

France's Constitutional Council approves draconian surveillance law

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On July 23, the Constitutional Council, France's highest authority on constitutional matters, approved with minor modifications a reactionary electronic surveillance law legalizing mass spying and data retention practices without authorization from a judge. The law, which sets up the surveillance infrastructure of a police state in France, was adopted despite broad criticism from human rights groups.

After the surveillance law was adopted by the parliament on June 24, amid mounting criticisms that the law trampled basic democratic rights, President François Hollande took the unusual step of submitting the law to the council to ensure it would not be challenged as unlawful. It was the first time a French president had ever sent a law to the Constitutional Council for approval before even it was officially promulgated.

The Council released a communiqué declaring the mass spying law to be constitutional. It stated, "The Constitutional Council has ultimately ruled that all the provisions of the administrative justice code overseeing controversial issues in the implementation of surveillance techniques are in conformity with the constitution."

On July 24, Gauri van Gulik, Amnesty International's Deputy Director for Europe, said: "France is on the brink of becoming a country where anyone's communications could be spied on, anytime, anyplace, and without even the need for a judge's approval. This law would be a major blow for human rights in France, at a time when it is becoming very clear to people around the world that mass surveillance must be stopped."

The United Nations committee for human rights (UNCHR) warned that the surveillance powers authorized to French intelligence authorities were

"excessively broad." It called on France to "guarantee that any interference in private life must conform to principles of legality, proportionality and necessity".

In fact, the Constitutional Council acted as a rubber-stamp for the anti-democratic law, which was launched ostensibly in response to the *Charlie Hebdo* terror shooting. The Council's decision underscores how the French ruling elite has shifted far to the right, responding to growing social tensions by setting up the infrastructure of a police state in France.

The law permits intelligence agencies to tap phones, read emails and hack computers, and turns the telecommunications industry into an extension of the state surveillance apparatus. Under the law, Internet and phone service providers must monitor metadata, including the time and frequency of use of given web sites, to track suspicious behavior. They must also install "black boxes," complex algorithms allowing the service providers to report to the authorities anyone whose online behavior is deemed "suspicious."

Through these secret algorithms, the state can automatically assemble detailed political profiles of the entire population, select those opinions and web sites whose followers it wants to monitor, and, potentially, target for repression and arrest.

The law allows intelligence services to eavesdrop on digital and mobile phone communications of anyone linked to a "terror" inquiry and install secret cameras and recording devices in private homes. The secret services can also install "keylogger" devices on computers to track keystrokes in real time. The law also authorizes the use of "IMSI catchers," devices that mimic cell phone towers in order to collect all the location and signal data of all cell phones in a broad area.

The law also sets up a special advisory group, the

National Commission for the Control of Intelligence Techniques—made up of magistrates, deputies and senators—to approve more intrusive spying, doing an end run around the courts.

As the law clearly threatens fundamental democratic rights, the Council sought to provide a pseudo-democratic cover for an illegal spying by symbolically striking down some sections of the law.

?The Council struck down an article dealing with surveillance of international communications that would have allowed the interception of communications “sent or received” abroad. It rejected a clause putting people outside France under surveillance. It also struck down an article allowing intelligence agencies to carry out surveillance without any authorization in emergency situations.

?The rejection of these clauses does not undermine the functionality of the surveillance law, however. Even supposing that the spy agencies obeyed these restrictions—a point that can be doubted, given the widely reported fact that mass spying went on unhindered before the law passed—French intelligence can get intercepts of international communications from its foreign allies, as well as by directly targeting foreigners outside France for surveillance.

Despite the rejection of some articles, Hollande’s office praised the approval of “the essential content of the law” and said that the rejection of some articles would not pose an obstacle to the intelligence agencies’ surveillance work.

The PS government praised Council’s decision, cynically claiming that the intelligence law would protect French citizens against terrorism while respecting civil liberties. According to the Elysée Presidential palace statement, “this law gives the intelligence services modern, appropriate means to deal with the threats we face, while respecting individual rights and private life.”

Jean-Jacques Urvoas, the PS deputy who drafted the law, bragged: “Virtually the entire intelligence law has been ruled constitutional. None of the complaints bandied about by the media were retained.” He claimed the law “guarantees the protection of liberties and reinforces the rule of law.”

In fact, the mass spying program is widely compared with the US Patriot Act, introduced by Bush administration in the aftermath of 9/11 terrorist attack.

This gave the US National Security Agency (NSA) the ability to collect and monitor the communication data of the population of the United States and the entire world, as whistleblower Edward Snowden revealed.



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