

Report of Various Size

Current reform of intelligence legislation

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IFDL

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1. Legislative reforms

(Please, highlight the key aspects of the reform, summarise any key report published in the context of the reform procedure)

The widening of the second circle of the intelligence community

On 1 February 2017 the Ministry of Justice prison services (*Services pénitentiaires relevant du Ministère de la justice*) became part of the second circle of the intelligence community, in accordance with Decree No. 2017-36 of 16 January 2017 relating to the designation of services coming under the Ministry of Justice which are authorised to employ the intelligence techniques mentioned in Title V Book VIII of the Internal Security Code, taken in application of Article L. 811-4 of the Internal security code.¹

This article of the Internal Security code was modified by Law No. 2016-731 of 3 June 2016 reinforcing the fight against organised crime, terrorism and their financing, and improving the effectiveness and the safeguards of the criminal procedure.²

According to the decree of 16 January 2017, the Central office for prison intelligence within the Department for prison authorities (*le bureau central du renseignement pénitentiaire au sein de la direction de l'administration pénitentiaire*), and the inter-regional branches for prison intelligence within the inter-regional departments for prison services and the department for prison services overseas (*les cellules interrégionales du renseignement pénitentiaire au sein des directions interrégionales des services pénitentiaires et de la mission des services pénitentiaires d'outre-mer*), placed under the authority of the director of prison authorities (*directeur de l'administration pénitentiaire*), can be authorized to use certain techniques for the collection of intelligence to prevent terrorism, crime and organized crime.

In particular, these services may:

- Collect intelligence or documents that are processed or retained by their networks or electronic communications services, including technical data relating to the identification of subscription or connection numbers to electronic communications services, the entirety of the subscription or connection numbers of a specific person, the localization

¹ France, Decree No. 2017-36 relating to the designation of services coming under the Ministry of Justice which are authorized to employ the intelligence techniques mentioned in Title V Book VIII of the Internal Security code, taken in application of Article L. 811-4 of the Internal Security code (*Décret n° 2017-36 relatif à la désignation des services relevant du ministère de la justice, autorisés à recourir aux techniques mentionnées au titre V du livre VIII du code de la sécurité intérieure, pris en application de l'article L. 811-4 du code de la sécurité intérieure*), 16 January 2017, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033876862&categorieLien=cid

² France, Law No. 2016-731 reinforcing the fight against organized crime, terrorism and their financing, and improving the effectiveness and the safeguards of the criminal procedure (*Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale*), 3 June 2016, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&categorieLien=id

- of the devices used and the communications of a subscriber relating to the list of incoming and outgoing numbers, the duration and the date of the communications;³
- Collect technical data relating to the localization of the equipment used;⁴
 - Use a technical method allowing for the localization in real time of a person, a vehicle or an object;⁵
 - Collect technical connection data allowing for the identification of a user device or subscription number as well as the data relating to the localization of the device used;⁶
 - Intercept communications;⁷
 - Use technical measures allowing for the collecting, locating, transmitting and recording of conversations of a purely private or confidential nature, or of images in private premises;⁸
 - Use technical measures giving access to data stored in an IT system, to record these, to retain these, and to share these;⁹
 - Use technical devices to access computer data, and to save, retain and share data as it is displayed on a screen of a user of an automated data processing system, as it is entered through keyboard input or as it is received and transmitted by peripheral audiovisual devices;¹⁰

³ France, Internal security code (*Code de la sécurité intérieure*), Article R851-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=1F3E476E59033CB05EAD59ACA3A39AE9.tpdila18v_1?idSectionTA=LEGISCTA000031944642&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁴ France, Internal security code (*Code de la sécurité intérieure*), Article R851-2, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=1F3E476E59033CB05EAD59ACA3A39AE9.tpdila18v_1?idSectionTA=LEGISCTA000031944642&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁵ France, Internal security code (*Code de la sécurité intérieure*), Article R851-3, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=1F3E476E59033CB05EAD59ACA3A39AE9.tpdila18v_1?idSectionTA=LEGISCTA000031944642&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁶ France, Internal security code (*Code de la sécurité intérieure*), Article R851-4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=1F3E476E59033CB05EAD59ACA3A39AE9.tpdila18v_1?idSectionTA=LEGISCTA000031944642&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁷ France, Internal security code (*Code de la sécurité intérieure*), Article R852-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=1F3E476E59033CB05EAD59ACA3A39AE9.tpdila18v_1?idSectionTA=LEGISCTA000031255224&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁸ France, Internal security code (*Code de la sécurité intérieure*), Article R853-1, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031255222&cidTexte=LEGITEXT000025503132&dateTexte=20170209

⁹ France, Internal security code (*Code de la sécurité intérieure*), Article R853-2 I 1°, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031255222&cidTexte=LEGITEXT000025503132&dateTexte=20170209

¹⁰ France, Internal security code (*Code de la sécurité intérieure*), Article R853-2 I°, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031255222&cidTexte=LEGITEXT000025503132&dateTexte=20170209

- Enter a private vehicle or private premises under certain conditions.¹¹

However, these prison services of the Ministry of Justice can not, according to the decree of 16 January 2017, use measures provided for by Articles L. 851-2 of the Internal Security code (the collection in real time of information or documents relating to a previously identified person from network operators) or L. 851-3 (requiring operators to implement on their networks automated processing intended to detect connections which may reveal a terrorist threat).¹²

On 7 November 2016, the Ministry of Justice referred to the National Commission of Control of the Intelligence Techniques (*Commission nationale de contrôle des techniques de renseignement* - CNCTR) for its opinion on the draft decree. The Opinion of the CNCTR of 8 December 2016, relating to a draft decree modifying the regulatory part of the Internal security code and the designation of those services under the Ministry for justice who are authorized to employ the techniques mentioned in Title V of Book VIII of the Internal security code, was published on 1 March 2017.¹³ The CNCTR considered that the organization of prison intelligence envisaged by the decree was adapted to ensure internal audit and the coordination of requests from the inter-regional prison intelligence cells spread across the whole country. However, the CNCTR gave an unfavourable opinion on the possibility for the services of the Minister of justice in charge of prison intelligence to intercept correspondence through IMSI catchers. This was due to the fact that these services have only recently been created and still have only modest human and material resources which do not allow their access to this technique to be considered as suitably adapted. With the use of this technique only being justified in circumstances characterized by an urgency and seriousness which would require the involvement of “first circle” intelligence services, the possibility exists in any event to implement the technique in prisons *via* these services. In the view of the CNCTR, detention cells and associated places such as family life units (*unités de vie familiale*), in that they provide an essential aspect of the private life of detainees, should be subjected to the highest protection provided for by law and, therefore, be considered as places of residence. Techniques such as tagging (*balisage*) (Article L. 851-5 of the Internal security code),¹⁴ intercepting purely private conversations (Article L. 853-1 of the Internal security code),¹⁵ capturing images in a private place (Article L. 853-1 of the

¹¹ France, Internal security code (*Code de la sécurité intérieure*), Article R853-2 I é°, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031255222&cidTexte=LEGITEXT00002503132&dateTexte=20170209

¹² France, Internal security code (*Code de la sécurité intérieure*), Articles L 851-2 and L 851-3, available at: www.legifrance.gouv.fr/affichCode.do?jsessionid=B51CE57731DD01848B2CFD358C2BBBBB.tpdila18v_1?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20170206

¹³ France, CNCTR, Opinion (*Deliberation*), No. 3/2016, 8 December 2017, available at: www.legifrance.gouv.fr/affichTexte.do?jsessionid=203F00A5B9D1567FE12A579D151854D1.tpdila15v_3?cidTexte=JORFTEXT000034104923&dateTexte=20170301

¹⁴ France, Internal security code (*Code de la sécurité intérieure*), Article L 851-5, available at: www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030939235

¹⁵ France, Internal security code (*Code de la sécurité intérieure*), Article L 853-1, available at: www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=1CE16B5589715C8F6331A40F683FFDB5.tpdila15v_3

Internal security code),¹⁶ and collecting IT data (Article L. 853-2 of the Internal security code)¹⁷ could not consequently be implemented in these places without an authorization to enter a place of residence also being granted, in addition to the authorization to use such techniques. In accordance with I of Article L. 853-3 of the Internal security code,¹⁸ the CNCTR will examine in a panel sitting (*en formation collégiale*) a request to enter cells and requests to implement these techniques.

Therefore, during the discussion of the bill relating to public safety in the Senate, the government presented an amendment aimed at specifying the legal framework of surveillance in prisons by modifying the provisions of the Internal security code and the Code of criminal procedure.¹⁹ According to the government, “it appeared necessary to bring greater detail to the safeguards provided for by the bill (methods to make a request, the duration of authorizations, and grounds for appeal) which should not depend solely on the regulatory authority”.²⁰ This amendment was adopted.

Indeed, Law No. 2017-258 of 28 February 2017 relating to public safety²¹ modified the provisions of the Internal security code, by inserting Title V (bis) 'Prison security intelligence' after Title V of book VIII of the Internal security code.

According to the new Article L. 855-1 of the Internal security code,²² prison services authorities designated by order in Council of State, taken after consultation with the CNCTR, can be authorized to:

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¹⁶ France, Internal security code (*Code de la sécurité intérieure*), Article L 853-1, available at: www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1CE16B5589715C8F6331A40F683FFDB5.tpdila15v_3?idArticle=LEGIARTI000030935975&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

¹⁷ France, Internal security code (*Code de la sécurité intérieure*), Article L 853-2, available at: www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1CE16B5589715C8F6331A40F683FFDB5.tpdila15v_3?idArticle=LEGIARTI000030935977&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

¹⁸ France, Internal security code (*Code de la sécurité intérieure*), Article L 853-3, available at: www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1CE16B5589715C8F6331A40F683FFDB5.tpdila15v_3?idArticle=LEGIARTI000030935979&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

¹⁹ France, Senate (*Sénat*), Amendments submitted on the commission bill, additional Article after Article 9 (*Amendements déposés sur le texte de la commission, Article additionnel après Article 9*), available at: www.senat.fr/amendements/2016-2017/310/jeu_complet.html

²⁰ France, Bill on public safety (*Projet de loi relatif à la sécurité publique*), available at: www.senat.fr/dossier-legislatif/pjl16-263.html

²¹ France, Law No. 2017-258 relating to public safety (*Loi n° 2017-258 relative à la sécurité publique*), 28 February 2017, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034104023&categorieLien=id

²² France, Internal security code (*Code de la sécurité intérieure*), Article L. 855-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000034109678&cidTexte=LEGITEXT000025503132&dateTexte=20170304

- collect, from electronic communications operators, information or documents processed or held by their networks or electronic communications services (Article L. 851-1);²³
- collect technical data relating to the localization of devices used upon a request to the network and transmission in real time by the operators to a service of the Prime Minister's office (Article L. 851-4);²⁴
- use a technical method allowing the localization in real time of a person, a vehicle or an object (Article L. 851-5);²⁵
- collect technical connection data allowing the identification of a user device or subscription number as well as the data relating to the localization of the device used (L. 851-6);²⁶
- intercept correspondence transmitted electronically (Article L. 852-1, I);²⁷

only for detained persons, in order to prevent escapes and to ensure safety and public order within prisons or health establishments for detained persons.

