

# A legal guide for protestors in France

01- Contents page

02- STOP AND SEARCH PROCEDURES

02- Identity check

03- Identity verification

04- Body, possessions and vehicle searches

04- Handcuffs

04- Tips

05- Focus: *Can we still speak of discriminatory identity checks?*

05- YOU ARE ARRESTED

06- Your rights

07- Tips for your time in custody

08- Focus: *Police custody: numbers and facts*

09- YOU ARE BEING CHARGED

10- Tips

10- Focus: *Police- citizens: an unequal balance of power*

11- Focus: *Recording police interventions on film*

11- YOU ARE GIVEN IMMEDIATE SUMMARY TRIAL

12- Your rights during the procedure

12- Tips

12- Focus: *Depots prisons*

13- Focus: *Minimum sentences*

13- YOU ARE FILED

13- The STIC

14- The FNAEG

15- Tips

15: Focus: *Activism and refusing to give your DNA*

## STOP AND SEARCH PROCEDURES

**Translators note:** In the context of French law, we use the term 'stop and search' to cover identity checks, body, possessions and vehicle searches, as well as being taken in for identity verification.

Stop and search procedures are highly strategic for the police and can be disastrous for protestors.

**Strategic** because it is very often through stop and searches that offences such as breach of lawful residency for foreigners, possessions of drugs or weapons (tear gas canisters, knives) are revealed. These procedures can be used during protests to isolate certain protesters.

**Disastrous** for the protestors because the law framing stop and search procedures can be conveniently read by the police to suit their numbers game, with individuals sometimes stopped illegally.

**Disastrous** also because stop and searches often develop into charges of verbal and physical assault.

**Disastrous** because it is the police who are in charge of writing up the reports, and you will be hard put to disprove their declarations.

### IDENTITY CHECKS (*controle d'identite*)

The police cannot check identity as and when they please. The law strictly frames this power, precisely to ensure against discriminatory uses of these identity checks.

Article 78-2 of the *code de procedure penale* (French code of criminal procedure) states that an identity check can only take place if there are grounds for suspicion. They must suspect that:

- the person has committed or attempted to commit an offence, or was preparing to commit an offence;
- the person is likely to provide information on a criminal enquiry; or
- the person is wanted for questioning

A person's identity can also be checked to "prevent public disorder".

Otherwise, the *procureur de la Republique* (public prosecutor) can also order the police, through a written summons, to check identity for specific offences: possession of illegal substances, weapons... In this case, the prosecutor must state the precise location and time at which this operation will take place. In actual fact, it is the police who ask the prosecutor to allow them to carry out these checks. This type of check has been used in the context of immigration policies, with 90% of deportations beginning with an identity check. These checks are targeted to particular places frequented by a certain part of the population (train and subway stations, public transport, but also pilgrimage sites and places of worship).

Finally, measures are in place to check identity in border areas or zones open to international transport.

The motives for identity checks are thus very broad, but they need to answer to certain criteria, the procedure being cancelled if these are not met. For example, during demonstrations wearing a sticker or banner with a party or organisation name does not warrant an identity check. More generally, the police have no right to ask you take down your sticker/ banner, as this is an infringement of your freedom of expression. Similarly, you have the right to photograph or film a protest as well as the police in public spaces. The police are not allowed to confiscate your film or equipment.

Moreover, to fight against discriminatory identity checks, jurisprudence strictly frames the possibilities of checking the identity of a foreigner. You need “objective elements, not based on the person’s appearance, which gives grounds to assume a foreigner’s status”. In short, the colour of their skin, their accent, or the fact that they speak a foreign language are not in themselves valid reasons for an identity check. However, magistrates consider more and more motives as valid for identity checks: driving a car with a foreign number plate, entering or leaving foreign worker hostels.

