



PUNISHED WITHOUT TRIAL

THE USE OF ADMINISTRATIVE CONTROL MEASURES IN THE
CONTEXT OF COUNTER-TERRORISM IN FRANCE

AMNESTY
INTERNATIONAL



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GLOSSARY

ASSIGNED RESIDENCE ORDER

An order from the French Ministry of Interior that mandates controls on a person's movement and association, including a requirement to report daily to the police; a ban on contact with specified people; a prohibition on visiting certain locations or institutions; and in some cases involving foreigners, a night time curfew.

EXPULSION EN URGENCE ABSOLUE

An administrative expulsion on grounds of national security ordered by the French Ministry of Interior and justified by an "absolute emergency". The affected person has no opportunity to challenge the order prior to expulsion.

FICHE S

A government file assigned to an individual indicating that he or she is a potential threat to national security. In most cases, the affected person does not know that such a file exists.

NOTE BLANCHE

A document composed by the French intelligence services allegedly containing information indicating that a person poses a threat to national security and used to justify the imposition of administrative control measures. A note blanche is typically only produced when a person challenges an administrative control order in court.

RÉFÉRÉ-LIBERTÉ

An expedited process before the administrative court initiated by a person subjected to an administrative measure who argues that the administrative order should be suspended because it results in an illegal and obvious infringement of a fundamental right.

SILT LAW

A law adopted in October 2017 (Loi renforçant la sécurité intérieure et la lutte contre le terrorisme: strengthening internal security and the fight against terrorism) that includes, among other things, four administrative control measures: assigned residence orders, house searches, controls on access to certain areas (secured perimeters), and the power to close places of worship.

INTRODUCTION

“My identity papers were destroyed by the administration and I have a receipt which states that I am assigned to residence. I did an application for social housing and it took ages because of that. For a work contract, the employer must go through the local representative of the Ministry of Interior, they make the request, but it takes more time. It is somehow worse than a prison sentence because we are in prison while being outside. At least in prison, there is no alternative, end of story.”

Rochdi, age 30, had been assigned to residence from February 2017 to July 2018.¹

A state's power to control a person's freedom, movements, associations, ability to work, and private life is usually exercised when an individual is reasonably suspected of having committed a crime and the criminal justice system – with all its attendant safeguards – is engaged. Across Europe however – and notably in France – governments are increasingly relying on administrative orders in the context of counter-terrorism. Administrative control orders commonly require a person to live only in a specific area, obey a night time curfew, and report to the police daily, among other control measures. The catch is that there is no intention on the state's part to investigate or criminally prosecute people affected by such orders. If law enforcement officers or other state actors simply believe that a person might, in the future, pose a threat to national security, administrative control measures can be applied. But few – if any – of the procedural safeguards that exist in the criminal justice system apply in the administrative context. In fact, most people have no

¹ Telephone interview with Rochdi on 17 July 2018.

access to the information that state has – it is treated as secret by the state – and so individuals may have no idea why exactly they are on the government's radar. People like Rochdi are thus punished without trial and without any effective means to challenge such punishment. As the cases in this report indicate, such measures violate France's international human rights obligations and have serious negative consequences for those individuals subjected to them.

This report focuses on the human rights implications of assigned residence orders and house searches imposed during the state of emergency in France; the consequences of assigned residence orders under the SILT law passed in 2017; and control measures adopted under the law on foreigners, including emergency orders of expulsion, withdrawal of refugee status, and assigned residence for foreign nationals who cannot be returned to their home countries or transferred to a safe third country because they would be at risk of torture or other ill-treatment on return. For this report, in addition to desk research and legal and policy analysis, Amnesty International conducted a total of 28 interviews including with individuals who were or are subjected to control orders, their family members, lawyers, national human rights institutions and other relevant civil society organisations. Additionally, Amnesty International held meetings with officials from the Ministry of Interior to raise some of the key concerns with them. The responses of the officials are included in this report.

In October 2017, the French government lifted the state of emergency that had been declared following a series of violent attacks in Paris on 14 November 2015. The state of emergency had been extended six times between 2015 and 2017.² Under the state of emergency, the French authorities derogated from France's human rights obligations and exercised a range of exceptional powers, including the imposition of certain administrative control measures (hereafter control measures), typically based on secret information (*notes blanches*) and applied without charging or prosecuting a person subjected to such an order with a criminal offence.³ Control measures included house searches, assigned residence, restrictions on public assemblies and closures of places of worship. During the state of emergency, no prior judicial authorization was required to carry out or implement the orders.

The French authorities are not alone in employing control measures, without any intention of charging or prosecuting a person subject to them. The notable regional upward trend of European governments using such measures in counter-terrorism operations as a response to violent attacks in several EU member states has raised alarm in recent years.⁴ Amnesty International had expressed strong concerns regarding the disproportionate impact of France's emergency measures on human rights and the risk that they might, in the future, be embedded in ordinary law.⁵ It is instructive to note that there is very little legal authority that directly addresses the phenomenon of administrative control orders in the counter-terrorism context and their implications for an individual's human rights. For example, in a set of updated guidelines issued by the European Court of Human Rights in August 2018, the briefs on article 5 (right to liberty), article 6 (right to fair trial) and article 8 (right to private and family life) make no mention at all of administrative control measures and whether they are in compliance with the ECHR or its jurisprudence.

Many independent experts and organizations, at international, regional and national level have criticized these measures because they unduly restrict a range of human rights – including the right to privacy and family life; the right to work; the guarantee of a fair trial; freedom of movement; and the right to a remedy – and are often unnecessary and disproportionate.⁶ If control measures amount to a deprivation of liberty – that is, they essentially put a person under house arrest – they serve as a proxy for criminal proceedings. Such deliberate displacement of the criminal justice system in favour of administrative controls with much weaker safeguards is an extremely disturbing development.

² Law on the state-of-emergency, 3 April 1955 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350>

³ European Convention on Human Rights (ECHR), Article 15

⁴ "The regional trend of using such measures instead of charging and prosecuting people in the criminal justice system is deeply problematic." Amnesty International, *Dangerously Disproportionate. The ever-expanding security state in Europe* (Index: EUR 01/5342/2017) p.48, <https://www.amnesty.org/en/documents/eur01/5342/2017/en>

⁵ Amnesty International, *Upturned lives. The disproportionate impact of France's state-of-emergency* (Index: EUR 21/3364/2016) <https://www.amnesty.org/fr/documents/eur21/3364/2016/en/>

Amnesty International, déclaration publique, *France : la logique de l'état d'urgence transposée en droit commun*, 5 July 2017

https://amnestyfr.cdn.prismic.io/amnestyfr%2F2509c66d-2139-49ee-a4cb-0602cf0195af_ai_d%C3%A9claration+publique+amnesty+international_france.projet+de+loi+antiterrorisme.pdf

⁶ Protocol 4 to the ECHR, Article 2 (freedom of movement); International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 6 (right to work); ECHR, Article 8 (right to private and family life) and ECHR, Article 13 (right to remedy);

Letter of the Commission for Human Rights of the Council of Europe to the French Senate on the SILT law, 10 July 2017 : "Je me dois de rappeler que la Cour européenne des droits de l'homme (CrEDH) avait précisé que les Etats ne sauraient prendre, au nom de la lutte contre le terrorisme, n'importe quelle mesure jugée par eux appropriée (voir, entre autres, arrêt Klass et autres c. Allemagne, CrEDH, 6 septembre 1978, § 49). Au nom de la lutte contre le terrorisme, les droits de l'homme et les libertés fondamentales peuvent être restreints, mais sous certaines conditions : de légalité, de proportionnalité et de contrôle démocratique." <https://rm.coe.int/lettre-au-senat-francais-sur-le-respect-des-droits-de-l-homme-dans-le-1680731105>

In France, the Ministry of Interior oversees the implementation of the control orders authorized by the SILT law, under which administrative measures are now embedded in criminal law and are employed as ordinary tools of counter-terrorism operations, including secured perimeters (controls on access to certain areas); the closure of places of worship; individual administrative control measures and surveillance or MICAS (known as assigned residence orders); and police actions at residences including search of the physical premises and seizure of data (known as house search).⁷ Failure to comply with a control measure can lead to a prison sentence and/or a fine. The transfer of exceptional measures - that are supposed to be temporary to address a national emergency - into ordinary law is also a worrying regional trend.⁸

Administrative control measures were used with great frequency from November 2015 to November 2017. During that two-year state of emergency, the French authorities issued orders for 4469 house searches; 754 assigned residences; 75 secured perimeters; and 19 closures of places of worship.⁹ Since the adoption of the SILT law on 1 November 2017 to October 2018, the French authorities have ordered 67 house searches, 70 assigned residence orders, 175 secured perimeters and 5 closures of places of worship.¹⁰ Amnesty International remains concerned that the SILT and other laws provide the French government with tools that violate human rights in the context of counter-terrorism. According to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the SILT law constitutes a “de facto state of qualified emergency in ordinary French law”.¹¹

Aside from the 1955 law that authorized the 2015 - 2017 state of emergency and the SILT law, the French legal framework also currently provides for the use of other control measures in the context of counter-terrorism operations, including travel bans; bans from French territory; expedited expulsions of foreign individuals and assigned residence orders specifically for foreign nationals who cannot be returned to their country of origin or a third country.¹² Such measures are available under French law for use at the discretion of an administrative authority and also do not provide the safeguards that are required in the context of the criminal justice system.

If a person is reasonably suspected of involvement in, or the commission of, a terrorism-related offence, that person should be investigated, charged and prosecuted in a criminal proceeding that complies with international fair trial standards. Amnesty International is not implying that persons currently subjected to or affected by administrative control measures should be criminally prosecuted instead. The distinction between the administrative and criminal systems, however, has become blurred in France and has resulted in the infringement of key human rights. Use of the administrative system to impose control measures on persons based on secret information violates the presumption of innocence, the right to fair process, and the rights to private and family life, freedom of movement, and the right to work. Amnesty International urges the French authorities to repeal the legislation that authorises administrative control measures in the context of counter-terrorism.

⁷ Respectively: Secured perimeters - Article L226-1 of the Code on internal security created by the article 1 of the Law n° 2017-1510 of October 30th, 2017 https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_1; Closure of places of worship - Articles L227-1 and L227-2 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th, 2017 https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_2; Assigned residence or “Mesures Individuelles de Contrôle Administratif et de Surveillance (MICAS)” Articles L228-1 à 7 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th, 2017 https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_3;

House search - Article L229 of the Code on internal security created by the article 4 of the Law n° 2017-1510 of October 30th, 2017 https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_4

⁸ Amnesty International, Dangerously Disproportionate. The ever-expanding security state in Europe, EUR 01/5342/2017 <https://www.amnesty.org/en/documents/eur01/5342/2017/en>

⁹ “Sortie de l’état d’urgence. Un bilan et des chiffres clés”, Information presse, Ministère de l’intérieur, 2 November 2017 <https://www.interieur.gouv.fr/content/download/105958/839732/file/information-presse-bilan-etat-durgence.pdf>

¹⁰ Contrôle parlementaire de la loi renforçant la sécurité intérieure et la lutte contre le terrorisme [http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/contrôle-parlementaire-silt/contrôle-parlementaire-de-la-loi-renforçant-la-securite-interieure-et-la-lutte-contre-le-terrorisme/\(block\)/45410](http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/contrôle-parlementaire-silt/contrôle-parlementaire-de-la-loi-renforçant-la-securite-interieure-et-la-lutte-contre-le-terrorisme/(block)/45410)

¹¹ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism preliminary report following her country visit in France in May 2018 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E>

¹² Respectively: Travel ban - Article L224-1 of the Code on internal security <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000029755321>; Bans from the French territory - Articles L214-3 to L214-8, Code of entry and residence of foreigners and the right of asylum <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000029755341&idArticle=LEGIARTI000006070158>; Expedited expulsion of foreign individuals in case of absolute emergency - Article L522-1 Code of entry of foreigners and the right of asylum <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTI000006335213&dateTexte=&categorieLien=cid>;

Assigned residence - Article L561-2 Code of entry of foreigners and the right of asylum <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTI000006335269&dateTexte=&categorieLien=cid>

METHODOLOGY

The research for this report covers the legacy of the state of emergency and how administrative control measures have been implemented under the SILT law and the law on foreigners. It includes follow-up on previously reported cases during the state of emergency and cases that have emerged since it ended in October 2017.

Between June 2018 and September 2018 Amnesty International interviewed 13 individuals – and/or their family members – who had been subjected to one or more administrative control measures either during the state of emergency, under the SILT law, or under the law on foreigners. A total of 10 lawyers were also interviewed. Amnesty International additionally spoke with family members in two cases where their relative was currently in prison and in one case where an individual had been expelled from French territory.

Amnesty International interviewed representatives of national human rights institutions including the Defender of Rights (French Ombudsman) and the National Consultative Commission on Human Rights (CNCDH), and also met with representatives of the Ministry of Interior and the MP in charge of the oversight of the SILT law's implementation.

Amnesty International had access to a range of supporting documents, such as assigned residence orders, emergency orders of expulsion, court decisions and documents provided as evidence in court by the Ministry of Interior. The research was also informed by information provided by civil society organizations and academic institutions.

Some interviews were conducted in person and others over the telephone. Some interviewees are identified by their real names; others have been assigned pseudonyms to protect their identities and their privacy.

