

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

France: Newly announced “anti-terror measures” put human rights at risk

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On 21 January 2015, the French Prime Minister Manuel Valls publicly announced the adoption of new measures to combat terrorism. These include the introduction of the crimes of “defamation” and “insult” into the Criminal Code, the establishment of a database of individuals convicted for terrorist-related acts and the adoption of a decree implementing measures adopted in 2014 allowing internet websites considered to incite or “defend” terrorism to be blocked.

Amnesty International is concerned that several of these measures may pave the way for violations of international and regional human rights standards that are binding on France, in particular those regarding the rights to freedom of expression and to private life.

Defamation and Insult should not be added to the Criminal Code

The government is proposing to move the offences of “defamation” and “insult” from the 1881 Law on the Freedom of the Press to the Criminal Code, thereby removing many of the procedural safeguards designed to protect freedom of expression. These include the requirement of a complaint by the purportedly injured victim or entity, limits on the powers of seizure and a three month statute of limitations.

Amnesty International opposes all laws criminalizing defamation, whether of public figures or private individuals, which should be treated as a matter for civil litigation. As with the recent spate of prosecutions for “defending terrorism”, moving these offences to the Criminal Code will increase the likelihood of ex officio prosecutions that violate the freedom of expression.

The proposal on defamation and insult also includes provision for aggravating circumstances where the offences are committed on the basis of racial or ethnic hatred. Incitement to hatred and discrimination is already punishable under Article R625-7 of the French Criminal Code.

Article 20(2) of the ICCPR requires States to prohibit “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. However, any discriminatory expression which falls short of such advocacy of hatred and incitement should not be subject to criminal punishment.

Amnesty International takes the view that the restrictions on the freedom of expression that follow from this proposal are neither necessary for, nor proportionate to the purported aim of “combating terrorism” and that it should therefore be dropped.

The blocking of internet sites for “defending terrorism” should require judicial authorization.

The proposed measures will also include a decree, expected to be published in the next two weeks, implementing counter-terrorism legislation adopted in November 2014 (Article 12, law 2014-1353 of 13 November 2014). The decree will allow the Minister of Interior to oblige internet providers to block websites considered to either incite or defend terrorism. The proposals do not set out any requirement for judicial authorization of such decisions or any procedure through which such decisions can be appealed.

This measure could result in unlawful restrictions of the right to freedom of expression, especially if implemented on the basis of the loosely defined concept of “defending terrorism”, which was introduced into the Criminal Code by the law on counter-terror (Article 421.2.5 of law 2014-1353). Stringent judicial safeguards are required to ensure that such blocking orders do not violate the right to freedom of expression.

Any “Terrorist database” should respect the rights to private life, freedom of movement and the presumption of innocence

The government also announced the establishment of a database of individuals convicted or, possibly, only formally investigated in connection with terrorism-related charges. Those on this list would be required to report any change of address or foreign travel to authorities. Much remains unclear about the scope of this proposal, including who precisely it would extend to, and what procedures would be put in place for individuals to be removed from the list. As announced, however, there is a clear risk that both the existence of the data-base itself and the related reporting requirements may violate the rights to private life, freedom of movement and the presumption of innocence.

Amnesty International has already expressed concern over the proliferation of arrests and prosecutions on charges of defending terrorism that have followed the Paris attacks. Many of these appear to violate the right to freedom of expression. The French authorities must ensure that their response to these appalling attacks does not violate the very principles and rights that were targeted and that the government is obliged to uphold.

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