#### **IDENTITY VERIFICATION** (*verification d’identité*)

**Translators note:** *Identity verification refers to the whole procedure whereby the police can stop you, ask to see your papers, handcuff you, take you to the police station, search you and take measures to establish your identity. This is NOT the same as being arrested – it is a preliminary measure, you are not being accused of or charged with anything. The nearest British police equivalent is a stop-and-search, but in France it is significantly more tiresome as you can be taken to the station, held for four hours and there can be repercussions if you fail to prove your identity.*

During an identity check, two situations can present themselves, depending on whether or not you can prove your identity:

- **if you are a French national**, you can establish your identity through various means, you are not required to produce your identity card
- **if you are a foreign national**, you must on principle carry at all times documents proving your right to travel or reside in France (a residence card, a passport or visa, a receipt of your asylum application, etc)

If you do not have documents proving your identity, the police can carry out an identity verification, as stated in Article 78-3 of the French code of criminal procedure. **This article states you can be detained by the police for up four hours (starting at the beginning of the identity check) to check your identity.** You must be released as soon as your identity has been ascertained.

At the beginning of this procedure, you have the right to request the public prosecutor to be informed of your detention. If you are a minor, the public prosecutor must be informed as soon as you have been detained and a legal representative must be present to assist you. You can also request that a member of your family or a person of your choice to be informed.

If you refuse to cooperate with your identity check (for example, by making false statements), your photograph or fingerprints can be taken with the permission of the public prosecutor. **If you refuse to comply, you are liable to be charged with three months of imprisonment and a € 3750 fine** (article 78-5 of the French code of criminal procedure).

## **BODY, POSSESSIONS AND VEHICLE SEARCHES**

During an identity check, the police are only allowed to carry out a security body search. This consists of an exterior search for objects liable to be dangerous for the carrier or others. **This body search must be carried out by a police officer of the same sex, and must in no case consist of a full or strip body search.**

Searching bags and pockets for proof of offences can only be carried out by an *officier de police judiciaire* (senior officer), and not by an *agent de police judiciaire* (junior officer), such as an *agent de police municipale* (city police officer) or a police constable. It must be carried out during working hours and in the framework of an investigation.

With regards to vehicle searches (called "*visites de vehicule*" in the law), the police may search a vehicle, except live-in vehicles (caravans, etc), if they have plausible grounds for suspecting a crime or offence has been committed by one of its occupants (article 78-2-3 of the French code of criminal procedure).

The police can also search, with the driver's permission, any vehicle to prevent a security threat to persons and property. If the driver refuses, the police have the right to stop the vehicle for a period of thirty minutes maximum, and wait for instructions from the public prosecutor who can authorise a vehicle search (article 78-2-4 of the French code of criminal procedure).

Vehicle controls can also be carried out following a written summons by the public prosecutor, following the conditions stipulated in article 78-2-2 of the French code of criminal procedure.

## **HANDCUFFS**

Article 803 of the French code of criminal procedure, from the law of 4<sup>th</sup> January 1993, states that a person can only be handcuffed if they are considered to be dangerous or likely to attempt escape.

Therefore, an identity check should not necessarily permit the use of handcuffs. **However, in practice, the police almost always handcuff all persons stopped and brought to the police station.** The reason is simple: the police want to minimise the risk of the person escaping, which would threaten the carrying out of their duties. Thus, the use of handcuffs in police practice does not comply to the law in writing.

## **TIPS:**

- **If you attend a demonstration**, take your identity papers with you. Do not carry any object that could be considered a weapon, such as knives or tear gas canisters.

- **If the police are aggressive** during an identity check, remain polite. **Do not make any violent gestures, as these can lead to charges of verbal assault of a public duty officer.** Take the details of any witnesses who could testify in your favour (or give them your details).
- **If you are witness to a stop and search** or police questioning where you believe the police did not conduct their work in a correct manner, do not hesitate to film the scene. This footage can be used as evidence in court.
- Do not attempt to get out of an identity check, this is considered an obstruction or resistance to authority (*delit de rebellion*)
- **If an identity verification** is being carried out- which means you have been taken to the police station- request a written statement and a respect of your rights. For example, request that the public prosecutor be informed.
- A copy of the police report (*proces-verbal*) must be given you after four hours of identity check, if it is not followed by being taken into police custody. Request this document.
- Before signing a police report, read through it carefully. If you do not agree with the content of the statement, ask for it to be modified. If this is refused, do not sign and write your reasons why on the statement.