The prison service authorities can be authorized to use the techniques referred to above under the general conditions provided for in Titles II and V of book VIII of the Internal security code, therefore, with prior authorization from the Prime Minister, given after consultation with the CNCTR.²⁸

In order to ensure the continuity and effectiveness of the work of the intelligence services, Article L. 821-3 of the Internal Security Code provides that, in the absence of an express opinion within the statutory time limits (24 or 72 hours), the CNCTR shall be deemed to

²³ France, Internal security code (*Code de la sécurité intérieure*), Article L. 851-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20170304

²⁴ France, Internal security code (*Code de la sécurité intérieure*), Article L. 851-4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20170304

²⁵ France, Internal security code (*Code de la sécurité intérieure*), Article L. 851-5, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20170304

²⁶ France, Internal security code (*Code de la sécurité intérieure*), Article L. 851-6, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20170304

²⁷ France, Internal security code (*Code de la sécurité intérieure*), Article L. 852-1, I, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935846&cidTexte=LEGITEXT000025503132&dateTexte=20170304

²⁸ France, Internal security code (*Code de la sécurité intérieure*), Article L. 855-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=9971092E7B0C72D9F55E0DBCD47A19B6.tpdila22v_3?idSectionTA=LEGISCTA000034109678&cidTexte=LEGITEXT000025503132&dateTexte=20170304

have delivered an implicit opinion and the Prime Minister may make a decision.²⁹

In cases of emergency concerning either national independence, territorial integrity, national defence, or the prevention of terrorism, or the prevention of threats on the republican nature of institutions, Article L. 821-5 of the Internal Security Code authorizes the Prime Minister to take a decision without first consulting the CNCTR.³⁰

According to Article in *Le Monde* published in February 2017, in total, 250,000 people under the judicial authority might be placed under surveillance (68,432 prisoners in French prisons at 1 January 2017; 10,000 convicts with electronic tags; and people who are the subject of an alternative sentence or court order). Priority attention is given to the 407 prisoners detained for terrorism offences and the 1,296 ordinary prisoners considered to have been radicalized, to which is added 426 radicalized detainees in open detention facilities.³¹

According to Article 40 of the Prisons Law,³² convicted persons and, provided that the judicial authority does not oppose such, persons being held before trial may correspond in writing with any person of their choice. Mail sent or received by detained persons may be monitored and withheld by the prison services only when such correspondence appears to seriously jeopardize their rehabilitation or the maintaining of order and security. However, no correspondence exchanged between detained persons and the president of the National Commission for information technology and freedoms (*Commission nationale de l'informatique et des libertés* – CNIL), with whom they correspond under seal, may be monitored or withheld.³³ Thus, convicted persons and persons being held before trial may apply to the CNIL for the right to indirect access to data processing which concerns State

²⁹ France, Internal security code (*Code de la sécurité intérieure*), Article L.821-3, available at : www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935046&cidTexte=LEGITEXT000025503132&dateTexte=20170701

³⁰ France, Internal security code (*Code de la sécurité intérieure*), Article L.821-5, available at : www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935046&cidTexte=LEGITEXT000025503132&dateTexte=20170701

³¹ France, *Le Monde*, "The prison service becomes part of the intelligence services family" ("*Le pénitentiaire rejoint la famille du renseignement*"), 1 February 2017, available at: www.lemonde.fr/police-justice/article/2017/01/31/l-administration-penitentiaire-rejoint-la-famille-du-renseignement_5072206_1653578.html

³² France, Prisons Law No. 2009-1436 (*Loi n°2009-1436 pénitentiaire*), 24 November 2009, Article 40, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021312171&categorieLien=id

³³ France, Code for criminal procedure (*Code de procédure pénale*), Article D 262, available at: www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000023410800&cidTexte=LEGITEXT00006071154

security, defence or public safety,³⁴ or make an application to the CNCTR with a request to verify that no intelligence measure is being unlawfully applied to them.³⁵

The Central office for prison intelligence, created within the new sub-directorate of prison security, consists of 15 staff at 1 February 2017. Its staff will rise to 40 at the end of 2017, while those of the intra-regional prison intelligence branches will rise to 83 agents. This subsidiary also includes 15 analyst-surveillance staff, 20 IT investigators and 10 translators, as well as local delegates for prison intelligence present in each of the 187 establishments.³⁶ The prison services are authorized to use surveillance measures under the conditions provided for by the Internal Security code for the specialized intelligence services³⁷ under the control of the CNCTR and the Council of State.³⁸

National Commission of Control of the Intelligence Techniques (CNCTR)

Law No. 2017-55 of 20 January 2017, for a general statute for the independent administrative authorities and the independent public authorities, changed the provisions of the Internal Security code.³⁹

In particular, the provisions relating to the composition of the CNCTR were modified: the condition according to which two Members of Parliament and two senators, the Members of the CNCTR, are appointed, respectively, for the duration of the legislature by the French National Assembly and for the duration of their mandate by the Senate, was removed. In effect, Article 5 of Law No. 2017-55 of 20 January 2017 harmonized the length of mandates

³⁴ France, Law relating to data, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, Article 41, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460

³⁵ France, Internal security code (*Code de la sécurité intérieure*), Article L 833-4, available at: www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&cidArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid

³⁶ France, *Le Monde*, "The prison service becomes part of the intelligence services family" ("*Le pénitentiaire rejoint la famille du renseignement*"), 1 February 2017, available at: www.lemonde.fr/police-justice/article/2017/01/31/l-administration-penitentiaire-rejoint-la-famille-du-renseignement_5072206_1653578.html; France, *Le Figaro*, "The Chancellery launches its prison intelligence office", ("*La Chancellerie lance son bureau de renseignement pénitentiaire*"), 1 February 2017, available at: www.lefigaro.fr/actualite-france/2017/01/31/01016-20170131ARTFIG00055-la-chancellerie-lance-son-bureau-de-renseignement-penitentiaire.php

³⁷ France, Internal security code (*Code de la sécurité intérieure*), Article L. 811-4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=85C14B0B990E2BE73ED192535B5129C9.tpdila18v_1?idSectionTA=LEGISCTA000030935034&cidTexte=LEGITEXT000025503132&dateTexte=20170209

³⁸ France, Internal security code (*Code de la sécurité intérieure*), Article L. 841-1, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20170209

³⁹ France, Law No. 2017-55 for a general statute for the independent administrative authorities and the independent public authorities (*Loi n° 2017-55 portant statut général des autorités administratives indépendantes et des autorités publiques indépendantes*), 20 January 2017, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033897475&categorieLien=id.

for authorities by introducing a common provision according to which the term of office of the members of an independent administrative authority, or of an independent public authority, is between three and six years. By way of derogation, the term of office of Members of Parliament or senators who are members of one of these authorities ends with the termination of their mandate as a Member of Parliament or senator.

Provisions relating to the right of the CNCTR to suspend the mandate of one of its members or to put an end to it if it notes, with a majority of three quarters of its other members, that the member is in a situation of incompatibility that prevents the member from exercising their duties or that they have failed in their duties, were also removed.

Article 6 of Law No. 2017-55 of 20 January 2017 also provides general provisions according to which the mandate of a member of an independent administrative authority or of an independent public authority is not revocable. In the event of an inability to act as a member the mandate may be suspended for a fixed period, either upon the request of the member concerned or by the other members, with a majority of three quarters of the other members adopting a motion put by one of these members.

The duties of a member may only be terminated in the manner provided for upon appointment, either in the event of their resignation or, on a motion proposed by the president of the board or a third of the other members, after a majority of three-quarters of the other members consider there to have been a serious failing in the member's legal obligations, or a permanent inability to continue with her/his mandate.

A member of an independent administrative authority or of an independent public authority who is in a situation that is incompatible with their duties shall put an end to this situation within thirty days of their appointment or their election. Failing this, the president of the independent administrative authority or independent public authority, or at least one third of the members when the incompatible situation concerns the president, relieves the member of their duties.

It was specified that the president of the CNCTR, who can not hold an elected mandate, must work in the role on a full-time basis. The purpose of this provision is to strengthen the independence of the post.⁴⁰

⁴⁰ France, Senate (*Sénat*), Report (*Rapport*), 27 January 2016, available at: www.senat.fr/rap/115-332/115-3321.pdf

The wanted persons file

Senator Hervé Maurey (UDC) submitted on 24 January 2017 an amendment to the bill on public safety, aimed at making it possible for mayors to obtain a list of wanted persons residing in their municipality from the Prefect. Mayors would be entitled to communicate the information received to the person in charge of the municipal police force in their municipality.⁴¹

Through Decree No. 2010-569 of 28 May 2010, relating to the wanted persons file,⁴² the Minister of the Interior (general directorate of the national police and general directorate of the national gendarmerie) was authorized to implement automated personal data processing which can include people who are the subject of a search to prevent serious threats to public safety or State security, whenever intelligence or evidence is collected which relates to them. They are thus people suspected of terrorist aims or threats to State safety, although without having committed an offence or crime. Approximately 20,000 people are therefore the subject of such a record in France. The S Files are mainly produced by the Directorate General of Internal Security (*Direction générale du renseignement intérieur*, DGSI). The purpose of this processing is to facilitate searches and checks that are carried out, within the framework of their respective remits, by the services of the national police, units of the national gendarmerie and customs agents fulfilling the role of the judicial police or administrative functions.

In submitting this amendment, the senator specified that the majority of perpetrators of terrorist attacks in France in recent years had a common point: they were the subject of surveillance under the wanted persons file, in the subcategory 'S'. In view of this observation, many mayors were concerned for the safety of their fellow-citizens and asked to be able to obtain a list of wanted persons residing in their municipality. As access to this type of information is currently reserved for the intelligence services and certain duly authorised agents, this request cannot succeed. However, it arises from a legitimate concern of elected officials in terms of public safety, which is one of the first objectives of their duties (under the terms of Article L. 2212-1 of the General code for local authorities).

The amendment suggested aimed at reinforcing the level of information and the means available to mayors to ensure safety and to usefully supplement intelligence services information, by improving co-operation between the State and the municipalities as regards safety, as the Government wishes.

The amendment provided that mayors could only use the information received within the framework of their legal duties and exclusively for the needs of their mandated duties. To avoid divulging any information which could be damaging to the intelligence services, they would be required to keep data received confidential.

⁴¹ France, Bill on public safety (*Projet de loi relatif à la sécurité publique*), available at: www.senat.fr/dossier-legislatif/pjl16-263.html

⁴² France, Decree No. 2010-569 relating to the wanted persons file (*Décret n° 2010-569 du 28 mai 2010 relatif au fichier des personnes recherchées*), 28 May 2010, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022276189&categorieLien=id

The Law commission provided an unfavourable opinion on this amendment, because “such a practice could even compromise or render inoperative the work of the security services, and even be unsafe for them”, and also from the government for whom the amendment “would lead to providing mayors few operational opportunities, which moreover would only be used to set up local protection, and would thus contribute to undermining the intelligence and surveillance system which is based on the confidentiality of information”.⁴³

The government has always been opposed to such a mechanism: “This judicial impossibility, which protects the confidentiality of this kind of information, even protects its existence”.⁴⁴

This amendment to the bill on public safety was rejected.⁴⁵

However, on 10 March 2017, a bill drafted by Members of Parliament making it possible for mayors to obtain a list of wanted persons residing in their municipality, was registered with the National Assembly.⁴⁶ Currently it is in the phase of the 1st reading at the National Assembly and would not be adopted before the end of the legislature in June. As this Bill was proposed by MPs, the Government will give its opinion later.

According to the bill, the representative of the State in the Department communicates, to a mayor who makes a request, the identity of the people residing in their commune who are registered in the wanted persons file under the conditions defined by Decree No. 2010-569 of 28 May 2010 relating to the wanted persons file. The mayor can only use the information thus transmitted within the framework of her/his legal powers and for the exclusive needs of the mandate entrusted to her/him.

According to the explanatory statement to the bill, the planned measure would meet the legitimate aspirations of mayors, within the framework of their public safety responsibilities, and would make it possible to strengthen the decentralized co-operation between the State and the communes. This bill aims at allowing what is already practised by the Ministry for the interior for the Ministry for national education for its recruitment: the ministry for the interior in effect informs the ministry for national education of teaching or management personnel who have been radicalized and who are recorded in the S File. According to those who drafted the bill this is a simple need for formal parallelism with mayors as employers, as such may be the case for canteen personnel in nursery schools and primary schools, or specialized regional staff in nursery schools. Mayors should have the same level of information as the heads of national education establishments with respect to staff who may be potentially dangerous for pupils.

