Le Contrôleur général des lieux de privation de liberté

Annual report 2014

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Glossary

AAH	Allowance for disabled adults (*Allocation pour adultes handicapés*)
ACAT	Action by Christians for the Abolition of Torture (*Action des chrétiens pour l'abolition de la torture*)
AFPA	Association for the professional training of adults (*Association pour la formation professionnelle des adultes*)
AGDREF	Application program for the management of files on foreign nationals in France (*Application de gestion des dossiers de ressortissants étrangers en France*)
AMP	Medico-psychological assistant [paramedical professional providing support in tasks of daily living and treatment, promoting well-being and hygiene for persons suffering from psychiatric disorders in particular](*Aide médico-psychologique*)
ANAFÉ	French National Association for the Assistance of Foreigners at Borders (*Association nationale d'assistance aux frontières pour les étrangers*)
ANVP	French National Association of Prison Visitors (*Association nationale des visiteurs de prison*)
APA	Personal care allowance (*Allocation personnalisée d'autonomie*)
APIJ	Public agency for real estate development for the legal system (*Agence publique pour l'immobilier de la justice*)
ARS	Regional Health Agency (*Agence régionale de santé*)
ASH	Member of hospital staff in charge of maintenance and hygiene and sometimes also assisting in care and socialisation of patients (*Agent des services hospitaliers*)
ASP	Public services and payments agency, a public corporation administrating funding of public policies (*Agence de services et de paiement*) (formerly the CNASEA)
ASPDRE	Committal for psychiatric treatment at the request of a representative of the State (*Admission en soins psychiatriques à la demande d'un représentant de l'Etat*, formerly HO)
ASPDT	Committal for psychiatric treatment at the request of a third party (*Admission en soins psychiatriques à la demande d'un tiers*, formerly HDT)
AVS	Home help and care provider (*Assistant de vie sociale*)
CAF	Social security office (*Caisse d'allocations familiales*)
CDAPH	Committee for the rights and autonomy of disabled people (*Commission des droits et de l'autonomie des personnes handicapées*), formerly COTOREP
CAP	Sentence Board (*Commission de l'application des peines*)
CARSAT	Employment Health Insurance Fund (*Caisse d'assurance retraite de la santé au travail*) (replaces the CRAM state regional health insurance offices)
CCR	Orders, behaviour, regime (*Consignes, comportement, regime*) (note used in the GIDE software application)
CD	Long-term Detention Centre (*Centre de détention*)
CDSP	Departmental committee for psychiatric treatment (*Commission départementale des soins psychiatriques*)
ECHR	European Convention on Human Rights
CEF	Young offenders' institution (*Centre éducatif fermé*)
CEL	Electronic liaison register (*Cahier électronique de liaison*)
CESEDA	Code for Entry and Residence of Foreigners and Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*)
CFG	School leaving certificate (*Certificat de formation générale*)
CGLPL	Contrôleur général des lieux de privation de liberté
CHG	General Hospital (*Centre hospitalier général*)
CHS	Psychiatric hospital (*Centre hospitalier spécialisé*)

CICI	Interministerial Committee for the Management of Immigration (*Comité interministériel de contrôle de l'immigration*)
CLAN	Food and nutrition liaison committee (*Comité de liaison alimentation et nutrition*)
CLIN	Committee for fighting against hospital-acquired infections (*Comité de lutte contre les infections nosocomiales*)
CLSI	Local IT security correspondent (*Correspondant local de sécurité informatique*)
CME	Public health institution medical committee (*Commission médicale d'établissement*)
CMP	Mental health centre (*Centre médico-psychologique*)
CMUC	Supplementary Universal health care coverage (*Couverture maladie universelle complémentaire*)
CNE	National Assessment Centre (*Centre national d'évaluation*)
CNIL	French Data Protection Authority (*Commission nationale de l'informatique et des libertés*)
CNSA	French national solidarity fund for the autonomy of elderly and disabled people (*Caisse nationale de solidarité pour l'autonomie*)
CP	Prison with sections incorporating different kinds of prison regime (*Centre pénitentiaire*)
CPA	Reduced sentencing training prison (*Centre pour peines aménagées*)
CPC	Criminal sentence enforcement in the community (*Contrainte pénale communautaire*)
CPIP	Prison rehabilitation and probation counsellor (*Conseiller pénitentiaire d'insertion et de probation*)
CPP	Code of criminal procedure (*Code de procédure pénale*)
CPT	Committee for the Prevention of Torture (Council of Europe)
CPU	Single multidisciplinary committee (*Commission pluridisciplinaire unique*)
CRAM	State regional health insurance office (*Caisse régionale d'assurance maladie*) (recently changed to CARSAT)
CRPC	Appearance in court after prior admission of guilt (*Comparution sur reconnaissance préalable de culpabilité*)
CRUQPEC	Committee for relations with users of health institutions and quality of health care (*Commission des relations avec les usagers et de la qualité de la prise en charge*)
CSAPA	Centre for the Treatment, Support, Prevention and Study of Addictions (*Centre de soins de prévention et d'accompagnement en addictologie*)
CSL	Open Prison (*Centre de semi-liberté*)
CSMJS	Secure socio-medical-jurisprudence centre *(Centre socio médico judiciaire de sécurité*)
CSP	Public Health Code (*Code de la santé publique*)
CRA	Detention centre for illegal immigrants (*Centre de rétention administrative*)
DAP	Prisons administration department (*Direction de l'administration pénitentiaire*)
DAVC	Diagnosis for criminological purposes (*Diagnostic à visée criminologique*)
DGGN	Central administration of the French national gendarmerie (*Direction générale de la gendarmerie nationale*)
DGPN	Central administration of the French national police force (*Direction générale de la police nationale*)
DGOS	Central health administration for the provision of health care (*Direction générale de l'offre de soins*)
DGS	Central health administration (*Direction générale de la santé*)
DISP	Interregional Department of Prison Services (*Direction interrégionale des services pénitentiaires*)
DPS	High-security prisoner (*Détenu particulièrement signalé*)
DPU	Emergency Allocation of Protective Clothing and Blankets (*Dispositif de protection d'urgence*)
DSM	Diagnostic and Statistical Manual of Mental Disorders (current edition DSM-5)

DSPIP	Department of prison services for rehabilitation and probation (*Direction des services pénitentiaires d'insertion et de probation*)
ELOI	Software application programme for the management of files on foreigners removed from the country (*Logiciel de gestion de l'éloignement*)
EPM	Prison for minors (*Établissement pénitentiaire pour mineurs*)
EPSM	Public mental health institution (*Etablissement public de santé mentale*)
EPSNF	National public health institution at the remand prison of Fresnes (*Établissement public de santé national de Fresnes*)
ERIS	Regional emergency response and security teams for dealing with incidents in prisons (*Equipes régionales d'intervention et de sécurité*)
FAED	French national fingerprints database (*Fichier automatisé des empreintes digitales*)
FASM	Federation in support of mental health (*Fédération d'aide à la santé mentale*) (Croix marine)
FHF	French Federation of Hospitals (*Fédération hospitalière de France*)
FNAEG	French national DNA database (*Fichier national automatisé des empreintes génétiques*)
FNAPSY	French National Federation of Psychiatric Patients' Associations (*Fédération nationale des associations d'usagers en psychiatrie*)
FIJAIS	French national database of sexual offenders (*Fichier judiciaire automatisé des auteurs d'infractions sexuelles*)
FNARS	National Federation of Associations for Reception and Rehabilitation (*Fédération nationale des associations d'accueil et de réinsertion sociale*)
GAV	Police custody (*Garde à vue*)
GIA	Asylum Information Group (*Groupe d'information asile*)
GIDE	Computerised prisoner management (*Gestion informatisée des détenus*, software application)
HAS	Independent scientific public authority contributing to regulation of the quality of the health system (*Haute autorité de santé*)
HDT	Hospitalisation at the request of a third party (*Hospitalisation à la demande d'un tiers*, has now become ASPDRE)
HL	Free, i.e. voluntary hospitalisation (*Hospitalisation libre*)
HO	Hospitalisation by court order (*Hospitalisation d'office*, has now become ASPDT)
HSC	Compulsory Hospitalisation without Consent (*Hospitalisation sans consentement*)
IDE	Qualified State-registered nurse (*Infirmier diplômé d'Etat*)
IGA	General Inspectorate of the French Administration (*Inspection générale de l'administration*)
IGAS	General Inspectorate of Social Affairs (*Inspection générale des affaires sociales*)
IGPJJ	General inspectorate of the judicial youth protection service (*Inspection générale de la protection judiciaire de la jeunesse*)
IGPN	General Inspectorate of the French national police force (*Inspection générale de la police nationale*)
IGSJ	General inspectorate of legal services (*Inspection générale des services judiciaires*)
IGSP	General inspectorate of prison services (*Inspection générale des services pénitentiaires*)
ILE	Breach of the law on foreigners (*Infraction à la législation sur les étrangers*)
ILS	Breach of the law on drugs (*Infraction à la législation sur les stupéfiants*)
IPM	Public and manifest drunkenness (*Ivresse publique manifeste*)
IPPP	Psychiatric infirmary of the Paris police headquarters (*Infirmerie psychiatrique de la préfecture de police*)
ITT	Temporary unfitness for work (*Incapacité temporaire de travail*)
JAP	Judge responsible for the execution of sentences (*Juge de l'application des peines*)
JE	Juvenile court judge (*Juge des enfants*)
JI	Investigating judge (*Juge d'instruction*)

JLD	Liberty and custody judge (*Juge des libertés et de la detention*)
LC	Release on parole (*Libération conditionnelle*)
LRA	Detention facility for illegal immigrants (*Local de rétention administrative*)
LRP	Software application programme for the drafting of procedures (*Logiciel de rédaction des procédures*) (PN: police; GN: gendarmerie)
MA	Remand prison (*Maison d'arrêt*)
MAF	Women's remand prison (*Maison d'arrêt "femmes")*
MAH	Men's remand prison (*Maison d'arrêt "hommes"*)
MC	Long-stay prison (*Maison centrale*)
MCI	Placement in a seclusion room (*Mise en chambre d'isolement*)
MDPH	Departmental centre for disabled people (*Maison départementale des personnes handicapées*)
MILDT	Interdepartmental Mission for the Fight against Drugs and Drug Addiction (*Mission interministérielle de lutte contre la drogue et la toxicomanie*)
OFII	French agency in charge of migration and welcoming foreign people (*Office français de l'immigration et de l'intégration*)
OFPRA	French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*)
OIP	OIP international prisons watchdog (French section) (*Observatoire international des prisons, section française*)
OMP	Member of the State Prosecutor's Office (*Officier du ministère public*)
OPJ	Senior law-enforcement officer (*Officier de police judiciaire*)
OQTF	Obligation to leave French territory (*Obligation de quitter le territoire français*)
PAF	Border police (*Police aux frontières*)
PCC	Central control post (*Poste central de contrôle*)
PCI	Central information post (*Poste central d'informations*)
PEP	"Sentence enforcement programme" (*Parcours d'exécution de la peine*) as well as Main Entrance Door in prisons (*Porte d'entrée principale*)
PIC	Information and control post (*Poste d'information et de contrôle*)
PP	Police headquarters (*Préfecture de police*)
PJJ	Judicial youth protection service (*Protection judiciaire de la jeunesse*)
PPP	Public-Private Partnership
PSAP	Simplified reduced sentencing procedure (*Procédure simplifiée d'aménagement de peine*)
PSE	Electronic tagging (*Placement sous surveillance électronique*)
PTI	Alarm system for isolated workers (*Protection du travailleur isolé*)
QA	New arrivals wing (*Quartier "arrivants"*)
QCP	Short sentences wing (*Quartier "courtes peines"*)
QD	Punishment wing (*Quartier disciplinaire*)
QNC	"New concept" wing (*Quartier "nouveau concept"*)
QI	Solitary Confinement Wing (*Quartier d'isolement*)
QPA	Wing for reduced sentences (*Quartier pour peines aménagées*)
QSL	Open wing (*Quartier de semi-liberté*)
RIEP	Industrial management of penal institutions (*Régie industrielle des établissements penitentiaries*)
RLE	Local Teaching Manager (R*esponsable local de l'enseignement*)
EPR	European Prison Rules
RPS	Additional remission (*Réduction de peine supplémentaire*)
SEFIP	End-of-sentence electronic tagging (*Surveillance électronique "fin de peine"*)
SEP	Prisons employment service (*Service de l'emploi pénitentiaire*)
SL	Partial release (*Semi-liberté*)
SMPR	Regional Mental Health Department for Prisons (*Service médico-psychologique régional*)

SMR	Minimum rate of pay (*Seuil minimum de rémunération*)
SPH	Hospital Psychiatrists' Trade Union (*Syndicat des psychiatres hospitaliers*)
SPF	Trade Union of Psychiatrists of France (*Syndicat des psychiatres de France*)
SPIP	Prison service for rehabilitation and probation (*Service pénitentiaire d'insertion et de probation*)
SPT	United Nations Subcommittee on Prevention of Torture
SROS	Regional plan for the organisation of health (*Schéma régional d'organisation sanitaire*)
SSAE	Social service for the assistance of migrants (*Service social d'aide aux migrants*)
STIC	Database of records of offences (*Système de traitement des infractions constatées*)
TA	Administrative court (*Tribunal administratif*)
TAJ	Processing of criminal records (*Traitement des antécédents judiciaires*)
TAP	Sentence execution court (*Tribunal de l'application des peines*)
TGI	Court of first instance in civil and criminal matters (*Tribunal de grande instance*)
TOC	Obsessive behavioural disorder (*Trouble obsessionnel du comportement*)
UCSA	Prison medical consultation and outpatient treatment unit (*Unité de consultations et de soins ambulatoires*)
UFRAMA	French National Union of Regional Federations of Associations of Accommodation Centres (*Union nationale des fédérations régionales des associations de maison d'accueil*)
UHSA	Specially-equipped hospitalisation unit (*Unité d'hospitalisation spécialement aménagée*)
UHSI	Interregional Secure Hospital Unit (*Unité hospitalière sécurisée interrégionale*)
ULSD	Long-term treatment unit (*Unité de soins de longue durée*)
UMD	Unit for difficult psychiatric patients (*Unité pour malades difficiles*)
UMJ	Medical Jurisprudence Unit (*Unité médico-judiciaire*)
UNAFAM	National Association of friends and families of (mental health) patients (*Union nationale des amis et familles de maladies*)
UNAPEI	National Association of families and friends of mentally handicapped people (*Union nationale de parents et amis de personnes handicapées mentales*)
USIP	Psychiatric intensive treatment unit (*Unité pour soins intensifs en psychiatrie*)
VAE	Validation of knowledge acquired through experience (*Validation des acquis par l'expérience*)
HCV	Hepatitis C virus
HIV	Human immunodeficiency virus
ZA	Waiting area (*Zone d'attente*)
ZSP	Priority security zone (*Zone de sécurité prioritaire*)

Foreword

At the end of an interview given at close of his term of office, Jean-Marie Delarue mentioned the situation of a prisoner, Claude, who was sent to the punishment wing on 23rd December, where he committed suicide on the 24th: "The visit by the inspector of prisons having manifestly been used to inflict a punishment that was out of all proportion upon a man who must have caused annoyance. A disciplinary investigation is underway. As far as I am concerned, this case is not and shall never be finished"[1]. This affair moved me deeply. It confirmed the importance of the responsibility entrusted to me, as the new *Contrôleure générale des lieux de privation de liberté*, it henceforth being incumbent upon me to ensure that this case is followed up in the necessary manner, and not forgotten and allowed to sink into obscurity.

In application of article 13, paragraph 5 of the Constitution[2], my candidature for appointment as the new *Contrôleure générale des lieux de privation de liberté* was put forward by the President of the French Republic and submitted to the Presidents of the French National Assembly and Senate. After favourable votes from the respective Law Commissions of the National Assembly and Senate, the French President decided upon my appointment to the position of *Contrôleur général des lieux de privation de liberté* at the Cabinet meeting of 16th July 2014, on a proposal from the Minister of Justice (*garde des sceaux*).

Before my appointment, this procedure thus led me to set out the lines of policy that I intended to defend before the Law Commissions of the National Assembly and the Senate.

The Law Commission of the National Assembly organised a questionnaire, at the initiative of its president, which was made public prior to this hearing; an essential procedure for openness that corresponds to one of the major lines of policy pursued during my predecessor's term of office. It appears in an annexe to this report.

In this foreword, I wish to emphasise at the outset the tremendous work accomplished by Jean-Marie Delarue. Furthermore, at the time of taking up my duties, I am moved in the first place by a deep feeling of respect.

As an introduction to this annual report, it is incumbent upon me to give an **assessment of the year 2014**, a large part of which was completed under Jean-Marie Delarue's authority.

The work that has been undertaken since the latter's appointment in 2008 is considerable. Thanks to Jean-Marie Delarue, an institution of a new kind has taken its place in our country's institutional landscape. This institution, which belongs to the category of independent government agencies with specific regulatory powers, has progressively brought issues into public debate that were hitherto circumscribed to a limited number of circles, concerning those subjected to deprivation of liberty, as well as professionals and activists. Jean-Marie Delarue thus succeeded in giving real meaning to the independence essential to the *Contrôleur Général*'s action, by setting the expected level of fundamental requirements.

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[1] *Libération, 6th June 2014:* "L'humanité mise aux arrêts"

[2] *"An Institutional Act shall determine the posts or positions, other than those mentioned in the third paragraph, concerning which, on account of their importance in the guarantee of the rights and freedoms or the economic and social life of the Nation, the power of appointment of the President of the Republic shall be exercised after public consultation with the relevant standing committee in each assembly. The President of the Republic may not make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees. Statutes shall determine the relevant standing committees according to the posts or positions concerned."*

A network of stakeholders has progressively formed around the *Contrôleur général*, themselves taking up the questions set out in the form of public opinions and recommendations.

Considerable achievements have been made. Great responsibility is thus placed upon his successor, since in this regard nothing can ever be taken for granted. For this reason, my first priority is maintenance and consolidation of the continuous presence of the *Contrôle Général*'s teams within all places of deprivation of liberty.

On taking up my duties, I wanted to meet all the actors with which, at Jean-Marie Delarue's instigation, the *Contrôle Général* has established relations of mutual knowledge and trust. I thus immediately reaffirmed our relations with the union organisations, major associations and professional representative bodies which, in one capacity or another, are concerned by the deprivation of liberty. This dialogue with all the stakeholders in the deprivation of liberty in our country constitutes an essential element of the *Contrôle Général*'s assigned preventive mission.

Pursuant to article 1 of the Act of 30th October 2007, my term of office will come to an end on 17th July 2020. In the course of this period, we need to construct a **second phase for the *Contrôle Général***, following on from the stage of its creation and establishment. This second stage needs to comprise two characteristics:

- consolidation of existing achievements;
- development of the CGLPL's role

However, before setting out these objectives, it appears necessary to recall the nature of the *Contrôle général des lieux de privation de liberté*, its role and its place within the institutions of the French Republic. In assessing his term of office, Jean Marie Delarue pointed out three key strengths of the institution:

- **independence** with regard to the authorities, as well as with regard to associations and union organisations;
- **intransigence** in its findings as well as in its recommendations, whenever fundamental rights are concerned.
- **openness**, insofar as every report is intended to be made public, apart from exceptions provided for by law;

These three key strengths need to serve as a guide for our action, both in the long term, and on a daily basis.