Amnesty International would like to thank the individuals affected by administrative control measures, their family members and lawyers, and organizations that cooperated with and/or facilitated its field research. Amnesty International would also like to thank the members of the network “Anti-terrorisme, droits et libertés.”¹³

¹³ Réseau “Anti-terrorisme, droits et libertés” <https://antiterrorisme-droits-libertes.org/spip.php?rubrique8>

1. LACK OF PROCEDURAL SAFEGUARDS IN ADMINISTRATIVE PROCEDURES

1.1 ASSIGNED RESIDENCE ORDER UNDER THE LAW

Assigned residence orders under the SILT law can be applied “for the sole purpose of preventing the commission of terrorist acts, where there are serious reasons to believe that the individual’s behaviour constitutes a serious threat for security and public order” and where the individual is, in some manner – however tenuous – in alleged association “with persons or organizations inciting, supporting or participating in acts of terrorism” or where the individual is supporting, spreading or adhering to statements inciting terrorist acts or apologizing them.¹⁴

The Minister of Interior exclusively makes the decision to issue an administrative control order after informing the public prosecutor. No prior judicial authorization is required. The Minister of Interior justifies the use of assigned residence orders on notes provided by the intelligence services (*notes blanches*). These notes typically are unsigned, undated and include some information about the targeted individual and/or their behaviour, associations and environment.

An assigned residence order prohibits a person’s movement outside of a geographically determined perimeter that cannot be smaller than the town or city of residence, and includes the obligation to report in person to the police at a police station once a day at a specific time. The order can also prohibit a person from visiting certain places or from being in direct or indirect contact with specific named individuals. To extend the geographical area from the town or city to the *departement* (a broader regional scope), the use of an electronic bracelet is possible upon proposition of the Ministry of Interior and if the affected person consents.

Administrative control orders under the SILT law last three months from the date the order is issued. The Ministry of Interior can renew an order for up to a total of 12 months.¹⁵ After six months, a renewal must be based on “new or complementary elements”. The sanction for violating an assigned residence order is up to three years of imprisonment and a maximum fine of 45,000 euros. There is no distinction among breaches of the order; that is, the same penalties apply whether an individual leaves the determined perimeter or whether they are in contact with a person with whom they have been prohibited from associating.

¹⁴ Articles L228-1 à 7 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_3

¹⁵ This total of 12 months excludes the time an affected person was assigned to residence under the state of emergency.

The order can be challenged before an administrative court within two months of its issue. The court should rule “as soon as possible”.¹⁶ An expedited process (*référé-liberté*) is also possible in an administrative court to suspend the order if an affected person argues that the order causes “serious and obviously illegal infringement” to a “fundamental freedom”. The administrative court is then required to issue a ruling within 48 hours.

1.2 INADEQUATE LEGAL SAFEGUARDS

Administrative control measures restrict rights but offer fewer and less robust legal safeguards than those provided in the criminal justice system. If a person is charged with a crime and prosecuted, they have a right to the full range of fair trial safeguards. Amnesty International is concerned that control measures are employed in France as a proxy for criminal proceedings specifically because the safeguards are weak and the executive, in this case the Ministry of Interior, enjoys a high degree of discretion when issuing an administrative control order. But such discretion coupled with weak safeguards can create the conditions for arbitrary and discriminatory issuing of such control orders.

The state of emergency law of 1955 transfers powers that typically require judicial authorization and oversight from the judiciary to the executive through the Ministry of Interior for what is supposed to be a limited period of time. These steps can be taken only on the grounds that there is an imminent threat to the life of the nation that requires exceptional temporary measures in order to protect national security. Despite the state of emergency having now been lifted, the SILT law mandates that the administrative authorities remain the primary state actors in charge of the implementation of control measures that restrict fundamental rights. By sidelining the criminal justice system, the French authorities appear to be attempting to avoid the obligation to abide by international fair trial standards in this aspect of their counter-terrorism operations.¹⁷

According to lawyers interviewed by Amnesty International, the application of control measures within an administrative procedure deprives the individual of key legal safeguards.¹⁸ Representatives of the Ministry of Interior told Amnesty International “the experience of the past year [November 2017 to October 2018] does not show insufficient safeguards”.¹⁹

The SILT law, as compared to the state of emergency, strengthens only slightly the procedural rights of those subjected to administrative control measures. Specifically, the SILT law requires prior judicial authorization for house searches from a judge (the Judge on liberties and detention of Paris). For other measures, the SILT law provides for judicial involvement only *after* an administrative order has been issued and a control measure has been applied, thereby authorizing retrospective judicial oversight as opposed to prior authorization. This precludes a judge from having the opportunity to stop an order from being applied on the basis of an independent and impartial evaluation of the necessity and proportionality of the proposed control measure.

The introduction of the SILT law immediately following the lifting of the state of emergency is problematic for several reasons. In a February 2018 decision, the French Constitutional Council determined that there was no need for any transition measures because the two legal provisions do not have the same objectives or the same requirements.²⁰ However, this ruling raises the concern that the Constitutional Council failed to recognize that assigned residence orders appear to have had precisely the same objective under the state of emergency as they do under the SILT law; that is to target people on the basis of certain behaviours and

¹⁶ “Dans de brefs délais”, Constitutional Council, decision n° 2017-695 §53, 29 March 2018 <https://www.conseil-constitutionnel.fr/decision/2018/2017695QPC.htm>

¹⁷ “The decision depends on both the nature of the act and the nature and severity of the possible penalty. States cannot avoid applying international fair trial standards to a case by failing to classify an offence as criminal or by transferring jurisdiction from courts to administrative authorities.” Amnesty International, *Fair Trial Manual* 2nd Edition (Index: POL 30/002/2014) p.13 <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>

¹⁸ Interview with Emmanuel Daoud, 18 July 2018.

¹⁹ Interview with two representatives of the Ministry of Interior, 15 October 2018.

²⁰ “La mesure d’assignation à résidence prévue par l’article L. 228-2 du code de la sécurité intérieure ne répond pas aux mêmes conditions que celle prévue par l’article 6 de la loi du 3 avril 1955, dans le cadre de l’état d’urgence, lequel ne peut être déclaré qu’ “en cas de péril imminent résultant d’atteintes graves à l’ordre public” ou “en cas d’événements présentant par leur nature et leur gravité le caractère de calamité publique”. Elle n’a pas non plus la même portée. Par conséquent, le fait qu’une même personne puisse successivement être soumise à l’une puis à l’autre de ces mesures d’assignation à résidence n’imposait pas au législateur de prévoir des mesures transitoires destinées à tenir compte de cette succession.” Constitutional Council, decision 2017-691, 16 February 2018.

associations with specific individuals and to control their movement and access to places and to other people with the belief that in the future a targeted person may commit a terrorism-related crime.

“Selim” and “Ali” have been affected by both the state of emergency and the SILT law. When the police called “Selim” on 1 November 2017 (the day the SILT law was adopted), he thought his assigned residence order was lifted because the state of emergency was over, but instead he seamlessly received a new assigned residence order under the new SILT law.²¹ When asked about the state of emergency and his experience of the regime under the new law, “Selim” told Amnesty International “I thought I would stop reporting to the police station on 1 November. They [police officers] told me I needed to come on 1 November and they just made me sign a paper. That was it, I kept reporting to the police daily.”²²

“Ali” was subject to an assigned residence order under the state of emergency on 28 July 2017 and he went to prison on 21 August 2017 for six months because of a breach of its conditions. When he was released on 13 December 2017, the state of emergency had ended, and the SILT law had been adopted. From then, Ali spent three months without an assigned residence order, until the Ministry of Interior subjected him to the new SILT provision on 26 March 2018.²³

All of the individuals on an assigned residence order under SILT interviewed by Amnesty International were also subject to an assigned residence order under the state of emergency. The orders under both laws for those individuals were automatically renewed by the Ministry of Interior.

Renewals and extensions of administrative control measures are a key concern for several of the lawyers and experts who Amnesty International interviewed because the safeguards that accompany the administrative orders are weak, and the scope for challenging the application of a measure is narrow. Following a constitutional decision on the new law, there is now a requirement for “new or complementary elements” to justify a renewal and confirm the continued “threat” that a person’s behaviour allegedly constitutes. According to some lawyers, to circumvent this requirement, the Ministry of Interior holds back certain information at the time of the initial order and then presents that information as new to justify renewing the control measure. Representatives of the Ministry of Interior told Amnesty International that “if the new and complementary elements are not sufficient it is difficult to renew the order. Those individuals are suspected of terrorist activities, they are not just robbers”.²⁴ According to the Ministry of Interior, in individual cases, the information from the intelligence services is compelling and the *note blanche* “extremely substantiated”.²⁵ It bears repeating that the person subject to the order usually does not have access to that intelligence information and therefore cannot mount an effective challenge to it.

For example, Rochdi told Amnesty International that “they [the Ministry of Interior] have no proof but they keep renewing it, they say they have new information. Every time they arrest me they say it is a new element. During the first three months of my assigned residence, I spent one month and a half in prison for violating it and fourteen days working. What is the new information?”²⁶

According to data of October 2018 published by the parliamentary commission that oversees the implementation of the SILT law, of 70 assigned residence orders issued under SILT law, the Ministry of Interior chose not to renew an order in only 20 cases.²⁷ As “Selim” told Amnesty International, “they [the Ministry of Interior] will always find something to renew it. Even if I do nothing, even if I bury myself, they will renew it.”²⁸

In two of the assigned residence renewal orders examined by Amnesty International there was no apparent new information included on the face of the order to justify the renewal. This was the case despite a time difference of fourteen months between the orders. In other cases, allegations of committing offences like *outrage* (the offense of insulting and showing disrespect to a law enforcement officer or public official) during a reporting visit to a police station were cited as new information to justify the renewal.

“Selim” told Amnesty International that “the convictions I had were because of *outrage* in relation to the assigned residence requirements. Every time I was in custody, it was because of that.”²⁹ The Ministry of Interior has claimed that “the attitude of ‘Selim’ during police reporting has been seen as provocative or

²¹ Telephone interview with “Selim”, 18 July 2018 (Name has been changed to respect the interviewee’s anonymity).

²² Telephone interview with “Selim”, 18 July 2018.

²³ Amnesty International had access to “Ali’s” file (Name has been changed to respect the interviewee’s anonymity).

²⁴ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

²⁵ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

²⁶ Telephone interview with Rochdi, 17 July 2018.

²⁷ Data published by the Parliament, October 2018 <http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/controle-parlementaire-silt/controle-parlementaire-de-la-loi-renforçant-la-securite-interieure-et-la-lutte-contre-le-terrorisme/donnees-chiffrees/mesures-de-police-administrative2>

²⁸ Telephone interview with “Selim”, 18 July 2018.

²⁹ Telephone interview with “Selim”, 18 July 2018.

threatening or vindictive”³⁰ as a justification for the renewal of the order. His brother “Mehdi” was in prison at time of writing on the charge of *outrage* for his behaviour during a trial for a violation of his assigned residence order. According to his mother and brother, “Mehdi” is mentally ill. His file mentions that he had been hospitalized several times in 2017 in psychiatric facilities. Every time “Mehdi” went to report to the police station under his assigned residence order, his mother was afraid he would not come back. “When he goes to report to the police, they put him in custody, immediate trial and prison [for *outrage*].”³¹

1.3 PRINCIPLE OF LEGAL CERTAINTY: BROAD AND VAGUE STANDARDS

According to the SILT law, control measures can be applied “for the sole purpose of preventing the commission of terrorist acts, where there are serious reasons to believe that the individual’s behaviour constitutes a serious threat for security and public order” and where the individual is, in some manner – however tenuous – in alleged association “with persons or organizations inciting, supporting or participating to acts of terrorism” or where the individual is supporting, spreading or adhering to statements inciting terrorist acts or apologizing for them.³²

This threshold is contrary to the principle of legal certainty and creates a risk of arbitrary implementation. In order to adjust their behaviours, individuals should understand precisely what conduct would amount to a crime.

The Council of State, the highest administrative court in France, in a 2017 advisory opinion on the SILT law insisted on the need to limit the use of the law to “the fight against terrorism”.³³ In 2017, Amnesty International expressed concerns about the broad and vague definition of terrorism in the domestic laws of several European countries, including France.³⁴ Under French law, acts of terrorism are defined as criminal offenses committed intentionally with the purpose of seriously disturbing public order through intimidation or terror.³⁵ Additionally, the criminal act of preparation in association with a terrorist purpose is far removed from the commission of a principal terrorism-related act.³⁶ Officials from the Ministry of Interior told Amnesty International that “the criminal offense of preparation in association with a terrorist purpose is maybe broad but essential”.³⁷

Control measures are thus apparently imposed on a person before they are reasonably suspected (which is the criminal standard required threshold) of having committed any offence under the French criminal code or having taken any affirmative step toward such an offence. Otherwise, the standard of reasonable suspicion would trigger a criminal investigation and the laying of criminal charges if evidence of a criminal act is found. Control measures have a preventive function intended to hinder or control the movement of individuals that the authorities label as a risk before they commit any offence.³⁸ Representatives from the Ministry of Interior told Amnesty International that they do not view the threshold “serious reasons to believe”

³⁰ Amnesty had access to “Selim’s” file.

³¹ Telephone interview with the mother of “Selim” and “Mehdi”, 19 July 2018.

³² Articles L228-1 à 7 of the Code on internal security created by the article 2 of the Law n° 2017-1510 of October 30th, 2017 https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/article_3

³³ Council of the State, advisory opinion, 15 June 2017.