⁴³ France, Senate (*Sénat*), Minute of meeting (*Compte-rendu de séance*), 24 January 2017, available at: www.senat.fr/seances/s201701/s20170124/s20170124025.html#section3207

⁴⁴ France, Nextinpact, "Senator wishes to authorize communication of wanted persons files to mayors" ("*Un sénateur veut autoriser communication fiches S aux maires*"), 23 January 2017, available at: www.nextinpact.com/news/103002-un-senateur-veut-autoriser-communication-fiches-s-aux-maires.htm

⁴⁵ France, Senate (*Sénat*), Amendment (*Amendement*), available at: www.senat.fr/amendements/2016-2017/310/Amdt_1.html

⁴⁶ France, Bill to allow mayors to know of persons identified in the S File residing in their area (*La proposition de loi visant à permettre aux maires de connaître les personnes identifiées comme fichées S résidant dans leur commune*), 10 March 2017, available at: www.assemblee-nationale.fr/14/propositions/pion4583.asp

This extension of informing mayors of people on the ‘S File’ arouses certain reservations, given the criticisms against the creation this ‘S File’. This file is in fact highly criticized for the way in which it is fed by data which are often very subjective and approximate, such as intelligence reports (*notes blanches*) from the intelligence services, against which it is very difficult to exercise the rights of defence. It is also criticized for the implications it entails and which go against the logic of criminal law and procedure, that of a proven danger, or of identifiable anti-social behaviour. The National Commission on Human rights (*Commission nationale consultative des droits de l’homme*, CNCDH) has thus echoed certain researchers who evoke a shift towards a "Minority report logic", based on the anticipation of a suspicion of a threat or subjective antisocial behaviour.⁴⁷

The offence of visiting terrorist sites

On 10 February 2017 the Constitutional Council censured the provisions of the Criminal code, which since the law of 3 June 2016 provided for a sentence of two years' prison and a €30,000 fine for “habitually” visiting terrorism related internet sites or sites which incite the committing of such acts as are contrary to the Constitution.⁴⁸

Nevertheless, Law No. 2017-258 of 28 February 2017⁴⁹ reinstated the offence of visiting terrorist sites. According to restored Article 421-2-5-2 of the Criminal code, habitually visiting, without a legitimate reason a public online site which shows messages, images or representations either directly provoking acts of terrorism, or defending these acts when, for this purpose, this site includes images or representations showing the committing of such life threatening acts is punishable by two years of imprisonment and a €30,000 fine when this consultation is accompanied by a demonstration of adhesion to the ideology expressed on this site. Legitimate reasons for visiting such a site may result from: the usual exercise of a profession whose aim is to inform the public; scientific research; for the content to be used as evidence in court; or if this consultation is accompanied by a reporting of the contents of the site to the relevant authorities.⁵⁰

⁴⁷ France, CNCDH, Opinion on the follow-up of the state of emergency and the counter-terrorism measures of the law of 21 July 2016 (*Avis sur le suivi de l'état d'urgence et les mesures anti-terroristes de la loi du 21 juillet 2016*), 26 January 2017, available at : www.cncdh.fr/fr/publications/avis-sur-le-suivi-de-letat-durgence-et-les-mesures-anti-terroristes-de-la-loi-du-21

⁴⁸ France, Constitutional Council (*Conseil Constitutionnel*), Decision, 10 February 2017, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-611-qpc/decision-n-2016-611-qpc-du-10-fevrier-2017.148614.html

⁴⁹ France, Law No. 2017-258 relating to public safety (*Loi n° 2017-258 relative à la sécurité publique*), 28 February 2017, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034104023&categorieLien=id

⁵⁰ The provisions modified with respect to the drafting result from the Law of 3 June 2016.

Public action for this offence is barred by limitation of six years as from the day when the offence was committed, as in common law.⁵¹

This modification of the offence of visiting terrorist sites was widely commented on. Members of Parliament believe the constitutional judge will again have to rule on this. The president of the Law Commission who sees therein a “pointless” offence, considers that “this offence will not be applied because it will be very difficult to define the demonstration of adhesion of those who visit these sites [one of the aspects of the offence]”.⁵²

A common counter-terrorism file

On 1 February 2017, the draft bill on the creation of a common counter-terrorism file for all actors working on the fight against terrorism⁵³ was submitted to the Presidency of the National Assembly. According to the explanatory memorandum of this bill, the databases listing individuals to be monitored within the framework of the fight against terrorism are the first working tool of the intelligence services, police and gendarmerie involved in the fight against terrorism. It is essential to all these actors in counter-terrorism to have an overview of individuals presenting a potential or proven terrorist threat, whether these people are in France or have gone abroad. It seems necessary to create a common database for actors in the fight against terrorism, based on the model of the American TIDE file (“terrorist identity damart environment”), as recommends the Investigation commission report relating to the resources implemented by the State to fight terrorism.⁵⁴

The draft bill on the creation of a common counter-terrorism file for all actors working on the fight against terrorism proposed to supplement the Internal security code by adding a Chapter relating to counter-terrorism files. The modifications suggested are as follows:

“The creation of a database called the ‘Common counter-terrorism file’, which would be accessible to all State services involved in the fight against terrorism, according to levels of access adapted to the needs of services and the ranks of the officers.

The purpose of the Common counter-terrorism file is to list all the individuals who may constitute a terrorist threat, and who are suspected of being connected with terrorist groups

⁵¹ France, Law No. 2017-242 on the reform of the statute of limitation in criminal cases (*Loi n° 2017-242 portant réforme de la prescription en matière pénale*), 27 February 2017, available at : www.legifrance.gouv.fr/eli/loi/2017/2/27/JUSX1607683L/jo/texte

⁵² France, NextInpact, The new version of the offence of visiting terrorist sites is adopted (*La nouvelle version du délit de consultation de sites terroristes définitivement adoptée*), 16 February 2017, available at: www.nextinpact.com/news/102917-la-nouvelle-version-delit-consultation-sites-terroristes-definitivement-adoptee.htm

⁵³ France, Draft bill on the creation of a common counter-terrorism file for all actors working on the fight against terrorism (*La proposition de loi tendant à la création d’un fichier antiterroriste commun à tous les acteurs de la lutte antiterroriste*), 1 February 2017, available at: www.assemblee-nationale.fr/14/propositions/pion4433.asp

⁵⁴ France, Investigation commission (*Commission d’enquête*), Report relating to the resources implemented by the State to fight terrorism since 7 January 2015 n°3922 (*Rapport d’enquête relative aux moyens mis en œuvre par l’Etat pour lutter contre le terrorisme depuis le 7 janvier 2015 n° 3922*), 5 July 2016, available at : www.assemblee-nationale.fr/14/dossiers/enquete_moyens_lutte_terrorisme.asp

or extremists or who are self-radicalized, as well as people who are part of their home and professional environment.

It contains all available information on each person listed: in particular their profile, criminal record, civil status, career, financial and banking information, biometric data, and voice recording.

The conditions under which the State services involved in the fight against terrorism are authorized to access this file, as well as the actual methods of operation, are set by the Ministry for the Interior after consultation with the CNIL”.⁵⁵

Internal Security and Justice Framework and Planning Bill

On 10 March 2017, an Internal Security and Justice Framework and Planning Bill, drafted by Members of Parliament, was registered at the National Assembly.⁵⁶ Currently it is in the phase of the 1st reading at the National Assembly and would not be adopted before the end of the legislature in June. As this Bill was proposed by MPs, the Government will give its opinion later.

The aim of this bill is to establish, until 2022, the objectives of internal security policy, the material and legal resources for the justice system, the conditions for co-operation between the different areas of internal security, and the legislative measures and budgetary programming necessary to give full effect to these plans.

According to the explanatory statement to this bill, in view of the Islamic extremist terrorist attacks which affect the whole of Europe and which have entered France into a war, the government response has to be particularly firm. The institutions of the Republic have to take measures to eradicate this major threat in the higher interests of the Nation.

The bill proposes to grant 8.53 billion euros to 'security' between 2018 and 2022, the recruitment of 10,000 police officers and gendarmes (including 1000 agents assigned to intelligence), the integration of the Directorate of intelligence for the prefecture of police (*direction du renseignement de la préfecture de police*) and a section of staff from the Central directorate for territorial intelligence (*direction centrale du renseignement*

⁵⁵ France, Draft bill on the creation of a common counter-terrorism file for all actors working on the fight against terrorism (*La proposition de loi tendant à la création d'un fichier antiterroriste commun à tous les acteurs de la lutte antiterroriste*), 1 February 2017, available at: www.assemblee-nationale.fr/14/propositions/pion4433.asp

⁵⁶ France, Internal Security and Justice Framework and Planning Bill (*La proposition de loi d'orientation et de programmation pour la sécurité intérieure et la justice*), 10 March 2017, available at: www.assemblee-nationale.fr/14/propositions/pion4582.asp

territorial) into the General directorate for internal security (*direction générale de la sécurité intérieure*).

Article 3 of the bill creates an administrative control measure for individuals who pose a serious threat to safety and public order, by order of the Minister of the Interior with the prior informing of the Paris public prosecutor. The measure can be carried out by way of house arrest, electronic tagging or administrative detention. When a twelve-day deadline since the administrative control decision has lapsed, the judge for freedoms and detention is called upon in order to extend the decision. When a sixty-day deadline has lapsed since the expiry of the twelve-day period, the Minister of the Interior can take a new decision to order administrative control measures.

Article 4 gives the Minister of the Interior the possibility to order administrative searches when there are serious reasons to believe that the premises concerned are frequented by a person whose behaviour poses a threat to safety and public order.

Article 14 authorizes the creation of a single interface making it possible to facilitate searches undertaken by the services charged with the fight against terrorism. The files concerned by this interface will be those that can currently be consulted within the framework of the prevention and the repression of acts of terrorism, in particular: the file for alerts on prevention and terrorist radicalisation (*fichier des signalés pour la prévention et la radicalisation à caractère terroriste*); the national registrations file (*fichier national des immatriculations*); the national system for the management of driving licences (*système national de gestion des permis de conduire*); the system for the management of national identity cards (*le système de gestion des cartes nationales d'identité*); the computerized system for the management of files for foreign nationals in France (*système informatisé de gestion des dossiers des ressortissants étrangers en France*); data files collected at the time of international travel (including the Passenger name record - PNR); the criminal records file (*fichier de traitement d'antécédents judiciaires*).

Article 15 reinforces the sanctions against telecommunications operators and internet service providers who refuse or abstain from withdrawing illicit content.

Article 39 of the bill provides that for the sole purposes of the prevention of terrorism, the capture in real time of the image of a person may be authorized for the purposes of biometric analysis. Images originating from video-protection systems are processed by means of an automatic face recognition device. This automated processing compares the images thus obtained with the anthropometric data, figuring in paragraph 5 of Article 4 of the Decree No 87-249 of 8 April 1987 relating to the automated fingerprint file managed by the ministry for the interior,⁵⁷ and with the people mentioned in paragraph 8 of III of

⁵⁷ France, Decree No 87-249 relating to the automated fingerprint file managed by the ministry for the interior (*Décret n°87-249 relatif au fichier automatisé des empreintes digitales géré par le ministère de l'intérieur*), 8 April 1987, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006065909

Article 2 of Decree No. 2010-569 of 28 May 2010 relating to the wanted persons file.⁵⁸ In respect of the principle of proportionality, the authorization from the Prime Minister specifies the technical field for the implementation of this processing. The CNCTR gives an opinion on the authorization request relating to automated processing and the detection measures selected. It has permanent, complete and direct access to this processing and the information and data collected. It is informed of any modification made to the processing or parameters and can make recommendations.

Intelligence Campus

In view of the challenges posed by the rise of terrorism and the IT revolution, the Directorate of military intelligence (*La direction du renseignement militaire*, DRM) has decided to overhaul its organization while opening up to the academic, research and business sectors. Placed under the aegis of the DRM, the Intelligence Campus project, which began at the end of 2016, was inaugurated by Jean-Yves Le Drian on 23 March 2017. As an association between the public and private sectors, experts and analysts from the DRM and the intelligence community, universities and higher education schools, research institutes and companies, the objective is to develop innovative solutions in the field of data processing, and data capture and use, with a primary focus on imagery and geo-intelligence. As both an agency and innovation network, Intelligence Campus hopes to associate human and artificial intelligence by drawing on humanities as much as hard science. By creating synergies and links between public and private sectors, large companies and start-ups, the Intelligence Campus will generate economic activity and employment. Particular associates of this project will be the National centre for scientific research (*Centre national de la recherche scientifique*, CNRS), the Polytechnic School (*Ecole polytechnique*), the National school for statistics and economic administration (*Ecole nationale de la statistique et de l'administration économique*, Ensaie), and the University of Paris I Panthéon-Sorbonne. From 2018, a masters in geo-intelligence will be offered there and the Joint military intelligence training centre (*Centre de formation interarmées du renseignement*, CFIAR), currently in Strasbourg, will move there in 2019.⁵⁹

⁵⁸ France, Decree No. 2010-569 relating to the wanted persons file (*Décret n° 2010-569 relatif au fichier des personnes recherchées*), 28 May 2010, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022276189&categorieLien=id

⁵⁹ France, Innovation in the intelligence services: inauguration of the Intelligence Campus project! (*L'innovation au service du renseignement: le projet Intelligence Campus inauguré*), Sécurité et Défense Magazine, 27 March 2017, available at: <https://sd-magazine.com/techno-et-innovation/innovation-service-renseignement-projet-intelligence-campus-inaugure>

2. Reports and inquiries by oversight bodies

Secure Electronic ID (Titres Electroniques Sécurisés)

On 17 January 2017, the Minister for the Interior made public a system security audit report on “Secure Electronic ID” (*Titres Electroniques Sécurisés* - TES) introduced by a Decree on 28 October 2016⁶⁰ which was jointly produced by the National agency for the security of intelligence communication systems (*Agence nationale de la sécurité des systèmes d’information* - ANSSI) and the Interdepartmental directorate for digital information and state communication (*Direction interministérielle du numérique et du système d’information et de communication de l’Etat* - DINSIC).⁶¹

This audit concludes that, “although the design principles of the TES system are compatible with the sensitivity of the data which it contains”, the overall security of the system could be improved and that new management, operational and security measures must be put in place by the ministry for the interior. It shows moreover that the system can technically be used inappropriately for the purposes of the biometric identification of the people concerned. It states that the technical inviolability of an IT system cannot be guaranteed in any absolute way and that it is up to the State to decide, taking into consideration the residual risks related to the implementation of such a file and of its anticipated benefits, on the advisability of maintaining such a system.