Our mission is to ensure respect for the fundamental rights of persons deprived of liberty and to prevent violations thereof; this mission is entrusted to us by both national and international law, by means of several fundamental texts which are binding upon France, the Convention of the United Nations against Torture and the Optional Protocol thereof, the European Convention for the Protection of Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, as well as the Charter of Fundamental Rights of the European Union. These conventions and treaties contain provisions which should serve us as a reference and guide, although fundamental rights are not limited to those set out in the texts. Moreover, in the first months after taking up my duties, I met with the highest authorities at Strasbourg, which contribute to ensuring compliance with these rights, in order to inform them of my will to continue the close cooperation established in the course of the first *Contrôleur Général*'s term of office. I shall continue these meetings throughout the year.

This mission, as I stated at the time of my hearings before the parliamentary assemblies, is an honour to democracy, to our democracy. It makes it possible to place values at the heart of our Republic, which should be shared by the public at large.

The Act of 26th May 2014 very considerably improved the conditions of our action, without changing the overall management thereof, by making it possible to give greater scope to our duties. This Parliamentary initiative, originally put forward by Mrs Catherine Tasca, Member of the French Senate, enables progress in three major areas of the CGLPL's activity: the creation of an offence of obstruction of the *Contrôleur Général*'s action places an essential lever at our disposal; access to medical information and more generally reduction of secrecy that might be raised against the exercise of the *Contrôleur Général*'s duties; and finally, extension of the *Contrôleur Général*'s field of competence to the control of deportation measures.

Here I would like to mention a few **working orientations** which have provided inspiration in these first months after taking up my duties. Certainly, it is easier to set out priorities than to implement them. Moreover, it may appear hazardous to immediately publish intentions. I am taking this risk because I believe it to be an essential element of the preventive mission assigned to the *Contrôleur Général* and that those who may be led to refer cases to the authority or face up to an inspection will thus be able to determine the precise aims thereof.

My intention here is not to set out a detailed programme for the next six years, but rather to provide a number of orientations arising from interviews which I have held with a certain number of actors, union organisations, associations, members of Parliament and certain representatives of the executive.

The first of these orientations is the need to measure up to the very high level of expectations placed upon the *Contrôle Général*, whose work is henceforth well-known, and whose quality of findings and recommendations, as well as independence and intransigence should be maintained. Particular tribute must be paid to Jean Marie Delarue, who succeeded in establishing these two major orientations as the *Contrôle Général*'s trademark.

The CGLPL is still too often considered to be the **prisons inspectorate**. Admittedly, we need to devote our full attention to examining deprivation of liberty arising from prison sentences, and it should be emphasised that the inspection of all prisons, at least once in the course of the previous *Contrôleur Général*'s term of office, constitutes a fundamental step forward. We need to build upon this progress, and continue our controls while paying particular attention to certain points, such as respect for the dignity of persons in all of its forms as well as expression on the part of prisoners. The date of the end of the moratorium on individual cell placement provided a first opportunity to assess Parliament's expectations with regard to the *Contrôle Général*: adopting a position in line with the Opinion of 24th March 2014[3] concerning the use of individual cells in prisons, I asserted the impossibility of renewed retreat in the face of this issue, which is essential for the dignity of prisoners as well as fundamental for the prevention of recidivism.

I am also aware of the important work undertaken in the field of **respect for the rights of persons suffering from mental disorders**. In 2011 and 2013, the legislature made a step forward by introducing control on the part of the ordinary courts, a guarantee of such respect. However, our task is to verify that the rights of these persons, rendered particularly vulnerable by their state of health, are not infringed on a daily basis. As already stated, I want to make this field a **priority orientation** of my term of office. This country has about 360 institutions accommodating persons hospitalised without their consent. We have inspected about a third of them. It is up to us to visit the whole of these institutions by 2020, whatever their legal status, whenever consent on the part of the persons accommodated in them is absent. Important

3 Published in the Journal Officiel *of 23rd April 2014.*

aspects have already been brought to light, through the inspection of fifteen health institutions in the course of the year 2014.

Police Custody, has also undergone far-reaching reforms in recent years, in the first place as a result of the Act of 14th April 2011 and, more recently, the Act of 27th May 2014[4]. It is generally acknowledged that this reform of police custody is the result of the combined impetus arising from the legislation of the European Convention for the Protection of Human Rights and the broadening of control by the Constitutional Council of France by means of preliminary rulings on questions of constitutionality.

Police custody facilities still too often fail to meet minimal conditions for the dignity of persons, as well as for the officials and gendarmes who work in them. We need to extend our controls in this area. Since the implementation of the Act of 27th May 2014, 41 police custody facilities have been inspected, in particular in order to examine the conditions of application of the right to information in criminal proceedings, as results from the transposition of Directive 2012/13/EU of the European Parliament and of the Council of 22nd May 2012.

The situation of minors in places of deprivation of liberty also needs to be a central orientation. My first visit was devoted to a young offenders' institution. I was able to assess the difficulties involved in dealing with juvenile delinquents in this semi-prison environment, as well as the problems faced by inadequately trained or supervised teams.

A further issue is the situation of young people **in health institutions**: this once again poses the question of respect for fundamental rights, with regard to the use of seclusion and the principle of the - purely functional - division between child and adult psychiatry at around fifteen years of age. The inspections conducted in 2014 once again showed situations in which children, and sometimes young children, were hospitalised in adult units, often due to the lack of a sufficient number of places in child psychiatry units. This situation obviously raises serious security problems for children and adolescents.

The rights of foreigners in waiting areas and detention centres come up against numerous uncertainties which, when all is said and done, impair the exercise of their rights, and in the first place, those of asylum seekers. All of the centres have been visited and, here once again, we need to build upon the benefits of these initial visits in order to go into greater depth in our controls. I have met the Commissioner for Human Rights of the Council of Europe on two occasions in order to discuss this issue, following his visit to the Marseille Marignane waiting area in France. In the last quarter of the year 2014, the first missions for the control of forced returns were organised, pursuant to the new competence vested in the *Contrôleur Général* by the Act of 26th May 2014 and in line with the practices of the majority of other national prevention mechanisms within the Council of Europe Member States.

International dimension: finally, the first contacts that I have had the opportunity of making, and my schedule for the coming weeks, show the extent to which the issues we are facing also need to be dealt with from a European and international point of view. Following the Treaty of Lisbon, the Council of the European Union put forward a roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (resolution of 30th November 2009) (incorporated in the Stockholm Programme). The European Union, the Commission and the European Parliament are, in a manner of speaking, writing a draft code of criminal procedure at the level of the twenty-eight Member States, and we need to be actively involved in this debate.

4 The Act of 27th May 2014 continues the movement of extending defence rights to the police investigation stage. In particular, it made a start at giving official status to questioning without arrest.

In 2015, the Committee for the Prevention of Torture of the Council of Europe will conduct its regular visit to France.

In these areas, as one of the only independent national prevention mechanisms, I want the CGLPL to be a driving force. I know that from this point of view we can rely upon support from essential partners. For this reason, with the Association for the Prevention of Torture, a non-governmental organisation that exerts constant and effective pressure for the promotion of the Optional Protocol to the Convention of the United Nations against Torture – which is one of the bases of the CGLPL – in the autumn of 2014 we published a compilation of the whole of the Opinions and Recommendations made public between 2008 and 2014, in French, English and Spanish. These orientations cannot be effectively developed without reflection concerning our methods.

Effectiveness. In this respect, it is important that our recommendations and opinions should lead to concrete results. I was greatly impressed by the procedure implemented following the urgent recommendations concerning the Baumettes prison in Marseille, at the end of which the case was referred to the administrative judge, who gave a clear verdict with regard to the issues of renovation of the latter institution. I want to further increase the closeness of our relations with the Council of State, Court of Cassation and Constitutional Council of France, as well as with the European Court of Human Rights. There are mechanisms enabling us to take third party action: we should make more regular use of them.

Our presence "on the ground" in places of deprivation of liberty throughout France is the strength and heart of the *Contrôle Général*. I wanted to conduct missions immediately upon taking up my appointment. These visits took place in a young offenders' institution (the CEF of Saint Pierre du Mont in the Landes department), in the National public health institution of Fresnes, which moreover houses the centre for secure medical jurisprudence placements, and at the remand prison of Dijon. These direct relations will thus ensure that the special attention to these issues intended under the Optional Protocol of the Convention against Torture – which has today been ratified by more than seventy-five States throughout the world – will become fully effective. Total "immersion" of this kind is alone capable of ensuring effective verification of respect for fundamental rights. At the same time, it is necessary to scrupulously ensure the confidentiality of interviews, both with persons deprived of liberty and with professionals, as provided for under article 21 of the Optional Protocol of the Convention against Torture[5].

The referral of cases constitutes the other foundation of our mission. The right of persons deprived of liberty to write to us in complete confidentiality is a fundamental right which needs to be protected[6]. The Act of 26th May 2014 reinforced this right, by creating an offence of obstruction with regard to any person who might attempt to prevent the accomplishment of the *Contrôle Général*'s missions, and by formally setting out the prohibition and criminal character of any reprisals to which persons might be subjected because of their contacts with the institution.

Still greater light needs to be shed upon the issues that we examine and address.

We need the support and knowledge of the academic world, as well as prominent qualified persons. An expert committee is currently being formed and will be in place at the beginning of 2015. Its intended role is that of a consultative committee, while respecting the

[5] *Article 21 : No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way.*

6 *Confidential information collected by the national preventive mechanism shall be protected. No personal data shall be published without the express consent of the person concerned.*

Contrôle Général's independence. It will include researchers, as well as important outside persons with acknowledged experience in the fields covered.

We also need to communicate. We need to go to further lengths in order to raise awareness within French society of the issues which are our concern. From this point of view, we cannot content ourselves with our Annual Report, and need to explore new means of placing our questions closer to the heart of public debate.

I would like to finish this foreword with a consideration that attracted my attention from the first days of taking up my appointment. In examining the Annual Report for the year 2013, I took particular note, in chapter 3 thereof, of the list of 20 recommendations made during Jean-Marie Delarue's term of office, whose implementation would not have any economic impact. It appears necessary to set them out once again here since, one or several years later, no start has been made in putting any of them in place.

> That the telephones currently installed in penal institutions should enable conversations that are not overheard by all.
>
> That prisoners' letters should only be opened and checked by the post orderly.
>
> That cellular telephones should be authorised in all open prisons.
>
> That the conditions of use of cellular telephones in prison should be rapidly specified by means of a study leading to controlled authorisation thereof.
>
> That all prisoners who so request (directly or through their counsel) should have the right to view the video surveillance recordings of the circumstances for which they are appearing before the disciplinary committee. That in this scenario, these recordings should be retained.
>
> That paragraph V and the final indented line of paragraph VI of article 10 of the prison model rules and regulations should be abrogated and their content, concerning freedom of expression and respect for prisoners' property, should be much more specifically defined, made more flexible and included in the regulatory part (decrees of the French Council of State) of the Code of Criminal Procedure.
>
> That (controlled) access to Internet should be made available in places of deprivation of liberty in which the length of detention is greater than four days (prisons, hospitals, detention centres, waiting areas and, on specific terms, young offenders' institutions). This access should include messaging (also subject to control if necessary).
>
> That use of means of physical restraint in case of removal from prison in order to go to hospital should be drastically reduced; to this end, escorts should only be held responsible in case of escape if the means used were manifestly inappropriate to the prisoner's personality.
>
> That the traceability of placements in seclusion in hospital psychiatric treatment should be ensured by means of an ad hoc register.
>
> That persons in police custody always be informed of the existence of a shower cubicle, if one or several of the latter have been designed, in the police station at the start of their police custody and that they should have access thereto upon request, during periods of rest.
>
> That women retain their brassières in police custody, except in case of special circumstance noted in the police report; glasses should be retained under the same conditions.

That all persons in police custody should receive a paper (and not a plastic) cup in order to be able to quench their thirst.

That the Code for Entry and Residence of Foreigners and Right of Asylum include a provision (section of decrees of the French Council of State) concerning use of exclusion rooms during periods of detention of illegal immigrants and asylum seekers due to be deported. That placements in exclusion rooms be recorded in an ad hoc register.

That associations authorised to provide support for foreign detainees have free access to the area accommodating these foreigners, with the exception of the night service.

That the 20 kg limit fixed for the weight of luggage belonging to persons deported be brought to an end, the person paying any excess charge beyond 30 kg at their own expense if necessary.

That the maximum period of detention of foreigners be brought back down from forty-five to thirty-two days (measure to be taken with trembling: it results from the law).

That the regulatory part (decrees of the French Council of State) of the Code for Entry and Residence of Foreigners and Right of Asylum should contain provisions concerning norms of habitability in waiting areas in which foreigners are held.

That the fast track deportation procedure for foreigners denied admission to French territory be mentioned in the same Code, including in particular the length of time for which it can be implemented. That these operations be recorded in a countersigned official record.

That associations managing young offenders' institutions submit a plan and resources with regard to in-service training of their employees, it being understood that the opening of centres be subject to the condition of the effective presence of a minimum number of qualified tutors.

That norms enforceable upon all young offenders' institutions with regard to disciplinary matters be instituted by the judicial youth protection service.

Far from being exhaustive, these recommendations provide an illustration of possible and necessary changes in favour of greater respect for the rights of persons. I want to recall them here with the stubborn insistence that is the CGLPL's trademark, and with which we will recall them in the future for as long as this proves necessary.

Section 1

Actions taken in 2014 in response to Opinions, Recommendations and Cases taken up by the *Contrôle Général*

> The first part of Section 2 of the 2013 Annual Report recalls (pages 64 *et seq.*) the working methods of the *Contrôleur général des lieux de privation de liberté*: The sending of findings to the head of the institution with a view to securing the latter's observations before drafting and then sending the inspection report, accompanied with recommendations, to the ministers concerned. This method remains, even if it gives rise to waiting time.

The observations made in this part concerning the contents of ministerial responses also remain: in most cases they once again take up remarks set out locally by the inspected institutions.

It is thus hardly surprising that implementation of the twenty measures mentioned in the 2013 Annual Report in the *Why Do You Come So Late?* Section, - measures put forward on various different occasions for rapid implementation, chosen from among numerous others-, has not yet even begun[7].

However, a systematic examination of the measures, recommendations and opinions published in the *Journal Officiel* enables assessment of the slow progress made, taking a certain number of points into account.

1. Actions taken in response to Recommendations and Opinions Published in 2014

1.1 Actions taken in response to the urgent recommendations of 26th March 2014 concerning the children's wing of the remand prison of Villeneuve-lès-Maguelone

After reports of violence between minors were brought to the attention of the *Contrôle Général*, two inspectors went to the site between 17th and 20th February 2014, in order to assess the veracity of this information.

They ascertained that the violence occurring in the children's wing was indeed very serious (24 serious acts of violence registered in the exercise yard between 1st January 2013 and 11th February 2014), placing the imprisoned minors in very serious danger of bodily harm.

[7] *This list is taken up once again in the foreword above, pages 12 et seq.*

In his urgent recommendations, the *Contrôleur Général* demanded in particular that, where the materiality of the facts was established, disciplinary and, if necessary, criminal proceedings should be brought against the persons responsible for the violence, in order to avoid the development of a sense of impunity among the minors.

These various different points are set out in detail in the text that appeared in the *Journal Officiel* on 23rd April 2014.

In response to this urgent recommendation, in a letter of 25th April 2014 the Minister of Justice announced a certain number of immediate and long-term measures, intended to improve the minors' situation: modification of the minors' exercise schedules, completion of work to make the exercise yard secure, putting in place of systems for the physical separation of adults and minors, reflection on the presence of a prison officer in the yard, creation of a specific disciplinary committee for minors in order to speed up the handling of procedures etc. Other actions were put in place in liaison with the National Department for Education and the departments of the Judicial Youth Protection Service, as well as the courts.

However, although the measures recommended by the Minister of Justice are likely to considerably improve the situation, the proceedings of the inquiry conducted by the *Contrôleur Général* are not closed.

The director of the remand prison of Villeneuve-lès-Maguelonne sent his observations to the *Contrôleure générale des lieux de privation de liberté* in a letter of 26th November 2014. He took a number of measures, in particular in liaison with prison officers, whose engagement appears manifest, both with regard to the prevention of violence by putting systems in place (asphalting of the exercise yard in order to make the extraction of stones impossible, better separation between adults and minors, surveillance camera etc.) and effective establishment of the disciplinary measures provided for by the regulations; the service project is currently being drawn up with the judicial youth protection service. The director's local contacts[8] may respond to the report of the *Contrôleur général des lieux de privation de liberté*.

The inquiry report will be made public in the light of the responses made to the observations.

1.2 Actions taken in response to the Opinion of 6th February 2014 concerning the implementation of secure medical jurisprudence centre placements

The secure socio-medical-jurisprudence centre (CSMJS) of Fresnes is the only institution of its kind in France. It was inaugurated on 6th November 2008 and is housed in the premises of the national public health institution at the remand prison of Fresnes (EPSNF). Since 2011, five persons[9] have been placed in the CSMJS in accordance with the provisional emergency placement procedure for breaches of obligations imposed under secure surveillance (article 723-37 of the Code of Criminal Procedure).

> The *Contrôleur général des lieux de privation de liberté* conducted an inquiry in the CSMJS of Fresnes from 9th to 11th October 2013, which gave rise to a report, passed on to the head of the institution, the director of the national

[8] *The public prosecutor at the court of first instance of Montpellier, the territorial director of the judicial youth protection service of the Hérault department, the doctor in charge of the prison health unit and the presiding judge of the court of first instance of Montpellier for the youth court.*

[9] *On 25th February 2014, date of publication of the Opinion concerning secure medical jurisprudence centre placements, four persons had been placed in the CSMJS in the 2011-2013 period. A fifth person was subsequently placed in 2014.*

> public health institution, and an opinion of 6th February 2014, published in the *Journal Officiel* on 25th February 2014.

It is to be recalled that the Act of 25th February 2008 leads to secure medical jurisprudence centre placement (*rétention de sûreté*) of persons condemned to prison sentences of fifteen or more years for very serious crimes, when it is established that they are especially dangerous after having served their sentence.

However, there is another category of persons who may be taken there: persons sentenced by an Assize Court to fifteen or more years of imprisonment for crimes of the same nature as those mentioned above, who have been subject to the court supervision (article 723-29 of the Code of Criminal Procedure), prolonged by secure surveillance, and who have disregarded obligations of the latter (article 723-37).

Since the Act of 2008, supplemented on this point by the Act of 10th March 2010, five persons have been taken to the premises of the socio-medical-jurisprudence centre (CSMJS) of Fresnes as a result of this course of events, the first of whom arrived on 23rd December 2011. This limited number obviously does not stand in the way of questioning the course of events that led them to be taken there.

> All five of the persons placed since 2011 were taken there for breaches of the obligations imposed upon them, in accordance with the procedures provided for under article 723-37, and for disregard of psychiatric treatment obligations in particular.

