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Adlène Hicheur: 537 days and counting of pre-trial detention

INTERNATIONAL SUPPORT NETWORK FOR ADLÈNE HICHEUR (CISAH)

<http://soutien.hicheur.pagesperso-orange.fr/> ou <http://pagesperso-orange.fr/soutien.hicheur>

M. Jack Steinberger, Winner of the 1988 Nobel Prize for physics, and M. Jean Ziegler, vice-president of the consultative committee of the United Nations council for Human Rights, are members of the International support network for Adlène Hicheur.

### **General overview:**

**Adlène Hicheur** (born in 1976) is a French particle physicist. After completing his master of theoretical physics in Lyon, he joined LAPP (Laboratoire d'Annecy le Vieux de Physique des Particules) to work on the BaBar experiment, located at the Stanford Linear Accelerator Center. His thesis, defended in 2003, was about the production of high energy Eta prime mesons in the decays of B mesons. He went onto a postdoctoral appointment in England at the Rutherford Appleton Laboratory, where he worked on the alignment of tracking detectors at the ATLAS experiment at CERN, Geneva. He then joined the high energy physics department of École Polytechnique Fédérale de Lausanne (EPFL) where he taught astroparticle physics and worked on the LHCb experiment at CERN.

Adlene was arrested at his parents home in Vienne, France, on the 8th of October 2009, and placed under investigation for « criminal associations in connection with a terrorist organisation », in relation to alleged postings on an internet forum with links to islamist sites. Tuesday 22nd March 2011, marks the 529th day since Adlene's détention (nominally "provisional detention") at Fresnes prison.

In France, such "provisional detention" in terrorist related cases can last up to 24 months, in contrast to the 12 month limit in "ordinary" cases. If the case comes to trial, the "Juge d'instruction" has, in addition, up to 8 months to fix the date, as opposed to the normal 4 months. This prolonged "provisional detention", together with the arbitrariness of the criteria used to trigger the arrest of suspects and the opening of investigations, has already attracted the critical attention of several international organisations such as Human Rights Watch and the United Nations Human Rights Committee. These organisations have highlighted the close links between the specialist "Juges d'instruction" and the counter-terrorism branch of the French intelligence service. These links cast serious doubt on the independence of the Judges and the access of suspects in such cases to a fair and impartial trial.

In a recently published (29/11/2010) article entitled "Wilkileaks", which discusses the view from Washington on the fight against terrorism in France, the Le Monde newspaper

summarises the situation as follows : “The anti-terrorist Magistrates operate in a parallel universe to that of the mainstream justice system... In France the standard of proof required in terrorist cases is significantly lower than that in standard criminal cases”. Even more seriously, the same article reminds us that French officials have paraded to American diplomats the track record of Judge Ricard in successfully convicting individuals on the flimsiest evidence, merely on the word of the intelligence services.

Ever since Adlene’s arrest the media have faithfully transmitted the information supplied by the Ministry of the Interior, alleging that Adlene had been in contact with AQMI activists based in Algeria. In October 2009 Mr Frederic Pechenard, French National chief of Police, even accused Adlene of planning an attack against the barracks of the 27th « Battalion des Chasseurs Alpins » in Annecy (Le Monde, 17/11/2009). Such accusations have been repeated, in more extrême language, by Mr Squarcini, head of the DCRI (French homeland security) in Figaro (01/07/2010) and in Journal Du Dimanche (10/09/2010). According to Mr Squarcini, his office has been responsible for foiling two terrorist attacks each year, and he quoted the affair of Adlene Hicheur as one of such “foiled attacks”. Such defamatory statements are on the one hand barely credible, and on the other, violate the basic principles of presumption of innocence and the confidentiality of an internal investigation, which explicitly forbids the divulgence of information to the public during the course of the investigation. It would be interesting to obtain impartial statistics on the effectiveness of the intelligence services, which should in principle be subject to the same independent controls as other governmental services. This does not seem currently to be the case.

Up to this day, in the face of complete lack of proof relating to the accusations, the inquiry has stagnated. There is no new element in Adlene’s files and no new development over the course of many months. The dangerous AQMI agent with whom Adlene is alleged to have communicated has never been identified, and his existence is doubtful. After a 12 month wait, a rogatory commission of enquiry was launched in Algeria, and 6 months later there are no conclusions, leading one to doubt that any resolution can come from this direction. A dossier empty of any content apart from a few legal wrangles **does not justify in any way the incarceration of a person for more than 17 months**. Adlene is infrequently interrogated, and according to him he receives each time the same questions, to which he gives the same replies. The last such interviews occurred in July 2010, October 2010 and January 2011, the last such occasion lasting 2 and a half hours, indicating that the authorities have nothing new to ask him. The next interview is scheduled for 19th April 2011. No date of trial – assuming that there is ever a trial – has been fixed. The only fact of which we can be certain is that there is an eventual time limit of 24 months on this detention period, so a decision must be forced before this time. It seems that it is the intention of the authorities to let the investigation drag on for the full course of 24 months, in spite of the complete lack of compelling evidence.