³⁴ Amnesty International, *Dangerously Disproportionate. The ever-expanding security state in Europe* (Index: EUR 01/5342/2017) p.23-26 <https://www.amnesty.org/en/documents/eur01/5342/2017/en>

³⁵ Les infractions citées “constituent des actes de terrorisme, lorsqu’elles sont intentionnellement en relation avec une entreprise individuelle ou collective ayant pour but de troubler gravement l’ordre public par l’intimidation ou la terreur” article 421-1 of the Criminal Code

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=5CDD9FC19BB4E420D828B3F96C09D82F.tplgr31s_3?idSectionTA=LEGISCTA000006418851&cidTexte=LEGITEXT000006070719&dateTexte=20181024

³⁶ “Constitue une association de malfaiteurs tout groupement formé ou entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d’un ou plusieurs crimes ou d’un ou plusieurs délits punis d’au moins cinq ans d’emprisonnement.” article 450-1 of the Criminal Code

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=0A600C3BF861049ED2A0AE8400E67E45.tplgr27s_2?idArticle=LEGIARTIO00006418851&cidTexte=LEGITEXT000006070719&dateTexte=20180530

³⁷ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

³⁸ “Je n’affirme certes pas que ce texte nous permettra d’éradiquer le péril et d’éviter tous les attentats. Qui pourrait le prétendre ? Mais je crois qu’il maximise nos chances de le faire car il permettra de prévenir très en amont le processus de radicalisation et il donnera la possibilité à nos forces de sécurité et à nos services de renseignement de prévenir des attentats imminents, par la surveillance d’individus voire par des visites à leur domicile, quand tout laisse à penser que ceux-ci sont sur le point de passer à l’acte.” Ministry of Interior, Assemblée Nationale session of 11 October 2017 <http://www.assemblee-nationale.fr/15/cr/2017-2018/20180007.asp#P1038024>

as insufficient or the process as falling short of necessary safeguards.³⁹ However, because there is no prior judicial authorization required for assigned residence orders, a judge is only able to assess the legality of the control order if an individual challenges it in court after the order has already been issued. As of October 2018, not one of the 40 assigned residence orders challenged by individuals in court had been struck down by courts. In just two separate cases, control orders were suspended by the judge.⁴⁰

The problems caused by using a broad and subjective threshold for the application of a control order can be seen in the experiences of the brothers “Mehdi” and “Selim” who were both charged with “apology of terrorism” in September 2016. In the case of “Mehdi”, the release of his brother “Selim” from pre-trial detention in early 2017 led the Ministry of Interior to call for the “closer supervision” of “Mehdi” by the imposition of an assigned residence order. A document from the Ministry of Interior noted that “Mehdi’s” perceived “fragility” and the release of his brother “motivated” this measure, indicating that there is an extremely wide range of non-criminal behaviours that could result in the application of control measures.

In all the individual cases examined for this report, being associated with individuals either suspected or convicted of terrorist acts was a ground for the use of control measures. In some of the *notes blanches* that were reviewed by Amnesty International, the main part of the text was a detailed description of an individual other than the one subjected to the measure in question. In one *note blanche*, the Ministry of Interior claimed that an individual assigned to residence “bragged about being in contact” with a suspected terrorist.⁴¹ The SILT law does not provide any precision on when the frequency and the nature of the association with such individuals could lead to the application of a control measure. As “Maxime”, a young man subject to a house search and assigned to residence during the state of emergency, told Amnesty International “when you go to the mosque, you can’t always know to whom you are saying *salam*”.⁴²

Amnesty International also spoke with “Naim”, a Chechen living in France, who lost his refugee status in 2016 under the state of emergency because of his alleged links with an individual labelled as “dangerous” by the Ministry of Interior. This individual, also a Chechen, had allegedly travelled to the Turkish-Syrian border and had also lost his own refugee status in 2016. “Naim” explained that everyone knows each other in the Chechen community and it is not “written on their forehead if they are terrorists”.⁴³ The other Chechen man is challenging the revocation of his refugee status. “Naim” is waiting for the ruling of the administrative court and told Amnesty International “if he is not recognized as dangerous and wins his case, then it is a good sign for me”.⁴⁴ “Naim” is planning to challenge the decision on his refugee status and he is currently still living in France with a residence permit. “Naim” explained: “I’m working, my children are studying. I’m not looking for problems. They don’t know how to discuss with people. I need to exercise my rights [to challenge the decision] so they will know I did not commit anything, I didn’t steal, I didn’t sell drugs.”⁴⁵

Rochdi also noted that application of a control order because of association is problematic. He told Amnesty International “the Ministry of Interior said that I was in contact with people who left the region several months ago. I can’t leave the town where I’m assigned, and those people are not even in the region.”⁴⁶

The broad and vague definition of “terrorism” and the criteria justifying the use of control measures taken together create a profound lack of clarity and violate the requirement of legality under international human rights law.

³⁹ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

⁴⁰ Data published by the Parliament, October 2018 <http://www2.assemblee-nationale.fr/15/commissions-permanentes/commission-des-lois/controle-parlementaire-silt/controle-parlementaire-de-la-loi-renforçant-la-securite-interieure-et-la-lutte-contre-le-terrorisme/donnees-chiffrees/mesures-de-police-administrative2>

⁴¹ Amnesty International had access to the document.

⁴² Telephone interview with “Maxime”, 18 July 2018 (Name has been changed to respect the interviewee’s anonymity).

⁴³ Interview with “Naim”, 21 July 2018 (Name has been changed to respect the interviewee’s anonymity).

⁴⁴ Interview with “Naim”, 21 July 2018.

⁴⁵ Interview with “Naim”, 21 July 2018.

⁴⁶ Telephone interview with Rochdi, 3 September 2018.

1.4 LACK OF MEANINGFUL OPPORTUNITY TO CHALLENGE AN ORDER

The research for this report strongly indicates that persons subjected to administrative control measures under French law are not afforded a meaningful opportunity to challenge such orders.

In July 2018, Rochdi was not allowed to attend his hearing before the Council of State in Paris because the Ministry of Interior denied him a pass to leave the municipality of his assigned residence order. According to his lawyer, the decision not to grant Rochdi a pass was justified by the “dangerousness” of Rochdi, and the Ministry of Interior had claimed that the presence of Rochdi’s lawyer at the hearing would be enough.⁴⁷ A few days later but before the final ruling, Rochdi went to the police station for his daily reporting and a police officer informed him that the assigned residence order had not been renewed. The Ministry of Interior decided not to renew the order before the Council of State ruled on the legality of renewal of Rochdi’s assigned residence order. A decision of the Council of State could have provided legal arguments for other persons seeking to challenge a control order like Rochdi’s. According to the Ministry of Interior, when the Ministry declines to renew an order, it does not have an impact on the legality of the initial decision to issue the order, which was that the affected person posed a threat at that time.⁴⁸ The arbitrary nature of the application of administrative control orders is reflected in the fact that the Ministry of Interior refused Rochdi the pass to attend his own hearing allegedly because he was dangerous, and yet ten days later the Ministry declined to renew his control order, indicating that he no longer posed a threat to national security.

In November 2018, the French Parliament is debating an amendment to the SILT law that would give the authorities the formal power, enshrined in law, to decline to issue a pass for a person to move beyond their municipality. This amendment states that “a pass shall not be granted if the applicant’s travel threatens public security and order”.⁴⁹ The French authorities are already exercising this power, as reflected in Rochdi’s case, so this amendment appears to be redundant. However, if adopted by the Parliament, this formal power will serve as yet another check on a person’s movement and could operate to prevent people from attending hearings on their cases in denial of core fair trial principles.

The Ministry of Interior appears to pre-empt the courts from issuing judgements that more broadly address the problematic nature of control measures. In addition, access to justice and to a remedy is cut off. The Ministry of Interior has not lifted any assigned residence orders since the adoption of the SILT law; to date, two orders have been suspended by an administrative judge but none have been struck down in court and deemed illegal.

As control orders are administrative, they are challenged before administrative courts. The individual subject to a measure has up to two months after they are notified of the decision to issue an order for a control measure to bring a claim before the administrative court, which should rule “as soon as possible” on the matter.⁵⁰

There is an expedited process that permits an individual to request the suspension of an administrative order that causes “any serious and obviously illegal infringement” to a “fundamental freedom” and the authorities can also adopt “any measure necessary to safeguard a liberty”.⁵¹ However, this expedited process is not consistently allowed by the administrative judge when a person challenges an assigned residence order. The Council of State recently ruled that due to the impact an assigned residence order has on freedom of movement, it creates an automatic “presumption of emergency” justifying that the administrative judge rules under the expedited process.⁵² Despite this ruling, the administrative authority may use “particular circumstances” to justify not applying the principle of a presumption of a potential infringement on a “fundamental freedom”.⁵³ An amendment to the SILT law proposed in November 2018 would limit a person’s access to the expedited process to one time. The expedited process would not be available to a

⁴⁷ Interview with Rochdi’s lawyer, 13 July 2018.

⁴⁸ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

⁴⁹ Assemblée Nationale, sous-amendement n°CL1088 Loi de programmation 2019-2022 et de réforme pour la justice (n°1349), 8 November 2018 http://www.assemblee-nationale.fr/15/amendements/1349/CION_LOIS/CL1088.asp

⁵⁰ “Dans de brefs délais”

⁵¹ Articles L521-1 and L521-2 of the Code of Administrative Justice

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=D32E63333FB0FA773A65CDDE42018B60.tplgr31s_3?idSectionTA=LEGISCTA000006150399&cidTexte=LEGITEXT000006070933&dateTexte=20181024

⁵² Council of the State, decision 419084, 4 April 2018.

⁵³ “It can appear as paradoxical that on one hand the Council of the State deemed sufficiently serious the issue of deprivation of rights and liberties [constitutionally guaranteed], especially freedom of movement, and on the other hand considers [in expedited procedure] that assigned residence does not create a serious and manifested infringement of a fundamental right” Agnes Roblot-Trozier, L’État d’urgence devant le Conseil constitutionnel : Contrôle, vous avez dit contrôle ? <https://www.conseil-constitutionnel.fr/de/node/1868>

person in cases where the Ministry of Interior is renewing the order if this person already used it to challenge the initial order.⁵⁴ According to one lawyer, the goal of this amendment is to narrow even further the ability of an administrative judge to rule on the legality of administrative control orders.⁵⁵

There is an additional difficulty to meaningfully challenge an assigned residence order when the individual is in prison for a violation of the assigned residence order (for example moving outside of the geographical perimeter or failing to report to the police on time).

“Ali” is in prison since May 2018 for a violation of his assigned residence order. “Ali” is challenging the legality of the order before the administrative court, while at the same time mounting a challenge to his sentence before the criminal court. As he is now in prison, the administrative court considers the effects of the administrative measure suspended and the judge has declined to rule on its legality in an emergency process because “Ali” is in prison and there is no urgency to respond to “Ali’s” challenge of the control order. The criminal court has also refused to examine the legality of the assigned residence order, claiming that the criminal courts are not able to address that issue precisely because the decision on the legality of the assigned residence had not been addressed by the administrative judge. If the Ministry of Interior renews “Ali’s” order upon his release, his lawyer would have to again challenge the administrative order in a new proceeding. Such logic has resulted in “Ali” having no meaningful opportunity at present to challenge his administrative control order.

Lawyers told Amnesty International there is also pressure on administrative judges to maintain control measures because they might be seen as “letting go” an individual who might later commit an attack.⁵⁶ According to one lawyer there is an “implicit blackmail exercised by the police on the judges, who will fear to cancel the measures once they have been shown the potential danger of the person concerned”.⁵⁷

1.5 NOTES BLANCHES: RIGHT TO A FAIR HEARING

“Notes blanches” or “white notes” are documents provided by the intelligence services to the Ministry of Interior that allegedly contain information to justify the need for the application of an administrative control measure. These notes are typically unsigned, undated and include information about the individual targeted or his/her environment. They are often based on classified or secret information to which an affected person does not have access. Thus, there is no way to verify the accuracy of the alleged information as it is top-secret. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concerns that white notes create “undue burdens on the presumption of innocence” and “lessen defence rights in court”.⁵⁸

In 2002, Nicolas Sarkozy, then Minister of Interior, halted the practice of relying on *notes blanches* as an internal governmental policy.⁵⁹ In 2004, the former Minister of Interior, Dominique de Villepin, stated that it was not “acceptable in our Republic for notes to be authentic when they do not bear an indication of origin and their reliability is not evaluated”. He stated: “I only know one method: the strict compliance with the rule of law.”⁶⁰ In 2015, during the state of emergency, the Ministry of Interior reinstated the use of *notes blanches* in the counter-terrorism context and that has continued under the SILT law. This was reinforced by the Council of State at the beginning of the state of emergency when it ruled that there were no legislative provisions precluding the use of such notes in administrative court proceedings.⁶¹

⁵⁴ Assemblée Nationale, sous-amendement n°CL1088 Loi de programmation 2019-2022 et de réforme pour la justice (n°1349), 8 November 2018 http://www.assemblee-nationale.fr/15/amendements/1349/CION_LOIS/CL1088.asp

⁵⁵ Les juges mis à l'écart du contrôle des assignés à résidence https://www.lemonde.fr/police-justice/article/2018/11/14/les-juges-mis-a-l-ecart-du-contrôle-des-assignés-a-résidence_5383376_1653578.html

⁵⁶ Interview with Rochdi’s lawyer, 13 July 2018; telephone interview with “Ali”’s lawyer, 17 July 2018, and interview with “Ismail”’s lawyer, 18 July 2018.

⁵⁷ Le Monde, *Un an, 11 mois et 18 jours d'état d'urgence*, 31 October 2017 https://www.lemonde.fr/police-justice/article/2017/10/31/un-an-11-mois-et-18-jours-d-etat-urgence_5208393_1653578.html

⁵⁸ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism preliminary report following her country visit in France in May 2018. www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E

⁵⁹ Libération, *Notes blanches: les corbeaux de la Place Beauvau*, 15 February 2016 https://www.liberation.fr/france/2016/02/15/notes-blanches-les-corbeaux-de-la-place-beauvau_1433587

⁶⁰ Question d'actualité au gouvernement n°0349G, Réforme des renseignements généraux, 4 May 2004. <https://www.senat.fr/questions/base/2004/qSEQ04060349G.html>

⁶¹ “No legislative provision or principle precludes that the facts recounted by the *notes blanches* produced by the Minister, which have been filed in adversarial proceedings and are not seriously contested by the applicant, are susceptible to be taken into consideration by the

Individuals subjected to control orders only have access to the grounds for imposing control measures if they challenge the order in an administrative court. The Ministry of Interior will provide the note to the court to justify the need for a control measure, and both the lawyer and individual targeted have access to it. The initial orders issued to the individuals contain only a limited amount of the total information contained in the complete *note blanche*. To effectively bring a challenge, individuals must be told why they have been subjected to control measures and have access to the information that is the basis for the measures. Depriving the applicant and his counsel of access to the entirety of the information justifying the imposition of a control measure unduly disadvantages the affected person and denies them a process based on the principle of “equality of arms”.