Apart from the legal questions posed by this new measure (cf. paragraph 9 of the Opinion of 6th February 2014), the *Contrôleur Général* had already begun to question the applicable rules.

Indeed, the intentions of the Act of February 2008 are clear: secure detention (*rétention de sûreté*) takes the form of placement in a secure medical jurisprudence centre in which the person is provided with "medical, social and psychological care intended to enable the measure to be brought to an end". In other words, far from being an end in itself and, therefore, entailing permanent deprivation of liberty, placement in a secure medical jurisprudence centre is an instrument of change intended to put an end to the "dangerous" character of the person.

> However, an initial group of problems was identified by the CGLPL with regard to the definition of the applicable rules. The latter cannot constitute a prison regime (the centre is not a prison) although security measures are, of course, required. Yet, members of prison staff who are present (in an occasional manner, moreover, since there are no permanent inmates) are in practice led to treat the two different sets of rules as being equivalent.

A second group of difficulties was mentioned, which changes the nature and implications of placement in a secure medical jurisprudence centre insofar as the care provided is far from corresponding to the designated objectives of the Act. In the first place, inmates are, as a rule, kept in a state of inactivity: nothing is organised to provide them with any occupation. For example, at the time of inspection there existed no educational projects, professional activities or outdoor activities whatsoever. Only a sports hall and an IT room (with "screened" Internet access) were used. Furthermore, due to the small number of inmates it had not so far been possible to put any medical projects of therapeutic care in place, which are for the most part based upon group therapies. In practice, the persons placed in detention since 2011 did not therefore have the benefit of any mental health care of their own, nor of that implemented for the inmates of Fresnes prison. They were entitled to regular consultations with a psychiatrist (in principle once a week) and nurse visits (once a week), which does not constitute a real treatment programme.

The CGLPL conducted a second visit to the CSMJS from 6th to 10th October 2014. It was then ascertained that no changes had been made either to the organisation or to the premises since the previous visit.

After examination of the situation of the fifth person then placed in the secure medical jurisprudence centre, the *Contrôle Général* had no other option than to renew the observations made in 2013, noting that placement in the secure medical jurisprudence centre was used as a sanction for failure to comply with obligations imposed upon the convicted prisoner within the framework of secure surveillance; it can therefore only once again question the notion of a "special danger" presented by certain persons due to the sole fact of failure to comply with obligations placed upon them.

The CGLPL reasserts that this organisation cannot work and moreover infringes the fundamental rights of persons held in this way. It once again requests that reflection should be undertaken with regard to the justification of this measure, which is not intended to be a punishment in the criminal sense, but is currently applied in order to "sanction" persons who have disregarded obligations set for secure surveillance, who are liable to be placed in this centre for several years.

The report on the inspection conducted in 2014 was passed on to the Minister of Justice as well as to the Minister of Health and Social Affairs on 18th November 2014, in order to allow them to make their observations.

1.3 Actions taken in response to the Opinion of 24th March 2014 concerning the use of individual cells in prisons

As provided for by the Act of 15th June 2000, placement in individual cells on presumption of innocence was supposed to come into effect on 15th June 2003. In fact, application thereof was successively postponed to 2008 and then to 2009. Admittedly, the Prisons Act of 2009 enables prisoners to request transfer to an institution where they can obtain an individual cell if they so desire, but this progress is entirely relative: prisoners have to choose between an individual cell and the maintenance of their family ties, a situation which is completely unjustifiable. The Prisons Act of 2009 had postponed application of the individual cell placement rule to 25th November 2014.

On 1st October 2014, 66,494 prisoners were held in French prisons – of whom 44,700 in remand prisons, a quarter of these being on remand – with a total number of 58,054 places. Prison overcrowding came to an average of 134% in remand prisons, although this level may reach levels as high as 150% or 180%, or even up to 200% in institutions in French overseas departments and territories.

Jean-Marie Delarue issued an Opinion on 24th March 2014, published in the *Journal Officiel* of 23rd April 2014, in which he ruled out the scenario of a new moratorium, deemed inappropriate, while recommending the progressive establishment of individual cell placement over a five-year period, for the benefit of certain prisoners: persons over sixty-five years of age, as well as the sick, disabled and foreigners. He proposed the establishment of a list of eligible types of prisoners by statutory means.

This proposal has not been examined by the authorities in spite of the fact that it would enable individual cell placement, in strict compliance with the principles of the law, to the benefit of certain categories of prisoners, determined by the authorities.

In this respect, the adoption of the Act of 15th August 2014 is to be welcomed, concerning the adaptation of sentences to offenders' individual requirements and consolidation of the effectiveness of penal sanctions, various different provisions of which should reduce the number of persons entering prison: establishment of criminal sentence enforcement outside of prison (*contrainte pénale*), abolition of mandatory sentencing, conditional release, with a compulsory judicial meeting two thirds of the way through the sentence. The latter measure will make it possible to review convicted prisoners' situations and increase the number of discharges: partial release, placements in an open environment, electronic tagging and conditional release[10].

In order to face the situation arising from the expiry of the new five-year moratorium provided for by the Prisons Act of 24th November 2009, the Minister of Justice proposed a governmental amendment of the 2015 Finance Bill, with a view to extending the moratorium until 2018. The president of the Law Commission of the National Assembly dissuaded her from pursuing this proposal.

> At the time of her hearing before the Law Commission of the National Assembly on 13th November 2014, the *Contrôleure générale des lieux de privation de liberté* welcomed certain experiments conducted in a few institutions by means of agreements between State Prosecutor's Offices, the judges responsible for the execution of sentences and the managers of penal institutions. For example, in one institution in the East of France, when a certain level of overcrowding is reached, the public prosecutor at the court of first instance informs the members of the national legal service in the State Prosecutor's Office, and the judges responsible for the execution of sentences, in order to enable any reduced sentencing procedures in progress to be accelerated and, if possible, the short-term postponement of implementation of short sentences.

However, in spite of the value of these practices, she noted that they were dependent upon individuals and therefore fragile. For this reason, she proposed that they be brought into general use and that provision also be made for acceleration of the discharge of convicted prisoners nearing the end of their sentences: those with the shortest amount of time remaining to be served would have the benefit of reduced sentencing rather than simple release[11]. This acceleration of discharge would enable considerable reduction of prison overcrowding.

> Today, such regulation of the prison population is one of the only means of reducing prison overcrowding and therefore progressively securing placement in individual cells, as provided for by law.

Finally, the *Contrôleure générale* recalled the need to pursue two objectives which are entirely compatible: the modernisation of France's prisons and the refusal of an endless policy of expansion of the prison population.

At the same time, the Prime Minister entrusted Dominique Raimbourg, Member of the French National Assembly, to draft a report on this issue. This report was made public on 30th November 2014 and comprised 24 recommendations, of which one was concerned with placement of "initial", elderly and handicapped prisoners in individual cells, with a new moratorium until 2022, including two intermediate stages: June 2016 and June 2019, at which dates the government is to present reports to Parliament on the state of implementation of individual cell placement, with provision of financial and budgetary information concerning the

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[10] *Only 7% of persons eligible for conditional release currently have the benefit of this system.*

[11] *In his report of 2013, the deputy Dominique Raimbourg pointed out that, on 1st October 2012, 2,557 convicted prisoners – that is to say 10% of the convicted prisoners held in remand prisons – had no more than one month left to serve.*

execution of prison real estate programmes and the impact thereof as far as compliance with the objective of individual cell placement is concerned.

It proposed a minor legislative amendment of the texts in order to facilitate reduced sentencing on the part of the judge responsible for the execution of sentences before imprisonment and, more generally, restriction of immediate summary trials, as well as the promotion of community service sentences (including when the defendant is absent from their trial but represented by a lawyer). It recommended that this plan should be exercised under the twofold control of Parliament and the CGLPL.

> The deputies finally voted in favour of an amendment to the Supplementary Budget Bill (PLFR / *projet de loi de finances rectificative*) for 2014, validating the principle of a new moratorium until the end of 2019.

The *Contrôle Général* will pay close attention to these developments, persuaded that prison overcrowding and the consequences thereof, as broadly set out in its various different Opinions, are entirely in contradiction with prisoners' rights.

The CGLPL once again recalls the recommendations of the statutory and legislative, and national and international texts on the issue of individual cell placement.

1.4 Actions taken in response to the Opinion of 9th May 2014 concerning the situation of Foreign Prisoners

Following the referral of cases concerning the situation of prisoners of Somalian nationality, the *Contrôleur général des lieux de privation de liberté* conducted an inquiry in several prisons in Île-de-France. A second inquiry into the procedures for handling prisoners of foreign nationality was conducted in the remand prison of Villepinte.

> The *Contrôleur Général* published an Opinion in the *Journal Officiel* of 3rd June 2014 concerning the situation of foreign prisoners.

On 1st January 2014, 18.5% of the 77,883 persons imprisoned were of foreign nationality.

The disproportionate number of foreigners in prison, as compared with the number of foreigners in the French population (6%), may be explained by three factors: the existence of offences concerning entry and residence of foreigners, institutional practices arising from the law and courts, and the fact that a large proportion of the foreign population is composed of persons belonging to the most disadvantaged social categories, which are over-represented in prison.

In its Opinion of 9th May 2014, the CGLPL set out the special difficulties encountered by foreign prisoners for which actions needed to be undertaken:

- lack of command of the French language which constitutes a handicap, making it impossible to be informed of the rights to which one is entitled; absence of organisation of a regular presence of professional interpreters;
- right to respect for private and family life organised under conditions different from those provided for French prisoners: very great difficulty in access to telephone for reasons of cost and different time zones, content of letters drafted in a foreign language which may lead to them not being sent due to absence of translation, visits rarely granted in view of language difficulties and distance of visitors;
- right to work in prison not always respected (foreigners whose residence papers are not in order are often refused this right, since administrative authorisations and definitive social security numbers are sometimes demanded, despite the fact that

prison work escapes from ordinary employment law and a temporary social security number is sufficient);

- the conduct of formalities concerning foreigners' residency rights is in most cases restricted on numerous grounds: institutions lacking any "legal information and advice access points" or ill-equipped due to lack of interpreters; difficulty of filing asylum applications which may be subject to processing by means of "priority" procedure, refusal of provisional grants of asylum on the part of prefectures, on the grounds of serious threat to public order, and failure to implement the provisions of the circular of 25th March 2013[12];
- greater difficulty in obtaining reduced sentencing: the absence of a residence permit in practice means that foreigners are deprived of the right to seek employment contracts or training, or to claim social security benefits, and that they therefore cannot meet the conditions enabling partial or conditional release placements; foreigners may apply to serve their sentence in an institution of their country of origin, although this is only possible where bilateral agreements exist authorising this type of transfer.

On the basis of these findings, the *Contrôleur général des lieux de privation de liberté* stressed the need to consider special measures for foreign prisoners, in order to ensure implementation of the principle of equality in prison.

> The conclusions of this Opinion were mentioned in an interview of 2nd September 2014 between the Minister of the Interior and the *Contrôleure générale des lieux de privation de liberté*. In particular, the *Contrôleure Générale* stressed that prefectures that have not signed an agreement with the prison services, as provided for by the circular of 25th March 2013 (cf. *supra*), should take the necessary measures.

She recalled that, notwithstanding the signature and implementation of such agreements, the definition of "danger of disturbance of public order" needs to be interpreted in accordance with its letter and spirit, in order to ensure respect for foreign prisoners' fundamental rights. Indeed, prefectures often tend to interpret this definition in a very wide manner, therefore refusing to issue or renew residence permits.

> This Opinion, whose findings unfortunately remain entirely pertinent, has not received any response nor been followed up by any concrete action to date.

[12] *Circular of 25th March 2013 concerning procedures for initial issue and renewal of residence permits for persons of foreign nationality deprived of liberty.*

2. Actions taken in response to less recent Recommendations and Opinions

2.1 Actions taken in response to the urgent recommendations of 17th October 2013 concerning the young offenders' institutions of Hendaye and Pionsat, and the recommendations of 1st December 2010, concerning the young offenders' institutions of Beauvais, Sainte-Gauburge, Fragny and L'Hôpital-le-Grand

The observations concerning the two young offenders' institutions of Hendaye and Pionsat expressed in the Annual Report for 2013 remain entirely relevant. These two institutions were inspected in September and August 2013 respectively.

> The **CEF of Hendaye** is not to be moved in spite of the risks to which minors are exposed, since they have to use a dangerous road prohibited to pedestrians and a prohibited railway crossing.

The **CEF of Pionsat** was characterised by the complete absence of any educational project. In her letter of 8th November 2013, the Minister of Justice announced that the procedure for bringing the institution's educational project back up to standard would be completed at the end of the first quarter of 2014, before being validated by the administration of the judicial youth protection service, which would also examine the pedagogical and educational content of the measures put in place for minors and, on the other hand, she also stated that in-service training would be strengthened for supervisory staff, before it conducted an inspection of the operation of the institution.

> The four young offenders' institutions of **Beauvais**, **Sainte-Gauburge**, **Fragny** and **L'Hôpital-le-Grand**, with regard to which recommendations were made on 1st December 2010, were inspected for a second time: Beauvais in November 2011, Sainte-Gauburge in January 2014, Fragny and L'Hôpital-Le-Grand in March 2014.

After inspection, the case of the young offenders' institution of Frangy was referred to the Minister of Justice on 29th April 2014, since serious breaches were once again ascertained. The letter recommended that an inspection should be conducted immediately by the judicial youth protection service. The Judicial Youth Protection Service conducted an inspection on 5th June 2014. According to the information received, the prefect of Saône-et-Loire issued an order to close the young offenders' institution of Fragny for a period of three months as of 3rd October 2014.

The *Contrôleur général des lieux de privation de liberté* raised questions with regard to the number of closures of young offenders' institutions in the course of the year.

> The visits to young offenders' institutions conducted in the course of the year 2014[13] have led to the ascertainment of recurrent difficulties: the

[13] *Sainte-Gauburge (Orne) in January; Fragny (Saône-et-Loire) and Hôpital-le-Grand (Loire) in March: Epinay-sur-Seine (Seine-Saint-Denis) in April; Gévezé (Ille-et-Vilaine) in June; Saint-Denis-le-Thiboult (Seine-Maritime) in August; Saint-Pierre-du-Mont (Landes) in September; La Chapelle Saint-Mesmin (Loiret) at the end of September and beginning of October; and Savigny-sur-Orge (Essone) in December.*

> frequent absence of any educational project, compulsory education being merely theoretical since minors are able to avoid it; management of young people's discipline still leaves great room for improvement; the training of tutors remains inadequate; and the number of trained tutors is also inadequate overall.

Certain young offenders' institutions are satisfactory, while others function with difficulty and some experience situations that are barely acceptable and can frequently lead to the closing of institutions.

2.2 Actions taken in response to the Opinion of 8th August 2013 concerning young children in prison and their imprisoned mothers

The *Contrôleur Général* published an Opinion in the *Journal Officiel* of 3rd September 2013 concerning young children in prison and their imprisoned mothers. This Opinion was passed on to the Minister of Justice in order for her to set out observations. The *Contrôleur général des lieux de privation de liberté* has not received any response to date.

> When parents are deprived of liberty, the need arises to choose between the inherently unsatisfactory alternatives of either separating them from their children, or including the latter in the deprivation of liberty (until 18 months of age), in order to avoid the effects of separation.

Because a positive response cannot be given to these alternatives, in its Annual Report for 2010, the CGLPL expressed a desire for reflection to begin in order to ensure that mothers imprisoned with children should either be granted reduced sentencing, have the benefit of deferment of their sentences on grounds of maternity or be granted release on parole.

Members of the National Assembly undertook this reflection, which was manifested in the filing and adoption of amendments, broadly inspired by the *Contrôle Général*'s recommendations, in Act no. 2014-896 of 15th August 2014 concerning the adaptation of sentences to offenders' individual requirements and consolidation of the effectiveness of penal sanctions. Article 25 of this Act amended two articles of the Code of Criminal Procedure (CPP):

- article 708-1 of the CPP is henceforth worded as follows: "When a prison sentence is to be implemented concerning a woman who is more than 12 weeks' pregnant, the public prosecutor at the court of first instance or the judge responsible for the execution of sentences shall endeavour by every means either to postpone the implementation thereof, or to ensure that the sentence is served in an open environment.";
- for its part, article 720-1 of the CPP[14] was supplemented by a paragraph worded as follows: "The threshold of two years provided for under the 1st paragraph is increased to four years when suspension for family reasons applies either to a convicted person exercising parental authority over a child of less than ten years of age having their normal place of residence with this parent, or to a woman who is over 12 weeks pregnant.";

[14] *Article 720-1 of the Code of criminal procedure: "In misdemeanour cases, where the person sentenced has no more than two years' imprisonment left to serve and in the event of a serious problem of a medical, familial, professional or social nature, this sentence may be suspended or divided into fractions for a length of time not in excess of four years, none of these fractions being shorter than two days [...]".*

- finally, the last paragraph of article 729-3 of the CPP is supplemented by the words[15]: "or when it concerns a woman who is over 12 weeks pregnant".

> Although the *Contrôle Général* naturally welcomes the adoption of these new provisions, it will be certain to check the effectiveness of their practical implementation, that is to say to verify whether everything is done in order to avoid the imprisonment of women with children.

2.3 Opinion of 13th June 2013 concerning the possession of personal documents by prisoners and their access to documents that can be made available for discovery and inspection

The *Contrôle Général* published an Opinion in the *Journal Officiel* of 11th July 2013, concerning the possession of personal documents by prisoners and their access to documents that can be made available for discovery and inspection.

Article 42 of the Prisons Act provides that "every prisoner has the right to confidentiality of their personal documents. These documents may be entrusted to the registry of the institution, which places them at the disposal of the person concerned. Documents mentioning the grounds for the committal of prisoners are compulsorily handed over to the registry on their arrival".

The regime established by article 42 and concrete practice thereof do not adequately guarantee respect for these rights, as shown by the evidence given by numerous prisoners as well as registry staff to inspectors as, moreover, the latter were often able to ascertain this in the course of their visits.

Indeed, in the facts of prison life, misplaced disclosure of personal information, and of the grounds for committal to prison, is a reality which can lead to insults, threats and acts of violence. Guaranteeing effective protection of personal documents is not merely a question of protection of privacy, it is also, in a very concrete manner, a question of protection from physical and psychological duress.

Conversely, this regime, which was intended to protect prisoners and their rights, has had the perverse effect of being a source of difficulties for captives wishing to have access to documents concerning them (in numerous institutions the consultation procedures are at best unsatisfactory and at worst non-existent).

For this reason, in his Opinion of 13th June 2013, the *Contrôleur général des lieux de privation de liberté* recommended an amendment of article 42 of the Prisons Act of 24th November 2009 and a review of the current regime for possession of personal documents, from the double point of view of possession and discovery and inspection thereof. In particular, he recommended that small lockers, equipped with locks, be made available to each prisoner in cells.

> It can only be noted that no positive improvement can be ascertained from the inspections conducted in 2014, quite the contrary: numerous letters sent by prisoners to the *Contrôle Général* note lack of respect for the confidentiality of information contained in these personal documents and the difficulty of gaining free access to consultation and reproduction thereof, and moreover of gaining free access to the rules applicable to daily life in prison (rules of institutions and national rules).