**FOCUS: *Can we still talk about discriminatory identity checks (controle "au facies")?***

One of the members of the *Syndicat de la Magistrature* was taken to court by the Ministry of the Interior over a period of seven years for having written that discriminatory identity checks, despite being forbidden by the law, is not only common practice but on the rise. It is only after the final court of appeal stated the primacy of the principle of freedom of expression that he was finally discharged.

Taking to court the author of this sentence on the grounds of "vilifying the police" shows the level of political sensitivity on the issue of identity check practices, as well as the intimidation that results for anyone prepared to denounce a phenomenon which has nonetheless been recognised by the majority of the groups concerned (whether it be police, magistrates or checked citizens) and the validity of which has been confirmed by researchers in the field.

In the new edition of the contested text in question, Michel Tubiana, then president of the *Ligue des Droits de l'Homme*, pushes the issue further: "It is accurate that the occurrence of discriminatory identity checks are on the rise. The authorities have a tendency to check those who appear to be below a certain age and/or seeming to originate from elsewhere".

## **YOU ARE ARRESTED**

After being questioned, you will be seen by a senior law-enforcement officer, who is the only one who has the power to decide to keep you in police custody (*garde a vue*).

**This officer can decide to detain you for up to 48 hours if s/he suspects you of having committed, or having attempted to commit, an offence.**

The 48 hours in police custody are counted from when you are first being questioned (this includes the time taken for the police to check your identity – up to four hours).

In practice, police custody consists of being detained in a small cell, which is often dark and dirty. You may be taken out to be questioned, or for other reasons: for the police to take your fingerprints, photo, full body search (which can include body cavity search) to check you are not hiding a weapon, etc. The police will take away from you any dangerous objects (including glasses, shoelaces, and bras).

The public prosecutor decides when your time in custody ends. He/She can then either: let you free, order you to appear before court at a later date, or order for you to be taken to court immediately (*deferement* and *comparution immediate*).

## **YOUR RIGHTS**

- As soon as you are taken in police custody, you should be told of your rights (to see a lawyer, a doctor and to let your family know) in a language you can understand (article 63.1 of the French code of criminal procedure). If no interpreter is available in person, they can get in touch with you through authorised means of telecommunication.
- You have the right to know what offence you are being accused of. You should ask that this be written on your police report.
- You have the right to see a lawyer – you can either choose one if you know one, or you will be given one. The police have up to 3 hours to go through this procedure, but your lawyer has no set time limit to come see you. If your time in custody is extended, the senior law-enforcement officer will ask you if you want to see your lawyer again. If you are detained on suspicion of a drugs-related offence, your lawyer will only be able to see after 72 hours in police custody.
- **From the start of your time in police custody – unless the public prosecutor explicitly forbids it – you are allowed to contact someone close to you by phone, through a police officer (this includes a person you live with, a relative or your employer).**

At any time in police custody, you may be examined by a doctor on your request, or on the request of a relative. After 24 hours, you are allowed to ask to be seen by a doctor a second time. If you are under 16 years old, a doctor is meant to see you and examine you as soon as you are in custody. If you are being held for a drugs-related offence, a doctor has to examine you within the first hour of custody, then every 24 hours, on top of the other medical examinations you may ask for.

You may be detained for a maximum of 48 hours (96 hours if you are being detained on a drugs-related offence, according to article 63-1 of the French code of criminal procedure). A 24-hour

extension of your time in police custody, after 48 hours, can be requested by police officers, but it has to be authorised by the public prosecutor. In practice, the public prosecutor rarely refuses.

If you are under 18, your time in custody may only be extended after a meeting with the public prosecutor. Those legally responsible for you (usually your parents) will have to be informed of any decisions taken.

Full body searches, in which you are naked, may only be carried out by an officer of the same sex as you.

Police officers have to allow you to drink when you want to; food has to be given to you at set meal-times.

