

4) INDIVIDUAL CASES FOR THOSE HAVING ALREADY BEEN SENTENCED

Some measures of a law dating from 2007 on recidivity and minimum sentences established:

1) Minimum sentences in cases of recidivity, called "base sentences"

The first point is directed at the accused whose infractions risk up to 3 years or more of detention or imprisonment. If the person is in a situation of recidivity, the law allows for the introduction of minimum sentences. Concrete examples of minimum sentences in cases of infractions:

- 1 year for a punishable offence to 3 years imprisonment.
- 2 years for a punishable offence to 5 years imprisonment
- 3 years for a punishable offence to 7 years imprisonment.
- 4 years for a punishable offence to 10 years imprisonment.

2) Possible exclusion of the excuse of age, for minors under the age of 16 (that is the justice system no longer considers age an appropriate reason to deny imprisonment!) in cases of recidivity of grave infractions. Also, the exclusion of the excuse of age is automatic if it is a second case of recidivity. The children's court or the "cour d'assises" for minors can derogate this exclusion, but are obliged to justify their decision. It is the judge's prerogative to derogate, but the situations that allow this are limited, and even less so when it is a second recidivity. In order to derogate, there needs to have been an "investigation into the personality" of the accused.

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For more information :

<http://www.guidejuridique.net/> : Face à la police/Face à la justice

<http://www.legifrance.gouv.fr/> : codes en vigueur en français, anglais, espagnol (code de procédure pénale)

www.antirepression.org

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LEGAL GUIDE

MANIF & ACTIONS NATO COUNTER-SUMMIT - 2009



**What to do if you are arrested ?
Stay cool and think !
Remember: the police and the law apply
arbitrary methods ...**

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The contradiction of the liberal capitalist State is demonstrated by the use of its law to continuously curtail the few liberties it allows: freedom of expression, right to protest and freedom of assembly. Attempts to intimidate and strategies to criminalise will not work if we organise collectively and avoid individual isolation. When a situation turns critical, the rule of thumb is to trust that your comrades will take care of you when and if you are between a rock and hard place – as you would do for them!

ABCs OF PROTESTING

Each protest is different and although often we can participate without having any problems, it's important to take into consideration some suggestions, since police repression is possible at any protest.

Dress appropriately: wear clothes that are not too loose (since they are easy to grab) with comfortable shoes that you can run in. Throughout the protest be sure to have something to hide your face with, such as a scarf, (it is legal in France); this may be especially helpful when a specific situation may elicit accusations (e.g. bombings, or other...). Be sure that you can quickly change your clothes or your appearance, especially if your clothes have traces of indictable actions (e.g. paint stains): when protesters disperse, the police may count on vague facial/feature descriptions or simple clothing descriptions, and may result in arrests several hours afterwards or on adjacent streets.

Take an ID card or other document that has your name and ID picture (license, passport, etc.). If you are European: your ID card. If you are non-European, you must always have on you your visa or documents that allow you to move freely in Shengen area or stay in France (visitor's visa, passport with a visa dating less than 3 months, a justification of a request for a visa or a convocation to the police station, etc.) : the police can control the legality of your stay in France at all moments.

Phone number: write the number of the Legal Team on your forearm.

Take also:

- A phone card and cash (it can always help),
- A pen and paper on which to write important details (useful for the Legal Team).
- Do not forget your daily medication (if you take any).

Avoid taking substances that alter your behaviour (alcohol, drugs...):

- Diminishment of your sense of space (often useful in situations of haste!),
- Pupil dilation, which can complicate matters if you are injured.

- If you are arrested, having ingested these substances or having them on you will aggravate the situation and may increase your prison sentence (e.g. from a suspended sentence to jail time). Keep cool and ensure that you are capable of making decisions at all times.

Do not take a knife with you or anything else that may be considered a weapon (this will also aggravate your situation if you are arrested).

Tear gas : wear glasses instead of contacts.

It is a way for them to justify visible bruises: "since that person was violent, they had to take control of the situation and had to use force". They will plead their innocence before the court by using these kinds of statements.

The interpretation of "rebellion" is vast: a look, a mannerism or action that expresses "dissatisfaction or disdain" can suffice.

The infraction of "rebellion" when directed at the police, has the specificity of being decided by the person against whom it is directed (the police!) and provides the police with a little extra pocket money since they may receive damages during a trial – thus the interest to stay in groups in order to have witnesses!

How to react if you are accused of insult?

This advice is not the miracle solution, but should at least allow you to avoid being tricked into doing something that may result in more serious consequences. They are also valid if you are accused of rebellion or threats.

In this case of insults and rebellion, the accused's file often times consists only of police statements. In law, a police statement is not worth more than anyone else's. However, it is under oath, and the justice department takes that into consideration.

It is thus indispensable to strongly contest the police version. You must file a complain for the violence, experience shows that if you show up a bit upset, the sentences are generally less severe. Contesting the police version is above all denying insult and rebellion and is therefore, for the accused, denying having said or done certain things.

Be careful, denying insults but admitting having "screamed" or "gotten upset/annoyed", is too much! The judge will use that as a pretext to condemn you ("s/he got annoyed, and must have slipped in an insult"). You must know how to present a believable version that doesn't change and doesn't leave anything to interpretation ("I remained calm", "I never spoke directly the police"...).

Rebellion is the act of violently opposing the public authority. Violent resistance has a vast definition: it is not necessarily hitting or punching, but can be a simple act such as blocking a passageway. In a protest, there are numerous occasions where you could be accused of manifesting rebellion. Only completely passive resistance (let yourself be arrested, let yourself be taken by the police without a single resistance) is considered not a rebellious act.

3) THIS IS PARTICULAR TO « ORGANISED GROUPS »...

This term has a specific purpose in repression: to increase the criminalisation of collective organisation. There are many different levels of what is labelled "organised groups".

From the simple "mob act" (an unorganised act, that is not premeditated) to an organised crime group with everything in between, including what we are concerned by here which is "organised group".

Activists may be taken in by the police thanks to this definition (created in 1994): "organised groups are all groups formed or fully agreed upon for the purpose of preparing, characterised by one or several material facts, one or many infractions". It considers even the commission of a single infraction or one material fact. The sentence is possibly more severe in this case.