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[15] *The previous version of article 729-3 of the CPP was drafted as follows: "Parole may be granted to any person sentenced to a prison term of four years or less, or for whom the amount of time left to serve is of four years or less, where this person has parental rights over a child of less than ten years, who habitually lives with this parent [...]".*

2.4 Actions taken in response to the Opinion of 17th January 2013 concerning unjustified stays in Units for Difficult Psychiatric Patients

The *Contrôleur général des lieux de privation de liberté* published and Opinion in the *Journal Officiel* of 5th February 2013 concerning unjustified stays in Units for Difficult Psychiatric Patients (UMD).

Persons who "present a danger for other persons of such a nature that the necessary treatment, surveillance and security measures can only be implemented in a specific unit" may be committed to specialised psychiatric facilities known as units for difficult psychiatric patients (UMD). Committal to a UMD is made by decision of a representative of the State, i.e. by decision of the prefect.

Discharge is also decided upon by prefectural order, after an opinion has been issued by the medical treatment committee of the UMD, considering the patient to no longer represent a danger requiring their maintenance in a UMD. In most cases, it is decided that the patient is to return to a traditional psychiatric ward in their institution of origin; the regulations lay down a deadline of twenty days for this purpose.

Yet, the CGLPL has ascertained that patients remain in UMDs even when the medical treatment committee and the prefect have pronounced a decision in favour of their discharge. Apart from the fact that, due to spontaneous apprehensiveness, the institutions of origin are reluctant to readmit patients who have represented a danger for staff, it is above all the vagueness of the texts that makes it impossible to determine which authority is in a position to impose the institution that is to cater for a patient discharged from a UMD, thus leaving room for negotiations of uncertain results. In the meantime, the patient is obliged to remain in the UMD.

The *Contrôleur Général* recommended that the authorities take appropriate measures by means of a circular:

- on the one hand, recalling that prefectural orders bringing stays in UMDs to an end shall at the same time be followed by an order on the part of the prefect of the French department in which the institution of origin is located, readmitting the patient to the latter; these orders naturally being binding upon the institution, which is liable towards the patient and to the latter's close relations for any failure to act;
- on the other hand, defining a procedure enabling the regional health agency concerned (or the central administration in case of several different agencies), to which this point is duly referred in good time by the management of the UMD, to fulfil the task of immediately determining, in case of doubt, the institution to which the patient is to return, the essential criterion to be followed in this regard being the capacity for rehabilitation of the patient, in particular with regard to their family ties, the prefect of the department which has thus been determined then immediately issuing the required order.

This Opinion, which was passed on to the Minister of Health and Social Affairs on 17th January 2013, has not received any response, either on 5th February 2013, its date of publication, or in the course of the year 2014.

Independently of the fact that article L.3222-3 of the Public Health Code (CSP), on which the creation of UMDs was based, has been abrogated by the Act of 27th September 2013[16], the

[16] *Act no. 2013-869 of 27th September 2013 for the amendment of certain provisions arising from Act no. 2011-803 of 5th July 2011 concerning the rights and protection of persons subject to psychiatric treatment and the practical details of their care and treatment (Journal Officiel, 29th September).*

UMDs remain and are henceforth governed by the provisions of ordinary law concerning treatment without consent. The interministerial directive (*instruction interministérielle*) of 15th September 2014[17], only answers the demands set out by the CGLPL in a very partial manner.

Indeed, the directive provides that: "as far as regulatory provisions with regard to UMDs (articles R. 3222-3 to R. 3222-8 of the CSP) are concerned, they remain for the most part applicable but may rapidly change in the short-term. However, the Council of State case law (CE, 13th March 2013, SCP PEIGNOT, no. 354976) henceforth has to be taken into consideration, according to which: "The representative of the State for the French department in which a person is hospitalised by court order is competent to decide alone, by virtue of their special police powers, upon the transfer of this person to another institution, even if the latter is located in another department. There is no need for the representative of the State for the latter department to take any measure of hospitalisation by court order for the transfer procedure". This decision invalidates article R. 3222-2."

> Since neither of the two recommendations previously addressed to the authorities by the *Contrôleur Général* have received any precise response, the situation of the patients concerned has scarcely improved. Certain patients are still waiting for their transfer to a site providing greater respect for the maintenance of their family ties and promoting favourable development of their state of health.

2.5 Opinion of the Contrôleur général des lieux de privation de liberté of 14th October 2011 concerning the use of videoconferencing with regard to persons deprived of liberty

The *Contrôleur Général* published an Opinion concerning the use of videoconferencing with regard to persons deprived of liberty in the *Journal Officiel* of 9th November 2011. By means of this Opinion, the CGLPL recalled that although the use of videoconferencing may sometimes be an unavoidable palliative measure, it should not in any case come to be used as a convenience without further qualification, and should above all be specifically supervised.

The Annual Report for 2013 (cf. § 6 of section 2) examined the creation of courtrooms within psychiatric treatment institutions with a view to ending the use of videoconferencing. The provisions of article 14 of the Act of 27th September 2013, amending certain provisions resulting from Act no. 2011-803 of 5th July 2011 concerning the rights and protection of persons subject to psychiatric treatment and the practical details of their care and treatment, came into effect on 1st September 2014.

> This represents a move in the right direction, although the number of visits conducted in 2013 and 2014 does not yet enable an overall Opinion to be given with regard to the practical application of the requirements provided for by law. Certain hospitals have taken measures to fit out courtrooms in accordance with both legal requirements and patients' needs; in certain urban centres, patients are to be transported from their places of hospitalisation to a single courtroom: the improvement intended by the Act needs to be verified.

[17] *Interministerial directive (instruction interministérielle) DGS/MC4/DGOS/DLPAJ no. 2014-262 of 15th September 2014 concerning the application of Act no. 2013-869 of 27th September 2013 for the amendment of certain provisions arising from Act no. 2011-803 of 5th July 2011 concerning the rights and protection of persons subject to psychiatric treatment and the practical details of their care and treatment, published in the Bulletin officiel Santé – Protection sociale – Solidarité no. 2014/10 of 15th November 2014.*

In the light of inspections of police custody facilities, in police stations and gendarmeries, videoconferencing is used for extensions of police custody when the court of first instance is not located in close proximity; for minors, videoconferencing is used in an exceptional manner when transport presents major difficulties. These provisions are satisfactory, on the condition that the exception does not become the rule.

3. Action taken in response to visits overall

> Apart from specific cases, the year 2014 was marked by the end of the 1st round of visits to prisons, young offenders' institutions (CEF), specially-equipped hospitalisation units (UHSA), interregional secure hospital units (UHSI), units for difficult psychiatric patients (UMD), detention centres for illegal immigrants (CRA) and waiting areas (ZA) and the beginning of the second round of visits for some of the above.

These second visits have enabled changes to be ascertained (for example, improvement of living conditions for detainees and reduction of the number of places in the CRA of Nice, creation of premises for the SPIP in the remand prison of Tours and renovation of the visiting rooms in the long-term detention centre of Joux-la-Ville) as well as the absence of change as far as certain points are concerned, with regard to structural considerations in particular, due to a lack of financing (for example, suspension of the construction of family lounges in the long-stay prison of Poissy and of family life units and family lounges in the long-term detention centre of Joux-la-Ville, as well as the renovation of cells in the remand prison of Tours without installation of any electrical sockets or hot water supply), and even deterioration (living areas of the CRA of Mesnil-Amelot). The second visit to the CEF of Fragny led the *Contrôleur général des lieux de privation de liberté* to immediately refer the latter to the Minister of Justice, who conducted an inquiry, of which the conclusions led to the closure of the institution (cf. § 3.1).

Second visits may occur in periods of special activity and sometimes lead to surprising conclusions. One visit to a CEF in the month of August, thus made it possible to ascertain that the teaching staff were on holiday, while minors were present, sometimes for a period of time coinciding with that of the school summer holidays.

The first visits to certain types of institutions, such as police stations, gendarmeries and hospitals catering for patients without their consent have not yet been completed. As far as gendarmeries are concerned, the *Contrôle Général* notes that the findings sent after visits, which are intended to ensure compliance with the *inter partes* principle, scarcely received any response.

In 2014, the *Contrôle Général* only received two responses from units of the national gendarmerie visited during or prior to the year 2014. No observations were received from the Minister of the Interior in 2014 with regard to the inspection reports concerning these units. By way of comparison, in 2013, the *Contrôleur général des lieux de privation de liberté* received five responses from gendarmeries and six ministerial responses.

> Moreover, certain observations appear in a recurrent manner in the reports sent to the ministers concerned. Once again, it is necessary to recall some of them here.

Persons placed in police custody in the secure rooms of **gendarmeries** are not "held in police custody" during the night, in the sense that no staff are present in an uninterrupted manner in the premises, from the time of closure of the offices at the end of the afternoon until their reopening the following morning. Provision is made for surveillance rounds to check that persons placed in cells are alright, but remain insufficient. A permanent presence should be

organised, or at the very least intercom devices should be installed, connecting the secure room to a designated soldier, in order to ensure continuity of surveillance.

The condition of police custody cells in **police stations** is variable, some of them being in a proper state of cleanliness, while others are in a disgraceful state. Issuance of a clean blanket and hygiene necessaries varies according to the police station; access to a shower remains exceptional.

In the vast majority of **police custody facilities**, as a general rule, brassières and spectacles are taken away. This is also the case in **customs detention cells**. In order to ensure protection of personal dignity, this rule, whose application is not justified by any real security requirements, should only be an exception made on justified grounds[18].

In **prisons**, use of the telephone is still unsatisfactory, with regard in particular to respect for the right to privacy and family life as defined under article 8 of the European Convention on Human Rights.

The telephones, which in most cases consist of open *phone points* located in yards and passageways, do not enable protection of the privacy, or even confidentiality, of conversations. This is the case of the prison of Rennes-Vezin, which the Council of State (in a ruling of 23rd July 2014 confirming a provisional order in an urgent matter pronounced by the administrative court of Rennes on 23rd April 2014) enjoined to take all necessary measures in order to ensure the confidentiality of exchanges made by telephone between prisoners and their lawyers, with regard to both the prisons administration and other prisoners.

Furthermore, hours of access to the telephone for prisoners are in the morning or afternoon; it is only rarely possible to telephone after 5:30 PM. It is therefore very difficult for them to contact their children of school age and partners, who generally work at these times. This situation does not promote the maintenance of family ties. Finally, the cost of telephone communications – for foreigners in particular – is out of all proportion to that of traditional telephone subscriptions.

In **detention centres for illegal immigrants**, detainees are too often, or even in most cases, informed of their time of departure and destination at the last moment, when they are informed thereof at all. The principle fixed by article L. 553-5 of the Code for Entry and Residence of Foreigners and Right of Asylum provides that foreigners shall be informed "except … if the person does not appear to be psychologically capable of receiving this information".

In **psychiatric hospitals** and **health institutions** authorised to cater for patients hospitalised without their consent, the traceability of placements in seclusion and physical restraint measures is, in general, not organised. It is thus difficult to verify that these treatment measures, which fall within the framework of medical prescription, are not used for other purposes of a punitive nature.

4. Actions taken in response to cases referred

Article 6 of the Act of 30th October 2007 instituting a *Contrôleur général des lieux de privation de liberté* provides that "all natural persons, as well as any corporation set up for the purpose of ensuring respect for fundamental rights, may bring facts or situations to the attention of the *Contrôleur général des lieux de privation de liberté* that are likely to come within his area of competence.

[18] *As expressly mentioned in the Act of 14th April 2011 concerning police custody.*

A procedure for the processing of information reaching the CGLPL by letter was put in place in an empirical manner in the course of the first CGLPL term of office. It was confirmed at the legislative level and clearly consolidated by means of the adoption by Parliament of the Act of 26th May 2014 amending the Act of 30th October 2007. Article 6-1 of this Act thus defines the actions that may be taken in response to cases referred to the CGLPL. The CGLPL may carry out verifications, if necessary on-site and, after having received the observations of any interested parties, make recommendations to the person in charge of the place of deprivation of liberty. These recommendations and observations set out may be made public.

> If need be, let it be recalled that although the procedures thus initiated by the CGLPL are intended to bring an end to the infringement of rights belonging to individual persons deprived of liberty, they form part of the wider dimension of its preventive mission. In other words, through individual situations, the verifications initiated by the CGLPL always have the objective of making sure that no problems exist within the inspected institution, of a character liable to prejudice the fundamental rights of persons deprived of liberty. If problems of this kind are brought to light, the CGLPL then asks the local or national authority concerned to bring them to an end, while setting out specific recommendations if necessary.

Beyond the checks and recommendations which may result therefrom, letters sent to the CGLPL are also a precious source of information, which may lead it to schedule a visit or follow-up visit to any particular institution. The permanent relations that these exchanges of letters create between the CGLPL and persons deprived of liberty, their close relations, their lawyers and associations etc. enable assessment of the development of the situation within institutions that have been visited. The referral of cases thus forms the required complement to detailed photography at the precise moment of visits by the inspectors. It also enables the renewal of recommendations that have not been followed up by actions.

The exchanges established between the CGLPL and the authorities concerned[19] throughout the year 2014 made it possible to make valuable progress for protection of the fundamental rights of persons deprived of liberty and to highlight good local practices. However, certain continuing difficulties need to be recalled within the framework of this Report.

4.1 Progress made within the framework of the handling of the cases referred

The common dominator of the verifications conducted and the recommendations made is the maintenance of proper balance between respect for fundamental rights and security imperatives resulting from the very nature of the institutions concerned.

4.1.1 Effective access to higher education in prisons

Access to education is organised by means of the appointment of a local teaching manager (RLE) within prisons, under the aegis of the National Ministry of Education, and through the action of teachers. With regard to the typology of the prison population and the provisions of paragraph 2 of article D435 of the Code of Criminal Procedure, interministerial circular no. 2011-239 of 8th December 2011 defines two priorities: catering for minors and the fight against illiteracy.

[19] In view of the type of cases sent to the CGLPL (see Section 2, overview of activities), the elements examined below for the most part concern respect for prisoners' rights. However, the actions taken in response to cases referred also make it possible to address difficulties and identify good practices with regard to other places of deprivation of liberty.

However, there is a section of the prison population, though admittedly a minority, which encounters difficulties of access to education. These are persons who desire to follow courses of higher education. Article D435 of the Code of Criminal Procedure which states that prisoners "shall acquire or develop the knowledge which they will need after their release, with a view to better adaptation to society" should also apply to them.

These difficulties are in the first place of a material nature due to the prohibition of Internet in prison, whereas enrolment in universities and schools of higher education takes place exclusively by means of this channel and course materials are also made available to students in IT format. This situation can only be remedied with the help of the RLE and the goodwill of the head of the institution.

> More than three years after the Opinion issued by the CGLPL concerning access to IT for prisoners, we can only note that the problem of Internet access in prison[20] remains in its entirety and penalises effective access to education, and to higher education in particular.

The obstacles encountered are also of a financial order insofar as enrolment in universities and schools of higher education and the purchase of indispensable books is expensive. Indeed, prisoners were expressly excluded from the benefit of grants for higher education according to social criteria by the annual circulars governing award thereof[21] and from emergency grants intended for students in difficulty[22]. They had no other option than to seek grants from foundations organising rehabilitation initiatives aimed at prisoners, provided that they were informed thereof. By means of a letter of 14th March 2014 sent to the Ministry of Higher Education and Research the *Contrôleur Général* set out a recommendation in favour of the abolition of this express exclusion of prisoners, in view of the following arguments:

- Grants for higher education awarded according to social criteria are intended to help students from the least privileged social backgrounds in order to "re-establish social mobility and enable access to knowledge and employment"[23]. Yet, access to higher education undeniably constitutes a guarantee of rehabilitation of prisoners.

- In 2013, the prisons administration estimated that a quarter of the prison population was affected by social precarity. At the time of its visits, the CGLPL specifically assesses the scale of difficulties connected to the situation of prisoners' poverty. Furthermore, it is difficult to choose between pursuing higher education and exercising paid employment.

- The *a priori* exclusion of prisoners from grant schemes does not appear to be justified by any objective difference in their situation with regard to the goals pursued and the objective of reduction of social inequalities, as established by article L821-1 of the Code of Education (*Code de l'éducation*), in particular.

- Finally, in view of the number of persons pursuing higher educational studies in prison, it does not appear that the allocation of financial aid would constitute an

[20] *In the Opinion of 20th June 2011, the CGLPL recommended controlled access to Internet: in a dedicated area under the control of a third party and/or a member of staff and access restricted to certain websites.*
[21] *Since the start of the 2011 academic year, persons having the benefit of partial release have been able to receive higher educational grants when they meet the award criteria under ordinary law.*
[22] *This involves personalised financial aid to students in difficulty, when they do not meet at least one of the conditions imposed by the regulations for higher educational grants awarded according to social criteria.*
[23] *Public declarations by Mrs FIORASO, Minister of Higher Education and Research.*

unreasonable burden for public finances[24]. Moreover, the conditions for the allocation of grants under ordinary law (age, qualification and resources), should also apply to prisoners.

> The Ministry of Higher Education and Research, which also shares this concern, has undertaken to include prisoners within the scheme for allocation of higher educational grants according to social criteria, in view of its objective of reduction of social inequalities.

The circular of 2nd July 2014 concerning the terms of allocation of these grants was therefore amended in order to enable prisoners to have the benefit of grants allocated according to social criteria and aid granted within the framework of the National Emergency Assistance Fund (FNAU), under the same conditions as other students.

4.1.2 Electronic cigarettes as an additional lever of health education initiatives

In the face of the increase in the supply of electronic cigarettes, the question of their use by prisoners, as well as by prison staff, has become a serious issue in the course of the past year. From the testimonies collected by the CGLPL it emerges that purchase thereof was, as a general rule, prohibited by directors of prisons, due to risks presented for the security of institutions. The security risks mentioned in different instances included the existence of a USB port, enabling recharging, as well as inappropriate use of the liquid contained in refills and risks of explosion of the battery.

> Health personnel, and those in charge of health education initiatives such as the fight against tobacco addiction in particular, were unable to recommend the use of this means of giving up smoking.

On 16th December 2013, the CGLPL therefore referred the matter to the director of the prisons administration in order to be informed of her point of view with regard to this issue, the instructions given to heads of institution and, if necessary, to be provided with objective elements establishing grounds for the conclusion that they present risks for the security of institutions.

> Several months after this request, the CGLPL was informed of a note of 11th August 2014 issued by the prisons administration department, authorising the use of electronic cigarettes in prisons, for both staff and prisoners, under the same conditions as for the use of tobacco.

This note specifies that, within the framework of cell allocation, prisoners using electronic cigarettes shall be considered smokers, that the purchase of electronic cigarettes, refills and chargers shall take place within the framework of the prison shop and that the sale thereof is prohibited as far as minors are concerned.

4.1.3 Adaptation of the national action plan to the specific nature of prisons, within the framework of the fight against heatwave temperatures

Following the testimonies collected, in the course of the summer of 2013 in particular, and by virtue of its preventive mission, the CGLPL approached the prisons administration department, in order to ensure better adaptation to the prison environment of measures implemented in case of heatwaves.