The CNIL welcomed the publication of this report, which consolidated its position according to which going through the legislative processes, the natural route for a national debate, would have been highly desirable.⁶² The work of the ANSSI and the DINSIC shows that the decision to create the TES processing system was not preceded by sufficient evaluations and expert assessments, given the magnitude and the sensitivity of the data processing, in particular from the point of view of the security measures required around this system, which the CNIL had regretted the lack of. Similarly, the CNIL had reiterated that the efficacy of prohibiting the carrying out of biometric identification of people, provided for by the above mentioned decree, supposes the implementation of strict security measures and permanent control of access to the data as well as its use. However, these measures were not ensured by the provision which was

⁶⁰ France, Decree n° 2016-1460 on the creation of processing of personal data related to passports and ID (*Décret n° 2016-1460 autorisant la création d’un traitement de données à caractère personnel relatif aux passeports et aux cartes nationales d’identité*), 28 October 2016, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033318345&categorieLien=id

⁶¹ France, CNIL, ANSSI/DINSIC report on the TES: high convergence with the opinion of the CNIL (*Rapport ANSSI / DINSIC sur le fichier TES : une forte convergence avec l’avis de la CNIL*), available at : www.cnil.fr/fr/rapport-anssi-dinsic-sur-le-fichier-tes-une-forte-convergence-avec-lavis-de-la-cnil; France, Ministry of Interior (*Ministère de l’intérieur*), TES system audit (*Audit du système TES*), available at: <http://mobile.interieur.gouv.fr/content/download/100011/786238/file/rapport-commun-public-tes-13-01-20172.pdf>

⁶² France, CNIL, Deliberation No. 2016-292 providing council on a draft decree authorizing the creation of a personal data processing file relating to passports and national identity cards (*Délibération n° 2016-292 portant avis sur un projet de décret autorisant la création d’un traitement de données à caractère personnel relatif aux passeports et aux cartes nationales d’identité*), 29 September 2016, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033318979

presented, in particular due to the possibility of using this information within the framework of legal requisitions.

The CNIL notes that these recommendations and the commitments entered into by the Minister of the Interior require a substantial modification of the conditions for the implementation of the TES. The CNIL has already been referred to, in December 2016, for a modification of the decree concerning the methods of collecting fingerprints. These new changes to the system will also have to be brought to its attention and it will consequently have the occasion to pronounce on the entirety of the decisions finally taken by the ministry for the interior concerning the TES.

Interpretation of the European regulation on data protection

Pursuant to the objective of proposing an interpretation of the European regulation on data protection, applicable from 25 May 2018, based as closely as possible on the concerns of the relevant actors, the CNIL launched an online consultation on 3 themes:

- Notification of violations of personal data protection,
- Consent,
- Profiling.

The online consultation on the CNIL site is open from 24 February to 24 March 2017. A workshop will be organized in Brussels following this consultation.⁶³

2017 Programme of CNIL

The CNIL published its 2017 programme. One of the sets of themes selected is control of the general operations for intelligence files and respect of the applicable regulations. As such, several files concerning the safety of the State, defence or public safety will be the subject of checks by the CNIL: files on the prevention of threats to public safety, authorized by decree and implemented by the services of the ministry of the interior, into which the old general intelligence files were transferred: PASP - Prevention of threats to public safety (*Prévention des Atteintes à la Sécurité Publique*), GIPASP - Information management and the prevention of threats to public safety (*Gestion de l'Information et Prévention des Atteintes à la Sécurité*

⁶³ France, CNIL, European Regulation a new consultation on profiling, consent and notification of violations (*Règlement européen : une nouvelle consultation sur le profilage, le consentement et la notification de violations*), 27 February 2017, available at: www.cnil.fr/fr/reglement-europeen-consultation-sur-le-profilage-consentement-notification-de-violations

Publique) and EASP - Administrative Investigations related to public safety (*Enquêtes Administratives liées à la Sécurité Publique*).⁶⁴

CNCTR Opinion

On 16 March 2017, the CNCTR adopted Opinion No. 1/2017 relating to the draft decree modifying the regulatory part of the Internal security code, and on the designation of those services under the Ministry for justice which are authorized to use the following techniques: access connection data, real time localisation, tagging (*balisage*), collection of connection data with IMSI catcher, and security interceptions.⁶⁵

The CNCTR considered that there is no legal basis for allowing agents from services of the prison authorities to enter a vehicle or private premises to use a technique pursuant to Article L 855-1 of the Internal security code.⁶⁶ It gave an unfavourable opinion on this technique provided for in the draft decree.

The CNCTR gave a favourable opinion on the central office of prison intelligence and the inter-regional prison intelligence cells being able to use the techniques mentioned in Article L 855-1 of the Internal security code.⁶⁷ However, the local delegations to prison intelligence can only be authorized to prepare requests to use the techniques mentioned in Article L 855-1 of the Internal security code⁶⁸ on the condition that the proposals for requests are sent to the central office of prison intelligence after being validated by the relevant inter-regional prison intelligence cell. The CNCTR recommends that the agents of local delegations should not themselves be authorized to implement the techniques mentioned in Articles L 851-5⁶⁹ (tagging) and L 851-6 (collection of data with IMSI catcher)⁷⁰ of the Internal security code. It also recommends that

⁶⁴ France, CNIL, Inspections: 2016 review and 2017 programme (*Contrôles : bilan 2016 et programme 2017*), 31 March 2017, available at: www.cnil.fr/fr/contrôles-bilan-2016-et-programme-2017

⁶⁵ France, CNCTR, Opinion (*Deliberation*), No. 1/2017, 16 March 2017, not yet published.

⁶⁶ France, Internal security code (*Code de la sécurité intérieure*), Article L 855-1, available at : www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B60F47844B4647380108CAC58E440691.tpdila15v_3?idArticle=LEGIARTI000034109680&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

⁶⁷ France, Internal security code (*Code de la sécurité intérieure*), Article L 855-1, available at : www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B60F47844B4647380108CAC58E440691.tpdila15v_3?idArticle=LEGIARTI000034109680&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

⁶⁸ France, Internal security code (*Code de la sécurité intérieure*), Article L 855-1, available at : www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B60F47844B4647380108CAC58E440691.tpdila15v_3?idArticle=LEGIARTI000034109680&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

⁶⁹ France, Internal security code (*Code de la sécurité intérieure*), Article L 851-5, available at : www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=78D570DD07F59980AAE811967634B675.tpdila15v_3?idArticle=LEGIARTI000030939235&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=&nbResultRech=

⁷⁰ France, Internal security code (*Code de la sécurité intérieure*), Article L 851-6, available at : www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=78D570DD07F59980AAE811967634B675.tpdila15v_3

these agents should not be authorized to directly use the data collected by means of this latter technique.

3. Work of specific ad hoc parliamentary or non-parliamentary Commissions

Information report on the means implemented by the State to fight terrorism

On 21 February 2017, an Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 was submitted by the Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*) (hereafter - National Assembly Law Commission).⁷¹

The National Assembly Law Commission notes that its several proposals intended to improve the effectiveness of intelligence were not followed up:

The Ministry for the Interior is opposed to:⁷²

- 1) Permanently assigning gendarmerie officers to premises of the General Directorate for Internal Security (*La direction générale de la sécurité intérieure - DGSI*);
- 2) The creation of a General regional intelligence directorate (*La direction générale du renseignement territorial*), merging the Central regional intelligence service (*Le service central du renseignement territorial - SCRT*), under the general directorate for the national

?idArticle=LEGIARTI000030939237&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLi
en=id&oldAction=&nbResultRech=

⁷¹ France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

⁷² France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, p.24, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

police (*La direction générale de la police nationale*), and the sub-directorate for operational planning (*La sous-direction de l'anticipation opérationnelle* - SDAO), under the general directorate of the national gendarmerie (*La direction générale de la gendarmerie nationale*);

3) The merging of the Counter-terrorism coordination unit (*Unité de coordination de la lutte antiterroriste* - UCLAT) and the general staff for the prevention of terrorism (*l'état-major opérationnel de prévention du terrorisme* - EMOPT) into a body which, placed under the Minister for the Interior would see its priorities centred on the running and operating of the ministry's departments working in the fight against terrorism;

4) The creation of a national counter-terrorism agency (*Agence nationale de lutte antiterroriste*), attached to the Prime Minister, to which would be entrusted the analysis of the terrorist threat, the strategic planning of counter-terrorism policy and the coordination of operations in the fight against terrorism. The objective of this proposal is to bring together within a single agency all the roles currently filled by different organisations. According to the Ministry for the interior, "the necessary" daily interministerial work is incarnated by the Allat" within the DGSJ which is intended to provide the sharing of information between the various intelligence community services;

Nevertheless, in response to the National Assembly Law Commission's proposal to strengthen the rights of the National Intelligence Coordinator (*Coordonnateur national du renseignement*), the Minister of the Interior, Mr Bruno Le Roux, said he could make proposals to the President of the Republic and the Prime Minister on this.⁷³

The National Assembly Law Commission supports the creation of a common database for counter-terrorism actors exclusively devoted to counter-terrorism, with access levels tailored to the needs of services, gathering information on all persons, whether they are present in France or not.⁷⁴

The Committee calls for continued recruitment in the intelligence services, beyond the commitments made until 2018, and the widening of diversity in this recruitment through, notably, increased use of expert contracts. It welcomed the fact that since the launch of the Counter-terrorism Plan (*Plan de lutte antiterroriste* - PLAT), announced after the terrorist attacks in January 2015, services have seen their ranks steadily grow. In the services under

⁷³ France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, p.31, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

⁷⁴ France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, p.28, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

the Ministry for the interior, nearly 1,800 jobs will have been created between 2012 and 2017. This is an effort without precedent. The DGSI, the main beneficiary of this reinforcement, will have seen its staff grow by 1,157. The SCRT will have seen an increase of approximately 600 staff. Ultimately, the total staff of these services should rise to nearly 15,000 officers in 2019. Diversity in the profile of those staff recruited is progressing. In 2013, 5 % of DGSI teams were contractual, in 2018, this should represent 17 % of its manpower. The three intelligence services under the Ministry of Defence will have more than 10,000 military and civil personnel at the end of 2019. At the beginning of 2015, there were 7,800 personnel.⁷⁵

The National Assembly Law Commission also welcomes the rise in the powers of prison intelligence. The Commission notes that the Ministry for justice engages in actions in accordance with the guidelines set out in the plan to reinforce prison security to fight violent radicalisation, published on 25 October 2016:⁷⁶

- **Defining the architecture of the service**

The reorganization of the central level of prison intelligence is ongoing. Since 1 February, the Central office for prison intelligence (*Le bureau central du renseignement pénitentiaire - BCRP*) has been charged, in place of the old Office for prison intelligence (*Le bureau du renseignement pénitentiaire - BRP*) which lacked structure, with centralizing intelligence, analysing it and diffusing it but also with running the prison intelligence network.

By the end of the year 2017, the BCRP will employ forty agents whereas it employed fifteen in January 2017. Staff numbers of the interregional prison intelligence branches (*Les cellules interrégionales du renseignement pénitentiaire - CIRP*) will be doubled and will rise from 42 to 83. As for the local prison intelligence delegates (*Les délégués locaux du renseignement pénitentiaire - DLRP*), based in prisons, there will be 187 of these (44 full-time and 143 part-time).