It is the will to act together under the rubric of a certain organisation. To prove it, the criteria is vague; for example, by the repartition of roles of a "team" and the possession of material.

The objective is to increase the means of preventive investigation and to reinforce penalties against these supposed organised groups. A law from 2004 states that this anything goes arsenal "adapts the justice system to the evolutions of criminality".

Concretely, these dispositions were increased thanks to "aggravated circumstances" related to these types of threats:

- Telephone and email surveillance

- Infiltration of groups in order to "observe people suspected of committing a crime or infraction by passing as one of their friends" and using a false identity.

- The aftermath of arrests have also been reinforced: Police custody: it is possible to prolong custody twice for a duration of 24 hours (up to 4 days). These prolongations are ordered by a magistrate or investigating judge.

- Night searches : the possibility to engage in a night search or investigation are enlarged and are inspired from the tactics used in the fight against terrorism.

Where and how to file a complaint ?

- If you manage to get the officer's identity (if it is a cop you have the right to ask for his/her badge number, but they often do not cooperate!): you can lodge a complain directly against that person if their act is manifestly disproportionate to the threat that you posed.

- If you do not know the identity of the police officer, lodge a complaint against X with details! Any information that may lead to his/her identification (date, time, place, circumstances of the police intervention).

Before whom to file a complain if you are victim of police violence?

- The bench at the correctional court or other that deals with penal cases by writing a letter to the State prosecutor within which you specify your full civil status, resume what happened, the elements of proof (photocopy of the medical certificate, photos, witness reports...).
- At the police station. You must officially deposit a complaint and not simply register it as a deposition since this will not lead to anything. The police do not have the right to refuse to register your complaint. Some may attempt to convince you that they are not in the position to deal with the complaint due to geographic issues ("you have to go to the station in the neighbourhood it happened", etc.): this is false! All police stations are competent to take your complaint. Don't let them brush you aside by saying they don't have time - filing a complaint is your right!!
- At the gendarmerie (briefly, the police deal with events in cities, the gendarmerie deal with events in the country, but there are gendarmeries close to the cities...). The gendarmes are part of the military, and are sometimes more helpful in these situations.
- In all cases (police, gendarmerie), do not leave without a copy of your complaint.

Usually nothing happens! The State prosecutor closes the cases, but you can, as a victim, pursue it in the civil courts. In this case, the prosecutor does not have the choice to pursue the case or not.

Do not hesitate to inform your deputy or senator (the elected officials in your region) by forwarding them a copy of your complaint, and ask them to take it further by contacting the national commission of deontology and security (or the European Court of Human Rights in Strasbourg!).

Be aware that complaints are generally long and often culminate in a dead end! The system is organised in a way to ensure that! Despite this, it is a necessary act that can, when coupled with a complaint to the General Inspection of the National Police (IGPN), General Services Inspection (IGS), provide an argument during a trial to support the accusation of police violence.

Politically, it is important to contest this violence !

ANNEXES

1) FOR NON EUROPEANS

- You may be subject of being accompanied to the border and an administrative detention of 48 hours.
- You can appeal both decisions but you stay in detention during this time.
- You have the right to ask for medical assistance, a lawyer, an interpreter and to contact your consulate and one person of your choice : ask that this person call the Legal Team, or call yourself.
- Administrative detention can be extended by a judge for up to 15 days once renewable. You have the right to appeal this decision.
- Ask to see the representative for CIMADE as soon as you can: (a French NGO working with uprooted people, especially undocumented immigrants in France): this NGO can help you specifically with regards to contesting the decision of expulsion and administrative detention.
- As during police custody, you must be well treated during administrative detention: do not stand for any violence, neither physical nor moral/verbal.

2) INSULT AND REBELLION

If the police use violence during an arrest, they almost always claim it was because of "insult", often associated to "rebellion" or "voluntary violence towards a public officer"

Do not take your mobile phone or delete all saved information and remove the SIM card when you are not using the phone. In short, leave your address book at home: your friends will thank you!

Do not give stickers from your organisation to people you do not know! That said, the police cannot ask you to remove a sticker that is stuck on you. The same goes for flags and banners since this is considered an attack on your freedom of expression.

Know that pictures and cameras, as well as the collection of DNA onsite of any clashes (where events may degenerate) can be used as proof against you and others.

Before leaving for the protest: Leave your name, surname, date of birth and nationality. Shout out these details to someone if you have a problem during the protest.

When possible, never go to a protest alone: It is not only more fun to go with friends whom you trust, it is also much safer.

In the best case scenario, you go together, during the protest you try to stay together, and you leave together.

It is also judicious to talk about and plan action plans for various situations that may arise during the protest. Listen to the concerns and apprehensions of everyone involved.

Get to know what the police look like - whether they are in uniform or not!

- CRS (Robocop - deployed during protests and ready for repressive action)
- National police
- Mobile agents from the Gendarmerie (military) in uniform, responsible for supervision and dispersion of the protest. They wear the number of their unit on their back (such as 1A, 3B etc.).
- BAC (Anti-Criminality Brigade) in civil attire and also in uniform, cow-boys responsible for rapid intervention and brutal arrests (often look to infiltrate and work undercover).
- Public security agents, responsible for evaluating the risks, for talking with protestors, trying to take charge of the protest and negotiate (they are often qualified as "secret service" agents, but do not have the same role and are not undercover).
- Secret Service are exclusively in civil attire and sometimes go undercover. They are political police responsible for monitoring activist networks and political events.
- Union representatives who participate in the protest and often "work" with the police...

Know that a special police service (not the Secret Service) was created recently to infiltrate groups in a friendly way.

Remember that there are MANY police dressed in civil attire: never talk about your "protest adventures" on the street, and avoid using names.

You can often tell police dressed in civil attire because at the beginning of the protest they stay on the sidelines in groups. The various types of police in civil attire can stop you, but they must do so wearing an armband and declaring what part of the police they belong to. They may not respect these obligations - this is a breach of procedure that may render void a legal pursuit in the case of arrest.