[24] *In 2012, the prisons administration department listed 350 prisoners pursuing studies supervised by universities, University Institutes for Technology (IUT), the Centre national d'enseignement à distance (CNED / "National Distance Learning Centre") and the Conservatoire national des arts et métiers (CNAM / "National Conservatory for Arts and Professions").*

The prison administration department's action plan for 2013 within the framework of the fight against heatwaves linked the implementation of specific measures, and provision of electric fans in particular, to the launching of a prefectural alert as defined under the French national heatwave action plan. Yet, the CGLPL noted that the temperatures reached in the months of June, July and August 2013 did not lead all prefectures to make decisions of this kind. Nevertheless, prisoners in some of these departments asserted that they suffered particularly from the heat, but were unable to obtain the granting of fans placed at their disposal.

> In view of the fact that prefectural decisions to launch alerts are based upon criteria that do not take the special living conditions of persons deprived of liberty into account (inability to ventilate their accommodation, impossibility of free access to any outdoor area or shower room etc.), the CGLPL recommended that measures for reducing the health risks connected with extremes of temperature in prison should be implemented independently of the launching of prefectural alerts and advised the establishment of daily cell temperature readings, in order to enable the launching of local alerts when temperatures reach pre-established levels.

By means of a letter of 23rd May 2014, the director of the prisons administration informed the CGLPL that the 2014 action plan sets out preventive measures to be implemented independently of the launching of prefectural alerts, in particular by means of authorisation of the purchase of fans, sun creams, sunhats and cap-type headgear in prison shops, between 1st June and 30th September. The notes specifies that the measures described are not exhaustive and that heads of institutions are encouraged to take local initiatives, even in the absence of the launching of prefectural alerts. Nevertheless, other measures (access to water, cooling of premises, adaptation of operation, catering to specific groups of prisoners etc.) remain linked to the launching of prefectural alerts. However, the director of the prisons administration has undertaken to look into the possibility of elaborating a specific alert system for prisons. The CGLPL shall therefore pay close attention to the results of this reflection.

4.1.4 Proper use of social networking services

The publication of comments and photos in publications on the *Facebook*[25] profiles of certain members of staff was brought to the *Contrôleur Général*'s attention. Although the elements ascertained do not directly enable the establishment of a clear case of violation of fundamental rights[26] and do not appear to constitute disciplinary faults as such, they nevertheless denoted a certain lack of respect towards prisoners and were liable to create a poor image of prison staff. In addition, the CGLPL wanted to draw the prisons administration department's attention to the abuses which may arise from use of social networking services and the need for compliance with the duty of confidentiality and the principle of professional discretion incumbent upon all officials.

In response, the director of the prisons administration pointed out that she was particularly vigilant with regard to the necessity of raising awareness among prison staff about the security measures which they need to take when using social networking services and that several measures had been undertaken to ensure proper balance between liberty of expression and respect for prisoners, in some cases even involving disciplinary sanctions against officers showing lack of respect for their professional obligations.

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[25] *This concerns the public area of Facebook profiles.*
[26] *In particular because the prisoners were not identifiable.*

Finally, a reminder note[27] was sent to officers on 17th February 2014 in order to raise their awareness of the liability incumbent upon them in case of failure to comply with their professional obligations and the principles defined by the code of professional ethics.

4.1.5 Questions concerning detainees' clothing

The situation of a detainee in the detention centre for illegal immigrants (CRA) of Oissel, who appeared before the liberty and custody judge dressed in a T-shirt on a winter's day, was brought to the attention of the CGLPL. On 4th June the CGLPL questioned the head of the centre to find out whether, since the initial visit to the CRA in September 2008, measures had been put in place enabling provision of seasonal clothes to detainees bereft of suitable clothing and not having the benefit of visits from close relations. Indeed, at the time of the visit, the inspectors had ascertained that the stock of clothes donated by officials and various associations was very small and that no steps had been taken to approach bodies possessing stocks for the replacement of the clothes.

In a letter of 26th September, the office of the Director General of the French national police force pointed out that, in the course of the summer, a partnership had been entered into with the local branch of the *Secours Populaire*, enabling officials from the detention centre for illegal immigrants to go to the *Secours Populaire* branch every month, or if necessary more frequently, in order to collect a batch of clothes.

> It would be worthwhile to extend this practice to other detention centres for illegal immigrants, in order to ensure detainees' dignity.

4.2 Continuing difficulties identified within the framework of the cases referred

4.2.1 The cost of telephone calls in prison

In his Opinion of 10th January 2011 concerning the use of telephones by persons deprived of liberty[28] and the Opinion of 9th May 2014 concerning the situation of foreign detainees[29], the *Contrôleur général des lieux de privation de liberté* emphasised the high cost of telephone calls. Indeed, according to the contract entered into with the SAGI Company, the cost of communications in prison is established by reference to the Orange public phone rate[30].

> Moreover, it emerged from testimonies sent to the CGLPL that the costs arising from the playing of the pre-recorded message, informing persons communicating with prisoners that their conversations may be monitored, recorded or interrupted[31], were payable by the prisoners.

In 2011, the CGLPL requested observations from the director of the prisons administration department (DAP) with regard to this difficulty. Following exchanges with the service provider, the DAP announced that separation of the pre-recorded message from the telephone conversation was technically complicated and therefore expensive to organise.

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[27] Two previous EMS3 notes of 5th November 2010 and 23rd January 2012 were issued in order to raise awareness among officers of security measures that they need to take when using social networking services.
[28] Point 7
[29] Point 9
[30] Prisons administration note of 29th January 2010
[31] Notification provided for under article R. 727-1 of the Code of criminal procedure.

The CGLPL also requested the opinion of the ARCEP (*autorité de régulation des communications électroniques et des postes*) [independent government agency with specific regulatory powers in charge of regulating telecommunications in France] with regard to this point. Although the ARCEP confirmed that the current architecture of telephone facilities within prisons makes separation of the message and the conversation difficult in itself, the cost of playing this message cannot be charged to the end user. Indeed, it is here a question "of a mission of public security conducted in the general interest and unrelated to the operation of electronic communication networks, the cost of obligations of this kind should not, in principle, be payable by the operators and, consequently, passed on to the end user" but "should be subject to financial compensation and by the State, in accordance with constitutional requirements[32] and the provisions of articles L 33-1, I e) and L 35-6 of the Postal and Electronic Communications Code (*code des postes et des communications électroniques*)".

> Since the public service delegation contract of which SAGI has the benefit comes to an end on 30th June 2015, the CGLPL has once again referred this question to the prisons administration department in order to ensure that these elements, concerning both the cost of telephone communications and the charging of the pre-recorded message, may be taken into account within the framework of the new contract.
>
> Moreover, the CGLPL would look into taking the services provided by Internet operators into account, which would make possible a real reduction in the cost of telephone calls, and international calls in particular.

The CGLPL will therefore pay close attention to the terms and conditions set out within the framework of the new contract.

4.2.2 Impossibility of undertaking freelance work within the framework of self-employment33

Article 718 of the Code of Criminal Procedure provides that "prisoners may work on a self-employed basis with the authorisation of the head of the institution", which includes in particular the right to work under the self-employment scheme defined under Act no. 2008-776 of 4th August 2008 (*auto-entreprise*)[34].

However, the current system of social security affiliation for prisoners has proven to be incompatible with this scheme. Indeed, article 381-30 of the Social Security Code (*Code de la sécurité sociale*) provides that "prisoners are compulsorily affiliated to the health and maternity insurance schemes of the general social security system as of the date of their imprisonment", without making provision for any exceptions thereto, whereas "*auto-entrepreneur*" status presupposes affiliation to the social insurance system for the self-employed (*régime social des indépendants*).

> The CGLPL therefore sent a recommendation to Minister of Health and Social Affairs in favour of an amendment of articles L 381-30 and L 381-31 of the Social Security Code in order to enable prisoners to work outside of prison on a self-employed basis.

[32] *Ruling no. 2000-441 DC 28th December 2000*

[33] *All occupations not coming under the general national social security system*

[34] *The case was referred to the CGLPL of a person wishing to work under the auto-entreprise self-employment scheme, however, any other status not coming under the general national social security system would come up against the same difficulties.*

In response, the Ministry informed the CGLPL of the need to engage in reflection with the prisons administration with regard to major issues of coordination and practical implementation of legal rules concerning social and prison issues.

> The CGLPL will continue to play close attention to actions taken with regard to this issue and will make sure that the solution reached, while enabling effective implementation of article 718 of the CPP, does not prejudice the welfare rights enjoyed by prisoners.

Finally, it should be noted that the circular concerning application of the provisions for the remuneration of prisoners under the Prisons Act of 24th November 2009 has still not been published, despite the prisons administration's repeated announcements.

4.2.3 When the principle of sectorial division prejudices patients' rights and health

In the Opinion of 17th January 2013 concerning unjustified stays in units for difficult psychiatric patients (UMD), the *Contrôleur Général* recommended the elaboration of a procedure enabling the regional health agency concerned (or, in case of several agencies, the central administration), to which the case is referred in due time by the management of the UMD, to take care of immediately determining, in case of doubt, the institution to which the patient is to be returned, the fundamental criterion to be followed in this respect being the patient's capacity for rehabilitation, in particular with regard to the latter's family relations, the prefect of the department thus established then immediately issuing the necessary order.

> Yet, in the absence of instructions issued at national level[35], situations endangering the health of patients have once again been brought to the attention of the CGLPL.

By way of example, one person imprisoned in an institution in region A (close to the person's place of residence and family) and then transferred by the prisons administration to an institution in region B due to the undertaking of work in the first institution, was subject to a measure of hospitalisation without consent followed by committal to UMD 1. During their UMD stay, their transfer to UMD 2, closer to their relations, was considered, but could not be carried out due to their release from prison. On discharge from UMD 1, the person was once again committed to the hospital of region B, in which they had been hospitalised prior to their committal to the UMD. The hospital in region A refused the transfer request on the grounds that the patient had no proof of being a permanent resident of its sector, without taking into account the fact that the person's presence in region B was entirely independent of their will, that they therefore had no ties whatsoever in the latter region and that this situation, insofar as it was a source of misunderstanding and frustration, was highly prejudicial to their health and the maintenance of their family ties.

> The CGLPL therefore repeats its recommendation that, in situations of this kind, the institution to which the person is committed should be determined by the regional health agency or the central administration and should not be subject to inevitably fruitless negotiations between two hospitals with divergent "interests".

[35] The Opinion of 17th January 2013 has not given rise to any observations on the part of the Ministry of Health and Social Affairs.

Section 2

Assessment of the work of the *Contrôleur Général des Lieux de Privation de Liberté* in 2014

1. Relations with public authorities and other legal entities

1.1 The Act of 26 May 2014 amending the Act of 30th October 2007 instituting the *Contrôleur général des lieux de privation de liberté*

In his Annual Report for the year 2012, the *Contrôleur Général* assessed the inadequacies of the text of the Act of 30th October 2007 by which the *Contrôle Général* was established. He put forward amendments in order to improve the conditions of exercise of his duties.

These proposals were for the most part taken up in the Act of 26th May 2014, which originated from a proposition presented by Mrs Catherine Tasca and the Socialist Group in the Senate.

> This Act has broadened the institution's means of action. Thus the text gives the *Contrôle Général* an opportunity to gather information from any person likely to shed light upon its investigations (and no longer solely the persons in charge of the places visited) and opens the possibility of sending formal notification with regard to these persons. The scope of any secrecy that may be raised against the *Contrôleur Général* is also specified. On the one hand, as far as police custody is concerned, it enables the handing over of police reports not concerned with questioning to the *Contrôle Général*, since they are unlikely to prejudice the secrecy of investigations or of the taking of evidence. On the other hand, the Act authorises inspectors who have the status of doctors to gain access to information covered by medical secrecy, with the agreement of the person concerned[36].

Moreover, the text introduces provisions for penal measures aimed at protecting persons who may enter into relations with the *Contrôle Général* and facilitating the exercise of its duties. Thus no sanctions can be taken against any person (persons deprived of liberty as well as any persons acting within places of deprivation of liberty, in particular in a professional capacity) on the basis of their relations with the *Contrôle Général*, in order to protect them against the possibility of reprisals, with the exception of any proceedings for false accusations. Moreover, the Act created an offence of obstruction, punishable by a fine of 15,000 euros, defined by the act of obstructing the *Contrôleur Général*'s duties, either by standing in the way of visits and the handing over of certain elements, or by threats or reprisals made against any person having entered into relations with the institution. The Act reasserts the principle of the confidentiality of correspondence between the *Contrôle Général* and prisoners, whatever the method of communication; violation of this secrecy is a punishable criminal offence.

[36] *This agreement not being required, when physical or psychological duress is involved committed towards a minor or a person who is not in a position to protect themselves due to their age or their physical or psychological incapacity.*

Furthermore, the CGLPL's duties have been extended to control of the concrete implementation of procedures for the deportation of foreign persons, until they are handed over to the authorities of the State of destination. Finally, the text enables the *Contrôleur Général* to send opinions to the authorities concerning plans for the construction and renovation of places of deprivation of liberty.

Conversely, the question of the appropriateness of extension of the CGLPL's competence to the control of retirement homes for infirm elderly people (EHPAD / *établissements d'hébergement pour personnes âgées dépendantes*) did not receive a favourable response. However, the contacts established by the *Contrôle Général* with professional associations working in the sector show that this issue still remains relevant and it shall be the subject of further reflection.

1.2 President of the Republic, Government and Parliament

As in previous years, the Annual Report of the *Contrôle Général* for 2013 was handed over to the President of the Republic as well as to the presidents of the Senate and National Assembly.

> Within the framework of taking up her duties, the *Contrôleure générale des lieux de privation de liberté* met the Minister of Justice, the Minister of the Interior and the Minister of Health, Social Affairs and Women's Rights.

At the time of these interviews, the recurrent questions of prison overcrowding and individual cell placements were mentioned, as well as conditions and inspection of police custody (poor state of cells, inadequacy of control exercised by State Prosecutors' Offices, systematic taking away of brassières etc.) and CEFs (inadequacy of content of educational projects, qualification and training of teams etc.).

Moreover, the *Contrôleure Générale* stressed the difficulties posed by secure medical jurisprudence centre placement measures as provided for under the Act of 28th February 2008, as well as the situation of prisons in French overseas departments and territories.

> She also made known her serious concern with regard to the question of provision of treatment to prisoners within local health institutions and, more specifically, removal from prison in order to go to the hospital.

Indeed, in accordance with the instructions of the prisons administration note of 5th March 2012, an escort level (of 1 to 4) is set for every prisoner, whether convicted or awaiting trial, on their arrival within the institution.

Yet, at the time of their visits the inspectors frequently ascertained that, in practice, the escort levels were not taken into account and the same rules were applied to all without distinction: imprisoned patients are handcuffed during transfer as well as during the accomplishment of medical acts, the handcuffs being replaced with plastic straps during medical imaging examinations (scans and MRI); during consultations, one or several officers remain present in examination rooms and even in operating theatres.

This situation is unacceptable with regard to the dignity of persons and should be examined by the authorities as a matter of urgency.

> The *Contrôleure Générale* also stressed the recommendations made by her predecessor with regard to the detention of illegal immigrants and asylum seekers due to be deported: reduction of the maximum length of detention, regulation of the use of exclusion rooms and protection of the maintenance of family ties, as well as effective application of the right to one clear day for persons placed in waiting areas.

Moreover, in the course of the year the *Contrôleur général des lieux de privation de liberté* was once again involved in numerous instances of Parliamentary work: the Act of 15th August 2014 concerning the adaptation of sentences to offenders' individual requirements and consolidation of the effectiveness of penal sanctions, the Bill concerning the rights of foreigners in France, the Budget Bill for 2015 and participation in the Parliamentary group on prisons in the National Assembly.

1.3 Other Non-Public Legal Entities

On taking up her functions, the *Contrôleure générale des lieux de privation de liberté* approached the various different union organisations and major associations working in the field of places of deprivation of liberty in order to engage in exchanges with them concerning the principal issues encountered.

These meetings, which were always fruitful, continued throughout the year with regard to various different aspects specific to each of the partners.

1.4 International Relations

> The Act of 2007 places an obligation upon the *Contrôle Général* to cooperate with international institutions with a similar role to its own. The Optional Protocol of the United Nations added to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (article 11), places an obligation upon the UN's competent Subcommittee (the SPT[37]) to provide advice for the mechanisms implemented in each signatory country. The *Contrôle Général* is therefore part of an international network, since national preventive mechanisms currently exist in 60 States[38].

Multilateral Relations continued and were amplified in 2014. Unlike previous years, in which the Council of Europe was practically its sole promoter, new institutions are now giving concrete expression to their interest in the dissemination of the Optional Protocol and the *Contrôle Général* is taking part in these initiatives. This is the case of the Organization for Security and Co-operation in Europe (OSCE) and the *Organisation internationale de la Francophonie* (OIF).

On taking up her duties the *Contrôleure Générale* wanted to go to Strasbourg in order to meet with the bodies of the Council of Europe as a whole and express the *Contrôle Général*'s renewed interest in this international organisation's work, which may lead to the creation of new instruments concerning various different aspects of captivity.

The *Contrôle Général* also took part in multilateral meetings organised by the Association for the Prevention of Torture (APT), intended to provide the authorities and non-governmental organisations with information concerning the value and feasibility of national preventive mechanisms. In particular, it participated in meetings of this nature organised in Algiers and Tunis. It notably took part in the first Jean Jacques Gautier Symposium, intended for national preventive mechanisms and devoted to ways of addressing the problems affecting children in situations of vulnerability in detention. It was also involved in a meeting of high-level experts devoted to the protection of persons deprived of liberty against reprisals.

> As in 2013, no European Union initiatives were undertaken in 2014; though, admittedly, the election of the new Parliament in June and the appointment of the new Commission were hardly conducive to new actions.

[37] *"Subcommittee on Prevention of Torture".*

[38] *Source: OPCAT Database, Association for the Prevention of Torture.*

> Although it is still to be regretted that no observable progress was made within the framework of the European Union, it is to be hoped that in 2015 the newly elected representatives, as well as the new European Commission, will look into following-up the "Green Paper" considered by the Commission in 2011, in order to address issues which it considered to fall within its jurisdiction, with regard to custody on remand in particular.
>
> The celebration of the thirtieth anniversary of the signature of the New York Convention against Torture by the departments of the Commission and the High Representative of the European Union for Foreign Affairs, in which the *Contrôle Général* took part, provided an opportunity for recalling the orientations taken for the promotion of the Optional Protocol.

At the bilateral level, the *Contrôle Général* also increased the efforts undertaken in previous years with certain countries, such as Honduras, with which an exchange protocol, supported by the European Union, was signed. The inspectors of Honduras' national preventive mechanism, accompanied by representatives of the APT, took part, with the teams of the *Contrôle Général*, into visits to places of deprivation of liberty.

Exchanges were also consolidated with the European mechanisms, and with the institution of the Czech Republic in particular, with which the *Contrôle Général* was involved in working seminars, bringing together preventive mechanisms from Central and Eastern Europe (Hungary, Poland, and Georgia, joined by the Institution for the protection of human rights which exercises control of places of detention in the Slovak Republic). The *Contrôle Général* was also approached by the human rights Institution of Latvia in order to present some of the CGLPL's results at a meeting intended to promote the signature of the Optional Protocol by the latter country.