In one *note blanche* Amnesty International reviewed, there were references to an individual who was said to be “clandestinely exercising the function of imam while in prison”, as well as the possession of religious documents and software to study Islam. Other notes referenced a problematic past in schools, expulsions from several institutions and generally violent behaviour. The *notes blanches* also mentioned past, non-terrorism-related criminal offenses and charges that had been dropped. “Selim” told Amnesty International that “they [the intelligence services] went to look in my previous school records saying that I was expelled eight times”.⁶²

Along with other details, some *notes blanches* include generic observations such as “incapable of self-control”, “[this individual] does not respect rules” or this person was “disregarding republican values and institutions”. There are frequent references to the physical appearance of the individual targeted, for example, the length of a person’s beard or choice of clothes. “Selim” told Amnesty International “[in the *note blanche*] they *draw* a profile, they do not want to admit they were wrong, therefore they pushed it as far as possible. If they subject us to those measures, they have to justify it.”⁶³

In several cases, Amnesty International noted additional references to a change of behaviour on the part of an individual described as “discreet” and seen as suspicious by the Ministry of Interior. Especially regarding individuals in prison, the notes mention how the individual suddenly changed his behaviour. According to the authorities, the objective of the changed behaviour is to “disguise” his/her radicalization and to not attract attention.⁶⁴ The justification of control measures is the “dangerous” behaviour of an individual but when the behaviour changes, it is still referred to in the notes as a justification for the measure. One note mentioned that the individual “adopted an attitude in contradiction with his usual values”.

The *notes blanches* Amnesty International reviewed also contained additional information like dismissed cases or dropped charges which are still not enough for prosecution. For example, the consultation of “jihadi” websites is not prohibited by law but can be mentioned as information in the *notes blanches* that purports to justify the imposition of control measures.⁶⁵

Lawyers explained to Amnesty International that it is difficult to challenge administrative orders before the court because the intelligence services are the source of the information supporting the orders and so much of that information is classified and therefore inaccessible. The *note blanche* in “Ali’s” case referred to behaviour while he was in prison due to a conviction on charges not even related to terrorism. However, according to his lawyer, the prison incident report does not support any information referring to his “radical behaviour” in prison as mentioned in the *note blanche*.⁶⁶

Administrative judges cannot accurately verify the information in such documents as much of the information backing a *note blanche* is classified. They are in the impossible situation of having to rule on whether the state has “serious reasons to believe” that such measures are required, without much, if any, hard evidence available to them. The administrative judge is not required to rely on the *notes blanches* as proof, but legal practice under the state of emergency showed a high reliance by the administrative courts on information from the intelligence services.

Lawyers interviewed by Amnesty International highlighted the difference of assessment between the administrative judge and the criminal judge when presented with information from the intelligence services. For the criminal judge, such information is part of the investigation, but the judge will consider it more

administrative judge” Council of the State, decision N° 395009 §28, 11 December 2015 <http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-11-decembre-2015-M.-H-X>

⁶² Telephone interview with “Selim”, 17 July 2018.

⁶³ Telephone interview with “Selim”, 17 July 2018.

⁶⁴ This is known as the strategy of “*taaqiya*”.

⁶⁵ Interview with the Syndicat de la Magistrature, 12 July 2018.

⁶⁶ Telephone interview with the “Ali”’s lawyer, 17 July 2018 and examination of the file.

cautiously, verify its accuracy and request more information where necessary. Such intelligence information cannot be the sole ground for a criminal prosecution.⁶⁷

Even if the administrative judge requests more detailed information from the Ministry of Interior, the burden of proof is on the person challenging an administrative decision. The individual would still have to dispute the information provided by the Ministry of Interior to the court (for example, past trips to certain countries). There is a presumption of veracity from information provided by the Ministry of Interior about an individual's behaviours and links which delegitimizes the applicant's counter arguments.

⁶⁷ Antoine Mégie, Institut de formation judiciaire, February 2017, "Terrorisme et droits fondamentaux : la phase d'enquête et de renseignement."

1.6 INTELLIGENCE GATHERING POWERS

“I would like my *fiche S* [state security file] to be repealed, I should not even have to ask for it.”

“Maxime”, subjected to a house search and assigned to residence during the state of emergency.⁶⁸

Control measures are often applied to individuals on the radar of the state under so-called counter-radicalization plans or those listed in the various databases of the intelligence services. By monitoring their behaviours, religious and social practices, or travels, authorities seemingly determine if a person is a potential risk and there is a need to apply control measures to them. These types of daily activities and personal information, for example individuals’ religious practices, are often referred to in the *notes blanches* as indicative that a person poses such a risk.

National plans to counter “radicalization” in France focus specifically on “jihadism” or “radical Islam”. In the government’s campaign *Stop Jihadism*, “jihadist radicalization” is defined as “the desire to replace democracy with a theocracy based on Islamic law (sharia) using violence and weapons. It implies the adoption of an ideology that influences their living environments and guides their behaviours.”⁶⁹ A national hotline also exists for families to report potentially “radicalized” individuals as part of the *Stop Jihadism* campaign.⁷⁰ One other component of the government’s action plan against “radicalization” and “acts of terrorism” is the establishment of national databases that contain *fiches* (files) on specific individuals.

Some individuals subjected to control measures have alleged that they initially appeared on the authorities’ radar through counter-radicalization plans and only found out that they were listed in particular databases once an administrative measure had been applied to them.

Most of the individuals interviewed by Amnesty International mentioned that they believe they are in the database with a personal file referred as “*fiche S*”. Because they do not have access to the database where *fiche S* profiles are stored, however, these individuals have no tangible proof that the state keeps such a file on them. The *fiche S* is part of the main database of individuals who are suspected – but not formally charged – of being a potential threat to national security. A *fiche S* implies that the authorities possess specific information (including grounds for the *fiche S*, photographs, movements tracking, among others) and that the police forces in France or the EU can conduct pat-searches based on the fact that a person has a *fiche S*. According to the Ministry of the Interior, there were 25,000 persons classified under the sub-group *fiche S* at the end of 2017; 9,700 of whom were there due to suspected “radicalization”.⁷¹ There are frequent calls from some politicians that all individuals with a *fiche S* should be placed in administrative detention, stripped of their nationality (in cases of dual nationality), or expelled (for foreign citizens).⁷² To date, no action has been taken on such proposals.

An individual is not notified when he/she is listed in this database. Typically, one learns that they are on the database during a police action or when attempting to travel to another country. As part of his assigned residence order, when “Selim” was required to report to the police station every day, he recalled hearing police officers say “here comes the *fiche S*”.⁷³ “Samia” and her husband “Mourad”, who were subjected to a house search during the state of emergency in November 2015, have noticed that when they travel, French border guards delay their onward travel. She claims that once she heard “we have two *fiches S*” at the police border control.⁷⁴

Under French law, the State has no duty to notify individuals regarding measures of surveillance or individual files like *fiche S* in state databases. If a person suspects or learns that they have or might have a *fiche S*,

⁶⁸ Telephone interview with “Maxime”, 18 July 2018.

⁶⁹ La radicalisation djihadiste, qu’est-ce que c’est ? <http://www.stop-djihadisme.gouv.fr/radicalisation/explication-du-phenomene/radicalisation-djihadiste-quest-ce-que-cest>

⁷⁰ Assistance aux familles et prévention de la radicalisation violente <https://www.interieur.gouv.fr/Dispositif-de-lutte-contre-les-filieres-djihadistes/Assistance-aux-familles-et-prevention-de-la-radicalisation-violente>

⁷¹ Sortie de l’état d’urgence : un bilan et des chiffres clés <https://www.interieur.gouv.fr/Espace-presse/Dossiers-de-presse/Sortie-de-l-etat-d-urgence-un-bilan-et-des-chiffres-cles>

⁷² Après les attentats de l’Aude, des propositions contre le terrorisme difficilement applicables https://www.lemonde.fr/les-decodeurs/article/2018/03/26/apres-trebes-le-retour-des-propositions-bancales-contre-le-terrorisme_5276571_4355770.html

⁷³ Telephone interview with “Selim”, 17 July 2018.

⁷⁴ Telephone interview with “Samia”, 19 July 2018.

they can approach the National Commission Regulating Intelligence Gathering (CNCTR) to inquire whether any illegal measures of surveillance have been imposed on him/her. If so, the CNCTR will challenge the legality of a measure or measures before the Council of State. If the measure of surveillance (for example, related to a *fiche S*) is deemed legal by the CNCTR, the individual will not be informed which type of measure he/she is subjected to. Some of the individuals Amnesty International interviewed felt that they experienced various obstacles linked to their potential *fiche S* (for example, delays in travel) without any meaningful opportunity to know definitively that the file existed and, if so, an effective mechanism for allowing them to challenge it. The Defender of Rights, the French Ombudsman, told Amnesty International that they had received complaints from individuals who had obstacles in common administrative procedures like renewing their passport, crossing a border, or working in a “high risk facility”. These individuals believe it is because they have a *fiche S*.⁷⁵

⁷⁵ Interview with the Defender of Rights, 17 July 2018.

2. OVERLAP OF ADMINISTRATIVE AND CRIMINAL CONTROL MEASURES

“For me the judicial control measures are the same as the administrative ones but with fewer restrictions. For example, with the judicial control I can’t leave the French territory, but with the administrative it is the town. It is useless, it has the same goal. And I don’t have the right to do anything, I don’t even have my ID.”

“Selim”, who was subject to an administrative assigned residence order while also being under judicial control.⁷⁶

During the state of emergency, Amnesty International raised concerns that a two-tier justice system – of administrative control on the one hand, and the criminal justice regime on the other – could emerge.⁷⁷ The cases of assigned residence orders examined under the SILT law indicate that control measures adopted in the context of criminal proceedings are overlapping with administrative control measures.

Judicial control measures (for example bail conditions) allow the judge to subject a person to one or more obligations before a trial, usually as an alternative to pre-trial detention. Such measures include limitations on movement (for example geographical area designation, area ban, prohibition on visiting certain places, obligation to inform the judge of all movements); surveillance (daily police reporting, contact ban, requirement to work and mandatory medical examination and/or treatment). Violations of those conditions can lead to pre-trial detention.

⁷⁶ Telephone interview with “Selim”, 17 July 2018.

⁷⁷ Amnesty International, déclaration publique, *France : la logique de l'état d'urgence transposée en droit commun*, 5 July 2017 https://amnestyfr.cdn.prismic.io/amnestyfr%2F2509c66d-2139-49ee-a4cb-0602cf0195af_ai_d%C3%A9claration+publique+amnesty+international_france.projet+de+loi+antiterrorisme.pdf

In terms of post-conviction controls, a judge can order a suspended sentence after a conviction, which often entails the person's release on probation and the imposition of certain requirements, including informing the judge of any travel abroad, and seeking judicial authorisation for changing residence or employment. The judge can also impose specific obligations including the obligation to work, to establish residence in a designated area, to seek medical treatment or the imposition of a contact ban and/or area ban. Violations of these obligations could lead to the extension of a probation period or the revocation of the suspended sentence.

During the state of emergency, the Ministry of Interior provided internal guidelines to prosecutors and prefects that described the control measures under the administrative regime and those under the criminal justice regime as “complementary” rather than conflicting and saw no problem with contemporaneous implementation.⁷⁸ The guidelines emphasized the sharing of information on targeted individuals and on monitoring “radicalized individuals”. It remains unclear why the state would impose administrative measures at the same time as judicial control measures that achieve the same objective, especially if the measures mirror one another. The authorities apply administrative measures as an additional layer of control understanding that such measures can be extended for up to 12 months and that fewer safeguards apply. In a number of cases documented in this report, a person subjected to judicial controls pre-trial, or a person whose sentence has been suspended, have also been under administrative controls at the same time.

2.1 PRE-TRIAL CONTROL MEASURES

“Why both measures? When I was released from pre-trial detention, I had an electronic bracelet for six months, judicial control measures and an assigned residence order.”

“Selim”, subject to control measures while waiting for his trial.⁷⁹

“Selim” and “Mehdi” were both charged with “apology of terrorism” in 2016.⁸⁰ When released from pre-trial detention in early 2017, “Selim”, 21, and his younger brother “Mehdi”, 20, were both assigned to residence under the state of emergency and were also under judicial control with an electronic bracelet.

“Mehdi”, a minor at that time as he was 17, was released after one and a half months.⁸¹ The judicial controls applied to “Mehdi” included the requirements to respond to a summons from any state and judicial authority and to report to the police once a day. “Mehdi” was also required to seek medical treatment for mental illness. Those requirements were contemporaneous with the requirements of “Mehdi’s” administrative order for assigned residence including no movements outside of the town to which he was assigned and daily reporting to the police station.

“Selim” spent five months in pre-trial detention. Upon his release in February 2017, he was also subject to assigned residence while being under judicial control measures with an electronic bracelet. Under the state of emergency in February 2017, the requirements of “Selim’s” assigned residence order were amended as deemed “not compatible with the ones of his electronic bracelet and his future work hours”.⁸² “Selim” was consecutively subjected to an assigned residence order under the SILT law in November 2017. “Selim’s”

⁷⁸ Amnesty International had access to the internal guidelines.

⁷⁹ Telephone interview with “Selim”, 17 July 2018.