NB : At the entrance of a public place, security guards (of supermarkets, stadiums, etc.) have the right to look in your bag and effect a "pat-down" only if you give your permission or if they are with a police officer. If you are obviously committing an offence, security guards do not have the right to ask you for your ID but can, as each citizen, hold you until the police arrive.

If confronted by violence

Do not panic! Breathe, stop yourself, and ask that others around you do the same. Make a human chain or organise a unified retreat, if there are no other possibilities. A human chain has in past protests been successful in avoiding arrests, police violence, and allows for the evacuation of injured people. .

If there are injured people

Take care of the injured and help to ensure their transportation. Alert the Medical Team or with friends organise transportation and assistance to the injured. At the hospital, give your name, surname, date of birth, etc. but nothing else: a lot of hospitals work with the police and pass on information.

If you are arrested

Call attention to yourself – scream/shout! Call out your name and where you come from so that your arrest can be transmitted to the Legal Team as soon as possible.

Stay calm and polite – the police are easy to accuse individuals of offences such as “insult and rebellion”.

During the transport to the prisoner-grouping site, you can talk with others about your rights but say nothing about what you have done. It would not be the first time a mole was amongst the arrested, even if everyone seems nice!

Take into consideration others and help them if you see that they are scared or anxious. Talk amongst yourselves about the fact that it is vital that you keep silent from that moment on – try to exchange names and addresses so that the first set free can pass on the information to the Legal Team.

Once let go, let the Legal Team know. As soon as you are home, and you’ve calmed down, try to produce a witness report that is as detailed as possible, that includes evidence of your arrest (if you have them) and contact the Legal Team.

THE LEGAL TEAM (LT)

The objective of the Legal Team is to help all people who are arrested and act as a medium between the arrested and lawyers : for more information check out the Infopoint at the Village and at Molodoi.

If you are stopped and put into police custody you will not be able to contact the Legal Team. **You must ask for a state-appointed lawyer.**

During the counter-summit, most of the state-appointed lawyers will be from the Legal Team, and will be in permanent contact with the Legal Team, so it is very important that :

- If you are presented to a judge (either immediately or first instance), ask the lawyer if s/he is part of the Legal Team: if not, **tell her/him that you want a lawyer from the Legal Team.**

- If you witness an arrest, inform the Legal Team as soon as possible: with the name of the person, the place of arrest, the number of people involved, the type of police, the number of police, and if you know to where the arrested were taken. Describe as best as possible what happened. Take the time, if you can, to write it down on paper. If you can, pass by the Infopoint of the Legal Time at the Village to fill out a “Witness Testimony”. Your testimony could be very important for the follow-up of the arrests. The testimonies are only for the Legal Team – if you do not pass it along to the Legal Team, keep it safe!



HOW TO ORGANISE YOUR DEFENSE ? HOW TO CONTACT A LAWYER ?

Lawyer

To ensure your defense, ask for a state-appointed lawyer from the Legal Team. Of course, you can also call a lawyer of your choice, if you have one.

If you do not have the financial means to pay a lawyer, you can ask for “judicial aid” (see below). Be aware that not all lawyers accept judicial.

The state-appointed lawyer is not always free. Their services are free for preliminary police custody and if you do not have the means to pay. In this case, you must fill in a form asking for judicial aid.

Once you have asked for the state-appointed lawyer and if you have an income, you will a contract for the lawyer’s honoraries and you must pay! Lawyers are there to help you and give you advice regarding the strategy for your defense. However, if you do not agree with him/her, tell him/her and in any case you have the right to change lawyers.

Judicial Aid

Judicial aid is a way to have the State pay for part or all of the costs of your trial (lawyers, etc.) if these costs are not paid for by an insurance contract for legal protection.

This aid is open to all citizens of the European Union or to foreigners who are legally in France.

It is capped depending on your financial resources. There are different sections depending on your resources (your income and savings are considered).

For judicial aid starting during police custody, the dossier is filled in using your statements. For a judgement, you will need proof of your statements.

For example, in 2008, you needed to earn less than €911/month for an individual to be completely paid for, and €1367 to be partially paid for. People who receive welfare as well as victims of violent criminal acts (rape, abuse, ...) do not have to justify their resources in order to benefit from judicial aid.

Anti-repression committee

Besides the help of lawyers for judicial procedures, you should contact the anti-repression team who can help you during and after the counter-summit. The objective of these anti-repression committees is to get organised to put political pressure against all kinds of repression.

Contact Anti-Rep Strasbourg : 06 37 98 30 87 and antirep-strasbourg@effraie.org

WHAT TO DO IN CASES OF POLICE VIOLENCE OR ABUSE OF POWER

If you have been hit, go to the hospital and try to get a detailed medical certificate from the medical-legal services which is taken more seriously than a certificate from a GP (general practitioner). Be aware, the police also go the Medical-Legal Institute when they are hurt, but there should not be any repression on site.

Even if you do not work being put on temporary sick leave is important! It should be written on the medical certificate, since the duration of your sick leave is a factor that can determine the gravity of the violence inflicted on you and what the gravity of the infraction!

These documents can be helpful in cases where you would like to press charges, for example against the police or during your trial if you are accused.

Provisional detention has as its official pretext to “guarantee the availability [of the accused] to the justice system”, “to end an infract or prevent its reoccurrence”, or to end “an exceptional or persistent disruption of public order.”

In other words, most often, one must convince the judge(s) of the fact that you will appear in court and that the offence committed will not happen again.

To prove that you will appear in court, you must bring what the law calls “guarantee of representation”: everything that proves that you are socially involved, or in other words that you can be trusted.

You must understand that for the judges, CEOs are more trustworthy than “workers”, the bourgeoisie over the prols, a cop over an anarchist ... the Law is a bourgeois tool! Knowing how to work the system will help you!

The documents you must present can be of any nature and all origins: work/internship contracts, certificate from your employer or professor, student card, proof of residency, etc. Since it is an immediate hearing, your loved ones will only have a few hours to get together for the hearing, and they should since they may be helpful in avoiding provisional detention (see the next paragraph). The presence of family members at a hearing may also be considered by the court as a “guarantee of representation”.

