

AMNESTY INTERNATIONAL

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French Constitutional Council declares the system of pre-charge detention for common offences unconstitutional

Amnesty International calls on the French authorities to revise the laws regulating the rights of all persons held in pre-charge detention in a manner which is consistent with respect for human rights.

This call is made in the wake of the ruling on 30 July by the French Constitutional Council (*Conseil constitutionnel*) which declared unconstitutional the laws regulating pre-charge detention (*garde à vue*) for persons deprived of their liberty in connection with common criminal offences because the laws do not guarantee detainees' rights of defence, such as effective assistance by a lawyer and to be informed of the right to remain silent. Those rules will be abolished on 1 July 2011, but they will remain in force until that date.

The ruling echoes wider concerns voiced about the rules on pre-charge detention in May this year by the United Nation's Committee against Torture (CAT). In doing so, the UN Committee reminded the government that "it is during the first few hours after an arrest that the risk of torture is greatest, particularly when a person is being held incommunicado".

Amnesty International is concerned, however, that in accordance with the ruling of the Constitutional Council, these unconstitutional laws may remain in effect for eleven more months, during which time the rights of all they are applied to will be violated and the individuals concerned will not be able to challenge such violations by claiming that the laws on pre-charge detention are unconstitutional.

The Constitutional Council's decision came as a response to lawyers who questioned the compatibility of provisions of the Criminal Procedure Code on pre-charge detention with the rights and freedoms guaranteed by the French constitution. A new law which came into effect on 1 March 2010 allows individuals to challenge the constitutionality of a law during judicial proceedings.

Under article 63-4 of the Criminal Procedure Code, pre-charge detention can last for up to 24 hours, and can be extended for a further 24 hours by decision of the public prosecutor. During this period individuals who are detained in connection with common criminal offences have a right to restricted access to a lawyer. They may have one 30-minute meeting with a lawyer from the first hour of their detention, and if the detention is extended, they may have another 30-minute meeting at the start of the extension. The detainee is not granted access to his or her lawyer during questioning. Detainees' rights to defence are further impeded as their lawyers are not granted access to the files the authorities hold on them.

The Constitutional Council's ruling brought into stark relief the authorities' extensive use of powers to detain people pre-charge, including for minor offences. In its ruling, the Constitutional Council noted that in 2009 alone, more than 790,000 cases of pre-charge detentions have been logged. The Constitutional Council also noted that most final judgments in criminal cases are based solely on proof gathered before the end of pre-charge detention, even in cases where the facts are particularly complex or the crime is particularly serious. The Constitutional Council considered that such important developments in the use of pre-charge detention must be accompanied by the necessary guarantees for the respect of the detainees'

rights of defence. It found that under the Criminal Procedure Act, individuals held in pre-charge detention do not enjoy effective assistance by a lawyer, nor are they notified of their right to remain silent. The Constitutional Council thus concluded that the laws on pre-charge detention for common criminal offences are unconstitutional.

Amnesty International is concerned that the even more restrictive rules, applicable to individuals held in pre-charge detention under suspicion of involvement in serious organized crimes, terrorism-related offences or drug trafficking, will remain in force. The Constitutional Council chose not to re-examine these rules because it had previously decided that they were justified by the complexity and seriousness of the offences.

Individuals detained for suspicion of having committed a number of serious organized crimes are granted access to a lawyer only 48 hours after they are placed in detention. Persons suspected of involvement in terrorism-related offences or drug trafficking are granted access to a lawyer only 72 hours after detention. If it is extended, pre-charge detention for those crimes can last for up to three and four days respectively. The same restrictions on access to a lawyer for individuals suspected of common criminal offences apply under this special regime.

Amnesty International calls on French law-makers to ensure that the new system of pre-charge detention fully respects international human rights standards, which call for detainees to enjoy effective access to a lawyer, including during questioning, from the outset of and throughout their detention.

In particular, Amnesty International urges the French government and parliament to ensure that the new legislation ensures that all persons deprived of their liberty in pre-charge detention, regardless of the offence they are suspected of:

- are notified of their rights, including to assistance by a lawyer and their right to remain silent;
- may be assisted by a lawyer from the outset of and throughout their detention, including during all questioning, and that there are no time limits on their meetings with their counsel;
- may be examined by a doctor of their choice from the outset of detention;
- may notify a person of their choice of their detention and whereabouts from the outset of detention.

Furthermore the law should ensure that lawyers are given access to the files the authorities hold on the detainee.

Amnesty International also calls on French law-makers to ensure that the new legislation makes the video and audio recording of all pre-charge detentions and interrogations compulsory; that audio and video equipment is installed in all places where detainees may be present, including common areas and individual cells; and that all law enforcement officials are required to wear a visible form of identification (such as their identification number) when using force, carrying-out arrests, and during questioning .

Finally, the organization calls on the French authorities to ensure that an independent, impartial and effective investigation is promptly carried-out into any allegation of torture or other ill-treatment during pre-charge detention.

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