⁸⁰ “Amnesty International is concerned that arrests and prosecutions – and pending proposals for such criminalization – on the basis of such vaguely defined offences as “apology of terrorism” (in France), “glorification of terrorism” (in Spain and the United Kingdom), or “promoting terrorism” (proposed in Germany) risk violating people’s right to freedom of expression. Although international treaties on the prevention of terrorism may require states to criminalize incitement to commit a terrorism-related offence, vaguely defined offences such as “apology of terrorism” risk criminalizing statements or other forms of expression which, even if deeply offensive to many, fall well short of incitement.” Amnesty International, *Dangerously Disproportionate. The ever-expanding security state in Europe* (Index: EUR 01/5342/2017) p.38, <https://www.amnesty.org/en/documents/eur01/5342/2017/en>

⁸¹ CNCDH advisory opinion on deprivation of liberty for minors p.32 http://www.cncdh.fr/sites/default/files/180327_avis_sur_la_privation_de_liberte_des_mineurs.pdf

⁸² Amnesty International had access to his file.

lawyer told Amnesty International “under judicial control, the judge decides on a requirement to work but under the assigned residence ‘Selim’ has to report daily to the police station, making it very difficult for him to find a job. Moreover, a violation of the judicial control’s requirements could lead to pre-trial detention.”⁸³

In the case of “Selim”, his judicial control measures were lifted in July 2018 to the surprise of his lawyer, who is currently challenging his assigned residence order. “It was very surprising to see a lift of judicial control, it is really rare, the investigative judge must realize there is an issue here.”⁸⁴

The Ministry of Interior claims that the contemporaneous use of both administrative assigned residence and judicial control measures is valid because they allegedly have “a different objective”.⁸⁵ The representatives of the Ministry of Interior told Amnesty International that “judicial control measures ensure that an individual will appear before a judge for the trial. For administrative measures, the intelligence services hold information on an individual that cannot support a prosecution but is still enough to subject him/her to control measures nevertheless.”⁸⁶

“Selim’s” lawyer stated “I insist the administrative assigned residence order is conflicting with the judicial control measures. Those measures are coming from two authorities that are not coordinating and are totally independent from each other. The criminal judge would say it is not my problem, and the Ministry of Interior’s local representative would say the same.”⁸⁷

Because judicial control measures take place in the context of prosecution, lawyers interviewed by Amnesty International explained that they have access to the entire file, in line with French criminal procedure law. “[With judicial control measures] We know what is at stake, there is the principle of equality of arms and the framework of investigation.”⁸⁸ Lawyers can ask the judge for the modification of certain components of a judicial control, for example if challenging a night curfew. However, as the lawyer explained, the same clarity is absent when challenging administrative orders.

2.2 POST-SENTENCE CONTROL MEASURES

“They sent me to prison, then they ruined my life and played with me. Until the very last week [before the end of the assigned residence order] they said I was dangerous.”

Rochdi, subject to assigned residence from February 2017 to July 2018 after his release from prison.⁸⁹

In a number of cases, the state has imposed administrative control measures on an individual after criminal proceedings and the serving of a sentence or a suspended sentence with specific conditions. In a hearing on the parliamentary control of the SILT law, one of the MPs in charge of the oversight of the law emphasized the utility of assigned residence orders, particularly in the context of individuals released from prison who have been sentenced for terrorism-related conduct or have been deemed to have been “radicalized”.⁹⁰

Lawyers representing individuals targeted by both regimes at the same time told Amnesty International that judges in the criminal justice system sometimes order “measures of reintegration” as a reduction of a sentence, or may order an obligation to work or seek medical treatment. These can conflict, for example,

⁸³ Telephone interview with “Selim’s” criminal lawyer, 13 September 2018.

⁸⁴ Telephone interview with “Selim’s” criminal lawyer, 13 September 2018.

⁸⁵ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

⁸⁶ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

⁸⁷ Telephone interview with “Selim’s” criminal lawyer, 13 September 2018.

⁸⁸ Telephone interview with “Selim’s” and “Mehdi’s” administrative lawyer, 28 August 2018.

⁸⁹ Telephone interview with Rochdi, 3 September 2018.

⁹⁰ Video of the hearing before the Parliamentary Commission, 12 September 2018 “Notamment dans le cadre des « sortants [de prison] » qui ont été condamnés pour terrorisme ou ont été radicalisés et sortent de prison. Ces personnes ne bénéficient pas de remise de peine et d’aménagement de peine. Face à des individus qui sortent sans mesures d’accompagnement sous le contrôle du juge d’application des peines, l’administration, la DGSJ et le renseignement territorial mettent en place des mesures de contrôle” http://videos.assemblee-nationale.fr/video.6564573_5b98c56d8683a.commission-des-lois--communications-sur-l-activite-de-la-commission-des-lois-2017-2018-12-septembre-2018

with the requirements of an administrative order for assigned residence, which can severely limit a person's ability to move freely.⁹¹

Rochdi has a sentence of 18 months including nine months of suspended sentence after a criminal trial where he was charged and convicted of "apology of terrorism" in 2016.⁹² Rochdi now has an obligation to work as part of his probation period. But there is a clash in Rochdi's case between the work requirement that was imposed on him by the judge and the requirements of his administrative assigned residence.⁹³

Rochdi articulated the dilemma he faces when subject to both types of orders: "I told the judge who gave me the obligation to work, they [the Ministry of Interior and administrative judge] are preventing me from working and you are imposing an obligation [to work]."⁹⁴ While Rochdi was working with a delivery company he was required to travel beyond the geographical perimeter defined in his administrative control order and, as a result, he was charged with a violation of his assigned residence. "They are making fun of me, they tell me you have to work, but they don't let me."⁹⁵ As a consequence, Rochdi was sent to prison for one and a half months. The judge of the criminal court advised him to file a request before the Ministry of Interior to amend the conditions of his assigned residence order. Rochdi asked for a broader regional perimeter but the Ministry of Interior responded that granting Rochdi's request would render the assigned residence order useless.⁹⁶

Following the serving of a sentence on charges not related to terrorism offenses, "Ali" was released during the state of emergency in 2016 and then assigned to residence. The Ministry of Interior suspected "Ali" of "radicalization" in prison.⁹⁷ The assigned residence was re-imposed under the SILT law and "Ali" has been in prison since May 2018 for violating the assigned residence order.

In both cases, the men's sentences were completed, but once released, the Ministry of Interior chose to impose an administrative control measure based on their alleged "behaviour" and "links" as provided by the SILT law. Neither decision is linked to a suspicion that the men have committed or have taken an affirmative step toward the commission of a terrorism-related crime.

⁹¹ Interview with Rochdi's lawyer, 13 July 2018, and phone interview with "Selim's" criminal lawyer, 13 September 2018.

⁹² "Amnesty International is concerned that arrests and prosecutions – and pending proposals for such criminalization – on the basis of such vaguely defined offences as "apology of terrorism" (in France), "glorification of terrorism" (in Spain and the United Kingdom), or "promoting terrorism" (proposed in Germany) risk violating people's right to freedom of expression. Although international treaties on the prevention of terrorism may require states to criminalize incitement to commit a terrorism-related offence, vaguely defined offences such as "apology of terrorism" risk criminalizing statements or other forms of expression which, even if deeply offensive to many, fall well short of incitement." Amnesty International, *Dangerously Disproportionate. The ever-expanding security state in Europe* (EUR 01/5342/2017) p.38, <https://www.amnesty.org/en/documents/eur01/5342/2017/en>

⁹³ Interview with Rochdi's lawyer, 13 July 2018 and telephone interview with Rochdi, 17 July 2018.

⁹⁴ Telephone interview with Rochdi, 17 July 2018.

⁹⁵ Telephone interview with Rochdi, 17 July 2018.

⁹⁶ Interview with Rochdi's lawyer, 13 July 2018. Amnesty International also had access to Rochdi's file.

⁹⁷ Telephone interview with "Ali's" lawyer, 16 July 2018. Amnesty International also had access to "Ali's" file.

3. NEGATIVE IMPACTS ON HUMAN RIGHTS

3.1 FREEDOM OF MOVEMENT

Assigned residence orders curtail people's freedom of movement.⁹⁸ The right to freedom of movement can be limited under very narrow circumstances in the interest of national security or public order. But such restrictions on the right must be necessary and proportionate.

As part of a criminal process under French and international law, it is permissible to control a person's movements in the pre-trial and on-going trial phase. For some categories of convicted persons, it is also permissible to put controls on their movements after release from prison. Administrative control measures that include confining someone to a limited geographical perimeter, imposing a curfew of a significant number of hours, and requiring them to report to the police station every day are unlikely to be either necessary or proportionate.

Rochdi was assigned to the town of Echirolles for one-year and a half; the town comprises an area of 8km² and Rochdi could not leave this perimeter. His mother lived in a different municipality, therefore he could not visit her. The job opportunities in Echirolles are also very limited. There is an option to extend the geographical perimeter from the municipality to the department with an electronic bracelet. Rochdi explained that he wished to get an electronic bracelet as provided under the SILT law. When Rochdi and his lawyer asked the Ministry of Interior, they were told that this provision of the law could not be implemented for him.⁹⁹ According to his lawyer, the Ministry of Interior is reluctant to apply this option in the context of an administrative measure, as it is commonly used in criminal proceedings only. According to representatives from the Ministry of Interior, they could not recall any case of an individual subject to an assigned residence order who had successfully petitioned the Ministry for an electronic bracelet.¹⁰⁰

On the night of the finale of the 2018 Football World Cup, on 15 July 2018 when France was playing Croatia, "Selim", 21, just like many other young French people, planned to watch the game in the fan zone near his town where he is assigned to residence. Despite being very nearby, going to this fan zone would have constituted a violation of the order. "Selim" was seen in the fan zone and taken into custody for 24 hours that same night because it was determined that he had violated the conditions of his assigned residence order.

Such restrictions, in the absence of a criminal investigation or prosecution, are disproportionate and violate the right to freedom of movement. Limitations in the interest of national security or public order do not permit restrictions on the right to freedom of movement based on a mere belief that a person may, in the future, commit a crime. Furthermore, the state's ability to restrict a human right cannot be proportionate if a person

⁹⁸ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2; International Covenant on Civil and Political Rights, Article 12.

⁹⁹ Interview with Rochdi's lawyer, 13 July 2018.

¹⁰⁰ Interview with two representatives of the Ministry of Interior, Paris, 16 October 2018.

has no access to the information on which an administrative control order is based, and no meaningful opportunity to challenge such an order.

3.2 RIGHT TO WORK

“I lost 10 months of salary and a permanent contract. I want to have them back.”

Rochdi, assigned to residence under the state of emergency and under the SILT law¹⁰¹

France has ratified and is a signatory to the International Covenant on Economic, Social and Cultural Rights (CESCR). Article 6 of the CESCR enshrines the right to work.¹⁰² Under the SILT law, the conditions of an assigned residence order can be modified to adapt to work hours on request of the affected person to the Ministry of Interior. Individuals under assigned residence orders must disclose the fact that they are under a control order to a potential employer, which automatically puts them at an extreme disadvantage in terms of acquiring employment. If they do manage to obtain a contract – not a conditional offer or mere promise of employment – they must present the contract to the Ministry of Interior in order to request a modification of the order.

In February 2017, Rochdi found a job in a shop in his town of Echirolles. He adapted his working hours so he could report to the police three times a day as per the requirements of the assigned residence order. Rochdi could not be there to close the shop as it required him to go to the other side of the city. He had a one-year contract but after one and a half months, his employer told him that if he did not find a solution so that Rochdi could close the shop, he would not pass his employment probation period. In the end, Rochdi lost his job. His former employer provided a letter confirming that he could no longer employ Rochdi because of the assigned residence requirements.

According to Rochdi and his lawyer, the Ministry of Interior responded that the right to work was not a fundamental right.¹⁰³ Rochdi then obtained an authorization to leave his town to attend a training in a company, but the Ministry of Interior refused to modify the conditions of his assigned residence order when he was offered a job there. The police also called the owner of the company several times, which Rochdi viewed as further interference with his right to work: “Go train yourself, do the interview, get the offer, but don’t work there.”¹⁰⁴

Rochdi remained unemployed until August 2018, when his order was not renewed, with an unemployment benefit of 600 euros per month and 180 euros of child support for his daughter. Rochdi and his lawyer asked on 26 June 2018 for an extension of the perimeter of his assigned residence order from the Ministry of Interior in order to have more opportunities to find work. The Ministry of Interior rejected the request on 4 July 2018 arguing that the assigned residence order would have “no effect” with an extended perimeter. The Ministry of Interior declined to renew Rochdi’s assigned residence order in August 2018 and since then he has been working as a delivery driver for the same company where he used to work. “The employer was really understanding and supportive.”¹⁰⁵ Rochdi is now trying to start his life over. In a meeting with the Ministry of Interior in October 2018, the representative of the Ministry acknowledged that employment is a vector of inclusion and the objective is not to prevent individuals targeted by administrative control measures from further inclusion.¹⁰⁶

“Selim” has not been able to find a job since he was released from pre-trial detention in February 2017 and has been subjected to assigned residence. “Selim’s” brother, “Mehdi” had an obligation to work as part of the conditions of his judicial control order but needed modification of his administrative assigned residence in order to gain employment. His mother told Amnesty International that the employer was asking him if he

¹⁰¹ Telephone interview with Rochdi, 3 September 2018.

¹⁰² The International Covenant on Economic, Social and Cultural Rights, Article 6; See also the Charter of Fundamental Rights of the European Union, Article 15-1.

¹⁰³ Interview with Rochdi’s lawyer, 13 July 2018 and telephone interview with Rochdi, 17 July 2018.

¹⁰⁴ Telephone interview with Rochdi, 17 July 2018.

¹⁰⁵ Telephone interview with Rochdi, 3 September 2018.

¹⁰⁶ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

could start right away and “Mehdi” had to say that he needed to ask the police before he could start working.¹⁰⁷ He finally was able to do an internship and had modified hours of reporting for his assigned residence order to adapt to his schedule. “The police would still come to our house to ask why he did not report” said “Mehdi”’s mother, despite the fact that Mehdi had the official authorization to work and the modification to the assigned residence order.