Concretely, the judges hardly have the time and the means to verify certain affirmations made by those who appear before them in an immediate hearing, not more than the documents brought by those from the outside. However, you must absolutely avoid any contradiction to maintain your credibility.

With regards to recidivism, this is often evaluated based on your history. You are not obliged to tell them about your pedigree (“do you know who my father/mother is?”, if you have one, especially since the limits on previous sentences in your justice file can play in your favour.

“First-time offenders” (if you’ve got a blank slate) should really drill this point! Your statements are also important: if you recognise the facts, you should not hesitate to say that it was a one-time thing that will never happen again.

On the other hand, the judgement to place you into provisional detention is not founded on the core of the case: if you deny the facts, the judges may not take this into consideration.

Contesting provisional detention :

Even if you had the bad luck of being put into provisional detention after having asked for a postponement, this does not mean that you have to stop trying to get out of jail before your hearing, first of all for the reasons stated at in the first paragraph.

There are two possibilities:

– Appealing the judgement that placed you provisional detention. This appeal is done before another court – the Court of Appeals.

– The request to set bail. This can be done at any moment directly to the director of the prison. You can ask as many times as you like. The correctional court decided on who takes the decision during the hearing that set the provisional detention. The hearing must take place within 10 days of the request. It is recommended to provide documents (“guarantees”) only at the beginning of the first hearing, arguing the difficulty to assemble them, since if the court only has the same documents it will reconsider the case in the same way. If your request is denied, you can appeal the decision within 24 hours: the Appeal Court must decide within 20 days. If the delay is not respected, the person is let out of prison. The request to be set free can be done after being condemned by the correctional court, when you make appeal.

- If you have just been let go, let the Legal Team know as soon as possible and write a report: produce a detailed written declaration of what you experienced (to hand in onsite or send to the email address on the Legal Cheat-Sheet and on this Legal Guide). Your declaration could be very useful, and even indispensable, if charges are brought against you (often several months later). The police write everything down!

If you witness any violence write it down. This must without exception include the place, the time/duration and the kind of violence witnessed (fight, arrest, etc.), the names and number of people involved and/or witnesses, the type of police squad (CRS, BAC, etc.) their number and a detailed description of the police (he has a moustache or she has blonde hair doesn’t cut it!). The information given to the Legal Team will obviously NOT be given to the police, and everything will be done to protect the people involved.

POLICE REPRESSION IN EVERY STATE...

ID CHECKS – VEHICLE SEARCHES

The police can administer ID checks for any number of reasons and are under no obligation to fill you in on what these are. They can check your ID:

- if they have reason to believe that you have committed or tried to commit an offence,
- if they think you are planning to commit a crime or an infraction,
- if they believe you are susceptible to provide information about an ongoing criminal investigation,
- to “maintain public order”.
- when the Shengen Area is lifted, the border controls will be re-established and systematically enforced.

If you are controlled, the police can only do a pat-down and the following questions: “you are not transporting arms, dangerous objects or drugs?”). If it is a pat down, it is strictly your clothes and should not include any touching or invasive searching.

Vehicle search: Except in the case of a mobile home (caravan, etc.), the police can search the vehicle, including the trunk. They can immobilise the vehicle for 30 minutes to search it, with the permission of the driver (or otherwise the State prosecutor) “to ensure the security of persons and goods”.

Where? Anywhere! Theoretically, you are completely free during the ID checks and vehicle searches. Take the opportunity to phone and communicate with a third party (e.g. to ask that they alert your friends/family...).

What to present?

If you are French : In general, your official papers with a picture : ID card, driver’s license, passport. Theoretically, you are not obliged to have these papers on you, a witness testimony can suffice, but if you do not present your papers, the police can bring you in to the station to effect verification of your ID.

If you are European (from the Shengen area) : You must present your ID card or a passport.

If you are from outside Europe/Shengen Area : You must always have on you, your visa or the document that allows you to be on the territory.

If the police are not satisfied with the documents presented, they can effect a “verification’ of your ID. They have 4 hours to verify your identity starting from the second the ID check began.

VERIFICATION OF YOUR ID

C'est la procédure qui permet à la police d'établir clairement ton identité (si tu refuses de lui donner ou si tu es dans l'impossibilité de justifier de ton identité).

Qui ? Un Officier de Police Judiciaire uniquement (OPJ)

Où ? Au poste de police la plupart du temps (ou dans la camionnette)

Pour combien de temps ? Les policiers ont 4 heures pour établir ton identité ; au-delà de ce délai, ils doivent te relâcher ou te placer en garde à vue (qui démarre à partir de ce contrôle).

What happens :

During the ID verification, you must immediately be read your rights:

- Ask for a lawyer
- Contact your family or any other person.

So, at the very minimum, ask to contact someone - in this case it is the Investigating Officer who calls the person you chose.

You are not obliged to speak nor to answer any questions. You have the right to remain silent other than for questions related to your civil status (name, surname, date and place of birth, name of parents).

After these mandatory questions, the police can start asking innocent questions ("what year are you in at university", "did you come by car", etc.). If you start responding to these questions, the police may not stop! If you choose to say nothing, you must simply say "I have nothing to declare" (and NOT "I don't know anything" - which connotes that you have something to declare!), and this must be transcribed as is on the questioning report. For each question, you must answer, "I have nothing to declare".

Police Report (PR):

Do not say right away that you are willing to sign it.

Make sure it states the exact reasons you were questioned and that the police read you your rights. Do not sign the report unless you are completely ok with what is written.

You are not obliged to sign the PR (and justify it before the judge : "I was victim of police violence, I did not agree with what was written, I refused which is within my rights, etc.").

If you sign the PR, take the time to read it over, and ask that things be corrected if need be.

You can also add handwritten comments if your rights were not respected. Be sure to add a line through the blank spaces!

In all cases, ask for a photocopy.

NB : Be aware, there are special conditions for minors (under 18).

You should know : If you refuse to give your ID or if you give "obviously incorrect information" (such as "I am Houdini, etc." ;) , the police can take your fingerprints and picture after getting authorisation from the State Prosecutor. If you refuse you are putting yourself in danger of jail time (up to 3 months) and/or a fine €3750.

