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State of Emergency, « Public Calamities », Nuclear Accidents: A French "Patriot Act" Targeting the Anti-nuclear People

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In the annals of France's Fifth Republic, 10 February 2016 deserves to go down as a black day (like 6/2/34 and 13/2/36 for the Third Republic). On that recent day, the National Assembly passed on its first reading, by 317 votes to 199 with 51 abstentions, a Constitutional Bill « for the nation's protection ». It is related to the current state of emergency and it is tacitly preparing for the next nuclear catastrophe.

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This bill comprises two articles. Article 2 deals with revocation of citizenship. It has attracted all the attention of public opinion and the media, unleashed much passion, and even provoked the departure from the cabinet of the Minister of Justice, Christiane Taubira.

And yet Article 1 should have received the greater scrutiny. It is formulated thus :
« After article 36 of the Constitution the article 36-1 is to be inserted, reading thus :
« Art. 36-1. - The state of emergency is declared in the Council of Ministers, over all or part of the Republic's territory, either in a case of imminent peril resulting from serious attacks on public order, or in the case of events presenting by their nature and seriousness the character of a public calamity.
« The law specifies the measures of administrative policing that the civil authorities can take to forestall the peril or to confront the events.
« The prolongation of the state of emergency beyond twelve days can be authorised only by law. And its duration is set by law. »

What can be meant by the notion of « events presenting by their nature and seriousness the character of a public calamity. » ? What is this notion doing in the bill presented on 23 December last by Manuel Valls in the name of the President of the Republic ? (*Cf.* http://www.assemblee-nationale.fr/14/projets/pl3381.asp)

The formula is admittedly the same (except for a trivial point of spelling) as that formula found in Law n°55-385 of 3 April 3 1955 « instituting a state of emergency and declaring its application in Algeria ».

Nevertheless, judging by the reasons given, the declared purpose of this bill to « constitutionalize the state of emergency » is to « confront the terrorist risk », to « effectively combat terrorism (...) in conditions under which the police and the gendarmerie can implement, under the [subsequent] control of the [administrative] judge, the appropriate means for combatting the threats of violent radicalization and terrorism ». That is the object of Article 1. And if the risk were to take concrete form, i.e. if prevention failed, the object of Article 2 in punishing by revocation of citizenship « the authors of actions so grave that they no longer deserve to belong to the national community » (at least those who are French citizens...). This is a « symbolic measure » which terrorists view as totally laughable, as everyone recognises.

So this bill now being pursued is to « constitutionalize » the state of emergency created by ordinary law in 1955 ; and the thing it is supposed to respond to is the terrorist threat.

However, in maintaining the notion of « public calamity » in its constitutional bill, the government is thinking of something quite different. To see this, we need to consider what was said in the National Assembly on 8 February 2016 at the 4pm session.

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During that day's plenary session, the Assembly was examining amendments to the government's bill proposed by MPs from both government and opposition benches. Some amendments proposed to modify the the definition of circumstances for justifying the declaration of a state of emergency by government decree. They were discussed. Then it was stated that a state of emergency can be decreed by the government not only to fight against terrorism but also for very diverse other reasons, including in particular a nuclear accident.

Indeed, according to **Dominique Raimbourg**, rapporteur of the Law Commission, **« the state of emergency covers not only attacks on public order but also things called « public calamities » : ecological catastrophes, natural catastrophes, catastrophes linked to epidemics. »**

According to **Jean-Jacques Urvoas**, the new Minister of Justice and the government's spokesman in this debate, **« the notion of public calamity includes all events of extreme seriousness, including those in which human activity has played a role, like an accident in a nuclear plant, for example. From our point of view, everything must be made secure ».** (My emphasis)

Delphine Batho, socialist MP for Deux-Sèvres, former Minister of Ecology (who has for 20 years specialised in questions of security, prevention and repression) stated it more strongly: « the replacing of of the word « events » by « major damage » would prevent the triggering of a state of emergency to prevent the consequences of a natural catastrophe or a major technological accident, in terms of keeping public order and protecting the population. »

In her view, **« to speak of major damage would prevent recourse to a state of emergency when a nuclear accident has not yet occurred but when prompt decisions need to be taken to ensure public order. »** (my emphasis)