**The Adlene support committee denounces this empty file and prolonged and unjustified detention. A simple web surfer has been dressed up as a terrorist and locked away for 17 months and counting. This is a scandal and this scandal must stop now. The support committee demands the immediate release of Adlene, under the appropriate judicial controls, until such time as the inquiry is ready to present its conclusions. If there is reasonable evidence indicating that a trial is necessary, then M. Adlene Hicheur has the**

right, as any citizen, to a fair and impartial trial within a reasonable time. In the absence of such charges, M. Adlene Hicheur should be cleared of all allegations and compensated for the serious defamation to his character brought about by this prolonged and unjustified detention.

### **Reasons for the arrest (extracts from official court documents, 9th November 2010)**

Extracts from the documents at the “Court of Cassation”

“Enquiries conducted by specialised investigators, in particular related to electronic surveillance, have indicated the need to detain (the suspect)”

“Statements recorded by (the suspect) indicate his desire to participate in and finance terrorist activities”

It has been since shown that the money seized at the moment of Adlene’s arrest – supposedly intended to finance terrorist activities, had been withdrawn in order to finance construction work at Adlene’s house in Setif, on land which he had acquired together with his brother-in-law.

### **Facts acknowledged by Adlene:**

He indeed posted on various internet forums, exchanging views with other web surfers. However he categorically denies ever indicating a wish or desire to commit any violent act, to finance or support in any way terrorist activities, and has had absolutely no contact with representatives of AQMI. If indeed he had been corresponding with a member of AQMI, why is it that the name of this person is still unknown (does he really exist) and why is Adlene the only person implicated in this affair? Why do the rogatory commissions launched almost one year after Adlene’s arrest, and after 6 months of activity, remain without any conclusion? According to Adlene the scenario is preposterous. Apparently the police have a stereotype of a certain kind of « sleeping cell » highly educated terrorist and struggle to identify someone fitting into this category. Apparently the behaviour of the police is particularly severe towards such suspects: Muslims who are highly educated and who think.

### **Currently open judicial procedures :**

- **Termination of detention for health reasons:** An appeal is underway at the « court of cassation ». Given Adlene’s health at the moment of his arrest (spinal disc hernia needing hospitalisation and several months of immobilisation) the doctors insisted that Adlene should be transported lying down and with a suitable corset to fix the spinal column. In fact he was moved from Lyon to Paris in a sitting position (at night with the windows fully open), and was forced to remove the corset. On top of this he has suffered enormously during his detention, having been subjected to more than 17 interrogations, by day and by night, on one occasion ending up after 3 days of interrogation lying on the floor, wishing only for it to

end. This part will be examined by a specialised lawyer at the French Supreme Court. In case of a negative decision it may be referred to the European Court of Human Rights.

- **Termination of detention for constitutional reasons** - No lawyer was available during the first 72 hours of arrest, and Adlene was not read his right to remain silent. These facts violate Article 6 of the Convention of Human Rights and Fundamental Liberties, which applies equally in ordinary cases as well as cases involving terrorism and drug trafficking. Recent discussions have highlighted this non conformity of French legal practice with the Convention of Human Rights, and the Constitutional Council of the French Republic has issued a declaration to this effect (30/7/2010). Following this, demands were lodged at the “chambre d’instruction” for the nullification of Adlene’s arrest due to violation of articles 6-1 and 6-3 of the Convention, and following the rejection of these demands an appeal was lodged. The decision of the court, delivered on 9th November 2010, is publically available on [legifrance.fr](http://legifrance.fr). Unfortunately the Supreme Court followed the chancellery guidelines, and returned a negative decision, in spite of the well justified request ; stating that articles 6-1 and 6-3 of the Convention can be considered as “suspended” until 1st July 2011. Following this decision Adlene has sent a letter indicating his intention to appeal to the European Court of Human Rights.

- **Requests for release** : The arrest warrant is renewed every 4 months, but the procedure allows for release requests to be lodged. This is done systematically by Adlene (on an almost monthly basis). Each such request proceeds in 3 obligatory steps:

1) Presentation to the “Juge des Libertes”. In general this step rubber stamps the decision of the “Juge d’instruction”.

2) If the detention period is prolonged, the case proceeds to the “chambre d’instruction” (consisting of 3 judges). The lawyer must provide a legal argument consisting of a dozen pages and the court returns a decision (up until now consistently negative). We note that since the ruling of 5<sup>th</sup> March 2007, the hearings and warrants in detention cases are in principle publically available. However in case that the court decides to refer to the council chamber, the hearing may be kept secret. In this case, in spite of repeated demands by the lawyer, the hearings have been conducted systematically *in camera*. In consequence, we are unable to obtain copies of the documents justifying these legal decisions concerning the “provisional detention”, only the individual concerned and their lawyer are allowed access.