### **TIPS FOR YOUR TIME IN CUSTODY**

- It may be useful to have the contact details of one or several lawyers on you when you are going on a demo.
- If you have been refused one of your legal rights or an officer did not notify them to you, ask for this to be included in your police report, or write this down yourself. Make sure you mention this to your lawyer, as any breach of your rights cancels the whole legal procedure.
- Re-read the police report very carefully: a police officer can easily misinterpret or misunderstand what you say. What you say in your report will have a significant impact on the rest of the legal procedure. If the report does not seem to reflect what you said, ask the officer to re-write the litigious passages. If he/she refuses, you can refuse to sign the report. In this case, write this down in the clearest possible way at the bottom of the report, include the reason why you will not sign it and the specific points on which you disagree.
- Police officers may advise you to immediately admit to the offence you are being accused of, saying you may get a more advantageous legal settlement and be released sooner. Be aware that such 'bargaining' is not lawful. Think very carefully about such 'Tips'. In practice, if you decide to change your plea, it will be very difficult for you to convince the judge or public prosecutor of your innocence if – for whatever reason – you admitted to the offence in your police report.
- You may choose to remain silent when you are being questioned. In practice, this may frustrate both police officers and judges. We would advise you to tell the officer very precisely why you choose to remain silent, and ask her/him to write this down in the police report, so that there is no ambiguity as to your decision not to answer questions.
- Police officers have no right to submit you to any form of physical or moral violence when you are detained (article 222-13 of the French code of criminal procedure, and article 3 of the European Convention on Human Rights). If they do, include it in your

police report when you sign it. Also tell this to all the officers you are seen by when you are at the police station, as well as to other detainees, your lawyer (you will be able to include his observations in the legal procedure), and to the public prosecutor when your time in custody is extended or when you are taken to court. The idea is to pile up as much evidence as possible, in case you decide to file a complaint later on.

- When you leave the police station, you will be able to file a complaint. If the offences you were the victim of were committed by officers from Paris or its near-by region, you should file a complaint to the Inspection Générale des Services, 30, rue Hénard, 75012 Paris (telephone: +33156951157). Give them as much evidence as possible to back up your claim. Otherwise, you should file a complaint in a police station, a gendarmerie, or by writing directly to the public prosecutor.
- If you think that an officer, a gendarme or a prison attendant has breached professional rules of conduct, you can also ask a Deputy or a Senator to go to the Commission Nationale de Déontologie de la Sécurité (CNDS) which will be able to conduct a parallel inquiry, leading to possible disciplinary measures. Finally, you can get in touch with the organisation Citoyens-Justice-Police, made up of the Ligue des Droits de l'Homme, the Syndicats des Avocats de France and the Syndicat de la Magistrature. You will need to write to them and include a letter explaining your case, a copy of your complaint and all the evidence to back it up. Their address is 138, rue Marcadet 75018 Paris (tel. +33156555100, fax +33142555121). This organisation, which does not have an official status, may conduct an inquiry in order to bring to light the failings of the police and to alert the authorities.
- Don't forget that being in custody is generally a confrontation between you and the police, and that your word carries less than that of a police officer: it is therefore clearly in your interest that your time in custody goes as well as possible. The more polite and respectful you are, the more you will be listened to.

#### **FOCUS: *Police Custody: Numbers and Facts***

Police custody is theoretically meant to be used to help the police in their investigations; however it has increasingly become one of the main indicators of police activity. Senior law-enforcement officer are nearly always asked by their superiors to detain suspected offenders.

It is therefore not surprising that the number of people having been through police custody has massively increased. According to statistics by the Ministry of the Interior, 562,083 people went through police custody in 2007, up from 336,718 in 2001 (+67%). A few politicians have expressed dismay at this situation, but nothing has been done to change it.

The independent prisons regulator (*Contrôleur général des lieux de privation de liberté*) published a report in 2009 highlighting the increasing abuse of detainees' rights in police custody.

## **YOU ARE BEING CHARGED**

The police may charge demonstrators with a number of different offences. Some are specifically related to the act of demonstrating, but the police often charge demonstrators with 'standard' offences. Here are some of them in detail.