The *Contrôle Général* was also called upon for expert advice in 2014. The "Child Rights International" non-governmental organisation, in charge of drafting a guide concerning the inspection of places of detention of children on behalf of the European Commission, asked the CGLPL to be involved in its committee of experts, alongside representatives of the CPT and the chair of the SPT.

> In Tunisia, the *Contrôle Général* was moreover approached in order to help with the putting in place of a national preventive mechanism for this country. This cooperation resulted in the completion of training modules for future members of the inspection authority, which is progressively being put in place by the Tunisian State.

Finally, the presentation of a proactive study is to be noted, with the national preventive mechanisms of the European Union, concerning the follow-up of recommendations, which will be the subject of a major international conference in Vienna, Austria in 2015.[39]

As in 2013, it should be noted that greater raising of awareness among France's representatives abroad would certainly make it possible to increase the scope and effectiveness of these meetings. However, the need to fit them into the normal framework of institutional activities means that excessive numbers of such meetings cannot be organised, as already written last year.

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[39] *Study conducted with eighteen European Union national preventive mechanisms by the Ludwig Boltzmann Institute of Human Rights (BIM Austria) and the University of Bristol (United Kingdom).*

1.5 Publications

Collection of Opinions and Recommendations Published by the CGLPL between 2008 and 2014

In the course of the first *Contrôleur Général*'s term of office, thirty-six opinions and recommendations were published in the *Journal officiel de la République française*, that is to say an average of one every two months. They supplement and shed light upon the institution's other means of expression (and therefore of making recommendations), i.e. the reports drawn up after each visit and the Annual Reports.

> The *Contrôle Général* wanted to compile the whole of these public opinions, recommendations and urgent recommendations in a single work, designed as a tool for the development of concrete rights, which is likely to inspire other actors.

Having ascertained that these opinions and recommendations can prove to be relevant for other national preventive mechanisms throughout the world, the *Contrôleur général des lieux de privation de liberté* decided to translate this collection into English and Spanish, in collaboration with the international NGO the Association for the Prevention of Torture (APT), in order to make it accessible to a larger number of actors working in favour of the prevention of torture and other cruel, inhuman and degrading punishments.

The whole of this collection of opinions and recommendations is available in the three languages on the website of the *Contrôleur général des lieux de privation de liberté*[40].

MOOK "Confinement: Observation, Protection and Alerts"

As part of its control duties of respect for fundamental rights, the CGLPL finds itself dealing with social questions on a daily basis which, far from only being relevant to persons deprived of liberty, should be of concern to citizens as a whole.

> On the strength of its practical knowledge of places of deprivation of liberty, the *Contrôle Général* collaborated with the *Autrement* publishing house in 2014 for the publication of a topical "Mook" (magazine/book) on the question of confinement.

Through life testimonies, in-depth articles and interviews with various different parties, the intention of this work for the public at large is to broaden reflection and provide a fresh look at these places and the people confined in them. To this end, various different actors are allowed to express themselves – inspectors, prison officers, prisoners, associations, victims, architects, doctors and jurists.

[40] www.cglpl.fr/en/

2. Cases Referred

2014 was an unusual year insofar as it saw the end of the term of office of the first *Contrôleur Général des lieux de privation de liberté*, an interim period of almost two months and, finally, the appointment of the second *Contrôleur Général*. It was therefore a year that combined both change and permanence. The continuity of the institution's mission was ensured by the stability of the team in charge of handling the cases referred and management by the Secretary-General during the interim period.

> Apart from the results obtained, the testimonies received during this period of transfer between different terms of office show how important it is to persons deprived of liberty to have their words taken into account, as a first step towards recognition of their dignity.

Finally, in 2014, the legislature itself acknowledged the important place held by the referral of cases within the performance of the preventive mission assigned to the CGLPL, by officially approving the procedure elaborated in an empirical manner in the course of the first term of office.

> Accordingly, Act no. 2007-1545, of 30th October 2007 amended by Act no. 2014-528 of 26th May 2014 provides that when natural or legal persons bring facts or situations to the attention of the CGLPL, which they consider to constitute an infringement or risk of infringement of the fundamental rights of persons deprived of liberty, the CGLPL may conduct verifications, on-site if necessary (article 6-1).

The inspectors to whom it delegates the conduct of on-site verifications enjoy the same prerogatives as at the time of inspections: confidential interviews, access to any useful document and any premises (article 8-1). The limits that may be raised against them are also similar: only secrets of national defence, linked to State security, taking of evidence, preparation of cases for trial and secrecy between lawyers and their clients may be raised against them. Within the framework of on-site verifications, medical secrecy may be lifted under the conditions provided for in the final paragraph of article 8-1. This new prerogative was moreover implemented at the time of the on-site verifications conducted the 4th, 5th and 13th June 2014 at the prison of Fresnes, with the agreement of the person concerned[41].

At the end of these verifications (made via exchanges of letters or on-site), and after having received the observations of any persons concerned, the *Contrôleur général des lieux de privation de liberté* may make recommendations concerning the facts or situations in question to the person in charge of the place of deprivation of liberty. These observations and recommendations may be made public, without prejudice to the provisions of article 5.

[41] *Cf. infra.*

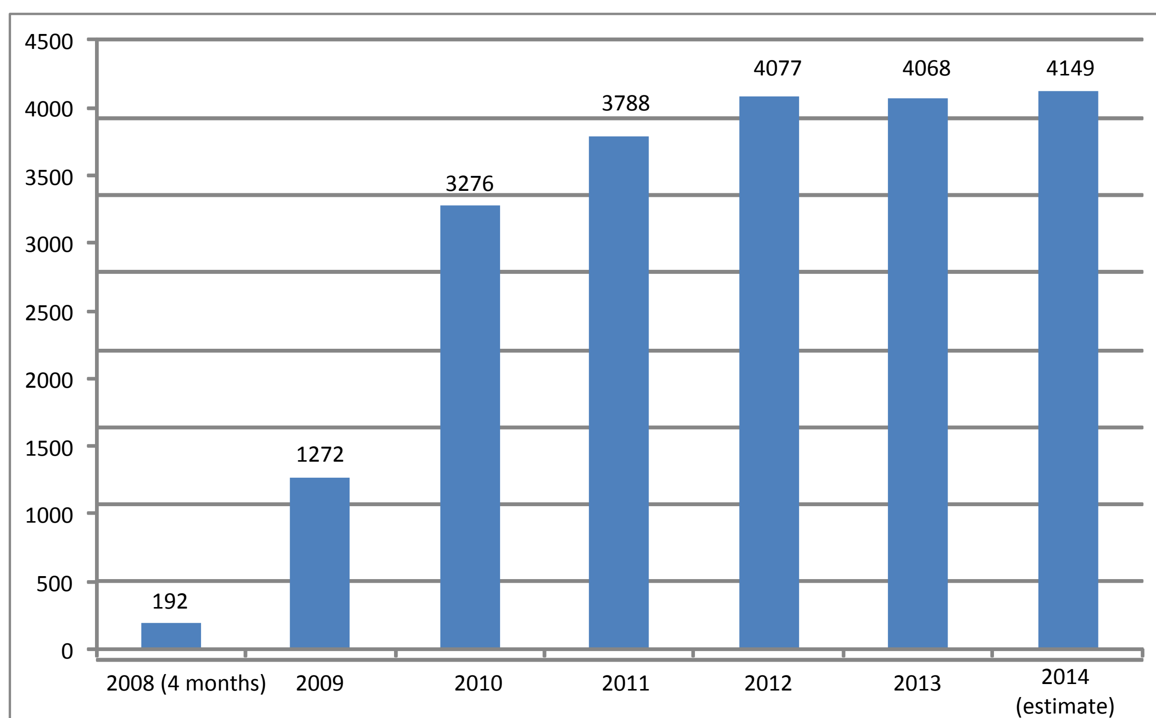
2.1 Analysis of Cases sent to the CGLPL in 2014

2.1.1 *Letters Received*

Overall volume of the number of letters sent to the CGLPL per year

After levelling out in 2013, the number of letters sent to the CGLPL by natural or legal persons increased by almost 2% in 2014, reaching a level higher than in 2012.

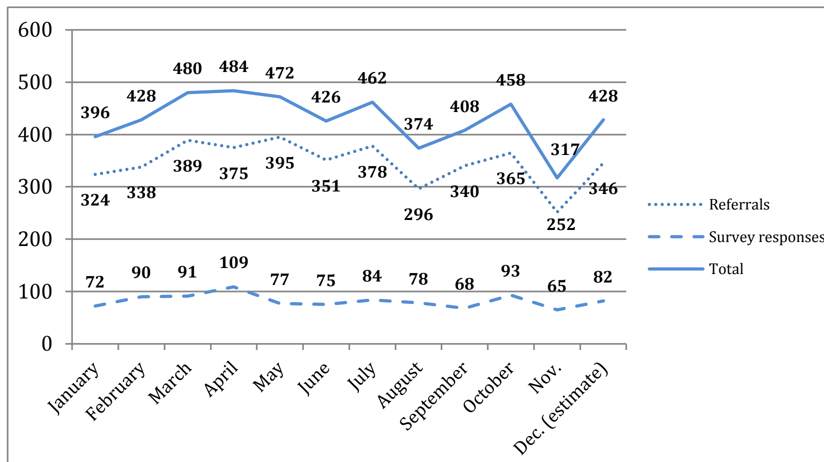
Out of the letters of referral as a whole received between 1st January and 30th November 2014, an average of 2 letters (2.1) concerned the same person's situation.



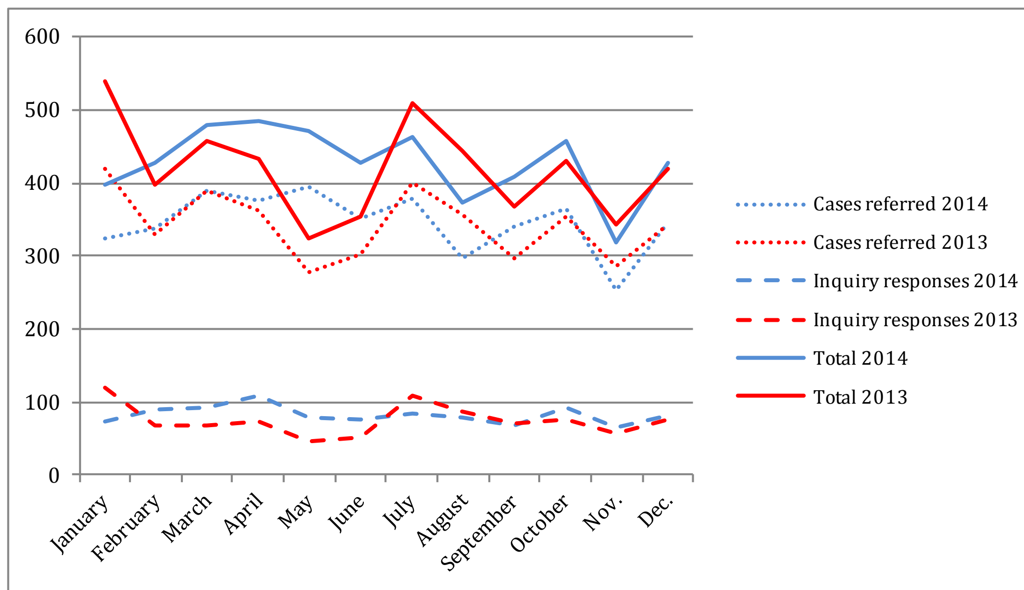
Percentage increases

- 2009 / 2008: 231% (or x 3.3)
- 2010 / 2009: 158% (or x 2.6)
- 2011 / 2010: 16% (or x 1.2)
- 2012 / 2011: 7.6% (or x 1.08)
- 2013 / 2012: -0.22% (or x 0.998)
- 2014 / 2013: 1.99% (or x 1.02)

Monthly trends of numbers of letters received [42]



Comparison of the number of letters received 2013/2014



Whereas in 2013, the number of case referrals received in May and June was considerably lower than that observed during the other months of the year, in 2014 these two months were the richest in terms of testimonies. This change may be connected with the end of Mr Delarue's term of office. It is a sign of the trust that our institution has earned.

November 2014 was the month in which the CGLPL received the smallest number of referrals, and more markedly so that in the previous year, without this being attributable to any specific cause.

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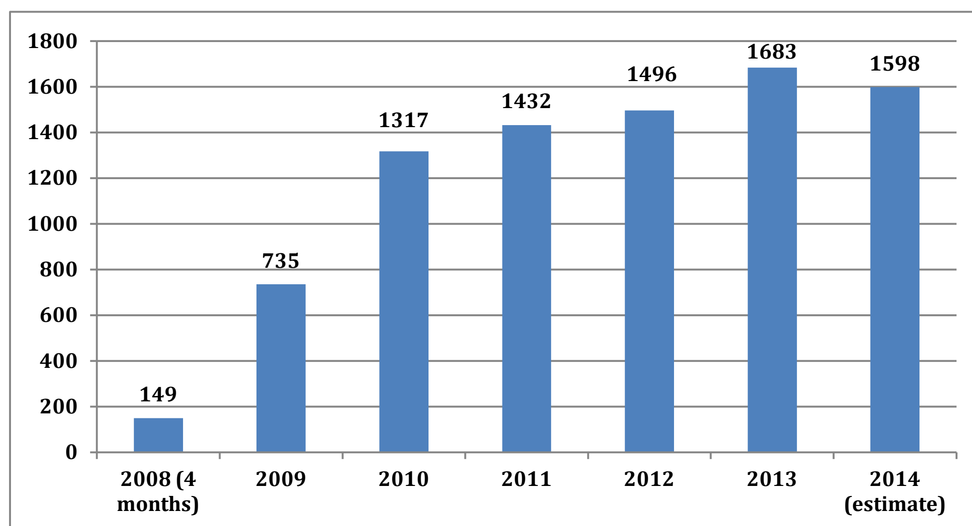
[42] *The number of letters received corresponds to cases referred to the CGLPL, as well as responses made by the authorities with which the CGLPL took these cases up within the framework of verifications.*

2.1.2 *Persons and Places Concerned*

Number of Persons Deprived of Liberty (or groups of persons) concerned by cases referred to the CGLPL for the first time

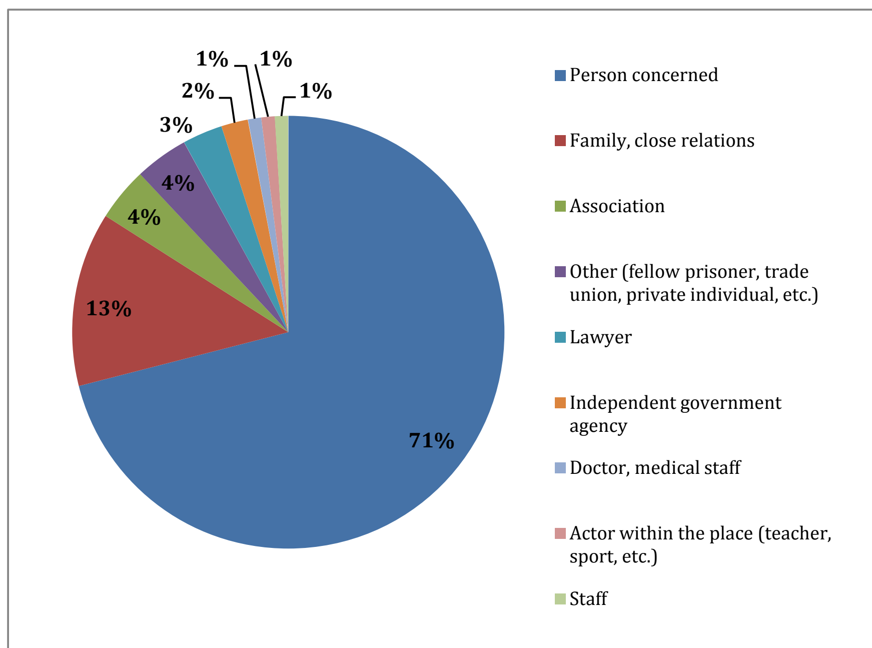


Distribution of cases by category of person referring them and nature of the institution concerned (January-November 2014)

	Person concerned	Family/close relations	Association	Other	Lawyer	Independent government agency	Doctor/medical staff	Actors within the place of dep. of liberty	Staff	TOTAL	Percentage
PENAL INSTITUTIONS	**2505**	**434**	**144**	**120**	**114**	**60**	**26**	**24**	**14**	**3441**	**90.48%** of places of deprivation of liberty
CP - Prison with sections incorporating different kinds of prison regime	1,112	154	68	39	48	23	13	8	6	1471	42.75% of penal inst.
MA - Remand prison	662	156	42	44	46	28	4	6	1	989	28.74%
CD - Long-term Detention Centre	496	90	24	17	10	9	6	2		654	19.01%
MC - Long-stay prison	210	32	3	6	9		1	4		265	7.70%
Hospitals (UHSA, UHSI, EPSNF)	13			2			2	1	3	21	0.61%
ALL	4		2	3	1			3	4	17	0.49%
CSL - Open Prison	2		1	2						5	0.15%
PI unspecified	2	1	2	3						8	0.23%
EPM - Prison for minors	2			4						6	0.17%
CPA - Reduced sentencing training prison	1		2							3	0.09%
CNE - National Assessment Centre	1	1								2	0.06%

	Person concerned	Family/close relations	Association	Other	Lawyer	Independent government agency	Doctor/medical staff	Actors within the place of dep. of liberty	Staff	TOTAL	Percentage
HEALTH INSTITUTIONS	**141**	**52**	**4**	**12**	**2**	**1**	**17**	**3**	**3**	**235**	**6.18%** of places of deprivation of liberty
Public health institution – psychiatric inst.	85	29	2	5	1	1	12		1	136	57.87% of health inst.
Public health inst. – psychiatric dept.	19	8	1	4			1			33	14.04%
Public health inst. – unspecified	24	3		1			1			29	12.34%
UMD - Unit for difficult psychiatric patients	6	10	1				1	3	1	22	9.36%
Private institution with psychiatric treatment	3	2								5	2.13%
Public health inst. - secure rooms	1			1	1		1		1	5	2.13%
Public health inst. – all	2									2	0.85%
Public health inst. – other	1			1			1			3	1.28%
DETENTION OF ILLEGAL IMMIGRANTS AND OF ASYLUM SEEKERS	**7**		**21**	**3**	**8**	**5**	**1**			**45**	**1.18%** of places of deprivation of liberty
CRA - Detention centre for illegal immigrants	6		17	3	7	5	1			39	% of detentions of illegal immigrants
ZA - waiting area			4							4	%
LRA - Detention facility for illegal immigrants	1				1					2	%
POLICE CUSTODY FACILITIES	**21**	**1**		**3**	**5**	**2**				**32**	**0.84%** of places of deprivation of liberty
CIAT - police stations and headquarters	*15*			*3*	*1*					*19*	*59.38% of police custody (GAV)*
BT - territorial gendarmerie (brigade territoriale de gendarmerie*)*	*3*				*2*	*1*				*6*	*18.75%*
Police custody (GAV) – unspecified	*1*	*1*			*1*	*1*				*4*	*12.50%*
Police Custody -	*2*									*2*	*6.25%*

other											
PAF - Border police					*1*					*1*	*3.12%*
OTHER	**6**	**10**		**7**	**1**		**3**		**1**	**28**	**0.74%** of places of deprivation of liberty
UNSPECIFIED	**9**	**3**		**1**						**13**	**0.34%** of places of deprivation of liberty
YOUNG OFFENDERS' INSTITUTION		**1**		**5**				**1**	**1**	**8**	**0.21%** of places of deprivation of liberty
COURT JAIL	**1**									**1**	**0.03%** of places of deprivation of liberty
TOTAL	**2,690**	**501**	**169**	**151**	**130**	**68**	**47**	**28**	**19**	**3,803**	**100%**
PERCENTAGE	70.73%	13.17%	4.44%	3.97%	3.42%	1.79%	1.24 %	0.74%	0.50%	100%	



Categories of Persons Referring Cases to the CGLPL	Statistics drawn up on the basis of the 1st letter referring the case		Statistics drawn up on the basis of the letters received as a whole			
	2009	2010	2011	2012	2013	2014
Person concerned	80.93%	80.33%	77.61%	77.90%	75.57%	70.73%
Family, close relations		7.14%	9.37%	10.94%	12.81%	13.17%
Association	5.04%	3.87%	3.02%	2.97%	2.93%	4.44%
Lawyer	7.08%	3.49%	2.85%	3.68%	2.58%	3.42%
Doctor, medical staff	0.95%	0.84%	1.24%	0.76%	1.20%	1.24%
Independent government agency	1.91%	1.21%	0.79%	0.81%	0.96%	1.79%
Persons working in place of deprivation of liberty (teachers, sports etc.)	Unknown	0.61%	0.58%	0.74%	0.64%	0.74%
Members of Parliament	1.50%	0.76%	0.32%	0.29%	0.10%	0.24%
Others (fellow prisoner, trade union, private individual etc.)	2.59%	1.75%	4.22%	1.91%	3.21%	4.23%
Total	100%	100%	100%	100%	100%	100%

The CGLPL continues to raise awareness, in particular among lawyers and associations with regard to the important role that they can play, alongside families, as special intermediaries for persons deprived of liberty, in order to limit the risks of dissuasion or reprisals which could be exercised against them as much as possible. Moreover, in 2014 the proportion of case referrals sent by families, associations and lawyers increased considerably.