⁷⁵ France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, p.31, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

⁷⁶ France, Commission for constitutional law, legislation and the general administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*), Information report on the implementation of the Investigation commission proposals relating to the means implemented by the State to fight terrorism since 7 January 2015 (*Rapport d'information sur le suivi de la mise en œuvre des propositions de la commission d'enquête relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015*), 21 February 2017, p. 33, available at: www.assemblee-nationale.fr/14/rap-info/i4534.asp#P294_50216

• **Providing new doctrines for prison intelligence** which will be finalized at the end of first half of 2017.

• **Drafting the necessary regulations to make prison intelligence a genuine intelligence service**

Order No. 2016-1877 of 27 December 2016 relating to the territorial jurisdiction, organization and remit of the interregional prison services offices and the role of overseas prison services⁷⁷ came into effect on 1 January 2017.

Four other orders (two *arrêtés* and two *Décrets*), published in the Official Journal on 17 January 2017, came into effect on 1 February:

- Order No.2017-37 of 16 January 2017 amending Order No, 2008-689 of 9 July 2008 on the organization of the Ministry of Justice⁷⁸ completes the list of tasks devolved to the prison administration and the work for the prevention of escapes, to ensure the security and good order of prisons or health establishments for detained persons and to participate in the prevention of crime, terrorism and organized crime;

- Order No. 2017-36 of 16 January 2017 relating to the designation of services under the Ministry of Justice, authorized the use of the techniques mentioned in Title V of Book VIII of the Internal security code, adopted pursuant to Article L. 811-4 of the Internal security code⁷⁹ allows the BCRP and the CIRPs to make use of these techniques for the prevention of terrorism on the one hand, and the prevention of organized crime and crime on the other;

- The Order of 16 July 2017 amending the Order of 30 June 2015 establishing the sub-directorate of the Directorate of Prison Administration (*La direction de l'administration pénitentiaire*)⁸⁰ creates the sub-directorate of prison security (*La sous-direction de la sécurité pénitentiaire*) and draws up a list of its roles;

⁷⁷ France, Order No. 2016-1877 relating to the territorial jurisdiction, organization and remit of the interregional prison services offices and the role of overseas prison services (*Décret n° 2016-1877 relatif au ressort territorial, à l'organisation et aux attributions des directions interrégionales des services pénitentiaires et de la mission des services pénitentiaires de l'outre-mer*), 27 December 2016, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033703404&categorieLien=id

⁷⁸ France, Decree no. 2017-37 amending Order No. 2008-689 of 9 July 2008 on the organization of the Ministry of Justice (*Décret n° 2017-37 modifiant le décret n° 2008-689 du 9 juillet 2008 relatif à l'organisation du ministère de la justice*), 16 January 2017, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033876942&dateTexte=20170203

⁷⁹ France, Decree No. 2017-36 relating to the designation of services under the Ministry of Justice, authorized the use of the techniques mentioned in Title V of Book VIII of the Code for Internal Security, adopted pursuant to Article L. 811-4 of the Internal security code (*Décret n° 2017-36 relatif à la désignation des services relevant du ministère de la justice, autorisés à recourir aux techniques mentionnées au titre V du livre VIII du code de la sécurité intérieure, pris en application de l'article L. 811-4 du code de la sécurité intérieure*), 16 January 2017, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033876862&categorieLien=id

⁸⁰ France, Order amending the Order of 30 June 2015 establishing the sub-directorate of the Directorate of Prison Administration (*Arrêté modifiant l'arrêté du 30 juin 2015 fixant l'organisation en sous-directions de la direction de l'administration pénitentiaire*), 16 January 2017, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033876983&dateTexte=&categorieLien=id

- The Order of 16 January 2017 amending the Order of 30 June 2015 establishing the offices of the Directorate of Prison Administration⁸¹ defines the roles of the offices which make up the new sub-directorate of prison security, in particular those of the BCRP.

● **Organising the relations between prison intelligence and other intelligence services**

As from the second quarter of 2017, several protocols between the BCRP and its partners belonging to the first and second circles of the intelligence community should be signed. Protocols signed in the past between the Directorate of Prison Administration (*La direction de l'administration pénitentiaire* - DAP), the General Directorate for Internal Security (DGSI) and the Coordination unit for the fight against terrorism (UCLAT) should be brought up to date.

Exchanges between BCRP staff and the other services are intensifying. The first has received an agent from the DGSI (since January 2017) and an officer from the SCRT (since February). They should be joined by an officer from the SDAO in March. A prison intelligence officer (*Un officier du renseignement pénitentiaire*) should soon join the Directorate for intelligence of the Paris police prefecture (*La direction du renseignement de la préfecture de police de Paris* - DRPP). The BCRP should merge with the Allat branch.

● **Defining the architecture of the relationships with the legal authority**

A circular from the Minister of Justice should appear by the end of first half of this year.

● **Conducting an active and effective recruitment policy and defining a training plan**

The Ministry of Justice is carrying out a number of actions: the development, with the support of the other intelligence services, of an initial and continuous training plan which aims to equip staff with a common knowledge base, and which is to evolve; the organization in prisons of awareness raising among teams, in particular the local prison intelligence delegates (*Les délégués locaux du renseignement pénitentiaire* - DLRP), in order to improve their knowledge of the legal framework in force and, more generally, to spread a culture of intelligence within the network, which is lacking today.

● **To precisely define the scope of action of the BCRP and its work methods with DAP staff**

The Ministry for justice aims to set up effective co-operation between the various actors from the DAP working on prison intelligence so that all prison authorities may benefit.

⁸¹ France, Order amending the Order 30 June 2015 establishing the offices of the Directorate of Prison Administration (*Arrêté modifiant l'arrêté du 30 juin 2015 fixant l'organisation en sous-directions de la direction de l'administration pénitentiaire*), 16 January 2017, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033876983&dateTexte=&categorieLien=id

● **To define the methods for processing the data collected by prison intelligence**

The initial finance law for 2017 devotes six million euros to supporting technological advances and the security policy in decentralized services. Four million is intended for the acquisition of intelligence equipment and for the protection of infrastructures and two million should be used for the development of an IT system to replace CAR software (Collect/Analyse/Inform) (*Collecter/Analyser/Renseigner*).

● **Establishing internal audit and organisation assessment rules**

This work will be based on action by the General inspectorate for justice (*L'inspection générale de la justice*), created in December 2016.⁸²

● **Defining areas for development and the priorities of prison intelligence**

The identification of the priority areas will be completed by the end of the second quarter of this year.

Cooperation between European services

Ambassador Mr. Pierre Sellal, permanent representative for the European Union, was heard by the European affairs commissions of the National Assembly and the Senate on 22 February 2017. He spoke in favour of an improvement in intelligence sharing and the reinforcement of co-operation between the services. “This subject is a source of difficult discussions within the Council and the European Parliament, but we must have tools in the fight against terrorism which allow our services to cooperate, using the broadest possible access to these data, while taking care to safeguard freedoms... We still need better cooperation with Internet Service Providers for the control of sites and illicit content, whose rapid removal is essential to the fight against radicalisation. In addition, the work of the police services is increasingly hampered by encrypted communications. These questions are very difficult to resolve because at the same time they affect the fight against crime, the internet economy and civil liberties. We will have to go as far as possible in search of co-operation with providers and, if necessary - and we will see rather quickly if it is - use

⁸² France, Order No. 2016-1675 on the creation of General inspectorate for justice (*Décret n° 2016-1675 portant création de l'inspection générale de la justice*), 5 December 2016, available

at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=516CCBFB01A4525556575692FFB2AB25.tpdila08v_3?cidTexte=JORFTEXT000033538164&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000033537421

legislative and regulatory measures upon which we have invited the Commission to make proposals.”⁸³

Activity Report of the parliament delegation on intelligence

The parliamentary delegation on intelligence (*la délégation parlementaire au renseignement*, DPR) has prepared its activity report for the year 2016.

Concerning the Passenger Name Record (PNR), the DPR notes in its report that preparations for the Passenger Information Unit (*Unité information passagers*, UIP) were put in place in dedicated buildings at Roissy in September 2015. In parallel, the installation of the PNR has begun, as well as the connection of a certain number of airline companies. However, the full deployment of the system will not be completed before the end of 2017. Currently, the PNR workgroup, in connection with the UIP, is preparing the effective provision of a system for operational use for all its future users, in particular the intelligence services.

The DPR would like the transposition of the directive of 21 April 2016 on the European PNR to be carried out by the Member States as soon as possible. It asks for France to accelerate this transposition into national law and for its representatives to work with the various governments of the European Union to move in the same direction.⁸⁴

The DPR stresses that securing the national territory in the face of the terrorist threat constitutes an essential priority for the intelligence community today. Coordination between the services was reinforced with the creation in 2014 and 2015 of the HERMES cell (controlled by the Directorate of military intelligence), of the INTERSERVICES cell (controlled by the Directorate-General of internal security) and the General staff for the prevention of terrorism (*État-major opérationnel de prévention du terrorisme*, EMOPT), placed directly under the Minister of the Interior. The National intelligence orientation plan (*Plan national d'orientation du renseignement*, PNOR) 2014-2019, drafted by the National intelligence coordinator and approved by the National Intelligence Council, defines seven action areas for the protection of national interests and three action areas for promoting these. For each of these areas, among which is the fight against terrorism, it determines the services in charge of the various missions.

⁸³ France, Senate, European affairs commission (*Senat, Commission des affaires européennes*), Session minutes (*Compte-rendu de la séance*), 22 February 2017, available at: www.senat.fr/basile/visio.do?id=c/compte-rendu-commissions/20170220/europ.html&idtable=c/compte-rendu-commissions/20170220/europ.html|c/compte-rendu-commissions/20170213/europ.html|c/compte-rendu-commissions/20170213/etr.html|c/compte-rendu-commissions/20170213/ce_schengen.html|c/compte-rendu-commissions/20170206/brexit.html|c/compte-rendu-commissions/20170206/europ.html|c/compte-rendu-commissions/20170130/etr.html|c/compte-rendu-commissions/20170130/fin.html&_c=renseignement&rch=gs&de=20160302&au=20170302&dp=1+an&radio=dp&aff=sep&tri=dd&off=0&afd=ppr&afd=ppl&afd=pjl&afd=cvn

⁸⁴ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p.22, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

It sets out the objectives which are assigned to them and it establishes a set of priorities in their realization and in the means to engage.⁸⁵

The DPR report notes that the payment appropriations for financing the intelligence services community in the strict sense (that is to say all specialized intelligence services, the Intelligence Academy and the National intelligence coordinator) saw very constant growth between 2013 and 2016, with a total increase of 11.3%. These appropriations include finance from various State budgetary programmes devoted to intelligence policy, not including special funds. Concerning staff levels, the number of intelligence community agents in the strict sense has been increased by 10.45%. If, for just the period 2013-2015, one adds to this the personnel from the “second circle”, defined by Article L. 811-4 of the Internal security code, as well as those of the interdepartmental monitoring group and those of the Commission for electronic defence communications (*Commissariat aux communications électroniques de défense*, CCED), there is an increase of 8.3%. Outside the intelligence community, the growth in the number of agents taking part in the public intelligence policy appears ascribable mainly to the Counter-terrorism coordination unit (*Unité de coordination de la lutte antiterroriste*, UCLAT), the Central Directorate of the Judicial Police (*Direction centrale de la police judiciaire*, DCPJ), the Central territorial intelligence service (*Service central du renseignement territorial*, SCRT), the Sub-directorate for operational planning of the national Gendarmerie (*Sous-direction de l'anticipation opérationnelle de la Gendarmerie nationale*, SDAO) and the Sub-directorate of internal security (*Sous-direction de la sécurité intérieure*, SDSI) of the Intelligence Directorate of the Paris Police Prefecture (*Direction du renseignement de la Préfecture de police de Paris*, DRPP). Overall, it appears that nearly 80% of the new resources are assigned to the fight against terrorism. The DPR insists that it is necessary to continue, in spite of budgetary difficulties, with recruitment within the intelligence services, as well as reinforcing their material and human resources.⁸⁶