### **Obstruction and violence**

You may be charged with obstruction or resistance to authority (*rébellion*) if the police consider you have violently resisted law-enforcement officers (police or gendarme) or public duty officers (for instance, ticket inspectors) as they were carrying out their duty. This offence does not imply you have been directly violent, in the sense of hitting someone. It simply implies that you did not comply with particular orders given to you when you were being questioned, or your identity was being checked. *Simple* obstruction or resistance carries a maximum sentence of 6 months in prison; 1 year in prison if the offence is committed in a group (with several people); 3 years if the offence involved a weapon; 7 years if the offence involved an armed group. The mere act of calling for others to be obstructive or to resist, verbally or on paper, may be fined up to 7,500 euros. Any violent behaviour towards law-enforcement and public duty officers, whatever its seriousness, is an offence which carries a prison sentence.

### **Insulting/abusive behaviour (*outrage*)**

This is defined as behaviour – spoken or written words, body gestures, threats, images, throwing objects – with the aim of undermining the authority or dignity of public servants. This includes offensive behaviour towards law-enforcement and public duty officers, work or training inspectors or controllers, public transport employees (maximum sentence of 6 months in prison), public duty officers (professors, nurses; maximum fine of 7,500 euros). According to a recent law (March 18 2003), you can be charged for insulting or abusive behaviour against the French flag and national anthem (maximum fine of 7,500 euros if the offence is committed alone, or up to 6 months in prison if committed by a concerted group).

### **Taking part in an unlawful demonstration**

According to a decree from October 23 1935, all public demonstrations, marches, processions and gatherings have to be declared in advance. A notification letter has to be sent to the local Mayor, police prefect or subprefect for Paris or the relevant administrative area, at least 3 and up to 15 days in advance. The letter should be signed by three of the organisers, and it should include the reason, date, time and itinerary of the demonstration. The authorities can ban the gathering if they think it will disrupt public order. Organising a demonstration without notifying the relevant authorities, or giving wrong information, is an offence which carries a maximum sentence of 6 months in prison; going to a demonstration equipped with a weapon carries a maximum sentence of 3 years in prison.

### **Unlawful assembly (*attroupements*)**

This consists of any group of people gathering together in the street or in a public space and which the police think may disrupt public order. The police have the right to forcefully disperse

the group, if they fail to disperse following verbal warnings (articles R.431-1 to 431-3 of the French code of criminal law). You may be charged for several different types of offences in this situation. Firstly, simply participating in an unlawful assembly carries a maximum three-year prison sentence. More importantly, refusing to disperse after police warnings can lead to between 1 and 5 years in prison (5 years if you are carrying a weapon). Incitement to unlawful assembly – attempted to organising such an assembly by spoken or written word – carries a maximum 1 year prison sentence, but may lead to up to 7 years if the unlawful assembly occurs.

**Obstructing or taking steps to prevent the freedom to work, freedom to meet, freedom to associate or freedom to demonstrate** – through verbal threats, physical violence, assault or criminal damage – may lead to up to 3 years in prison (1 year if threatening freedom of expression).

Finally, the French government has recently introduced a law making it a punishable offence to purposefully cover up one's face in order not to be identified, in situations threatening to disrupt public order, as part of or on the sidelines of a demonstration on the public highway (article R.645-14 of the French code of criminal law). This offence carries with it a maximum fine of 1,500 euros; it does not entail being taken in police custody. In order to be found guilty, the public prosecutor has to prove that:

- you were covering up your face in order not to be identified (not because you were cold or ill)
- by covering up your face, one could fear that public order would be disrupted i.e. that you were about to commit acts of vandalism or that you were with people who were.

The French government is, meanwhile, preparing to draft a bill on 'gangs'. As part of this bill, it would be a punishable offence to be knowingly part of a group (even temporarily) with the intent of committing offences against people or criminal damage – material evidence would be needed to prove a group had such intent.

## **TIPS**

- If you are being charged with criminal damage, assault or insulting/abusive behaviour, it is very important that you take the details of witnesses who could give statements to defend you. When you go on a demonstration, bring little bits of paper with your name and phone number with you, so that you can give them out as soon as the police arrest you – try, if you can, to get the details of potential witnesses as well. Their statements may turn out to be decisive if you contest the police's version of events.