The right to work is a human right. France has an obligation to ensure that people are free to choose and accept work without unlawful interference from the state. The right recognizes “the importance of work for personal development as well as for social and economic inclusion”.¹⁰⁸ Administrative control measures that erect barriers to meaningful employment and that result in economic hardship – with little or no recourse for the affected individual -- violate the right to work. The imposition of a control order marginalizes a person by labelling them as a threat to society and often also a threat to “French values”. Such marginalization is exacerbated by excluding a person from meaningful and gainful employment.

3.3 RIGHT TO PRIVATE AND FAMILY LIFE

“It kills you, you are accepting the unacceptable. You are not taking care of your wife because you report to the police three times a day. Psychologically, it affects you.”

“Maxime”, subject to a house search and an assigned to residence during the state-of-emergency.¹⁰⁹

“Maxime” was subjected to a house search and assigned residence during the state of emergency. Since then, “Maxime” has moved to a different town and got a divorce at the end of 2017. “Maxime” told Amnesty International that the administrative measures were a factor in the decision to divorce and to move to a different town.

Another couple – “Zeia” and “Moussa” - relayed the details of their own house search and the lasting effects it has had on them. “I thought there were ten individuals knocking on the door, they broke everything. I would have opened the door normally. But they wanted to make a big scene, like in movies” “Zeia” told Amnesty International.¹¹⁰ On the night of 28 November 2015 at 9pm, “Moussa” and “Zeia” were subjected to a house search. The police presented the order of the house search only at the end of the search and “Moussa” noticed that it did not include his name or his flat number. “Moussa” raised that issue with the police who replied that they knew this flat had to be searched even though no flat number was featured in the order. Family relatives were there that night including a seven-year-old child. “Moussa’s” and “Zeia’s” three sons were handcuffed on the floor. During the house search, “Zeia” asked a police officer who was going to repair the door, and he replied that it is “Zeia’s” and “Moussa’s” responsibility. They then filed a request for compensation and wrote two letters to the prefect who is the local representative of the Ministry of Interior. The first one was sent on 2 December 2015 to claim reparations and the second one on 16 March 2016 to request a written record of the house search.¹¹¹ As of October 2018, both letters remained without a response from the prefect.

In July 2018, “Samia”, 23, described in detail the house search police conducted in December 2015 and the lasting effects it has had on her sense of security. “Samia” and her husband “Mourad”, 28, lived with “Mourad’s” mother when the house search was conducted. The police came around 5am, Mourad was already working, it was only “Samia” and her mother-in-law in the house. Over 20 officers came into the house and first separated “Samia” and her mother-in-law and put them in different rooms. The house search lasted for more than six hours. The mother-in-law could not warn her employer, a public hospital, that she would not be able to come to work, and “Samia” could not contact her husband for several hours.

¹⁰⁷ Telephone interview with the mother of “Selim” and “Mehdi”, 19 July 2018.

¹⁰⁸ Committee on Economic, Social and Cultural Rights General Comment 18, §4.

¹⁰⁹ Telephone interview with “Maxime”, 18 July 2018.

¹¹⁰ Interview with “Zeia” and “Moussa”, 16 July 2018.

¹¹¹ Amnesty International had access to both letters.

The police searched the technological equipment including personal computers. “Samia” had to go through her personal pictures with the police. “Some of the pictures were very personal and I did not feel comfortable with police officers looking at them.”¹¹² When “Samia” asked to go to the bathroom, she was followed by the only female police officer who came into the bathroom with her.

Such operations, in the absence of a criminal investigation or prosecution, are disproportionate and violate the right to private and family life. Limitations in the interest of national security or public order do not permit restrictions on the right to private and family life based on a mere belief that a person may, in the future, commit a crime. Furthermore, the state’s ability to restrict a human right cannot be proportionate if a person has no access to the information on which an administrative control order is based and no meaningful opportunity to challenge such an order.

3.4 PRINCIPLE OF NON-REFOULEMENT

“My father has heart problems, I don’t want to scare him.”

“Naim”, a Chechen refugee who had his refugee status withdrawn in 2016.¹¹³

The principle of non-refoulement protects individuals from forcible return to countries where they are at real risk of torture or other ill-treatment. This is an absolute obligation and cannot be counter-balanced with the potential threat a person allegedly poses.¹¹⁴ There are no exceptions to this rule.

Under French law, refugee status may be terminated when “there are serious reasons to consider that the presence in France of the person concerned constitutes a serious threat to the security of the state”.¹¹⁵ However, a government attempt to withdraw refugee status from a person alleged to be a threat to national security must be justified on more than a mere suspicion.

“Naim” arrived in France in 2008 and obtained refugee status in 2009. He is married with five children, and he lives in France with his family, including his parents who are also refugees. On 27 July 2016, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) revoked his refugee status. “Naim” has not told his parents that he has lost his status because he does not want to worry them.

According to official documents, the revocation of “Naim’s” refugee status was based on national security grounds, including his contact with another Chechen refugee labelled as “dangerous” by the authorities and who had his own refugee status revoked in July 2016. “Naim” was not subjected to any other control measures, such as assigned residence, and has no criminal record in France.¹¹⁶ “Naim” was neither formally suspected, nor arrested or under investigation for terrorism-related offenses. Naim told Amnesty International “I am afraid if the Russians ask for me, they [France] will send me back. I thought that my situation will end quickly but it has been three years now.”¹¹⁷ In September 2018, an Amnesty International urgent action indicated that Chechens of a similar profile to “Naim” are indeed at risk of torture and ill-treatment if forcibly returned to Russia.¹¹⁸ “Before I fled Russia in 2004, the police tried to arrest me at my house but I was already gone. They took my father instead and kept him in custody for five days.” “Naim’s” parents and wife also came to France as refugees.

After first receiving a letter from the French Office for the Protection of Refugees and Stateless Persons (OFPRA) notifying him that his status would be revoked, “Naim” was summoned by the OFPRA in

¹¹² Telephone interview with “Samia”, 19 July 2018.

¹¹³ Interview with “Naim”, 21 July 2018.

¹¹⁴ “The concepts of ‘risk’ and ‘dangerousness’ in this context do not lend themselves to a balancing test because they are notions that can only be assessed independently of each other. Either the evidence before the court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill-treatment that the person may be subject to on return.” *Saadi v Italy*, (37201/06), European Court of Human Rights, 28 February 2008, para. 139, <http://hudoc.echr.coe.int/eng?i=001-85276>

¹¹⁵ Article L711-6 Code of entry and residence of foreigners and asylum.

¹¹⁶ <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTI000030950630>

¹¹⁷ Amnesty International had access to “Naim”’s judicial record.

¹¹⁸ Interview with “Naim”, 21 July 2018.

¹¹⁹ Russia: Chechen refugee forcibly disappeared after being unlawfully deported from Poland, Amnesty International, 3 September 2018 <https://www.amnesty.org/en/latest/news/2018/09/russi-chechen-refugee-forcibly-disappeared-after-being-unlawfully-deported-from-poland/>

June 2016 for an interview on the grounds of the decision of revocation. “Naim” went to the interview with his lawyer but OFPRA confirmed the revocation of his refugee status alleging that “Naim” had failed to contest or otherwise challenge the allegations against him.¹¹⁹ “Naim” previously had received a residence permit for ten years, which was valid until 2020, but that permit was linked to his refugee status. “Naim” is planning to challenge the decision before the administrative court. “Naim” would also like to reapply for refugee status without waiting for the decision on the initial revocation.

When Amnesty International met with representatives of the Ministry of Interior, they said that once a person’s refugee status is revoked by OFPRA, the prefect, who is the local representative of the Ministry of Interior, is not required to repeal the residence permit but they should in line with the change of a person’s refugee status.¹²⁰ If individuals lose their refugee status and their residence permit consecutively, they are at significant risk of being forcibly returned to a place where they would be at risk of persecution or torture, and other ill-treatment.

EMERGENCY EXPULSION ON NATIONAL SECURITY GROUNDS: THE CASE OF “ISMAIL”

In other cases, people are subject to the threat of expulsion from France under an expedited procedure that does not allow an effective opportunity to challenge the expulsion order. Under French law, an individual can be expelled based on an emergency procedure on the same day he/she is notified of the expulsion decision, without the possibility to appeal the order before expulsion.

In April 2017, as part of an investigation on terrorism conspiracy, “Ismail”, 29 at the time, was arrested. He was suspected of being a follower of a certain ideology and of being close to two individuals who, during this investigation, had also been arrested earlier in 2017 and then indicted for terrorism conspiracy.¹²¹ Both the statements of “Ismail” taken during his custody, and documents seized at his home were not considered “convincing” enough for prosecution. His custody was therefore lifted and he was not required to appear before the investigating magistrate. However, because of the grounds for his arrest, “Ismail” was assigned to residence in May 2017.

On 10 July 2017, “Ismail” was notified that his assigned residence order had been lifted and that the Ministry of Interior had issued an order of emergency expulsion. That same day at 3pm, “Ismail” was expelled by boat from France to Algeria. He had no opportunity to challenge the expulsion order. From Algiers, “Ismail” filed a motion for the suspension of the expulsion order before the administrative court in France and he is still waiting for the hearing.

Due to the expedited nature of the process, “Ismail” had no ability to mount a challenge before his expulsion. “Ismail” had lived in France since the age of nine. His father, two siblings and two children remain in France. Despite his situation, the Ministry of Interior considered that there was no disproportionate infringement on his right to family life by expelling Ismail to Algeria.¹²² “Ismail’s” father told Amnesty International “as a father, I suffered a shock. Every two or three days I call him.”¹²³

According to his father, “Ismail” does not know Algeria, having spent the last 20 years in France. The Ministry of Interior argued in the order that Ismail would face no risk of ill-treatment in his “country of origin”.¹²⁴ The expedited manner in which the expulsion order was issued and implemented did not allow Ismail the chance to seek legal counsel and to consider challenging the order before it was enforced. Under French law, any expulsion should be preceded by the consultation of the departmental commission on expulsions.¹²⁵ This was not the case for Ismail and the Ministry of Interior argued that due to its emergency nature and the immediate threat, the consultation was not possible.¹²⁶

¹¹⁹ Amnesty International had access to “Naim’s” OFPRA letter.

¹²⁰ Interview with the Ministry of Interior, Paris, 15 October 2018.

¹²¹ References to “terrorism conspiracy” denote the offence contained in article 450-1 of the Criminal Code: “Constitue une association de malfaiteurs tout groupement formé ou entente établie en vue de la préparation, caractérisée par un ou plusieurs faits matériels, d’un ou plusieurs crimes ou d’un ou plusieurs délits punis d’au moins cinq ans d’emprisonnement.”
https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=0A600C3BF861049ED2A0AE8400E67E45.tplgr27s_2?idArticle=LEGIARTIO0006418851&cidTexte=LEGITEXT000006070719&dateTexte=20180530

¹²² Amnesty International had access to the expulsion order provided by the Ministry of Interior.

¹²³ Telephone interview with “Ismail’s” father, 16 July 2018.

¹²⁴ Amnesty International had access to the order of expulsion provided by the Ministry of Interior.

¹²⁵ Article L522-1, Code of entry and residence of foreigners and the right of asylum
<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTIO000006335213&dateTexte=&categorieLien=cid>

¹²⁶ Amnesty International had access to the judgement of the administrative tribunal.

Emergency orders of expulsion do not provide adequate legal safeguards, can have an adverse impact on the right to private and family life and can violate the principle of non-refoulement. They also undermine the right to an effective remedy.

3.5 NOTE ON THE PRINCIPLE OF NON-DISCRIMINATION

“One complex challenge in assessing the effects of counter-terrorism laws on specific communities including racial profiling and disparate effects is the constraint on gathering national data concerning minorities or specified religious groups. Despite the formal barriers to data disaggregation, it is clear that the French Arab and/or Muslim communities have been primarily subject to exceptional measures both during the state of emergency and presently from the SILT law, in tandem with other counter-terrorism measures.”

Fionnuala D. Ní Aoláin, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in May 2018 after a visit to France.¹²⁷

All of the individuals interviewed for this report expressed the view that they were targeted because of their religious practice and identity. An artefact that bolsters this perception comes with the file of copies of the *notes blanches* that have been issued to people whose cases are included in this report. In each of those notes, one of the justifications for imposing an administrative control order – among others – included those individuals’ religious practices or behaviours perceived by the authorities as linked to “radical Islam” or “jihadism”. Those practices include the fact that a person began growing a beard; “having religious documents” (“documents” undefined in the *note blanche*); possessing CDs of Quranic chants or recitals; a person’s style of dress; the expressed desire to live in a Muslim country; alleged links with individuals who have a “rigorous” practice of Islam and more generally, the “manifestation” of religious practice (that is Islam).¹²⁸

Sid Ali, for example, feels he was targeted as a “Muslim intellectual”: “A lot of people who are in the same situation as me sadly share the same feeling.”¹²⁹ He describes himself as a normal person who lives his religion and spirituality “as any Christian, Jew, Buddhist or Protestant”.¹³⁰ Sid Ali said that it is difficult for him to understand that a certain category of the population has been targeted like that.¹³¹

“Naim” feels that since the knife attack of 13 May 2018 in Paris committed by a French-Chechen, his community has been targeted by the police. “For the French people we are the problem: the Muslims... Because of one person, we are all paying.”¹³² “Naim” and his friends organized a protest in Paris on 3 June 2018 against terrorism following this attack.¹³³

“Zeia” recalled that during the house search in November 2015, the police took the Quran from the shelf in her living room. “I thought they wanted to read it. They took it, they looked inside it and they just left it near the entrance door. I thought they had someone with them who spoke Arabic to read the Quran.”¹³⁴

“Samia” and her mother-in-law were asked by the police officers who conducted their house search in December 2015 if they supported the Bataclan attack. On the house search record, “Samia” could read that they mentioned the house was “not orientalized” in decoration and had a “contemporary style”. “Samia” told Amnesty International “if we had a Moroccan-styled living room, what would that mean?”¹³⁵

On 15 October 2018, an Amnesty International delegation met with representatives from the French Ministry of Interior. In response to questions about the non-discriminatory application of the laws that provide for the

¹²⁷ The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism preliminary report following her country visit in France in May 2018 p.7

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E

¹²⁸ Amnesty International had access to *notes blanches* and the orders provided by the Ministry of Interior.