POLICE CUSTODY

This is a decision taken by the police. A police report (PR) establishes the decision to take you into custody.

The police can take you into custody if there exists "one or more plausible reasons to suspect that you have committed or tried to commit an infraction". The "plausible reasons" are terms that are sufficiently vague to allow the police to put whomever they choose into custody!

A witness can be kept in custody if the police believe that they are useful for the investigation but only

To ask or not for the postponement of trial ?

It is the choice given to you in the case of an immediate hearing : either be judged immediately or ask for a postponement. It is particularly important to be able to weigh the pros and cons.

In all cases, the choice to postpone means that you are giving yourself better chances to avoid provisional detention.

If it is postponed, if it requested by the judges or the accused, the correctional court can place you or keep you in provisional detention. They will do this after hearing what you and your lawyer have to say.

This is a preliminary judgement that decides only on the question of a provisional detention and which does not go into the case itself: it follows the same steps as other judgements.

In the case of a provisional detention, the trial must take place within 2 months maximum. This delay can be extended to 4 months maximum and cannot be less than 2 months if the possible sentence is more than 7 years imprisonment. At the end of this time-frame (either 2 months or 4 months depending on the sentence), if the hearing has not yet taken place, you are set free and the case is null.

If the court decides not to keep you in police custody, the hearing is fixed within the next 2 to 6 weeks, except in cases where the offence is punishable up to 7 years imprisonment, where the delay is between 2 and four months. Most often, the court decides at a minimum to place you under judicial supervision.

Judicial supervision consists of a series of constraints imposed on you "the accused" who have been let go whilst waiting for your trial. These constraints are decided by a First Instance judge, who chooses them from a long list set out by the law :

- Denied the right to leave a certain territorial delimitation without authorisation (country, city, even your home)
- Obligation to present yourself periodically to the authorities
- Pay a guarantee of a certain sum decided by the judge.

The choices often depend on the personality of the accused, the characteristics of the case, etc. in short, it depends on how the judge feels and their impression of you!

If you are not under judicial supervision, you may be placed into police custody for provisional detention.

PROVISIONAL DETENTION

What it entails :

In France, provisional detention is common and is relatively important on deciding the subsequent events.

First of all, you are not free and you are constantly surrounded by cops, sometimes your are handcuffed when you are brought into the room and placed into the accused "box": a treatment which is not given to those who are brought before the court "free".

Moreover, if you have spent several weeks in provisional detention, the court will try to cover this period by an equivalent sentence.

Most of all, if you are sentenced to prison time, if you have already been in detention, you will definitely spend at least one part of your time in prison. If you have appeared before the court "free", you are not placed under the mandate of the depot at the hearing, and thus have the possibility to avoid time behind bars.

Trying to avoid provisional detention:

This advice is valid whether you are before the court, asking for a postponement or before a magistrate.

You have certain rights whilst in police custody: inform someone close to you, see a doctor, and see a lawyer at any moment (the lawyer still has not seen your file). Differing to the detention, you are not supposed to be questioned.

Holding you like this must be done in a police station or gendarmerie under the supervision of the prosecutor. This can thus be done at the “commissariat” (station) or at a depot (the internal prison of the courthouse).

At the end of the 20 hours, if you have not been presented to the prosecutor, you must be released.

During your interview, the prosecutor must establish your ID. S/he must establish the facts of which you are accused and eventually gather your statements (if you ask).

This interview could be purely a formality or it could be definitive, depending on the case. The prosecutor always has the possibility, at this stage, to close the case, to decide on mediation or “penal composition” and in the case that it is sent before the court, the hearing is not always immediate (see the next paragraph).

Your statements can thus play an important role in the prosecutor’s decision: you have to remember at this stage that you do not have access to your file via your lawyer, and you have no idea what elements and testimonies the police might have on you!

Being presented to the court

If the prosecutor decides to send you before the court, s/he will inform you that you have the right to a lawyer of your choice or state-appointed. Differing from when in police custody, the lawyer now has access to your file and can communicate freely with you. From this moment on, you are the “accused” and you will now know exactly what is in your file.

If you are sent before the court, the prosecutor can decide on the date (immediate or postponed).

Immediate hearing

It is possible :

- In situations of flagrant infraction, all offences punishable by a sentence of longer than 6 months imprisonment.
- If it is not a flagrant infraction, for offences for which the sentence is equal to or more than two years imprisonment.

In all cases, one can be condemned during the immediate hearing for a maximum sentence specified for an offence – that is 10 years in prison, doubled if it is a repeat offence, meaning 20 years.

Waiting for your immediate hearing :

- If the correctional court can assemble the same day, you wait at the depot. If you are under 21, there is an interview with a social worker. Be aware that these are employees of the Minister of Justice and will repeat whatever they find out.
- If the correctional court cannot assemble the same day, the prosecutor will ask the judge that you be placed in custody until the day the court meets: this detention cannot exceed three working days (so it can last from Saturday to Wednesday).
- If the judge refuses this provisional custody you are set free but you could be placed under judicial supervision. You are summoned to court anywhere from 10 days or 2 months afterwards.

Postponing Trial

When there has been an immediate hearing, the court or yourself can ask for that the trial be postponed:

- The court, if it considers that it does not have enough elements in the file, can appoint a judge to investigate, designate an investigating judge, send the case to the prosecutor or postpone the trial, and eventually put you into provisional custody;
- You can refuse to be judged immediately. The chief justice of the correctional court must ask you this question at the beginning of the hearing: your acceptance is only validly sought if done in the presence of a lawyer.

for the time needed to take down the information. This significantly increases the timeframe for the cops during a protest.

However, it is important to know that when a person is kept by the Investigating Officer (other than the case of an ID verification) that person HAS to be placed into custody and read their rights.

Police custody is used in three different investigations (flagrant offence/crime, preliminary investigation, investigation. In the first two, police custody can turn directly into an immediate hearing before a judge.

Police custody serves to question you and prevent you from communicating with other people or dissimulating proof/evidence.

The decision and act of keeping you in custody can be taken at all times.