## **FOCUS: *Police-citizens: an unequal balance of power***

According to article 430 of the French code of criminal procedure, police reports of suspected offences can only be used for information purposes. In other words, these reports should not carry more legal weight than other pieces of evidence – in particular, witness statements or other private accusations. Many police officers and other legal representatives ignore this and they think that a police report is indisputable and can even be used to challenge the authenticity of other evidence. In practice and often by default, judges clearly give more weight

to police statements than any other kind of evidence. A lot of people are found guilty of obstruction/resistance or insulting/abusive behaviour simply based on police statements, and even though they deny the charges.

### **FOCUS: *Recording police interventions on film***

When he was Minister for the Interior (2002-2007), Nicolas Sarkozy, mentioned the possibility of equipping police vehicles with cameras so that judges would be better able to monitor police activity. Initially against the idea, a number of police officers have changed their minds. As of July 2009, however, this measure has only been tested in the Seine-Saint-Denis department. Installing cameras on police vehicles would mean judges and investigators would rely less on police statements when dealing with cases of assault on law-enforcement officers, obstruction/resistance or insulting/abusive behaviour.

### **YOU ARE GIVEN IMMEDIATE SUMMARY TRIAL**

At the end of your time in custody, it is very likely the public prosecutor may have decided to judge you according to the French immediate summary trial procedure (*comparution immédiate*), if he believes s/he has sufficient evidence showing you have committed an offence.

Prosecutors have indeed been asked by the French Ministry of Justice to use immediate summary trials to deal with cases of so-called 'urban violence'.

This procedure is meant to be used simply to prioritise certain cases, but it often implies a brutal legal treatment (jail custody at the court and being accompanied by police to a courtroom, a very small time is given to prepare the defence, a brief hearing, a lack of imagination in the prosecutor's choice of sentence requested, etc.).

The immediate trial thus allows 'swift' judgement by the court, just after you have come out of police custody. The only condition for this procedure to be used is that the potential maximum sentence for the offence is greater, in terms of gravity, to six months imprisonment: according to French law, this means the procedure can be used for the vast majority of suspected crimes. For example, if you are not legally allowed to be in the country and you are being accused of causing criminal damage, insulting or abusive behaviour or obstruction or resistance to authority, you can be sentenced under this procedure.

The other 'benefit' of this procedure is that the court may send you to prison whatever the length of sentence. In practice, when you arrive in court, you will be seen by the public prosecutor. He/She will read out the offences you are accused of and give brief comments. You will then meet with your lawyer (the one you have chosen or who has been appointed as your assigned counsel, if you do not know a lawyer or cannot afford to pay; note that the appointed lawyer will not necessarily be the one who you saw while in police custody) and a social worker. Later on, you will be judged by three judges in court.

If your time in custody ends on a weekend or public holiday, a judge may decide to provisionally detain you for few days (three maximum), until your court appearance.

## YOUR RIGHTS DURING THIS PROCEDURE

- At the beginning of the hearing, the judge will ask if you would like to be tried immediately or if you would prefer some more time to prepare your defence. It is imperative that you have resolved this issue with your lawyer before the hearing. If you refuse to be tried immediately, the court may then decide to detain you. Theoretically, the reasons that may play against you are limited (the risk that you may consult with other accomplices, the risk of pressure on the victims/witnesses, the risk of repeating the crime or flight). In reality, the perception that the judges have of the seriousness of the case will play a key role in their decision. Talk to your lawyer. S/he may, before the hearing, obtain some proof that you are working and possibly a promise of accommodation if the court does not want you to stay around until the hearing. Provisional detention can only last between two and six weeks.
- You have the right to appeal against your sentence (but you cannot appeal against being provisionally detained, if the case is adjourned). However, if the case is adjourned, and you are remanded in custody, you can at any time make a request for release.