Categories of Persons Referring Cases to the CGLPL	Statistics drawn up on the basis of the 1st letter referring the case		Statistics drawn up on the basis of the letters received as a whole			
	2009	2010	2011	2012	2013	2014
Penal institutions	87%	91.42%	94.15%	93.11%	90.59%	90.48%
Health institutions	6%	5.32%	3.48%	4.24%	5.88%	6.18%
Police custody facilities	-	1.21%	0.29%	0.74%	0.61%	0.84%
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers	-	0.99%	0.71%	1.10%	1.18%	1.18%
Young offenders' institutions	-	0.23%	0.05%	0.15%	0.12%	0.21%
Court cells	-	0.15%	0.11%	0.07%	0.04%	0.03%
Other	7%	0.38%	0.79%	0.12%	1.16%	0.74%
Unspecified	-	0.30%	0.42%	0.47%	0.42%	0.34%
Total	100%	100%	100%	100%	100%	100%

Although the cases referred concerning penal institutions represent a considerable proportion, the number of cases concerning patients hospitalised without consent has grown constantly since 2011. However, there is still room for progress insofar as families are still very hesitant to refer cases to the CGLPL (probably through fear of the impact that it may have upon the treatment of their close relation deprived of liberty). Associations and even CDSPs should not hesitate to consider the CGLPL as an intermediary for their concerns and observations. Their close relations with and knowledge of places of hospitalisation constitute a major asset for the CGLPL, if only in terms of prioritising the inspections to be planned.

As far as places of detention of illegal immigrants are concerned, the number of cases referred remains stable. Since the whole of the places of detention of illegal immigrants have been visited at least once, the CGLPL will be able to refine its approach to ensuring respect for fundamental rights at the time of the second visits by placing still greater importance upon procedures and the effectiveness of the measures put in place for detainees, particularly in

medical and social terms. In this respect, precious information may be passed on to the CGLPL by associations present in these places. The extension of the CGLPL's duties to control of the execution of deportation measures should also lead these associations to inform the CGLPL of any difficulties liable to arise within this framework.

Distribution of cases referred by institution concerned

This table lists the institutions concerned by cases referred, with regard to which more than 25 letters were received between the months of January and November 2014. This list of 46 institutions accounts for 63% of the referrals received.

INSTITUTION CONCERNED BY THE CASE REFERRED	NUMBER OF CASES REFERRED
REMAND PRISON OF FLEURY-MEROGIS	135
PRISON OF FRESNES	134
PRISON OF REAU - SOUTH-ILE-DE-FRANCE	125
PRISON OF RENNES-VEZIN	93
PRISON OF POITIERS-VIVONNE	91
LONG-STAY PRISON OF SAINT-MARTIN-DE-RE	82
PRISON OF NANCY - MAXEVILLE	73
DETENTION CENTRE OF JOUX-LA-VILLE	71
DETENTION CENTRE OF MAUZAC	68
PRISON OF BOURG-EN-BRESSE	64
PRISON OF LILLE-SEQUEDIN	64
REMAND PRISON OF LYON-CORBAS	61
DETENTION CENTRE OF VILLENAUXE-LA-GRANDE	60
PRISON OF CAEN	59
DETENTION CENTRE OF BAPAUME	51
PRISON OF MEAUX-CHAUCONIN	51
REMAND PRISON OF GRASSE	49
WOMEN'S PRISON OF RENNES	49
PRISON OF NANTES	48
PRISON OF LILLE ANNOEULLIN	45
REMAND PRISON OF YVELINES - BOIS D'ARCY	45
DETENTION CENTRE OF MURET	45
LONG-STAY PRISON OF POISSY	45
PRISON OF MARSEILLE-LES BAUMETTES	43
LONG-STAY PRISON OF SAINT-MAUR	42
REMAND PRISON OF LILLE-SEQUEDIN	42
REMAND PRISON OF DOUAI	40
PRISON OF LIANCOURT	39
DETENTION CENTRE OF SALON-DE-PROVENCE	39
PRISON OF PERPIGNAN	38
DETENTION CENTRE OF TARASCON	37
DETENTION CENTRE OF VAL-DE-REUIL	36
LONG-STAY PRISON OF ARLES	36
DETENTION CENTRE OF TOUL	35

PRISON OF AITON	35
REMAND PRISON OF NANTERRE	34
PRISON OF LE HAVRE	33
REMAND PRISON OF EPINAL	33
PRISON OF ALENCON - CONDE-SUR-SARTHE	33
PRISON OF MOULINS-YZEURE	32
DETENTION CENTRE OF ROANNE	31
PRISON OF METZ	31
LONG-STAY PRISON OF CLAIRVAUX	30
DETENTION CENTRE OF ARGENTAN	29
LONG-STAY PRISON OF ENSISHEIM	26
OTHERS (251 institutions + unspecified place)	*1,421*
TOTAL	**3,803**

2.1.3 *The Situations Raised*

Distribution of cases referred according to the principal grounds and type of person referring the case

For each letter received, principal grounds and secondary grounds for referral of the case are given. The last column of the table below shows the percentage of occurrence of different types of grounds, taking the reasons for referral of cases as a whole (without distinguishing between principal and secondary grounds). In view of the small number of letters received concerning police custody facilities, detention of illegal immigrants and young offenders' institutions, the principal grounds for the referral of cases presented below only concern penal and health institutions.

Health Institutions catering for Patients Hospitalised without their Consent

(See table below)

Order of grounds 2014	Grounds for psychiatric hospitals	Person concerned	Family/close relations	Doctor/medical staff	Association	Actors within the Institution	Union	Anonymous	Other	Total	% 2014	% 2013	% including all grounds (principal and secondary) 2014
1	Procedure	79	16	6	1				2	104	44.26%	37.13%	↘31.36%
	Dispute of hospitalisation	66	11	4	1					82			
	Non-compliance with procedure	1	1	2					1	5			
	Dispute of UMD transfer order	3	2							5			
	Other	3	1							4			
	JLD procedure	2	1							3			
	Guardianship procedure	2							1	3			
	Medical treatment committee	2								2			
2	Access to healthcare	14	11	2			1	1	1	30	12.77%	7.92%	↗12.94%
	Access to psychiatric treatment	5	8				1			14			
	Treatment programme	5	1							6			
	Access to somatic treatment	1	1					1	1	4			
	Other	2		2						4			
	Access to medical record		1							1			
	Relations with general practitioner	1								1			
3	Preparation for discharge	14	3	1						18	7.66%	4.95%	↗7.89%
	Discharge from hospitalisation	10	3							13			
	Preliminary discharge	4		1						5			
4	Relations with the outside	2	8	2						12	5.11%	9.41%	↗7.89%
	Visits		5	2						7			
	Other		2							2			
	Trusted person appointed as legal representative	1								1			
	Correspondence	1								1			
	Notification of family		1							1			
4	Patient/staff relations	7	2		1			1	1	12	5.11%	5.94%	↗6.58%
	Confrontational patient-staff relations	4	2					1	1	8			
	Patient-staff use of force	2								2			
	Other	1								1			
	Patient-staff respect/relations				1					1			
4	Staff working conditions	1	10			1				12	5.11%	-	↘3.29%
	Doctors/working conditions		9			1				10			
	Nursing staff/working conditions	1								1			
	Other/working conditions		1							1			
5	Assignment	2	2	2		1	1		2	10	4.26%	6.44%	↘3.73%
	Determination of sector		1	1					2	4			
	Other	2	1							3			
	Readmission after UMD			1		1				2			
	Assignment to inappropriate unit						1			1			
6	Material conditions	4	1	1	1				1	8	3.39%	4.46%	↗6.8%
	Accommodation	1		1	1				1	4			
	Other	1	1							2			
	Clothing	1								1			
	Food	1								1			
6	Seclusion	5		2					1	8	3.39%	4.46%	↘3.29%
	Conditions seclusion room	2							1	3			
	Traceability/seclusion			2						2			
	Grounds for seclusion	2								2			
	Other	1								1			
-	Other grounds	13		1	1	1			5	21	8.94%	19.29%	↗16.23%
	Total	141	53	17	4	3	2	2	13	235	100%	100%	100%

In 2014, the three principal grounds for referral of cases concerning health institutions were therefore: procedures/access to healthcare/preparation for discharge. In previous years, they were as follows:

- procedures/preparation for discharge/seclusion (2010);
- procedures/preparation for discharge /assignment (2011);
- procedures/assignment/access to legal information and advice (2012);
- procedures/relations with the outside world/access to healthcare (2013).

Penal Institutions: Principal Grounds according to Category of Person referring the Case

Order of grounds 2014	Grounds concerning penal institutions	Person concerned	Family/close relations	Association	Lawyer	Other	Independent government agency	Co-Prisoner	Doctor/medical staff	Actors within the Institution	Private Individual	Total	% 2014	% 2013	% including all grounds (principal and secondary) 2014
1	Transfer	337	65	7	16	6		1	2		1	435	12.64%	13.79%	↘8.63%
	Requested transfer	249	52	4	14	4		1	1			325			
	Administrative transfer	33	11	1	1	1			1			48			
	Conditions of transfer	36	1	1	1	1						40			
	International transfer	11									1	12			
	Other	8	1	1								10			
2	Prisoner/staff relations	254	37	20	8	12	18	4	2	1	3	359	10.43%	9.68%	↘8.50%
	Confrontational Relations	121	10	3	1	1	7	3		1	2	149			
	Violence	67	20	11	4	6	9	1	2			120			
	Disrespect	55	7	5	2	5	2				1	77			
	Other	11		1	1							13			
3	Access to healthcare	200	54	22	17	7	2	6	11	4	1	324	9.42%	9.53%	↘9.34%
	Access to somatic treatment	78	25	6	6	2	1	1	2	1		122			
	Access to specialist treatment	34	11	5	6	1			2	1	1	61			
	Access to psychiatric treatment	27	7		2	2		1	5			44			
	Access to hospitalisation	19	7	5	1	1		1		2		36			
	Distribution of medicines	11	1	1			1		1			15			
	Other	10	3		2							15			
	Consent to treatment	6		4								10			
	Medical services/prisons administration/police relations	6		1								7			
	Access to medical record	4			1				1			6			
	Preventive healthcare	1				1		1				3			
	Conditions of installation of medical services	1			1							2			
	Paramedical devices	2										2			
	Management of internal movement/healthcare	1										1			
4	Relations with the outside	188	102	11	6	4	2	1	1	2	4	321	9.33%	8.13%	↗10.46%
	Access to visiting rights	39	55	2	1	1	2				1	101			
	Correspondence	72	5	5	2	1					2	87			
	Visiting room conditions	28	22	2	2	1		1		2		58			
	Telephone	30	6	1							1	38			
	Family visiting rooms and family life units	7	6						1			14			
	Maintenance of parent/child bonds	10	1	1		1						13			
	Notification of family	1	7		1							9			
	Other	1										1			

5	Material conditions	206	19	14	11	12	14	3	1	1		281	8.17%	8.82%	↗12.68%
	Accommodation	68	4	7	5	7	8			1		100			
	Prison shops	57	4	1			1	2				65			
	Hygiene/maintenance	36	3	3	4	3	3	1				53			
	Property office/searches	15	6	1	2		1					25			
	Food	14	2	1		1			1			19			
	Television	12		1								13			
	Other	4				1	1					6			
6	Preparation for release	216	29	11	6	3	3	1		1		270	7.85%	7.30%	↘7.07%
	Reduced sentencing	111	22	4	4	2	1	1		1		146			
	SPIP/preparation for release	59	6	1			1					67			
	Administrative formalities	22	1	2	2	1	1					29			
	Relations with outside bodies	11		1								12			
	Other	6		2								8			
	Deportation procedures	3		1								4			
	Sentence enforcement programmes	2										2			
	End-of-sentence PSE placement	2										2			
7	Activities	219	9	4	8		3			6	2	251	7.29%	6.61%	↗8.73%
	Work	105	2		2		1			1	1	112			
	IT	38	5		2							45			
	Education/training	32	1		2		1			3		39			
	Exercise	18		1	1							20			
	Leisure activities	6	1	3	1					2	1	14			
	Sport	8										8			
	Library	8										8			
	Other	4					1					5			
8	Procedures	177	22	10	9	4	3		1		1	227	6.60%	6.76%	↘5.15%
	Dispute of procedure	101	13	4	5	4			1		1	129			
	Sentence enforcement	34	1	4			1					40			
	Procedural questions	27	2	1	1		1					32			
	Disclosure of grounds for imprisonment	11	6	1	3		1					22			
	Other	4										4			
9	Internal order	141	32	12	9	4	4	4	1	2	2	211	6.13%	6.52%	↗8.57%
	Discipline	62	22	5	4	2	2	1	1	1		100			
	Body searches	40	6	4	3	1	2	1		1	2	60			
	Security measures	10	1	2		1		1				15			
	Cell searches	13	1					1				15			
	Confiscation/withholding of property	10	1		1							12			
	Management of movements	2	1									3			
	Use of means of physical restraint	1		1	1							3			
	Use of force/violence	2										2			
	Other	1										1			
10	Relations between prisoners	123	25	11	5	14	1	2	1	1	1	184	5.35%	5.78%	↘4.67%
	Threats/extortion/theft	66	12	8	3	10	1		1			101			
	Physical violence between prisoners	47	12	3	2	4		2		1	1	72			
	Measures taken following misdemeanours	7	1									8			
	Other	2										2			
	Gifts between prisoners	1										1			
11	Internal allocation	67	8	2	4	3	3		2			89	2.59%	3.13%	↘2.58%
	Cell allocation	48	6	2	3	3	3					65			
	Differentiated regime	10	2									12			
	New arrivals wing	4			1				1			6			
	Loss of property	3										3			
	Other	2							1			3			
12	Inspection (CGLPL – interview request)	71	3	3	2	1		2				82	2.38%	1.25%	↘1.29%

13	Financial situation	73	3	1	1	1				1	1	81	2.35%	2.32%	↗2.66%
	Personal account	29	1									30			
	Taking of poverty into account	19		1	1	1				1		23			
	Money orders	6									1	7			
	Welfare benefits and allocations	6	1									7			
	Other	6										6			
	Savings	6										6			
	Cash deductions	1	1									2			
14	Legal information and advice	49	4	3				2		2		60	1.74%	1.79%	↗1.88%
	Provision of information	17	1	2								20			
	Access to personal data –GIDE/CEL etc.	13	1									14			
	Access to lawyer	8		1				1		1		11			
	Welfare rights (CPAM State health insurance office etc.)	5	2							1		8			
	Means of remedy	5										5			
	Other	1						1				2			
15	Self-harming behaviour	32	8	8	1	2	2	2			1	56	1.63%	1.67%	↗1.82%
	Hunger/thirst strike	20	3	4		1						28			
	Suicide/attempted suicide	11	3	4	1	1	1	1			1	23			
	Death/circumstances of death	1	2				1	1				5			
16	confinement	40	9	1	1	1	2	1				55	1.60%	1.52%	↗1.94%
	Confinement/PPL security	21	5				1	1				28			
	Confinement/inst. security	19	3	1		1	1					25			
	Other		1		1							2			
17	Other	34	2	3	3		3	1			2	48	1.38%	2.75%	↘0.61%
18	Removal from prison	29	1		5					1		36	1.05%	0.83%	↘0.93%
	Removal from prison for medical reasons	20	1		2							23			
	Removal from prison in order to appear in court	8			3					1		12			
	Other	1										1			
19	Handling of applications	26	4	1	1							32	0.93%	0.80%	↗1.71%
	Absence of response	15	3	1	1							20			
	Response waiting time	4										4			
	Hearings/applications	4										4			
	Other	2	1									3			
	Letter-writer	1										1			
20	Staff working conditions	5	1			12		1	3			22	0.64%	0.45%	↘0.36%
	Prison officers/working conditions					10		1				11			
	Other/working conditions	4	1			2			3			10			
	SPIP/working conditions	1										1			
21	Religion	10			1			1		2		14	0.41%	0.57%	↘0.37%
	Dietary requirements/religion	4										4			
	Religious items	3										3			
	Provision of religious services				1					2		3			
	Conditions/religious worship	2										2			
	Other	1						1				2			
22	Voting rights (practical means)	3										3	0.09%	-	↘0.05%
	Total	2500	437	144	114	86	60	32	25	24	19	3441	100%		

In 2014, the three principal grounds for the referral of cases concerning prisons were therefore: transfer, prisoner/staff relations, access to healthcare. In previous years, they were as follows:

- transfer, access to healthcare, material conditions (2010);
- transfer, access to healthcare, activities (2011);

- transfer, access to healthcare, activities (2012);
- transfer, prisoner/staff relations, access to healthcare (2013).