Legally, the police can only decide to take you into custody : afterwards, keeping you in custody, extensions or what follows is decided by the State prosecutor (or his/her assistant, called the “substitute prosecutor”). However, as this happens more often than not by telephone, the prosecutor judges the situation based on what s/he is told by the police.

Here afterwards, we will simply use the term prosecutor : in the case of an investigation, this must be replaced by the “investigating judge”.

Duration of Police Custody (starting from the arrest or the beginning of the verification of your ID):
- In general : 24 hours once renewable (48 hours) upon authorisation by the State prosecutor or investigating judge.

- If you are suspected of terrorism, drug trafficking, organised group, etc. it is automatically 48 hours with a possible prolongation of 24-48 hours upon authorisation of the State prosecutor or investigating judge/ first instance judge after an interview with the detainee, meaning up to 96 hours.

- For infractions related to terrorism or with a “serious risk of terrorist act” the judge can further prolong police custody, after the 96th hour, for two periods of 24 hours – meaning a total of 144 hours behind bars (6 days).

WHAT TO EXPECT IN POLICE CUSTODY

Your rights are written on the police report and on the registry. Each right must be written on the police report and must include whether you exercised your right or not (and must be signed).

The police have to do a certain number of things from the beginning of your detention and at the latest within 3 hours :

- inform the State prosecutor
- read you your rights
- tell you exactly what you are accused of
- remind you of the legal duration of the custody

These obligations (and particularly the reading of your rights) can be put delayed, for “insurmountable circumstances”, over 3 hours (if you are drunk/drugged, if the police station is surrounded by protests).

Reading of your rights: Informs of you of a certain number of things :

This notification must be said immediately, except in “insurmountable circumstances” (if you are drunk, until an interpreter arrives...). It must be spoken in a language you understand, meaning that the Investigating Officer must do everything possible to bring in a prosecutor or read you a printed version.

- A reminder of your right to contact a lawyer and your loved ones, and the right to see a doctor. Once you have asked to exercise one or other of these rights, the Investigating Officer has to give you 3 hours to properly exercise them.

This information must be written on the police report and on the police custody registry. If you refuse to sign it, this must be noted. Do you have to sign? See below at “The documents the police can make you sign”.

Any prolongation must also include your rights being read.

Notify someone close to you :

During the first 3 hours you can ask that your loved ones be notified by phone (the police officer calls them) : All persons with whom you live on a regular bases, a parent, ascendant or descendant (mother, father, grand-parents, children), a brother or sister, your employer.

The police officer can refuse for “reasons of necessity for the investigation”, but in order to do so s/he must obtain authorisation from the State prosecutor.

In the case of a prolongation for terrorism, you can ask that your loved ones be notified at the 96th hour on the condition that this was refused at the beginning of your detention.

Medical Examination :

You, your family and the police can ask that, during the first 3 hours, and in the case of a prolongation, that you have a second medical examination.

In the case that the detention is more than 48 hours, medical examinations are obligatory. You can in any case demand to see a doctor for a second examination.

On their side, your family can demand that a medical examination if it has not yet been done.

The medical examination is done to verify that you are medically able to spend the time requested by the police in custody, but you can use it to bring attention to police brutalities. You must demand that a doctor examine all marks and bruises and if there are none, that s/he write it down in black and white : This is important because it may happen that you are victim to police violence later on. Do not hesitate to verify the contents of the medical certificate.

Depending on the police station and the time, a doctor may come to you, or you may be driven to a hospital. The medical exam may be a moment to leave the cell during your detention.

Lawyer :

The police are obliged to suggest that you meet with a lawyer at the beginning of your detention (within the first 3 hours) and at the beginning of an eventual prolongation.

In certain cases, the lawyer may not be seen before the 48th hour or the 72nd hour of detention :

- Drug trafficking,
- Organised groups: stealing; destruction, degradation or deterioration of property; crimes and offences constituting acts of terrorism ; offences with arms and explosives; offences regarding aiding and abetting the entry, circulation and irregular residence of an “alien” in France; kidnapping and holding someone against their will, etc.
- Infractions by association to wrongdoers if they are planning one of the offences mentioned above.

If you know the phone number of a lawyer, the police cannot refuse to call. If you do not, you can choose to ask for a state appointed attorney.

ATTN: all the state appointed lawyers throughout the counter-summit will be in contact with the Legal Team.

With regards to contacting a lawyer, the police are held to an “obligation of means”, but not of “results”, that is that they must call a lawyer that you have chosen, but they are not responsible if that lawyer is not available or if s/he cannot come to the station. In that case, it is always possible to call a state appointed lawyer.

Your conversation with a lawyer is confidential (the police are not with you) and is a maximum of 30 minutes.

Besides a doctor, a lawyer is the only person from outside the police station that you can meet with and from whom you can receive advice.

A lawyer is not supposed to give away any information to anyone about the detention.

At this point, the lawyer does not have access to your file, and has no other information on the in-

- Deferred to the bench, meaning you must see the State prosecutor. This is a bad sign, since it marks the beginning of a procedure that may end up in an immediate hearing or a CRPC.

- Brought before a First Instance judge. In the case that you are prosecuted for a crime, you may be presented to the Cour d'Assises (court). You will automatically see a magistrate. In the case of an offence the State prosecutor sends you before the magistrate who deals with complicated cases with many people. In this case, there is no immediate trial, but there is the possibility of provisional detention if the possible sentence is equal to or longer than 3 years. This type of procedure is not considered in this guide.

Pleading Guilty:

The expression “pleading guilty” does not exist in French law: it is anglo-saxon. In France, this corresponds to the “penal composition” or appearing before the court having already recognised your guilt (CRPC).

The “penal composition” and the (CRPC) have the same starting point: recognise your guilt in exchange for what you hope will be a less severe sentence, and accelerate the trial by by-passing the hearing.

It the representative of the accusation (State prosecutor) who decides on the sentence, and not the judge - as would be the case during a hearing. The role of the judge would be reduced to a veto: s/he could only accept or refuse the suggested sentence.

The goal of pleading guilty is to alleviate the charge of the court whilst giving a penal response to all infractions.