### TIPS:

- It may be advisable to know the name and phone number of a lawyer so that your interests can be best defended, even though appointed lawyers are not necessarily bad, contrary to what is sometimes said.
- It is in your interest to prove to the social worker that you have a stable professional career and family relations, and give them all possible evidences so that they can get in touch with those who can back up your claims. This can only work in your favour, especially if you are a repeat offender and you risk receiving so-called "minimum sentences" (*peines planchers*).
- Before the court, stay calm and polite. Listen to what your lawyer – whose presence is mandatory – says about how to behave and especially what statements to make to the court.

### FOCUS: *Dépot prisons*

If your case is being dealt with by the courts of Paris, Bobigny or Créteil, you may have to spend the night in the infamous *dépot* prisons of the courts, where, by law, you can remain for up to twenty hours between the end of your custody and your interview with the prosecutor.

Initially used outside of any regulated legal procedure, the *dépot* prisons were "legalized" by the Act of March 9, 2004.

You must know that when you arrive in these places, the police are under an obligation to notify you of your rights (to tell a member of your family, to see a doctor, lawyer). It is in your best interests to use your rights to their maximum, not least because a problem could always arise between the time you ask to see a lawyer and when they actually come see you. Moreover, if the police fail to inform you of your rights, report it to the lawyer you meet the next day, because it will nullify the procedure and enable you to regain your freedom immediately.

In 2008 and 2009, the courts of Paris and Créteil were obliged to cancel several procedures in which people had spent the night in a *dépot*, on the basis that the conditions of detention were contrary to human dignity. The Paris Court of Appeal reversed the cancellations, but the *dépot* prisons of these courts have been partially renovated.

FOCUS: "**Minimum sentences**" (*peines planchers*)

In line with one of Sarkozy's campaign promises, the minimum sentences were introduced followed the Act of 10 August 2007. Briefly, if you are a re-offender, you may be given a minimum sentence, which shall be determined in relation to the maximum sentence of the penalty for the crime you have committed (1 year minimum if the maximum penalty is three years, 2 years if the penalty is 5 years, 3 years if the maximum sentence incurred is seven years, 4 years if the maximum penalty is 10 years). You can only escape these minimum sentences based on the "circumstances of the offence, the personality of the accused individual, or guarantees put forward of social integration or reintegration".

Highly contentious from the outset, because of their effect on prison overcrowding, minimum sentences now appear to have entered the courts' practices.

## **YOU ARE PUT ON FILE**

An essential accessory for police control of convicted and suspected offenders, police files and court files have a tendency to multiply without anybody really worrying.

In successive reports, repeatedly ignored by the government, the CNIL (the French authority overseeing the application of data privacy law) has criticised the dangers of this. Arrested demonstrators should be particularly concerned by two specific police files, because they may have far more painful consequences for demonstrator's daily life than the conviction itself.

- **THE STIC**

The police STIC file, which stands for the 'Processing System of Recorded Infringement' is regulated by the Decree of the 5 July 2001. This is a file that is supposed to "facilitate the search of offenders" and that gathers personal data (full name, aliases, offences committed, criminal prosecution).

Any person against whom there is serious suspicions or corroboration that s/he participated in serious crimes or offences (known as fifth-level crimes or offences) is included in the STIC. Furthermore, the victims are included in a separate filing.

The Gendarmes have their own special file called JUDEX, which is used in almost the same way. A current project aims at unifying the two files.

There are three major problems relating to this file in terms to individual freedom.

Firstly, the length of data retention. The period is 20 years for adults. However, it can be up to forty years in certain cases for an extremely long list of offences (which include all forms of

violence and threats, drug offences and sex offences). For minors, it is normally 5 years, but often 10 years (for aggravated robbery, drug offences) or 20 years. Importantly, if a new offence is committed while your file still exists, data is retained for all your offences as determined by the offence for which the date can be retained the longest.

Furthermore the list of people who can access this file and can use it means that it can affect your chances of finding a job. Apart from judicial authorities, some administrative authorities empowered by the prefect have access to the file, in particular to allow people to work in certain areas (for security or in airports for example). However, having a STIC file hampers almost systematically the application for any professional authorisation.

Finally, the lack of an efficient relay between police and the judiciary's computer systems means that STIC files have a high percentage of errors, as highlighted by CNIL reports to the French Parliament. According to the CNIL, only 17% of STIC files are free of errors. These errors sometimes considerably handicap the users. The time – often long – to correct false entries is at the behest of public prosecutors.