The DPR notes that the reform of prison intelligence, which will gradually come into force during 2017, is accompanied by budget allocations amounting to 12 million euros.⁸⁷ According to the DPR, after the finalization of the legal framework, the human and material resources dedicated to prison intelligence should continue to rise in the years to come.⁸⁸

⁸⁵ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p.27, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁸⁶ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p.30, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁸⁷ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p. 54, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁸⁸ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la*

The DPR would like the Intelligence services inspectorate to carry out a study on the organization and the coordination of the various intelligence service files.⁸⁹

The DPR recommends carrying out an evaluation of the application of Article L. 851-2 of the Internal security code⁹⁰ concerning the real time collection of connection data. According to the DPR, it is necessary to assess the advisability of modifying this article by specifying that the real time collection of connection data from operator networks of people identified as posing a threat, can be authorized not only on an individual basis but also on the basis of list provided by the intelligence services.⁹¹

The DPR is reviewing Constitutional Council Decision No. 2016-590 QPC of 21 October 2016⁹². This decision proscribed the measure according to which, in addition to overall network monitoring, the intelligence services have the possibility of carrying out interceptions of radio and satellite communications, for the sole purpose of defence of the national interests, without specific authorizations or specific grounds for appeal, in particular before the CNCTR, being provided for. The Constitutional Council additionally decided to defer to 31 December 2017 the effective date of the declaration of unconstitutionality. The DPR puts forth a proposal according to which a new bill should be drafted as soon as possible to re-word Article L. 811-5 of the Internal security code concerning radio/satellite interceptions.⁹³ This law, whose contents should be determined in conjunction with the CNCTR, will respect civil liberties. In order to do this, the interception mechanisms must be accompanied by real safeguards for the people concerned.⁹⁴

délégation parlementaire au renseignement pour l'année 2016(2017), p. 57, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁸⁹ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p. 60, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁹⁰ France, Internal security code (*Code de la sécurité intérieure*), Article L 851-2, available at: www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=E5AF7AC48182018535EBBF68EC0C10D2.tpdila15v_3?idArticle=LEGIARTI000032925403&cidTexte=LEGITEXT000025503132&dateTexte=20170422&categorieLien=id&oldAction=

⁹¹ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p.78, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁹² France, Constitutional Council (*Conseil constitutionnel*), Decision No. 2016-590 QPC, 21 October 2016, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2016-590-qpc/decision-n-2016-590-qpc-du-21-octobre-2016.148047.html

⁹³ France, Internal security code (*Code de la sécurité intérieure*), Article L 811-5, available at : www.legifrance.gouv.fr/affichCode.do;jsessionid=E5AF7AC48182018535EBBF68EC0C10D2.tpdila15v_3?idSectionTA=LEGISCTA000030935034&cidTexte=LEGITEXT000025503132&dateTexte=20170422

⁹⁴ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p. 75, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

The ruling of the European Union Court of Justice of 21 December 2016 (*Tele2 Sverige AB versus Post-och telestyrelsen*) declared the indiscriminate conservation of data by operators for longer than a very short period of time, including when this conservation is justified by concerns for public safety, is not in conformity with the European Union Charter of Fundamental Rights. The ruling, essentially, no longer authorizes the real time collection of connection data. According to the DPR, this ruling by the European Union Court of Justice encroaches on the competence of the Member States, in as much as it results from the application of the principle of subsidiarity, and clearly does not take into account the requirements and purposes which are attached to action by the intelligence services. Barring a reversal in jurisprudence, the French Government should request that the Council revise European Directive 2002/58/CE as quickly as possible.⁹⁵

4. Work of non-governmental organisations and academia

Secure Electronic ID (Titres Electroniques Sécurisés)

The TES file (*Titres Électroniques Sécurisés*, Protected Electronic ID) were generalized throughout the country in March 2017.

The 'La Quadrature du Net'⁹⁶ association has firstly submitted an introductory request for a summary hearing before the Council of State, to contest the creation of a 'TES' file which is common to national identity cards and passports. This request aims to bring an appeal on grounds of abuse of power within the time limits imposed (two months as of the publication in the Official Journal of the decree being challenged). The public consultation for the appeal before the Council of State against the TES file was launched on the site <https://exegetes.eu.org>. An additional written statement (*mémoire ampliatif*) was sent to the Council of State on 27 March 2017. It develops in more details the arguments against the implementation of this database.⁹⁷

⁹⁵ France, Parliamentary Delegation for Intelligence (*Délégation parlementaire au renseignement*), Report on the activity of the Parliamentary Delegation for Intelligence for the year 2016 (*Rapport relatif à l'activité de la délégation parlementaire au renseignement pour l'année 2016*)(2017), p. 80, available at: www.assemblee-nationale.fr/14/pdf/rap-off/i4573.pdf

⁹⁶ France, Public consultation for the appeal before the Council of State against the TES file (*Consultation publique pour le recours devant le Conseil d'Etat contre le fichier TES*), available at: <https://exegetes.eu.org/consultation-tes/>

⁹⁷ France, Lausson, J., The much decried TES file arrives everywhere in France, the legal response is launched (*Le très décrié fichier TES arrive partout en France, la riposte juridique est lancée*), Numerama, 29 March 2017, available at: www.numerama.com/politique/244393-le-tres-decrie-fichier-tes-arrive-partout-en-france-la-riposte-juridique-est-lancee.html

The right to encryption

On 23 January 2017, the Observatory for freedoms and information technology (*Observatoire des libertés et du numérique* - OLN) published its arguing position on the defence of the right to encryption in response to certain political desires calling into question the technical and legal protection guaranteed by encryption methods.⁹⁸ The Observatory noted that “there does not exist a systemic technique of weakening encryption which would make it possible to target only criminal activity: all citizens would then also be potentially targeted. Nor does there exist a technique of weakening encryption which would benefit only “well intentioned” individuals. If a weakness is created for a State (police, justice, intelligence services), it will be then available for all other users (other States, criminal organizations, hackers) who are less well intentioned.” The Observatory stresses that “the benefit of an additional weakening of encryption in the fight against crime seems very low, not to say uncertain. What is certain on the other hand, it is that the consequences would be devastating for the rights and freedoms of everyone.”⁹⁹

Guide for Internet adventures

The Centre for study on citizenship, computerization and freedoms (*Centre d'Études sur la Citoyenneté, l'Informatisation et les Libertés* - CECIL), in partnership with the League of Human Rights (*Ligue des droits de l'Homme* - LDH), has developed a "Survival guide for internet adventurers or how to protect your freedoms in a hostile digital environment" which provides advice for protecting freedoms from the dangers of online surveillance.¹⁰⁰

⁹⁸ France, Observatory for freedoms and information technology (*Observatoire des libertés et du numérique*), Arguing position on the defence of the right to encryption in response to certain political desires calling into question the technical and legal protection guaranteed by encryption methods, 23 January 2017, available at: www.lececil.org/node/20509; France, Nextinpact, NGO unequivocally defend encryption, "bulwark" against surveillance (*Des associations défendent sans équivoque le chiffrement, « rempart » contre la surveillance*), 26 January 2017, available at: www.nextinpact.com/news/103036-chiffrement-observatoire-libertes-et-numerique-appelle-a-sa-defense-et-sa-promotion.htm

⁹⁹ France, Observatory for freedoms and information technology (*Observatoire des libertés et du numérique*), Arguing position on the defence of the right to encryption in response to certain political desires calling into question the technical and legal protection guaranteed by encryption methods, 23 January 2017, available at: www.lececil.org/sites/all/files/pj/201701.olin_chiffrementsecuritelibertes.pdf

¹⁰⁰ France, CECIL, LDH, Survival guide for internet adventurers or how to protect your freedoms in a hostile digital environment (*Guide de survie à destination des aventuriers d'Internet ou comment protéger ses libertés en milieu numérique hostile*), 30 January 2017, available at: www.lececil.org/node/18001

Big Data on terrorism

The internet site NextInpact reveals the signature of a contract for 10 million euros between the Directorate General of Internal Security (DGSI), which does not have the technological means to handle the surge in data linked to or exchanged between jihadists, and the American company Palantir.¹⁰¹ This company, based in California, will from now on analyse Big Data on terrorism on behalf of the DGSI.¹⁰²

Review of the first CNCTR report

An article regarding the review of the first CNCTR report issued in December 2016 was published in *Revue des Droits de l'Homme* in February 2017.¹⁰³ The authors of this article considered whether the resources available to the CNCTR (a small team of 15 people and a 'derisory' budget of 2,957,641 euros) are sufficient for it to fulfil its decisive role in the respect of rights and freedoms. In stating significant advances, the CNCTR report also poses various problems which leave the impression that being certain of effective control over the legality of requests for the implementation of intelligence collection techniques is actually impossible. In particular, the CNCTR must in practice examine priority requests covering activities related to terrorism within an hour. However, in view of the various elements which the CNCTR must examine to give its opinion on the implementation of an intelligence technique, it is difficult to see how it can take all of these into account when it returns a decision '*in a few minutes*'. The authors therefore wonder about the effectiveness of its control with respect to the many requests which are submitted to it, and the elements which it must examine and the deadlines which are given for a response. In addition, the centralisation of data collection has not yet been completed. The authors of the article also note with regret that the complaints system provided for the law of 24 July 2015 is almost never used. The notable fall in the number of complaints to the CNCTR and the number of Council of State rulings (3 at the time of the drafting of the article) in connection with the increase in the number of requests for intelligence collection techniques raises questions.

¹⁰¹ France, NextInpact, Palantir, the private company to help the intelligence services (*Palantir, l'entreprise privée qui aide les services de renseignement*), 24 February 2017, available at: www.nextinpact.com/news/103432-palantir-entreprise-privee-qui-aide-services-renseignement.htm

¹⁰² France, Cohen-Grillet, P., The CIA called in to help by the French counter-terrorism bodies (*La CIA appelée au secours par l'antiterrorisme français*), *Paris Match*, 7 December 2016, available at: www.parismatch.com/Actu/International/La-CIA-appelée-au-secours-par-l-antiterrorisme-francais-1138268

¹⁰³ Chataignier, L., Geraud, A. et Gauthier, T., The Rule of Law in the Intelligence Test: Review of the First CNCTR Report (*L'Etat de droit à 'épreuve du renseignement: Bilan du premier rapport d'activité de la CNCTR*), February 2017, available at: <https://revdh.revues.org/3010>

Surveillance of international electronic communications.

The internet site NextImpact reveals that appeals concerning the scope of the law on the monitoring of international communications will be examined by the Council of State in May. These appeals concern the implementation of Article L841-1 of the Internal Security code. This provision recognizes the competence of the Council of State to check “that no intelligence technique is unlawfully implemented” on any person. However, within the framework of international monitoring, only the Commission for the control of intelligence techniques is qualified to act. The European MP Sophia Helena in't Veld, who claims that it is possible that she could have been the subject of surveillance measures both before and after the law on monitoring of international communications, intends to use a breach of the law to push the Council of State to take the case to the Court of Justice of the European Union. Article 854-3 of the Internal security code provides that members of Parliament (also journalists, etc.) “who work in France cannot be the subject of individual surveillance of their communications conducted in the exercise of their mandate”. Except that it is impossible to know in advance who is behind a certain IP address. In the same way, during a security interception, it cannot be anticipated that the remarks to come will be related to the mandate or not.¹⁰⁴

The offence of routinely visiting internet sites defending acts of terrorism

The Human rights review (*Revue des droits de l'homme*) published an article entitled “Death and resurrection of the principle of criminal necessity: On the Constitutional Council Decision of 10 February 2017” in March 2017 (*Mort et résurrection du principe de nécessité pénale: A propos de la décision du Conseil constitutionnel du 10 février 2017*). The authors of the article reconsider the Constitutional Council's decision to withdraw the offence of routinely visiting internet sites defending acts of terrorism. This offence was introduced by the Law of 3 June 2016. The Constitutional Council, referred to by the Court of cassation (*procédure de question prioritaire de constitutionnalité*), decided to remove this offence under the terms of the principle of the necessity for offences and sanctions. However, members of parliament and senators immediately decided to re-establish this as a criminal offence. Lawyers in general and judges in particular are from now on confronted with a new and thornier situation: what to make of a law which, although explicitly unconstitutional, nevertheless remains in force?¹⁰⁵

¹⁰⁴ France, NextImpact, At the Council of State a European MP challenges the monitoring of international communications (*Au Conseil d'État, une eurodéputée s'attaque à la surveillance des communications internationales*), 22 March 2017, available at: www.nextinpact.com/news/103773-au-conseil-detat-eurodeputee-sattaque-a-surveillance-communications-internationales.htm