**Why such secrecy?** This is justified by the judges by appealing to the terrorist nature of the investigation, rather than basing the decision on factual elements which could justify the secrecy. According to Adlene there is nothing specific to his case in the written decisions, rather statements which are completely generally applicable. Examples include, keeping the suspect available to the authorities, avoiding risk of conspiracy, avoiding repetition of the alleged crime (i.e. that the suspect might surf the web), pursuing the enquiry. This is all extremely vague with no specific details given. Such a situation cannot be viewed favourably by the European Court of Human Rights, in particular after 17 months of detention.

3) In case the request is again turned down, one may appeal to the French Supreme Court (“Cour de Cassation”). Such an appeal is underway based on numerous rejected appeals to the “chambre d’instruction”, however a 6 month period is given for a decision to be taken. Adlene is faced with the decision whether to simultaneously pursue an appeal to the European Court of Human Rights, while such a process is underway. In the meantime, the “chambre d’instruction” turned down on 14<sup>th</sup> March 2011 an appeal (possibly the 13<sup>th</sup> such appeal) concerning the last decision to refuse Adlene’s release. A 14<sup>th</sup> appeal will be considered in a fortnight from now.

**Request for the case to be closed:** The Penal Code authorises the closure of a case after 12 months if no new information has come to light. Such an appeal was launched at the end of February by Adlene and his lawyer, under article 175 of the Penal Code. The Judge refused this request on 18<sup>th</sup> March 2011, insisting on a 6 month extension. The reasons given for this refusal, according to Adlene, were the difficulty of analysing computer hard disks (which have nonetheless been in the hands of the authorities for more than 17 months!) and the ongoing rogatory commission in Algeria. Adlene has appealed against this decision.

**Launch of civil defamation case:** A civil libel case is underway concerning a book by M. Guidere entitled “Les Nouveaux Terroristes” (Autrement Editions). This book contains several paragraphs referring to Adlene’s case, while the case is still under investigation. A response will be issued on 28<sup>th</sup> March.

### **The Support Committee and its Actions**

The support committee has sent letters to the French President and the Justice Minister, underlining that a simple allegation of internet contacts cannot in itself justify the incarceration of a person, for more than 17 months, in “provisional detention”. The committee demands the **immediate release of Adlene, under the appropriate judicial controls, until such time as the inquiry is ready to present its conclusions.** If there is reasonable evidence indicating that a trial is necessary, then M. Adlene Hicheur has the right, as any citizen, to a fair and impartial trial within a reasonable time. In the absence of such charges, M. Adlene Hicheur should be cleared of all allegations and compensated for the serious defamation to his character brought about by this prolonged and unjustified detention.

These letters have been copied to the presidents of various parliamentary groups. The only replies received have been from those responsible for the “Parlementaire Socialiste” (PS) and “Nouveau Centre” groups, however the replies have been disappointing. The head of PS, Mr Jean-Marc Ayrault replied with the following few lines “In line with the principle of the separation of legal affairs and the exercise of my mandate, you will understand that I am unable to comment on an ongoing judicial process”. Whereas the reply from “Nouveau Centre” was slightly more encouraging, the UMP and “Gauche Democrat and Republicaine” groups did not reply at all to our letter. **Our committee feels however, that in the particular**

**case of Mr Hicheur, our parliamentary representatives should feel themselves more closely involved, given that the actions of the anti-terrorist section of the St Eloi Magistrate gallery (just as in any governmental service) should be subject to independent scrutiny and control.**

The justice minister replied to our letter with another letter, which may be read at the following address:

<http://soutien.hicheur.pagesperso-orange.fr/Documents/ministere-justice-8fevrier001.pdf>

This letter explains that French anti-terrorist legislation, while being certainly of a specific nature, does not contravene basic rights, and that we should not feel anxious on this account: Mr Hicheur has opportunities available to him to make all necessary appeals, to request whichever modifications or procedures he desires, and all such requests will be properly entertained by the justice system and will be subject to fair debate. Given the successive failures of every such request, in spite of a dossier empty of evidence, and the refusal to set Adlene free while awaiting a hypothetical trial, one can understand that such statements could be doubted. Is it possibly the case that this matter is driven by the interior minister, and hence the magistrates are unwilling to take a decision which might be unpopular at higher levels, in spite of the absence of any concrete information in the dossier? This case will now pass to the court of appeal, and becomes potentially incendiary..... The relentless pursuit by the state of one individual remains incomprehensible... **We note that the Swiss justice system, which has remained a model of reserve and intelligence since the beginning of this affair, has thrown out the case due to lack of convincing information. We can only hope that the French justice system will follow suit.**

We conclude by noting that there are four criteria which can justify the prolonged detention without charge of any individual. These are the risk that the person concerned may:

- fail to attend court
- interfere with the course of justice (for instance by conspiracy with accomplices)
- commit further offences
- interfere with public order

It is doubtful that the incarceration of Adlene, the only person to be placed under examination in this affair, is justified under any of these criteria. **One can only be surprised that the slender allegations in this case can justify the detention of a person for more than 17 months.**