- THE FNAEG

The FNAEG, which stands for the 'National Automated File of Genetic Fingerprinting', was created by a 1998 law and its remit has since been extended on numerous occasions. Originally created to gather genetic data on sexual offenders, it was extended by the Law of 15 November 2001 to many other crimes, then by the Act of March 18, 2003, to those suspected of 137 other offences, with the notable exception of most offences known as "financial". The principle is simple: the file contains the genetic profile of more and more individuals, both convicted or simply suspected and found innocent. Profiles on the FNAEG are systematically compared to all traces found at crime scenes. The length of data retention on the FNAEG is 40 years for those sentenced, and 25 years for those charged but found innocent. The spectrum of offences mandating DNA filing has been constantly expanding. Today, most of the usual offences demonstrators are charged with – all theft, damage, threats and violence – are covered.

The number of DNA profiles recorded on FNAEG was 40,000 in 2004 and 806,356 on 1 October 2008, the vast majority corresponding merely to suspected offenders and not convicted individuals. The fundamental principle of respect for a person's bodily integrity means that a DNA sample cannot be taken if an individual does not comply. However, the law provides that a tissue sample can be taken, without the consent of the person, from "biological material which would naturally have separated from the body of the person" (a fallen hair, trace of saliva on a cigarette butt, for example).

For those individuals convicted and having refused to give a DNA sample, the law had originally planned a criminal sanction of six months imprisonment.

The Act of March 18, 2003 extended the scope of the infringement on the grounds that it is more efficient to collect DNA at the time of custody, even it means later deleting individuals' FNAEG file if they are found not guilty. **This has thus criminalized the act of refusing to give a DNA sample when a person is merely a suspect; the penalty is a one year prison sentence.** But the most important – and often unknown – consequence is that attached to the sentence is, in

the case of imprisonment, the withdrawal of any reduction of sentence for all offences committed before the imprisonment. For people given long sentences, this may correspond to years of extra imprisonment.

Moreover, the refusal to consent to the taking of fingerprints or pictures is also punishable by one year's imprisonment.

**TIPS:**

- Under certain circumstances (see below), you may ask to have your file erased from STIC, by writing to the public prosecutor in charge of the implementation of sentences (*service de l'exécution des peines*).
- A decree from 2001, which puts STIC files under control of the courts, gives the prosecutor the power to order a file to be deleted only on specified grounds; in practice, when the case has been dismissed for lack of offence or a poorly characterized offence, or when the offender was acquitted or the case was dismissed. The STIC file will not be erased under any other circumstance, that is, if the prosecution or legal action ends in any other way (including mere police warnings or minor offences). Thus, a person arrested for smoking cannabis and given a warning by the police, will go down on the file for forty years. No authority has the power to appeal this decision, and it will have obvious consequences for the individual if they want to become a public servant or apply for a position requiring the approval of the prefect.
- Similarly, it is possible to ask for fingerprint data to be deleted from the FNAEG when you have been acquitted or if you have benefited from a dismissal, by asking the public prosecutor in charge of the implementation of sentences (*service de l'exécution des peines*).

**FOCUS: *Activism and refusing to give your DNA***

The logic behind the criminalization of withholding DNA collection seems to have reached a major limitation. That offence is now used to punish mainly activists placed in custody and prosecuted for "political" offences (anti-GMO protesters, anti-advertising protesters, wound-up demonstrators).

Ironically, after custody, if the prosecutor considers that there is no charge against a person, but this person has refused to give a DNA sample to the Police, the courts then have to try an individual for refusing to give a DNA sample for being suspected of having committed an offence, for which they have been found not guilty!

However, a memo by the Justice Ministry in 2004 told public prosecutors that that individuals who refuse DNA collection should be systematically prosecuted, and the length of time a DNA file is kept on the FNAEG file will be renewed every time a person is charged with a new offence.

The *Syndicat de la Magistrature* (the Judiciary Union) regularly provides testimony in trials of people prosecuted for this offence.