¹⁰⁵ France, Sizaire, V., “Death and resurrection of the principle of criminal necessity: On the Constitutional Council Decision of 10 February 2017” (*Mort et résurrection du principe de nécessité pénale: A propos de la décision du Conseil constitutionnel du 10 février 2017*), *Revue des Droits de l'Homme*, March 2017, available at: <http://revdh.revues.org/3038>

ANNEX – Court decisions

Thematic area	Please provide the most relevant high court decision relating to the use of surveillance measure.
Decision date	27 January 2017
Reference details	Council of State (Conseil d’Etat), Decision No. 402079 ECLI:FR:Code Inconnu:2017:402079.20170127
Key facts of the case (max. 500 chars)	<p>Mr. A. requested access to data likely to relate to him which appeared in the automated data processing system of the General directorate for external security (DGSE) through the National Commission for information technology and freedoms (CNIL). According to the email for the president of the CNIL of 2 June 2016, access was refused by the minister of defence.</p> <p>Mr. A. requested that Council of State annul this decision of the minister of defence on the grounds of abuse of power, and to refer the question of conformity with the rights and freedoms guaranteed by the Constitution of Article L. 773-8 of the Code of administrative justice, in its drafting resulting from the law of 24 July 2015 relating to intelligence, to the Constitutional Council.</p> <p>According to this Article, when it concerns requests relating to the implementation of Article 41 of law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms (rights of “indirect” access to data processing which concerns State or defence security or public safety), the Council of State ruling committee bases its decision on the elements contained, if any, in the data processing without revealing these nor revealing if the applicant appears or not in the data processing. However, when it notes that the processing or the part of the processing which is the subject of the litigation comprises personal data relating to the applicant which is inaccurate, incomplete, ambiguous or out-of-date, or for which the collection, the use, the communication or the retention are prohibited, it informs the applicant of this, without revealing any element protected by the secrecy of national defence. It <u>can</u> order that these data are, according to each case, rectified, updated or erased. In light of this, it <u>can</u> compensate the applicant.</p>
Main reasoning/argumentation (max. 500 chars)	<p>Mr. A. held that Article L. 773-8 of the Code of administrative justice, in not providing for a simple means for a judge to sanction an irregularity committed in holding the file covered by national secrecy of defence, it disregards the right to effective recourse guaranteed by Article 16 of the Declaration of human rights and rights of the citizen.</p> <p>According to the Council of State, it results from Article L. 773-8 of the Code of administrative justice that, when it</p>

	<p>is observed that data appear illegally in a file, the managing authority of the file has an obligation to erase the data or to rectify it, to the extent that this is necessary. Under these conditions, when an irregularity is observed and the applicant informed, the argument that in leaving to the judge the possibility of enjoining the relevant authority to carry out this removal or this rectification, the legislator has ignored the right to effective jurisdictional recourse guaranteed by Article 16 of the Declaration of human rights and the right of the citizen, raises no new or serious questions. Consequently, there is no case for referring the priority question of constitutionality raised by the applicant to the Constitutional Council.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Concepts:</p> <ul style="list-style-type: none"> - the right to effective recourse. - the implementation of the conditions for raising a priority question of constitutionality: <ul style="list-style-type: none"> • the disputed provision must be applicable to the litigation or the procedure, • the disputed provision had not already been declared to be in conformity with the Constitution in the reasoning or by the means of a Constitutional council decision, barring a change of circumstances, • the question must be new or of a serious nature.
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Council of State decided that there was no case for referring the priority question of constitutionality raised by Mr. A to the Constitutional council.</p> <p>According to the Council of State, the question posed, raising the incompatibility between the right to effective recourse guaranteed by Article 16 of the Declaration of human rights and the rights of the citizen, and the possibility, but not an obligation, for a judge to sanction an irregularity committed in holding a file covered by national defence secrecy, was not serious.</p> <p>Thus, the constitutional conformity of Article L. 773-8 of the Code of administrative justice will not be examined by the Constitutional council and judges will keep this possibility.</p>

<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>“It results from these provisions that, when it is observed that data appear illegally in a file, the managing authority of the file has an obligation to erase the data or to rectify it, to the extent that this is necessary. Under these conditions, when an irregularity is observed and the applicant informed, the argument that in leaving to the judge the possibility of enjoining the relevant authority to carry out this removal or this rectification, the legislator has ignored the right to effective jurisdictional recourse guaranteed by Article 16 of the Declaration of human rights and the right of the citizen, raises no new or serious questions. Consequently, there is no case for referring the priority question of constitutionality raised by the applicant to the Constitutional Council.”</p> <p>“Il résulte de ces dispositions que, lorsqu'il a été constaté que des données figurent illégalement dans un fichier, l'autorité gestionnaire du fichier a l'obligation de les effacer ou de les rectifier, dans la mesure du nécessaire. Dans ces conditions, le moyen tiré de ce que, en laissant au juge, lorsqu'il a constaté une illégalité et en a informé le demandeur, la faculté d'enjoindre à l'autorité compétente de procéder à cet effacement ou cette rectification, le législateur aurait méconnu le droit à un recours juridictionnel effectif garanti par l'article 16 de la Déclaration des droits de l'homme et du citoyen ne soulève aucune question nouvelle ou sérieuse. Par suite, il n'y a pas lieu de renvoyer au Conseil constitutionnel la question prioritaire de constitutionnalité soulevée par le requérant.”</p>

Thematic area	Please provide the most relevant high court decision relating to the use of surveillance measure.
Decision date	10 February
Reference details	State Council (<i>Conseil d'Etat</i>), Judge for summary procedures, Decision N° 407545, available at: www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000034113866&fastReqId=1636772270&fastPos=17 ECLI:FR:CEORD:2017:407545.20170210
Key facts of the case (max. 500 chars)	<p>The intelligence services had established that Mr. A. had been stopped in May 2016 by the Turkish authorities in an area close to the Syrian border, then deported to France on 14 June 2016. It appeared, during an interview between investigators and Mr. A's mother before the return of her son, that he had visited sites relating to Islamic State. When questioned by the French authorities on his return, Mr. A. denied to have intended to go to Syria to join Daesh there, but did not provide a coherent explanation on the reasons for his trip.</p> <p>On 25 July 2016, Mr. A. was put under house arrest by a court order requiring him to reside in the area of the commune of Folschviller and requiring him to report to the Folschviller gendarmerie twice a day at 9am and 6pm, including Sundays and public holidays, and to remain confined to his residence between 8 p.m. and 6 a.m. every day.</p> <p>On 28 July 2016, during an administrative search of Mr. A's residence it was discovered that he had visited the 'jihadology' site, two videos of a preacher related to Al-Qaeda were found, and it was also discovered that he had done a search relating to the keywords 'Islamic State'.</p> <p>The same day, Mr. A. was placed in police custody for insult, rebellion and death threats towards the gendarmerie soldiers taking part in the search, and was sentenced at an immediate appearance to six months of imprisonment, without a detention warrant.</p> <p>On 1 August 2016, the judge for summary procedures of the administrative court of Strasbourg authorized the examination of a digital device seized at the time of the search. This revealed that for nearly one year Mr. A. had visited, very frequently, many sites in connection with international jihadism, which included propaganda videos.</p> <p>By an order of 29 August 2016 taken pursuant to Article L. 224-1 of the Internal security code, the Minister of the Interior prohibited Mr. A. from leaving the country for six months.</p> <p>On 20 December 2016, Mr. A's house arrest was renewed by an order by the Minister of the Interior.</p> <p>Mr. A. asked the judge for summary procedures of the administrative court of Strasbourg to order the suspension of</p>

	<p>the order of 20 December 2016 and, failing this, to ask the Minister of the Interior to re-examine his situation within 48 hours from an order for her/him to do so coming into effect. In ordinance No. 1700285 of 20 January 2017, the judge for summary procedures of the administrative court of Strasbourg refused his application.</p> <p>In a request lodged on 4 February 2017 with the litigation secretariat of the Council of State, Mr. A. asked the judge for summary procedures of the Council of State:</p> <ul style="list-style-type: none"> - to annul this ordinance; - to order the suspension of the order dated 20 December 2016, on the grounds that is a serious and immediate breach of the fundamental right of freedom of movement, taken without regard for the proportionality of the measure when taking into consideration the objectives sought by the administration; - failing this, to ask the Minister of the Interior to proceed with the re-examination of his situation within one week of the notification of the ordinance for her/him to intervene.
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Council of State considered that it is not disputed that Adana, located on one of the main roads serving the Turkey-Syria border, constitutes one of the usual crossing points of people who try to join Daesh. With regard to the evidence presented and the information provided by the intelligence services, it does not appear that by renewing Mr. A's house arrest, and by continuing it at present, on the grounds that there are serious reasons to believe that his conduct constitutes a serious threat to public safety and law and order, the Minister of the Interior has committed a serious and clearly unlawful breach of Mr. A's right to freedom of movement.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The freedom of movement.</p> <p>The Council of State considers that this fundamental freedom can be limited if there are serious reasons to believe that the conduct of the person in question constitutes a serious threat to public safety and public order.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Mr. A's application was rejected by the Council of State.</p> <p>Mr. A. remains under house arrest, since there are serious reasons to believe that his conduct constitutes a threat to public safety and public order.</p>

Key quotation in original language and translated into English with reference details
(max. 500 chars)

«Considérant qu'aux termes de l'article 6 de la loi du 3 avril 1955: " Le ministre de l'intérieur peut prononcer l'assignation à résidence, dans le lieu qu'il fixe, de toute personne résidant dans la zone fixée par le décret mentionné à l'article 2 et à l'égard de laquelle il existe des raisons sérieuses de penser que son comportement constitue une menace pour la sécurité et l'ordre publics dans les circonscriptions territoriales mentionnées au même article 2. (...) / La personne mentionnée au premier alinéa du présent article peut également être astreinte à demeurer dans le lieu d'habitation déterminé par le ministre de l'intérieur, pendant la plage horaire qu'il fixe, dans la limite de douze heures par vingt-quatre heures...Le ministre de l'intérieur peut prescrire à la personne assignée à résidence : / 1° L'obligation de se présenter périodiquement aux services de police ou aux unités de gendarmerie, selon une fréquence qu'il détermine dans la limite de trois présentations par jour, en précisant si cette obligation s'applique y compris les dimanches et jours fériés ou chômés...

Considérant qu'il résulte de l'instruction, et notamment de " notes blanches " établies par les services de renseignement et soumises au débat contradictoire, que M. A. a été interpellé à la fin du mois de mai 2016 par les autorités turques dans une région proche de la frontière syrienne, puis expulsé vers la France le 14 juin 2016 ; qu'il est apparu, lors d'un entretien entre des enquêteurs et la mère de M. A., avant le retour de son fils, que celui-ci avait consulté des sites relatifs à l'Etat islamique ; qu'interrogé par les autorités françaises à son retour, l'intéressé a nié avoir eu l'intention de se rendre en Syrie pour y rejoindre " Daech " mais n'a pas fourni d'explication cohérente sur les motifs de son voyage ; que, le 25 juillet 2016, M. A. a été assigné à résidence sur la base de ces premiers éléments ; que, le 28 juillet 2016, une perquisition administrative a été menée à son domicile révélant, à partir de son historique internet, la consultation, entre autres, du site " jihadology ", de deux vidéos d'un prédicateur lié à Al-Qaeda ainsi qu'une recherche portant sur le mot-clef " Etat islamique " ; que le même jour, M. A. a été placé en garde à vue pour outrage, rébellion et menaces de mort sur les militaires de la gendarmerie intervenant lors de la perquisition et a été condamné en comparution immédiate à six mois d'emprisonnement ferme, sans mandat de dépôt ; que le 1er août 2016, le juge des référés du tribunal administratif de Strasbourg a autorisé l'exploitation du support numérique saisi lors de la perquisition ; que celle-ci a révélé que M. A. consultait depuis près d'un an, et très fréquemment, de nombreux sites en rapport avec le jihadisme international, dont des vidéos de propagande ; que, par un arrêté du 29 août 2016 pris en application de l'article L. 224-1 du code de la sécurité intérieure, le ministre de l'intérieur a interdit à l'intéressé de sortir du territoire pour une durée de six mois ;

Considérant que M.A., en ce qui concerne les faits qui lui sont imputés, se borne à soutenir que son voyage en Turquie avait un objet touristique, qu'il a été arrêté par les autorités turques près d'Adana, ville distante de la frontière d'environ 200 km par la route, que ses recherches sur internet témoignent simplement de son intérêt pour la situation géopolitique au Proche-Orient et qu'il a d'ailleurs également consulté des sites hostiles à l'Etat islamique ; que, toutefois, il n'est pas contesté qu'Adana, située sur l'un des principaux axes routiers desservant la frontière

turco-syrienne, constitue l'un des points de passage habituels des personnes qui tentent de rejoindre Daech ; que, par ailleurs, la seule circonstance que l'arrêté contesté soit fondé sur des faits antérieurs à août 2016 n'implique aucunement, contrairement à ce qui est soutenu, qu'il n'ait pas été procédé à un nouvel examen de la situation de l'intéressé lorsque son assignation à résidence a été renouvelée le 20 décembre de la même année ; que, dès lors, en l'état de l'instruction, il n'apparaît pas qu'en renouvelant l'assignation à résidence de M. A., et en la maintenant jusqu'à ce jour, au motif qu'il existe de sérieuses raisons de penser que son comportement constitue une menace grave pour la sécurité et l'ordre publics, le ministre de l'intérieur ait porté une atteinte grave et manifestement illégale à la liberté d'aller et venir de M.A.; qu'il résulte de tout ce qui précède que celui-ci n'est pas fondé à soutenir que c'est à tort que, par l'ordonnance attaquée, le juge des référés du tribunal administratif de Strasbourg a rejeté sa demande ; que, par suite, son appel, y compris les conclusions tendant à ce qu'il soit enjoint au ministre de réexaminer sa situation et celles présentées au titre des dispositions de l'article L. 761-1 du code de justice administrative et de l'article 37 de la loi du 10 juillet 1991, ne peut qu'être rejeté ».