¹²⁹ Telephone interview with Sid Ali, 16 July 2018.

¹³⁰ Telephone interview with Sid Ali, 16 July 2018.

¹³¹ Telephone interview with Sid Ali, 16 July 2018.

¹³² Interview with “Naim”, 21 July 2018.

¹³³ “Vive la France” à Paris les tchétchenes se désolidarisent du djihadiste Khamzat Azimov, Nouvel Obs, 3 June 2018 <https://www.nouvelobs.com/monde/20180603.OBS7629/vive-la-france-a-paris-les-tchetchenes-se-desolidarisent-du-djihadiste-khamzat-azimov.html>

¹³⁴ Interview with “Zeia”, 16 July 2018.

¹³⁵ Telephone Interview with “Samia”, 19 July 2018.

imposition of administrative control measures, the Ministry of Interior representatives said that there is no “reluctance in principle to apply the measures to people other than radical Islamists”.¹³⁶ The representatives argued that adhesion to an ideology is factual and can ground a decision. “Can we still talk about Salafism? We have the right to speak about ideology, they have the choice to integrate or not. They can leave the radical movement.”¹³⁷ On the usefulness of keeping quantifiable demographic data on the use of administrative control measures, the Ministry of Interior responded that “it is not reasonable to quantify, there is a risk of stigmatisation” without precisely identifying who and how an individual or group would suffer from stigmatisation.¹³⁸

Neutral laws can be implemented in a discriminatory manner if one particular group is disproportionately targeted.¹³⁹ This was particularly noted for counter-terrorism laws which led the United Nations General Assembly to call for counter-terrorism legislation that is not discriminatory.¹⁴⁰

3.6 LEGACY OF THE STATE OF EMERGENCY

“The State could give official excuses and aim to restore the trust that was broken.”

Sid Ali, subject to a house search during the state-of-emergency.¹⁴¹

The state of emergency might be over, but for the people Amnesty International interviewed, the negative impacts of the measures remain. Measures imposed during the state of emergency have had long-term consequences for the targeted individuals and their family members.

Sid Ali, who was subjected to a house search on 1 December 2015 during the state of emergency, subsequently challenged the house search before the administrative court. The court concluded that the search was “unjustified” and granted him compensation. The procedure lasted two years. Sid Ali told Amnesty International “the administration continued in its delirium when I went to court, instead of recognizing their mistake, they pushed it further, adding a *note blanche* full of lies”.¹⁴²

When Sid Ali read the *note blanche* for the first time he started laughing: “Soon they were going to blame me for global warming.”¹⁴³ The second time he read the documents, Sid Ali told Amnesty International, “it became worrying as it indicated that the government was not as demanding as it should be with the grounds of such measures”. In the *note blanche*, Sid Ali found very outdated facts about him, for example about a conflict that had arisen between a Muslim association he is a member of, and a slaughterhouse in 2006, during the celebration of the Aid el Kebir in Chambéry.¹⁴⁴

After receiving the compensation, Sid Ali’s lawyer advised him to file a complaint against the Ministry of Interior’s local representative for a decision obtained under false pretences (*escroquerie au jugement*). But Sid Ali did not wish to go further. In Sid Ali’s opinion, the authorities had deliberately misrepresented his case in the *note blanche* before the administrative judge.

According to Sid Ali the issue is also psychological. “What they did, it is hurtful and worrying. When the administration, which is supposed to represent your rights, and the justice system are both lying, you lose trust. I arrived in France in 1997 [from Algeria]. I had a great image of this country. I gave the best of myself to this society. And then you are suspected of being a traitor. Can you understand how hurtful that is? For

¹³⁶ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

¹³⁷ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

¹³⁸ Interview with two representatives of the Ministry of Interior, Paris, 15 October 2018.

¹³⁹ See CERD Concluding Observations: Croatia, UN Docs. CERD/C/304/Add.55 (1999) §12, CERD/C/HRV/CO/8 (2009) §15; CAT Concluding Observations: Bosnia and Herzegovina, UN Doc. CAT/C/BIH/CO/1 (2005) §§10-11.

¹⁴⁰ See Special Rapporteur on human rights and counter-terrorism, UN Docs. A/HRC/4/26 (2007) §37, E/CN.4/2006/98 (2005) §§26-27, 42-50, 72; Special Rapporteur on the independence of judges and lawyers, UN Doc. A/64/211 (2009) §23.; General Assembly: resolution 65/221, §§4, 6(e), 6(m), resolution 66/171 §§4, 6(f), 6(n).

¹⁴¹ Telephone interview with Sid Ali, 16 July 2018.

¹⁴² Telephone interview with Sid Ali, 16 July 2018.

¹⁴³ Telephone interview with Sid Ali, 16 July 2018.

¹⁴⁴ Aid compliqué pour les musulmans savoyards, Le Monde, 9 January 2006 https://www.lemonde.fr/societe/article/2006/01/09/aid-complique-pour-les-musulmans-savoyards_728861_3224.html

three years I lived like that. Should I stay here? I'm asking myself a lot of questions, what is the point? There is a fracture, there is a harm, they broke all this confidence. But despite the psychological injury, we are trying to rebuild ourselves.”¹⁴⁵

Rochdi feels that the measure of assigned residence, which started under the state of emergency and lasted a year and a half, changed him. “Luckily, I can work. But they ruined me. It is noticeable in my reactions. I am suspicious of everyone. I was more patient before. It will take time to come back from that, there was damage. We are trying to go forward.”¹⁴⁶ Rochdi was also subjected to a house search under the state of emergency and he told Amnesty International that his daughter is not able to sleep normally following the trauma from the house search. “She is one-year old and she has bags under her eyes.”¹⁴⁷

For people subjected to assigned residence, reporting to the police also means daily interactions with police officers who routinely pat-search them when they enter the police station. “I told them they were going too far, just to humiliate me” Rochdi told Amnesty International.¹⁴⁸ He said that at each police reporting – three times a day during the state of emergency, and once a day under the SILT law – he was pat-searched by the officers some of whom were abusive.

“Selim” had similar experiences: “With some, it goes very well, they even come outside the police station to make me sign without the pat-search. With others, you feel the hate in their attitudes and their behaviours. They try to provoke you.”¹⁴⁹

“Zeia” feels traumatized by the house search she experienced in November 2015. “Now, even when someone shuts the door it scares me. And I fled my country of origin because of the war.”¹⁵⁰

“Mourad” was subjected to a house search on 5 December 2015 during the state of emergency and is now under no control measure. “Mourad” is currently working as an independent taxi driver. “Mourad” kept facing issues with police controls around big events like Bastille Day and Rolland Garros. He believes his license plate is registered and that is why he is subjected to more identity checks. In June 2017, “Mourad” was dropping off a client in front of Rolland Garros, when he reached the gate several police officers stopped and surrounded him, and they subsequently conducted a search of his car. According to his wife interviewed by Amnesty International, one police officer told “Mourad” to “turn off his phone application [for independent taxi drivers] and to go home”.¹⁵¹

People have reported fear, stress and other health-related issues that have continued far beyond the period of 2015-2017. Amnesty International is concerned the similar measures now in ordinary law with the SILT could create the same long-lasting effects.

3.7 DEPRIVATION OF LIBERTY: CASE OF KAMEL DAOUDI

"This measure is invisible, it is a disguised prison. When I walk down the street people do not see me as someone who is subject to a certain number of conditions similar to prison. It is a very pernicious system."

Kamel Daoudi¹⁵²

In addition to control measures under the SILT law, the state can issue control orders to foreigners and assign them to residence under Article L561-2 of the Code of Entry and Residence of Foreigners and the

¹⁴⁵ Telephone interview with Sid Ali, 16 July 2018.

¹⁴⁶ Telephone interview with Rochdi, 3 September 2018.

¹⁴⁷ Telephone interview with Rochdi, 3 September 2018.

¹⁴⁸ Telephone interview with Rochdi, 17 July 2018.

¹⁴⁹ Telephone interview with “Selim”, 18 July 2018.

¹⁵⁰ Interview with “Zeia”, 16 July 2018.

¹⁵¹ Telephone interview with “Samia”, “Mourad”’s wife, 19 July 2018.

¹⁵² Telephone interview with Kamel Daoudi, 13 July 2018.

Right to Asylum.¹⁵³ This provision allows the administrative authority to place under assigned residence foreigners who are unable to leave French territory, or unable to return to their country or to a third country. This measure is enforced by the state until there is a reasonable prospect of execution of an order to leave the territory at which point the individual is expelled.

Daoudi was arrested in London in September 2001, sent to France and charged on 2 October 2001 with terrorism conspiracy based on his trip of several months to Afghanistan in 2000 and 2001, and for "preparing" an attack against the US embassy in France (he denies this last point). He was stripped of his French nationality on 27 May 2002, before the final ruling on the criminal charges.¹⁵⁴ Daoudi was eventually convicted by the Court of Appeal on 15 March 2005 and sentenced to nine years of imprisonment (subsequently reduced to six years). He was released from prison in 2008 and subsequently subjected to an order permanently excluding him from French territory. On 21 April 2008, he was assigned to residence under the Code of Entry and Residence of Foreigners and Asylum Seekers. The European Court of Human Rights halted his deportation to Algeria in 2009 as the court ruled that such a transfer could put Daoudi at risk of inhumane or degrading treatment.¹⁵⁵ In June 2018, the authorities declined to renew his provisional residence permit, leaving Daoudi with an undocumented legal status. The French authorities cannot send Daoudi to Algeria but will not lift the restrictions he is subjected to while he remains in France.

Daoudi is a 44-year-old Algerian man and former French national who arrived in France when he was five years old. He is married to a French woman and has three children and one step-daughter. Daoudi has been assigned to residence for 10 years and he is currently living in a motel in Saint-Jean d'Angely. Daoudi cannot go beyond the limited geographic area of this little town of 19km² and the near town of La Vergne. Daoudi has a night curfew that lasts from 9pm to 7am, and he must report to the local police station three times every day (at 9:15am, 3:15pm and 5:45pm). Daoudi was previously assigned to residence in the town of Carmaux, where his family lives. During the state of emergency, on 27 November 2016, the Ministry of Interior decided to separate Daoudi from his family and to relocate him more than 400km from his home; the authorities claimed that Daoudi posed a risk to public order on the vague basis of "information that can give rise to a fear that a violent act may be committed".¹⁵⁶ As Daoudi told Amnesty International during a visit to the town where he is forced to reside in October 2018, "France should not be able to subject a person and their family to a punishment that is unlimited and Kafkaesque".¹⁵⁷ During the visit, Amnesty International observed the severe impact of the restrictions imposed on Daoudi, on his daily life and his family. Regarding his partner and young children, Daoudi told Amnesty International that "it is like they are subject to an assigned residence order themselves".¹⁵⁸

Amnesty International believes that Daoudi's indefinite assigned residence and the conditions thereof violate France's obligations under international law.¹⁵⁹ As such, Daoudi should be afforded an effective opportunity to challenge the application of the control measure and provided with procedural guarantees based on Article 6 of the ECHR.¹⁶⁰

¹⁵³ Article L561-2 Code of entry of foreigners and the right of asylum
<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070158&idArticle=LEGIARTI000006335269&dateTexte=&categorieLien=cid>

¹⁵⁴ Article 25 of the Civil Code allows a naturalized French citizen to be deprived of citizenship
<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006420131&cidTexte=LEGITEXT000006070721&dateTexte=19960722>

¹⁵⁵ Daoudi v. France (19576/08), European Court for Human Rights Fifth Section (2009)
<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-96005&filename=001-96005.pdf&TID=ihgdqbxnfi> Amnesty International, *France must not deport terror suspect to Algeria* <https://www.amnesty.org/en/press-releases/2009/12/france-must-not-deport-terror-suspect-algeria-20091204/>

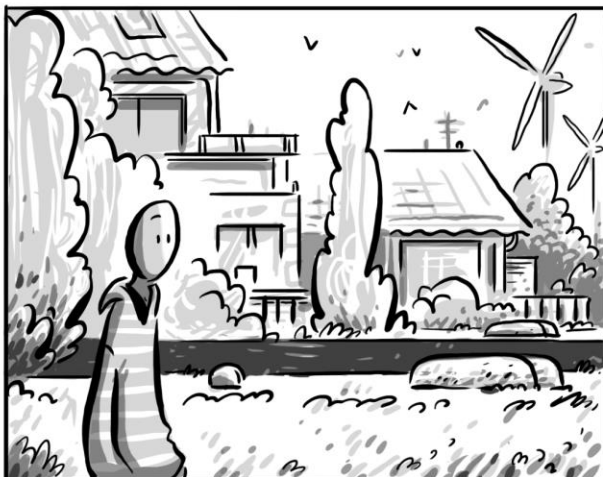
¹⁵⁶ "Ces éléments peuvent laisser craindre un passage à l'acte violent" Amnesty International had access to Daoudi's file

¹⁵⁷ Interview with Kamel Daoudi, 26 October 2018.