This type of procedure is always a kind of blackmail. If you are or not the person who did the action that is accused, you are confronted with the same problem: being able to quickly fix the situation on your side, or have to face the delays and incertitude of a trial.

Here is a brief definition of the two concepts:

The penal composition is possible for all delinquent acts punishable by imprisonment equal to or less than 5 years. The State prosecutor either directly or by an intermediary (e.g. a cop or a delegate from the prosecutor) will propose a sentence and you recognise your guilt. You can accept or refuse the sentence proposed and ask for a delay of 10 days to notify them of your decision. You have the right to discuss this with a lawyer before giving your response. It is important to hear the advice of a lawyer before accepting, because contrary to what it may seem, the penal composition is not always favourable.

Appearing before the court having already recognised your guilt applies when you recognise the acts of which you are accused as delinquent acts punishable by fine or imprisonment of a duration of less than or equal to 5 years. Pleading guilty does not apply to “minors under 18, nor to infractions of the press, nor to involuntary homicide, political infractions or infractions where the prosecution is dictated by a specific law”. It is the State prosecutor who decides whether to use this procedure, or if you ask for it, or if your lawyer does. You can accept or refuse the prosecutor’s offer, which will be validated or not by a judge in a court of law.

DEFERRING TO THE BENCH AND ITS CONSEQUENCES

Deferment and the interview with the prosecutor :

When you are “deferred”, you are transferred to the police station near the court to see the prosecutor. In general, you must see the prosecutor the same day your detention ends - the same goes for your presentation to the Investigating judge.

However, “in cases of necessity”, a supplementary delay can be imposed: maximum 20 hours from the end of the detention to the presentation to the magistrate. During these 20 hours, the law specifies that you “must be given the opportunity to eat”.

it, but that you see it and then return it unsigned.

It is not only the deposition that can be a trick! The notification of the end of detention is also (see below).

The notification of the end of police custody:

The end of your detention does not mean that you are free: there can be a “deferment to the bench” or a presentation to the First Instance judge, and the judicial machine is just beginning!

The report of the notification of the end of your detention is thus an important document that describes:

- What happened during the detention, including the time it started and ended (with or without prolongation)
- The times you were fed, the times and duration of interrogations and rest,
- The time you were read your rights, the reasons you were held in police custody,
- The times a doctor or lawyer saw you, etc.

The same information is on the registry of the detention of the commissioner.

Attention : Signing these documents is recognising that the detention happened as it is described. In general, this prevents the lawyer, afterwards, to successfully argue the nullity of the trial for irregular procedures during the detention (get off on a technical point). As explained above, you can of course refuse to sign, both the report and registry, which often include the same information.

What to do if someone you care about is in police custody?

Important : Contact the Legal Team, if you think that they have not yet been notified.

Contact the anti-repression collective: gather in front of the police station and demand the liberation of one or more detainees is often an efficient means of pressure if the numbers are sufficiently high. You can always try to get them food, drinks, or cigarettes using the police. It is increasingly rare that they accept, and when they do, they often keep it for themselves.

GETTING OUT OF DETENTION

(in the case of a flagrant crime or preliminary investigation)

The State prosecutor, by telephone decides what happens next and decides the judicial qualification of the facts. This is important (for example if it is “theft” or “armed theft”) since it modifies the gravity of the crime and thus the possible sentence and can lead to immediate trial. What follows could be:

- Let go without prosecution: you are free and don’t need to worry.
- Let go with a convocation to appear in court that includes the date, time and place of the hearing, as well as what you are accused of and the articles of the law that correspond to the offence. This includes that the accused must appear in court with a justification of revenues. Before letting you go, the police will ask you to sign this convocation. Signed or not will not change anything. The hearing often occurs several months after the fact (depending on how tied up the court is). While you are waiting for your trial, you are free and are not under any particular restraints. The convocation to appear in court with recognition of guilt (CRPC: see below) can also be given to you when you are let go.
- Let go without convocation, but later sent to you by the court. In other words, you are never completely out of the woods! The prescription (end date) of an offence is 3 years in most cases. This convocation follows the same procedure as at point 2). The convocation CRPC can arrive by post.
- Let go without judicial prosecution but with a warning.

investigation than those that you have given her/him. S/he can verify the state of your detention and make written observations that will be joined to the report.

Where there are several accused, they may be defended by the same lawyer, or by different lawyers.

Invasive Body Search :

This is a full body search, where you are completely naked – it can be humiliating. It must be done by an Investigating Officer or Customs Officer of the same sex as you.

In the case of an “internal body search” (finger in anus or vagina, to be blunt), the police MUST call a doctor.

The police are not satisfied with looking for clues or illegal objects, but also they keep a certain number of personal effects : it could be a belt, laces, certain clothes, bags, jewellery, lighters, etc. Money is not included and should be set apart.

The objects that the police keep are made part of an inventory that is signed.

Fingerprints and photos

The police can take your fingerprints as well as photograph :

- In the case of a crime or offence, if there exists one or more plausible reasons to suspect that you have committed or have attempted to commit an infraction: if you are suspect, it is an infraction to refuse to let them take your fingerprints (one year in prison and €15 000 fine).
- If you are “susceptible to providing information on the events in case” : if you are a witness, however it is possible to refuse since there is no sentence provided.
- Possible in all kinds of investigations.

These fingerprints or pictures will be compared to those in different files and to the fingerprints taken at the crime site.

They can be filed.

DNA

Note : This paragraph is based on the brochure “Refuse DNA filing : why? How?” that we invite you to look at <http://refusadn.free.fr>; especially to know more about the number of years that your DNA information will be kept, the kinds of (pro)filing done, activist struggles against DNA filing and possible support, etc.).

If this is done during your detention or afterwards the police can ask you for your DNA.

Why? The law says : “all persons to whom there exists one or more plausible reasons to suspect that they have committed a crime or offence.”

How? The DNA is taken by your spit or by introducing a cotton swab into your mouth. The police do not warn you that they are taking your DNA and will not give any explanations.