“Considering that under Article 6 of the Law of 2 April 1955: The Minister of the Interior may order house arrest, in a place which s/he decides on, of any person residing in the area set out by the Order mentioned in Article 2 and with regard to which there are serious reasons to believe that his conduct constitutes a threat to public safety and public order in the districts mentioned in same article 2. (...)/The person mentioned in the first subparagraph of this article may also be required to remain in the place of residence determined by the Minister of the Interior during the times which s/he establishes, up to a maximum of twelve hours per twenty-four hours... The Minister of the Interior may order the person under house arrest: 1. To periodically report to the police or gendarmerie units, according to a frequency which s/he determines, up to a maximum of three times per day, specifying if this obligation applies on Sundays and public holidays...

Considering that it results from the investigation, and in particular from the 'white notes' produced by the intelligence services and presented in court, that Mr. A. was stopped at the end of May 2016 by the Turkish authorities in an area close to the Syrian border, then deported to France on 14 June 2016; that it appeared, during an interview between investigators and Mr. A's mother before the return of her son, that he had visited sites relating to the Islamic State; that when questioned by the French authorities on his return, Mr. A. denied to have intended to go to Syria to join Daesh there, but did not provide a coherent explanation on the reasons for his trip; that, on 25 July 2016, Mr. A. was put under house arrest on the basis of these first elements; that, on 28 July 2016, an administrative search of Mr. A's residence revealed, from his browser history, that he had visited, among others, the 'jihadology' site, two videos of a preacher related to Al-Qaeda were found, and it was also discovered that he had done a search relating to the keywords 'Islamic State'; that the same day, Mr. A. was placed in police custody for insult, rebellion

and death threats towards the gendarmerie soldiers taking part in the search, and was sentenced at an immediate appearance to six months of imprisonment, without a detention warrant; that on 1 August 2016, the judge for summary procedures of the administrative court of Strasbourg authorized the examination of a digital device seized at the time of the search; that this revealed that for nearly one year Mr. A. had visited, very frequently, many sites in connection with international jihadism, which included propaganda videos; that, by an order of 29 August 2016 taken pursuant to Article L. 224-1 of the Code for internal security, the Minister of the Interior prohibited Mr. A. from leaving the country for six months;

Considering that, as regards the facts alleged against him, he maintains that his journey to Turkey was as a tourist, that he was stopped by the Turkish authorities close to Adana, a town which is at a distance of approximately 200 km from the border by road, that his internet search simply testifies to his interest in the geopolitical situation in the Middle East, and that he also visited sites opposed to Islamic State; that, whereas, it is not disputed that Adana, located on one of the main roads serving the Turkey-Syria border, constitutes one of the usual crossing points of people who try to join Daesh; that, in addition, the simple circumstance that the contested Order was based on facts prior August 2016 does not imply in any way, contrary to that which is claimed, that a new examination of the situation of the interested party was not carried out when his house arrest was renewed on 20 December of the same year; Whereas, therefore, at the present stage of the investigation, it does not appear that, by renewing Mr A's house arrest, and maintaining it to this day, on the grounds that there are serious reasons to believe that his conduct constitutes a serious threat to public safety and public order, the Minister of the Interior had committed a serious and manifestly unlawful breach of Mr. A's right to freedom of movement; It follows from the foregoing that the applicant has no grounds to claim that, in the contested order, the judge for summary procedures of the Strasbourg Administrative Court was wrong to reject his application; That, as a result, his appeal, including the submission that the Minister be required to reconsider his situation and those submitted under the provisions of Article L. 761-1 of the Code of Administrative Justice and Article 37 of the Law of 10 July 1991 can only be rejected".

Thematic area	Please provide the most relevant high court decision relating to the use of surveillance measures.
Decision date	6 March 2017
Reference details	State Council (<i>Conseil d'Etat</i>), Judge for summary procedures, Decision N° 408394, available at: http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=1&fond=DCE&text=Titres+%C9lectroniques+S%E9curis%E9s&Page=1&querytype=simple&NbEltPerPages=4&Pluriels=True ECLI:FR:CEORD:2017:408394.20170306
Key facts of the case (max. 500 chars)	In a request registered on 27 February 2017 with the litigation secretariat of the Council of State, Mr. A. and Mr. B. asked the Council of State judge for summary procedures, ruling on the grounds of Article L. 521-1 of the Code of administrative justice: 1) to order the suspension of Decree No. 2016-1460 of 28 October 2016 authorizing the creation of a personal data processing system for passports and national identity cards (TES file); 2) to order the suspension of the Order of 9 February 2017 on the application of Decree No. 2016-1460 of 28 October 2016 authorizing the creation of a personal data processing system for passports and national identity cards.
Main reasoning/argumentation (max. 500 chars)	Firstly, the request to suspend the Decree of 28 October 2016 is inadmissible due to having been made too late. The decree was published on 30 October 2016, while the request was only registered with the litigation secretariat of the Council of State on 24 February 2017, that is to say after the expiry of the two month period provided for in Article R. 421-1 of the Code of administrative justice. Secondly, the emergency condition is not met: the provisions of a regulatory nature of the Order of 9 February 2017 do not in themselves make mention of any emergency, either with regard to the general public interest or with regard to the interests of the applicants.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of a serious and immediate threat to the public interest, or the situation of the applicant, or the interests which the applicant intends to defend by justifying the urgency as a condition for the appeal for a summary procedure-suspension.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The request was rejected. New personal data processing system for passports and national identity cards is now operational in France.</p>
Key quotation in original language and translated into English with reference details (max. 500 chars)	<p>« 1. Under Article L. 521-1 of the Code of administrative justice: When an application is made to have an administrative decision, even a rejection, annulled or reviewed, the judge for summary procedures to whom the case has been referred may order the decision, or some of its effects, to be suspended, when the urgent nature of the case justifies such and when a submission that is sufficient to create a serious doubt regarding the legality of the decision, at the current stage of the proceedings, has been put in evidence. Under the terms of Article L. 522-3 of the same code, the judge for summary procedures can, in a legally grounded order, reject a request without an investigation or hearing when the emergency condition is not met, or when it appears manifest, in view of the request, that it does not come under the responsibility of the administrative court, that it is inadmissible or that it is poorly grounded. The urgency of the situation justifies the suspension of an administrative act whose execution poses a serious and immediate threat to the public interest, or the situation of the applicant, or the interests which the applicant intends to defend. It rests with the judge for summary procedures to properly assess, taking into account the evidence provided by the applicant, if the effects of the litigious act are likely to characterize an urgent situation which justifies that, without awaiting the ruling on the legal grounds of the request, the execution of the decision be suspended.</p> <p>2. Initially, the applicants hold that their request for the suspension of the execution of the Decree of 28 October 2016 is admissible. However, it arises from the case file that the request to annul this decree, published on 30 October 2016, was only registered with the litigation secretariat of the Council of State on 24 February 2017, that is to say after the expiry of the two month period provided for in Article R. 421-1 of the Code of administrative justice. This request is late and, consequently, inadmissible. Under these conditions, the request for suspension of the execution of this decree cannot be accepted.</p> <p>3. Secondly, in order to justify the urgency of the situation for the suspension of the execution of the Decree of 9 February 2017 to be ordered, the applicants hold that this poses a serious and immediate threat to their personal interests, the interests which Mr. A intends to defend, and the general public interest. However, the provisions of a</p>

regulatory nature of the Order of 9 February 2017 do not in themselves make mention of any emergency, either with regard to the general public interest or with regard to the interests of the applicants.

4. It results from all that precedes that Mr. A. and Mr. B. do not have the legal grounds to request the suspension of the execution of the contested acts. Consequently, their request, including the interpretations presented under Article L. 761-1 of the Code of administrative justice, must be rejected according to the procedure provided for in Article L. 522-3 of the Code of administrative justice.”

« 1. Aux termes de l'article L. 521-1 du code de justice administrative : " Quand une décision administrative, même de rejet, fait l'objet d'une requête en annulation ou en réformation, le juge des référés, saisi d'une demande en ce sens, peut ordonner la suspension de l'exécution de cette décision, ou de certains de ses effets, lorsque l'urgence le justifie et qu'il est fait état d'un moyen propre à créer, en l'état de l'instruction, un doute sérieux quant à la légalité de la décision ". En vertu de l'article L. 522-3 du même code, le juge des référés peut, par une ordonnance motivée, rejeter une requête sans instruction ni audience lorsque la condition d'urgence n'est pas remplie ou lorsqu'il apparaît manifeste, au vu de la demande, que celle-ci ne relève pas de la compétence de la juridiction administrative, qu'elle est irrecevable ou qu'elle est mal fondée. L'urgence justifie que soit prononcée la suspension d'un acte administratif lorsque l'exécution de celui-ci porte atteinte, de manière suffisamment grave et immédiate, à un intérêt public, à la situation du requérant ou aux intérêts qu'il entend défendre. Il appartient au juge des référés d'apprécier concrètement, compte tenu des justifications fournies par le requérant, si les effets de l'acte litigieux sont de nature à caractériser une urgence justifiant que, sans attendre le jugement de la requête au fond, l'exécution de la décision soit suspendue.

2. En premier lieu, les requérants soutiennent que leur demande de suspension de l'exécution du décret du 28 octobre 2016 est recevable. Toutefois, il ressort des pièces du dossier que la demande tendant à l'annulation de ce décret, publié le 30 octobre 2016, n'a été enregistrée au secrétariat du contentieux du Conseil d'Etat que le 24 février 2017, soit après l'expiration du délai de deux mois prévu à l'article R. 421-1 du code de justice administrative. Cette demande est tardive et, par suite, irrecevable. Dans ces conditions, la demande de suspension de l'exécution de ce décret ne peut être accueillie.

3. En second lieu, pour justifier l'urgence qui s'attache à ce que soit ordonnée la suspension de l'exécution de l'arrêté du 9 février 2017, les requérants soutiennent que celui-ci porte une atteinte grave et immédiate à leur intérêt personnel, aux intérêts qu'entend défendre M. A. et à l'intérêt général. Toutefois, les dispositions de caractère réglementaire de l'arrêté du 9 février 2017 ne font apparaître, par elles-mêmes, aucune situation d'urgence ni au

regard de l'intérêt général ni au regard des intérêts des requérants.

4. Il résulte de tout ce qui précède que M. A. et M. B. ne sont pas fondés à demander la suspension de l'exécution des actes contestés. Par suite, leur requête, y compris les conclusions présentées au titre de l'article L. 761-1 du code de justice administrative, doit être rejetée selon la procédure prévue par l'article L. 522-3 du code de justice administrative.”