Eventually all the amendments were either rejected or withdrawn : the government's version was the one retained and adopted on 10 February. So here is its precise outcome : the constitutionalized « state of emergency » will enable the government to « treat » a major nuclear accident, a « major techonological accident » presenting by its nature and seriousness « the character of a public calamity ». Naturally, this was not in the minds of the MPs setting up the state of emergency back in April 1955 in order to apply it immediately in Algeria : at that time France had not one nuclear plant, and didn't even have an atom bomb (the first test, nicknamed « Gerboise bleue », was on 13 February 1960). At the most they could have been thinking of a natural calamity like the earthquake of 9 September 1954 which destroyed 20000 houses, and caused 1500 deaths and 14000 injuries in Orléansville, Algeria. Perhaps also they foresaw the prevention and handling of terrorist acts like those on 1 November 1954 which began what became the « Algerian Events » - i.e. the Algerian War of Independence.

In metropolitan France now, there is something quite different to prepare for under the cover of fighting terrorism : it is the next nuclear accident. President Hollande, Valls his PM and their entourage know that such an accident could well strike France, after Ukraine and Japan. And at any moment. Provided the state of emergency provision is constitutionalized first!

But how can France prevent Chernoblaye-sur-Gironde, Fukussenheim-on-Rhine and other accidents like Three Mile Island? By shutting down the plants, stopping the reacotrs ? No, not at all. By stopping the antinuclear groups. Preventatively, even before there is an accident : as Delphine Batho tells us, there is provision to « take decisions aimed at ensuring public order » by having recourse to a state of emergency « when a nuclear accident has not yet occurred ». For it is a fact, is it not, that the anti-nuclear activists, whistle-blowers that they are, could well trouble public order by a flood of incongruous warnings.

It is a fact also that the police measures planned for the new « state of emergency » are radically innovative

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compared with 1955, when the state of emergency provided in total (article 5) for the possibility of :
« 1. banning the circulation of people and vehicles in the places and at the hours set by the decree ;
« 2. instituting by decree protection zones and security zones where people may lodge only by regulation ;
« 3. banning residence in all or part of a département of any person who tries by any means to hamper the actions of the public authorities. »

The emergency arsenal of 2016 is much broader:

« The administrative measures to augment the effectiveness of means to meet the peril and confront the events leading to the state of emergency are varied :
- **identity checking without the need to justify it by particular circumstances establishing a risk of disturbing public order as in normal times is required by the Constitutional Council** (n° 93-323 DC of 5 August 5 1993) and, if the situation arises, **searching of vehicles with opening of trunks** ;
- **administrative detention, without prior authorisation,** of people present in the house or place being administratively searched ;
- **administrative seizure of objects and computers during the administrative searches,** whereas Law n° 55-385 of 3 April 1955 provided only for seizure of weapons and **access to information systems and copies of them**.

In addition, « the legislator can set up **freedom-restricting measures (escort to place of residence, detention at the start of the search...**) or measures reconciling Article 36-1 with the freedom to come and go (meetings at residence...). **These measures** described as « non-freedom-depriving », which are aimed at preventing attacks on security and public order, **do not have to be placed under the control of the judicial authority. They will be placed under the full control of the administrative judge** » (All my emphasis)

Full control... but exercised retroactively! When we know that over 200 complaints have been laid against abuse of police powers since the current « state of emergency » came into force, and that so far only two have been judged, we can see how much power the « administrative judge » will have to prevent or suspend arbitrary treatment!

And when we know that the searches can henceforth be made at night, well, doesn't that reassure the people who have been searched - or who will be? From now on they will not need to wait for the « crack of dawn » to learn that our so-called democratic society has proved the terrorists right: they have succeeded in making it move into fascism.

In the first line of fire are the antinuclear activists. They are the ones that the « democratic and socialist » powers have in their sights. It is so much easier to silence sensible people than listen to them... Never have we come closer to verifying the slogan « nuclear society, police society, military society, totalitarian society. »

The paradox is that the Head of State and the PM, while claiming to « punish those whose behaviour aims to destroy social cohesion » are contributing not only to sowing discord even among their own supporters but even themselves lining up among the criminals who deny « the respect due to human life and the values that our the basis of our nation ».

For after all how many « innocent victims » did the Bataclan murders in Paris kill? 130. That is odious, horrible, revolting. But how many victims would the smallest French atom bomb kill, the one that's only 7 times more powerful than the Hiroshima bomb? Add four zeros and you'd be near the mark.

So it is François Hollande and Manuel Valls who should be the first to have their citizenship revoked.

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Saintes, 11 February 2016
Jean-Marie Matagne

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