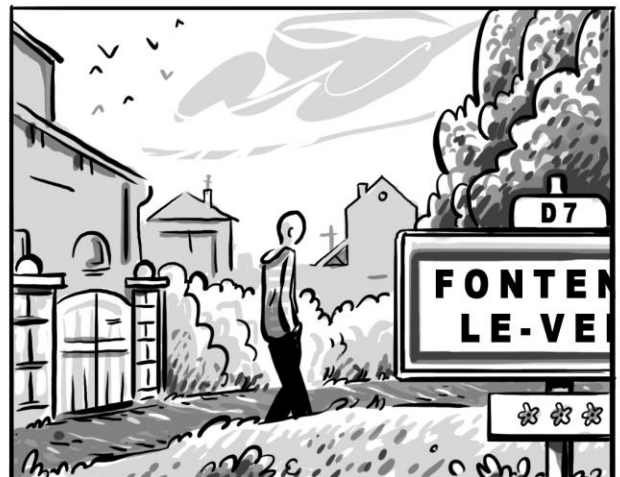
¹⁵⁸ Interview with Kamel Daoudi, 26 October 2018.

¹⁵⁹ ECHR, Article 5.

¹⁶⁰ ECHR, Article 6.



I'M A 30-YEAR OLD MAN. MY LIFE HASN'T BEEN PERFECT, BUT MY REAL PROBLEMS STARTED WHEN I WAS ASSIGNED TO RESIDENCE BY A GOVERNMENT ORDER.



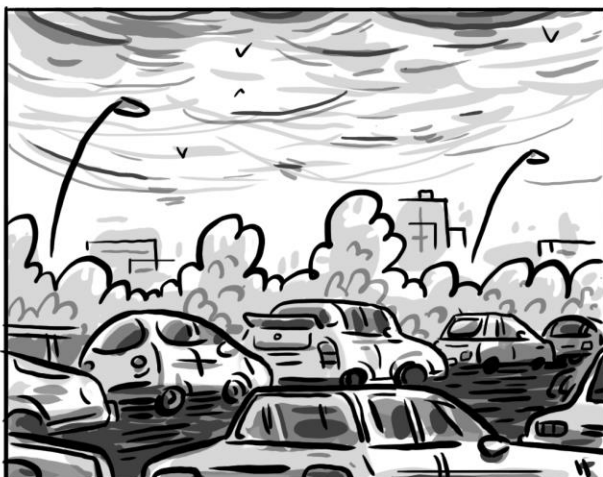
UNDER THIS ORDER, I'M NOT ALLOWED TO LEAVE THE TOWN WHERE I LIVE. A SMALL TOWN OF ONLY 8KM².



I NO LONGER HAVE MY ID CARD AND MUST REPORT TO MY LOCAL POLICE STATION EVERY DAY AT THE SAME TIME. EVERY DAY, THE POLICE PAT SEARCH ME. WITHOUT EXCEPTION, EVEN SUNDAYS.



I USED TO SPEND SUNDAYS WITH MY FAMILY AT MY MOTHER'S HOUSE. BUT SHE LIVES IN A NEARBY VILLAGE... BEYOND THE BORDERS OF MY TOWN. I HAVEN'T HAD A FAMILY MEAL AT HER HOUSE FOR OVER A YEAR.



THE OTHER DAY, I WAS ON MY WAY TO REPORT TO THE POLICE STATION WHEN I GOT STUCK IN TRAFFIC.



"YOU'RE LATE. WE'RE GOING TO HAVE TO SEND THIS UP TO THE PROSECUTOR."



I HAD TO TELL MY WIFE AND DAUGHTER THAT I MIGHT GO TO PRISON. JUST FOR BEING AN HOUR LATE.



I LOST MY JOB BECAUSE MY WORK WASN'T COMPATIBLE WITH THE RESTRICTIONS IMPOSED ON ME.



I HAVE TO FIND A NEW JOB, BUT WHO WOULD EMPLOY SOMEONE IN MY SITUATION?



THE MINISTER OF INTERIOR DIDN'T GRANT MY REQUEST TO ATTEND MY TRIAL IN PARIS TO APPEAL THE ORDER AGAINST ME.



I HAD TO HAVE FAITH IN MY LAWYER. I COULDN'T EVEN TELL MY OWN STORY BEFORE THE JUDGE.



THEY'VE NOT BROUGHT A CASE AGAINST ME, I'M NOT BEING PROSECUTED... I'M BEING PUNISHED WITHOUT INVESTIGATION, WITHOUT CHARGE, WITHOUT TRIAL.

4. OVERSIGHT OF COUNTER-TERRORISM MEASURES

4.1 ACCOUNTABILITY AND ACCESS TO DATA

Much of the information used to conduct counter-terrorism operations is classified as secret, including the use of control measures by the authorities. Civil society organizations and lawyers have repeatedly called for more transparency about the implementation of control measures in the context of counter-terrorism.¹⁶¹ The accountability on implementation of control measures is for now only provided by the SILT law provisions and does not include other controls such as travel bans, assigned residence for foreigners and emergency orders of expulsions included in other laws.

Amnesty International is concerned that the current data available is incomplete and insufficiently detailed to allow a clear evaluation of the use of the measures, and to ensure transparency. Comprehensive data, such as the number of judicial proceedings for each of the control measures, disaggregated by procedures and rulings, and the number of criminal investigations initiated following such measures, would allow an independent assessment of the necessity and proportionality of the measures.

4.2 EVALUATION OF IMPLEMENTATION

The SILT law provides parliamentary oversight as well as a sunset clause until 31 December 2020 on the four administrative measures of assigned residence, house search, closure of places of worship and secured perimeters.¹⁶² Concerning the sunset clause, in a September 2017 speech President Macron stated that “if some of these measures are not useful or appropriate, they will be removed. On the other hand, if there are technological advances or new strategies employed by terrorists, the law should be amended

¹⁶¹ Consideration of the Universal Periodic Review outcome of France A/HRC/38/4, A/HRC/38/4/Add.1, 22nd Plenary Meeting, 28 June 2018 <http://webtv.un.org/search/france-upr-report-consideration-22nd-meeting-38th-regular-session-human-rights-council-/5803058554001/#t=47m30s>

¹⁶² Article L. 22-10-1 of the Code on internal security
<https://www.legifrance.gouv.fr/eli/loi/2017/10/30/INTX1716370L/jo/texte#JORFARTI000035932820>

accordingly.”¹⁶³ As part of the twenty-ninth session of the Human Rights Council’s Universal Periodic Review Working Group, in January 2018, some twenty-three recommendations were put to France concerning counter-terrorism legislation including seventeen on the need to evaluate and monitor the implementation of counter-terrorism laws.¹⁶⁴ Those recommendations included the need to evaluate counter-terrorism laws to prevent any possible violations of human rights through an independent and transparent assessment.

The French Parliament is entitled to be informed of the measures taken or implemented by the Ministry of Interior and to receive a copy of all administrative orders and associated authorizations adopted in application of the SILT law provisions. The parliament may request any additional information in the context of the monitoring and evaluation of these measures. In addition, the government is required to send the parliament a detailed report every year on the application of these measures. The first annual report by the Ministry of Interior is due in November 2018. Amnesty International is concerned that parliamentary control based solely on the Ministry of Interior self-reporting on the implementation of the measures under the SILT law is not an independent and transparent review process.

Three MPs and members of the Parliamentary Commission are mandated to oversee the implementation of the four specific measures under the SILT law. As part of their oversight mandate, they may conduct visits to any relevant locations. To date they have conducted only two such visits: on 9 January 2018, the Parliamentary Commission visited the centre for the evaluation of radicalization in the prison of Fleury-Mérogis, and on 29 January 2018 they visited Lille to evaluate the implementation of secured perimeters. The three MPs in charge of the oversight held three hearings before the Parliamentary Commission on 20 December 2017, 11 April 2018 and 12 September 2018. These hearings involve sharing the data published on the use of the measures and answering questions of MPs. The three MPs also heard judges, intelligence services officials and prosecutors. Beside the videos of the three hearings before the Parliamentary Commission and the data published on the use of the measures, no outcomes and findings of the visits and hearings of external actors are accessible. As part of this series of hearings, no affected individuals or civil society organizations were heard by the Parliamentary Commission. The MP in charge of the oversight of the SILT law told Amnesty International that “the oversight of the SILT law is independent as both the political majority and opposition are represented by the 3 MPs mandated”.¹⁶⁵ The MP told Amnesty International that “no problematic issues in the implementation of the SILT law have been brought to their attention”, and that “the SILT law contains good tools permitting us to confront a threat”.¹⁶⁶

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism called for the creation of an independent mechanism overseeing the counter-terrorism measures. The National Consultative Commission on Human Rights (CNCDH) wishes to have this mandate as a national Rapporteur and advisor of the Government on current and future policies impacting human rights. Amnesty International supports the involvement of independent bodies overseeing and monitoring the human rights obligations of the State for an independent and transparent control of counter-terrorism laws.

Amnesty International is concerned that the Parliamentary Commission is not consulting individuals directly affected by control measures, either under the state of emergency or under the new law.

The evaluation process of the use of control measures should involve civil society organizations, especially those working with affected communities. If the Parliamentary Commission is restricted to members of parliament, civil society should be able to formally express their concerns as part of the Commission’s yearly review. This could be achieved through formal participation in hearings or through formal written consultation.

¹⁶³ Discours du Président Macron devant les préfets le 5 septembre 2017 <http://www.prefectures-regions.gouv.fr/ile-de-france/content/download/36702/247580/file/05.09%20-%20Discours%20du%20Pr%C3%A9sident%20de%20la%20R%C3%A9publique%20aux%20Pr%C3%A9fets.pdf>

¹⁶⁴ Universal Periodic Review – France <https://www.ohchr.org/EN/HRBodies/UPR/Pages/FRIIndex.aspx>

¹⁶⁵ Interview with the MP in charge of the oversight of the SILT law, 22 October 2018.

¹⁶⁶ Interview with the MP in charge of the oversight of the SILT law, 22 October 2018.

RECOMMENDATIONS

TO PARLIAMENT

- Repeal the following provisions of laws that provide for the imposition of administrative control measures that violate a person's human rights and run afoul of France's international human rights commitments:
 - provision for assigned residence under the Law on Internal Security and Fight against Terrorism (SILT);
 - provision for assigned residence under the Code on Entry of Foreigners and Right to Asylum in the context of counter-terrorism.
- Amend the provision for emergency orders of expulsion under the Code on Entry of Foreigners and Right to Asylum to ensure that any affected person is provided with their full prior procedural safeguards, including providing for suspensive effect until the challenge is complete.
- Involve civil society organizations, especially groups working with individuals affected by administrative control measures, in the yearly evaluation process of the SILT law.
- Ensure that there is a transparent and effective way to review and evaluate the SILT law and its application to guarantee that its provisions have not been imposed on individuals in an arbitrary or discriminatory manner.
- Refrain from maintaining in law any provisions proven to infringe human rights and due process rights as part of the sunset clause of 30 December 2020 in the SILT law.

TO THE MINISTRY OF INTERIOR AND THE MINISTRY OF JUSTICE

- Ensure that any person reasonably suspected of involvement in a recognizable terrorism-related crime is investigated, and where sufficient evidence exists, charged, and prosecuted in an ordinary criminal proceeding that meets international fair trial standards.
- Refrain from the imposition of administrative control measures on the basis of secret information. Desist from circumventing the criminal justice system.

- Refrain from the imposition of administrative control measures which, either on their own, or as a result of their combined effects on the individual concerned, violate a person's human rights including their rights to liberty, freedom of movement, freedom of association; private and family life; and/or work.
- For each of the administrative control measures, collect and make publicly available data on the number of judicial remedies challenging the measures, disaggregated by procedures and rulings, and the number of criminal investigations and prosecutions initiated following those measures.
- Lift assigned residence orders imposed under the SILT law and ensure effective remedy for any human rights violations individuals may have suffered while subjected to the order.
- Lift as a matter of urgency the assigned residence order currently imposed on Kamel Daoudi under the Code on Entry of Foreigners and Right to Asylum and ensure that he has an effective remedy for any human rights violations he may have suffered while subjected to the order.

TO THE MINISTRY OF INTERIOR

- Ensure that counter-terrorism measures do not violate the principle of *non-refoulement* and that no person is transferred from France to their country of origin or a third country where they would be at risk of torture or other ill-treatment, or would face a trial where there is a risk that information extracted under torture could be admitted as evidence. Ensure that all counter-terrorism measures comply with the 1951 Convention relating to the Status of Refugees.
- Ensure that all counter-terrorism measures comply with the principle of non-discrimination.
- Evaluate, based on available data, the potential discriminatory impact of administrative control measures adopted in the context of counter-terrorism, and make publicly available any such evaluation.

TO THE MINISTRY OF JUSTICE

- Ensure that any outstanding claims related to human rights violations alleged to have occurred in the context of the state of emergency from November 2015 to October 2017 are resolved in compliance with France's obligation to guarantee victims of such violations an effective remedy.
- Ensure access to an effective remedy for anyone who alleges to have been subjected to human rights violations as a result of an assigned residence order or an emergency order of expulsion.

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PUNISHED WITHOUT TRIAL

THE USE OF ADMINISTRATIVE CONTROL MEASURES IN THE CONTEXT OF COUNTER-TERRORISM IN FRANCE

As part of their counter-terrorism efforts, French authorities have imposed orders on individuals that restrict them to living in a specific location, and require them to report to the police daily, refrain from contacting certain people. These administrative control measures are applied based on broad and vague criteria, typically rely on secret information and are imposed without the person being charged or tried for committing a crime. Individuals subjected to these control measures are denied a meaningful opportunity to challenge them.

This report reveals the consequences of these measures on the people subjected to them. It shows how the use of such measures gives rise to violations of the right to fair process, the rights to private and family life, freedom of movement, and the right to work. This report also examines the continued negative impact of house searches and assigned residence orders imposed during the state of emergency, and the human rights implications of control measures applied to foreign nationals, including assigned residence orders, emergency orders of expulsion and the withdrawal of refugee status. Amnesty International urges the French authorities to repeal legislation that authorizes administrative control measures in the context of counter-terrorism.