The police do not have the right to take your DNA from you directly if you do not agree, since your body is considered private property and inviolable. However they can take your DNA in other ways : “from any organic material that may have naturally detached itself from the body of the accused” that is cigarette butts, your hair, etc. ... and you will still be prosecuted for the refusal!

If you refuse : You risk going to trial for “refusing to submit to DNA testing”. This infraction is punishable by one year imprisonment and €15 000 fine. If you have already been found guilty of a crime, you risk 2 years and €30 000.

Finally, on orders of the State prosecutor, if you are found guilty of a crime or an offence punishable by 10 years imprisonment, the your DNA can be taken without your agreement, for example forcing your to open your and using a Q-tip.

It is also possible for the police to, in particular for cases of deterioration and sabotage, to take fingerprints and DNA from the scene of the crime as evidence. Be careful of the fingerprints and other that you leave behind you – wear gloves!!

The police often put a lot of psychological pressure on you to accept what they want (threats, sometimes insults), which can be very difficult. You have to prepare yourself and succeed in explaining clearly the reasons for your refusal. Be careful about insulting the cops, which is a punishable offence!

You should know : Being called in for your DNA can happen several years after the trial of the initial offence. The police can call you into the station without any specific motive, and in the case of a refusal to take your DNA, they can put you in detention as a pressure tactic.

Why should you refuse?

“ Because we refuse the politics surrounding security that reinforce an unjust social organisation that is driving us towards Totalitarianism; because we refuse to give our genes to the authorities who, under the guise of “insecurity”, tread a path towards racial discrimination; we consider the refusal of genetic profiling as an indispensable political act. It is possible!”

You must know that a refusal does not systematically entail a trial. According to the Minister of Justice, between 2003-2005, for the 452 people who refused DNA profiling, 108 were let go without sentence, 267 were given jail-time (on average 3 months), 16 were bailed out, 58 were given fines or day-fines (on average €300).

The refusal to give your DNA is considered as an “infinite” infraction. In other words, after being sentenced for refusal to give your DNA, the police can ask that you be forced to do another test. If you refuse again, you will find yourself in contempt of court, which aggravate the sentence sought!! To put pressure on the French Justice system, mass refusal is possible. The saturation of the courts is possible with only 10% refusals!

Living conditions of police custody

The conditions of detention can vary considerably. During a detention, there is no possibility to wash yourself (even if there are areas sometimes provided) or to change clothes.

The cells are often dirty. You can be purposefully isolated from other detainees, taken in at the same time as you.

Police custody is in itself a psychological pressure. Certain detentions are simply a brief interrogation, some are long hours of waiting in a cage and with an uncertainty of its duration, its outcome and what will happen. Others are much more intense, with long interrogations, etc.

In all cases, lack of hygiene, fatigue, and not knowing what's going on during the detention and afterwards are factors that incite anxiety.

This stress is caused on purpose and maintained by the police to destabilise you.

This is why they may also try to increase the pressure at any moment during the detention.

Unfortunately, police violence can happen (hitting/slapping...), but are strictly unauthorised and you must notify a doctor and lawyer! Threats, comments, intimidation of all kinds are even more common (“you aren't planning to see your kids again are you?”, “your friends said it was you”, etc.)

Avoid pleading your innocence outside the interrogation : the police sometimes play a friendly role (“leftwing cop”, etc.).

Don't be intimidated by the brutes! Don't be tricked by pseudo-nice police, and don't try to be smarter than them!

Interrogation :

This is the moment where the police will ask you questions and write everything that is said on a piece of paper called the “questioning/interrogation report”.

During this interrogation, you have no obligation to speak. You have the choice to make your own declarations, to respond to questions that are asked, or to be silent. Everything said is written on the

report and can be used against you in a court of law.

It is thus imperative to speak only if you know how to play the game! That is, if you know exactly what to say without putting yourself or anyone else at risk.

If you are arrested as a group or if the case concerns others, speaking is a risk to be in contradiction with what the others have said and can also get the others in trouble without meaning to. It is thus, imperative to stay silent, unless you have agreed earlier on an identical version of events.

The consequences of silence (being held up in the judicial machine, pass a few more hours at the police station) are always better than what will happen if you say too much.

Only the State prosecutor has the power to indict you and to offer you the possibility to plead guilty (that is to “admit” – see the paragraph further below).

The question is not about being nice or credible with the police. What is important after the interrogation is not the opinion of the police, but what is written on the report – whether it is signed or not!!

If you choose to remain silent, you must say “I have nothing to declare” and not “I don't know anything” which a fortiori means that you know something. This must be noted as is on the report.

It can happen that the police continue to ask you questions regardless of what you say. Each time, you must say “I have nothing to declare”.

You can also choose to make your own statements, which have nothing to do with what the police are asking you. In this case, you choose what you want to say : you can talk about police violence, even if the police avoid the question.

You must demand that the officer write down what you say, even if they are reticent – do not hesitate to rewrite it if s/he was not faithful to your words!

You can finish your statement by reaffirming that you “have nothing else to declare” to demonstrate that you do not want to start playing their games of Q & A.

The documents the police can make you sign :

- That you have been read your rights,
- Search inventory,
- Return of items from search,
- Interrogation report,
- Notification of end of detention,
- The detention registry held by the police commissioner.

If a judicial convocation is delivered at the end of your detention, the police make you sign it. Some of these documents are put together on the same page when they are presented for signature.

Whatever you sign, signing means that you recognise everything on the document. That means that you must read everything very carefully before signing anything, whether it be the statement, the search, the notifications, etc. Do not hesitate to correct something that is incorrect or add more detail. Sign as close to the text as possible to ensure that nothing else can be added. Put a line through any blank space below your signature. Do not forget to ask for a copy of the police report that you have signed!

Refusal to sign : It is never mandatory to sign, whatever the pressure the police put on you and whatever they say. Refuse to sign:

- If the document includes things with which you do not agree, or if they do not include things that you chose to say and the police refuse to modify,
- If, regardless of what is written, you are not satisfied with what you said,
- Or simply out of principle: anything not signed is easier to contest during a trial.

It is very important to read the interrogation report in all cases, even if you do not have the intention to sign it. It is preferable that you do not tell the police beforehand that you have no intention to sign