2.2 Actions taken in Response to Cases Referred

2.2.1 *Overall Data*

Type of Letters Sent

	Type of action taken	Total (2014) (Jan.-Nov.)	Percentage 2014	Percentage 2013
Verifications (article 6-1 Act 30th October 2007)[43]	Referral of case to the authority by letter	993	33%	29.4%
	Number of on-site verification reports sent	3	0.1%	Not specified
Subtotal		**996**	**33%**	**29%**
Responses given to letters not having given rise to the immediate opening of an inquiry	Request for further information	878	29.2%	29.9%
	Provision of information	718	23.9%	28.4%
	Other (taken into account for visit, passed on for reasons of competence, etc.)	276	9.2%	8.1%
	Lack of competence	137	4.6%	4.2%
Subtotal		**2009**	**67%**	**71%**
TOTAL		**3005**	**100%**	**100%**

The cases referred were principally followed-up in the following ways:

- establishment of *inter partes* exchange with the authority concerned and gathering together of documents, within the framework of the provisions of article 6-1 of the Act of 30th October 2007 (resulting from the Act of 26th May 2014), enabling the CGLPL to gain the greatest possible objectiveness in its view of situations referred to it (33%);
- requests for further information from the person having referred the case to the CGLPL (29.2%);
- provision of information concerning the situation described – information concerning applicable legal and statutory provisions, information on formalities to be conducted, direction to an institution, lawyer – (23.9%);
- declaration of lack of competence (4.6%, to which may be added transfers for reasons of competence to independent government agencies with specific regulatory powers with which the CGLPL's relations are established by agreement).

Within the framework of verifications undertaken, the CGLPL sent the following letters between 1st January and 30th November 2014:

- 993 letters to the authorities concerned (as compared with 835 in 2013),

[43] *Corresponds to the inquiries mentioned in previous Annual Reports.*

- 844 letters to persons having referred cases, informing them of verifications conducted (682 in 2013),
- 649 letters to authorities with which cases were taken up, informing them of actions taken in order to follow-up verifications (606 in 2013),
- 484 letters to persons having referred cases, informing them of actions taken in order to follow-up verifications (502 in 2013),
- 444 reminder letters (274 in 2013),
- 306 letters to persons having referred cases, informing them of reminders issued (189 in 2013),

Throughout the year 2014, considerable effort was made to reply to every letter within a shorter space of time. With the same number of staff, the CGLPL thus sent 5,729 letters between January and November 2014, whereas it sent 5,093 for the whole of the year 2013. The CGLPL thus conducted a larger number of verifications with the authorities (+19% for the first eleven months of 2014 as compared with 2013). However, a non-negligible part of its activity was devoted to sending reminder letters to authorities with which cases had been taken up and, if necessary, to the higher authorities above them (+62% for the first eleven months of 2014 as compared with 2013).

It should be recalled that article 9-1 of the Act of 26th May 2014, amending the Act of 30th October 2007, provides for the possibility of sending formal notification when requests for information, documents and observations, made in particular within the framework of article 6-1 (cases referred), are not fruitful. The CGLPL has not, to date, made use of this prerogative, giving priority to the establishment of constructive exchanges with the authorities. Moreover, it should be noted that the waiting time for the sending of observations and documents requested is sometimes dependent upon the time required for handling of requests by heads of institutions (the CGLPL has thus been able to identify a few prisons, which on each occasion, only send back responses after one or even two reminders). However, in most cases it depends upon the time required by the established circuit of authority, whether within the Ministry of Justice or the Ministry of the Interior.

This waiting time is particularly detrimental to the CGLPL's action with regard to verifications conducted within the framework of measures of detention of illegal immigrants. Indeed, in view of the deadlines concerning foreign detainees, in most cases the CGLPL immediately sends requests to the heads of detention centres for illegal immigrants by fax, whereas the elements of responses only come back to it from the Private Office of the Minister of the Interior after several weeks. Although this waiting time does not exclude the possibility of the CGLPL making recommendations of a general nature to the authority concerned, it is unable to do so in useful time with regard to the detainee or detainees concerned, when the individual situations submitted to it jeopardise respect for their fundamental rights. The CGLPL therefore recommends that the requested elements should be sent back to it within a deadline enabling it to fully exercise its duties.

Time required for Responses (to letters received between 1st January and 30th November 2014)

Although in most cases the CGLPL succeeded in replying to persons who approached the institution in 2014 within less than two months (45% of letters handled), reduction of the waiting time remains a permanent objective in view of the problems submitted to it and the different perception that persons deprived of liberty have of the passage of time.

Although lengthening of the waiting time may be explained by a certain saturation effect, the gradual reduction of which would be facilitated if the CGLPL were to obtain the creation of two positions for inspectors in charge of case referrals, as requested within the framework of the Budget Bill for 2015, it is also connected with the handling of certain letters together (identical problems, persons writing long and very regular letters etc.) and the need to carry out meticulous research with regard to specific issues.

Length of response time	Number	%
0-30 days	1,141	30%
30-60 days	569	14.97%
More than 60 days	1,227	32.26%
Response pending	713	18.75%
Cases not taken up	153	4.02%
TOTAL	3,803	

2.2.2 *Verifications with the Authorities*

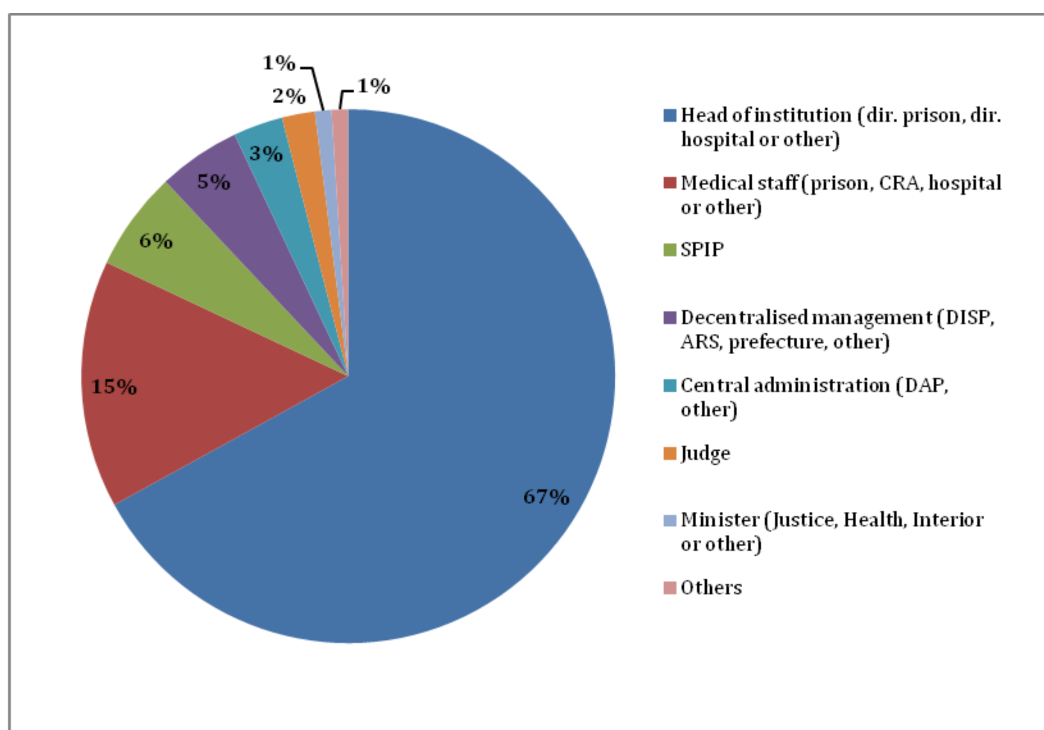
In view of the institutions concerned and the issues raised in cases referred[44], requests for observations and documents are, in most cases, sent to prison directors and doctors of health units and regional mental health departments for prisons.

Category of Authorities called upon within the framework of Verifications

Type of authority approached	Number of cases referred	Percentage 2014	Percentage 2013	Percentage 2012
Head of institution	665	66.97%	63.23%	64.79%
Prison director	606	(61.03%)		
Director of a hospital facility	35			
Director of a CRA	9			
Gendarmeries	5			
Police stations	6			
Director of a LRA/ZA	2			
Other director	2			
Medical staff	146	14.70%	17.96%	12.56%
Doctor in charge of health unit, SMPR	138	(13.90%)		
Hospital doctor	3			
Doctor from other facility	3			
CRA Doctor	2			
SPIP	56	5.64%	5.51%	5.30%
Office	33	(3.32%)		
DSPIP	23			
Decentralised management	50	5.04%	6.71%	8.21%
DISP	27			
ARS	9			
Other	3			
Prefecture	11			

[44] *See paragraphs 1.2 and 1.3 of this Section*

Central administration	36	3.62%	3.95%	6.23%
DAP	27			
Other central management	9			
Member of the national legal service	17	1.71%	1.92%	2.91%
Minister	12	1.21%	-	-
Minister of Justice	4			
Minister of Health	4			
Minister of the Interior	3			
Other Minister	1			
Other	11	1.11%	0.72%	-
TOTAL	993	100%	100%	100%



Inquiry Case-Files

In the course of the first eleven months of the year, **549** new inquiry case-files were opened, as compared with 446 for the same period in 2013, that is to say an increase of 23%. Out of these case-files, 136 were closed in the course of the year 2014.

Of the inquiry case-files opened before 1st January 2014:

- 160 are still in progress on 30th November 2014;
- 332 were closed in the course of the first eleven months of the year.

Type of Persons Referring Cases leading to the Opening of Case-Files

Category of persons	Total	%
Person concerned	371	67.58%
Family/close relations	63	11.48%
Association	29	5.28%
Lawyer	30	5.46%
Other	22	4.01%
Fellow person deprived of liberty	15	2.73%
At the initiative of the CGLPL	11	2%
Doctor/medical staff	6	1.09%
Persons working within the Institution	2	0.37%
Total	**549**	**100%**

Type of Institutions Concerned

Place of deprivation of liberty	Total	%
Prisons	507	92.35%
CP - Prison with sections incorporating different kinds of prison regime	246	
MA - Remand prison	116	
CD - Long-term Detention Centre	93	
MC - Long-stay prison	38	
Hospitals (UHSA, EPSNF)	6	
All	4	
CSL - Open Prison	1	
EPM - Prison for minors	2	
CPA - Reduced sentencing training prison	1	
Health institutions	19	3.46%
EPS - public psychiatric institution	11	
EPS - public health institution secure rooms	4	
UMD - Unit for difficult psychiatric patients	2	
EPS - public health institution psychiatric department	2	
Detention of illegal immigrants	17	3.10%
CRA - Detention centre for illegal immigrants	13	
LRA - Detention facility for illegal immigrants	2	
ZA - waiting area	2	
Police custody facilities	4	0.73%
CIAT - police stations and headquarters	3	
BT - territorial gendarmerie (*brigade territoriale de gendarmerie*)	1	
Court cells	1	0.18%
Deportation	1	0.18%
Total	549	100%

Average Length of Inquiries

468 inquiry case-files were closed between January and November. The average length of time taken by inquiries was 9 months (as compared with 8 months in 2013). Almost 50% of them took less than 8 months.

Length of Time	Number of case-files	Percentage	Combined percentage
Less than 2 months	12	2.56%	2.56%
From 2 to 4 months	50	10.68%	13.24%
From 4 to 6 months	91	19.44%	32.68%
From 6 to 8 months	82	17.52%	50.20%
From 8 to 10 months	67	14.32%	64.52%
From 10 to 12 months	40	8.55%	73.07%
From 12 to 18 months	87	18.59%	91.66%
From 18 to 24 months	25	5.34%	97%
More than 24 months	14	3%	100%
Total	**468**	**100%**	**100%**

Principal Grounds upon which Verifications were Taken Up with the Authorities

The CGLPL may request observations concerning various different issues from authorities to which cases are referred. However, the CGLPL defines each inquiry case-file on the basis of the principal grounds for verification.

Principal Grounds with regard to Health Institutions catering for Persons Hospitalised without their Consent

Grounds concerning psychiatric hospitals	Total	Order of principal grounds, letters of referral
Access to healthcare	4	2
Material conditions	3	6
Procedures	2	1
Assignment	2	5
Preparation for discharge *(preliminary discharge)*	2	3
Seclusion *(grounds provided)*	1	6
Patient/staff relations *(use of force)*	1	4
Activities *(IT)*	1	-
Internal order *(security of staff)*	1	-
Total	**17**	

Principal Grounds with regard to Prisons

Grounds concerning prisons	Total	Order grounds for case-file	Order of principal grounds, letters of referral
Access to healthcare	86	1	3
Relations with the outside world	52	2	4
Transfer	50	3	1
Material conditions	46	4	5
Relations between prisoners	44	5	10
Internal order	42	6	9
Activities	39	7	7
Prisoner/staff relations	30	8	2
Preparation for release	25	9	6
Solitary confinement	21	10	16
Financial situation	16	11	13
Legal information and advice	11	12	14
Removal from prison	9	13	18
Procedures	8	14	8
Internal allocation	8	14	11
Handling of requests	7	15	19
Self-harming behaviour	7	15	15
Other	3	16	17
Staff working conditions	2	17	20
Inspection (CGLPL)	1	18	12
Religion (religious items)	1	18	21
Total	508		

Fundamental Rights concerned in Inquiry Case-Files by Type of Place of Deprivation of Liberty

Fundamental rights	Prisons	Detention of illegal immigrants	Health institutions	Police custody facilities	Total	%
Access to healthcare and prevention	100	5	5	1	111	20.22%
Protection from bodily harm	101	5	2	1	109	19.85%
Maintenance of family/outside bonds	73	1	1		75	13.66%
Dignity	57	5	2	3	67	12.20%
Social integration/preparation for release	31		1		32	5.83%
Property rights	29				29	5.28%
Access to employment, activities, etc.	26		1		27	4.92%
Equal treatment	18				18	3.28%
Protection from mental injury	16			1	17	3.10%
Legal information	9	1	2		12	2.19%

Defence rights	10				10	1.82%
Freedom of movement	8		2		10	1.82%
Confidentiality	8				8	1.46%
Right to information	8				8	1.46%
Welfare rights	4				4	0.73%
Freedom of conscience	2		1		3	0.56%
Right to individual expression	2				2	0.36%
Unjustified detention	1	1			2	0.36%
Image rights	1				1	0.18%
Staff working conditions	1				1	0.18%
Privacy	1				1	0.18%
Other	2				2	0.36%
TOTAL	508	18	17	6	549	100%

2.2.3 *On-Site Verifications*

The Legislature has approved the procedure implemented at the CGLPL's initiative in order to enable it to properly fulfil its preventive duties. Article 6-1 thus provides that the CGLPL "may conduct verifications, on-site if necessary" and article 8-1 grants the same prerogatives to inspectors acting within the framework of inspections and within the framework of on-site verifications. Both the inspection and on-site verification methods of action are based upon an internal mode of organisation involving two specialised but complementary groups: inspectors in charge of inspections and inspectors in charge of referred cases (and therefore on-site verifications).

The unchanged number of inspectors in charge of referred cases, combined with the emphasis placed upon more rapid handling thereof, did not enable the number of on-site verifications to be increased as much as hoped. Between January and November 2014 the CGLPL thus conducted five on-site verifications concerning either one person (three on-site verifications), or a group of persons (two). In any case, even when these procedures only concern an individual situation, they always form a part of broader overall reflection with regard to a particular issue. Four were conducted in an unexpected manner and one was scheduled (advance notice of two working days) in order both to enable the person concerned to prepare the elements that they wished to bring to the attention of the CGLPL, and the management to gather together the documents requested by the CGLPL.

The CGLPL thus delegated between two and three inspectors in order to conduct on-site verifications under the following circumstances:

- the situation of a young adult imprisoned in the prison of Fresnes with a view to ensuring proper balance between the security measures implemented and respect for their dignity, as well as the practical details of their psychiatric treatment. The lifting of medical secrecy as provided for under the final paragraph of article 8-1 of the amended Act of 30th October 2007 was requested within the framework of this inquiry. An inspector with the status of doctor was thus delegated in order to consult the medical record of the person concerned and engage in exchanges with the psychiatrist, head of the UHSA centre and of the SMPR. Prior agreement was given by the person concerned in writing. During this phase, no other inspector was present and the medical information was not passed on internally. Only the doctor inspector's conclusions were re-transcribed in the

report. The CGLPL pays particularly close attention to respect for medical secrecy and to the limits of its action when the latter is lifted.

- several testimonies reporting serious violence between minors in the children's wing of the remand prison of Villeneuve-lès-Maguelone, in the exercise yard in particular. The CGLPL made its urgent recommendations public[45] without awaiting the inquiry report. This prerogative, provided for by article 9 of the Act of 30th October 2007 when the CGLPL ascertains a serious violation of fundamental rights, had hitherto never been implemented within the framework of the handling of cases referred[46]. These recommendations concerned the difficulties encountered by inspectors in gaining access to the whole of information requested from various different institutions as well as, and above all, the serious risks weighing upon the security of minors imprisoned within this wing, and therefore their protection from bodily harm. Following these recommendations, the Minister of Justice decided to organise an inspection and several measures were taken, in particular, to make the exercise yard secure, to facilitate the integration of newly-arriving minors without clashes and to re-establish the meaning of the disciplinary regime.

- a few days after the visit to the EPM of Porcheville by a team of inspectors, an incident was referred to the CGLPL, having occurred between a minor and prison officers the day after the inspectors' departure and corresponding to testimonies heard during the visit. The *Contrôleure Générale* then delegated two inspectors, one of whom had taken part in the inspection and the other being an inspector in charge of cases referred, in order to rapidly conduct on-site verifications for the purpose of gaining a better understanding of the circumstances of the incident and the actions taken in response to it.

- the taking of a testimony concerning the situation of aged and/or dependent persons imprisoned in the long-term detention centre of Toul in a specific wing, which therefore posed the question of the suitability of the measures put in place with regard to their state of health and, beyond this, the prospect of reduction of their sentences. At the time of the visit to this institution in April 2011, special arrangements for them had been noted, in particular in terms of in-home help. The *Contrôleure Générale* thus delegated three inspectors in charge of cases referred in order to check the conditions of the measures put in place for them and gain a better understanding of the terms of reduced sentencing, in particular with regard to the right for persons over 70 years of age to have the benefit of release on parole without any conditions concerning time remaining to be served. Finally, at the time of discussion on the Bill on dependency in Parliament, the issue of access to aid schemes for prisoners is increasingly relevant, both in detention and on release therefrom.

- the CGLPL was unable to obtain the whole of the observations and documents requested either from the directors of certain institutions, in which a prisoner had successively been imprisoned, or from the management of the central administration, which would have enabled it to better determine the person's course of detention, ensure respect for proper balance between the security measures applied to them (security transfers, placement in the solitary confinement wing, use of means of physical restraint, long-stay prison

[45] *See the cglpl.fr website, "recommendations" section*

[46] *It should be recalled that it has been implemented on three occasions since 2008 following inspections (CP of Nouméa, CP of Marseille, CEF of Hendaye and Pionsat)*

assignment) and respect for their dignity, and assess the possibilities of transfer closer to home for family reasons. The *Contrôleure Générale* therefore delegated three inspectors to conduct on-site verifications.

> On-site verifications take three days on average (three lasted three days, one lasted four days and another lasted one day), which enables the delegated inspectors to gain a very precise and objective understanding of the individual situation or situations concerned, as well as defining specific problems more clearly with a view to making recommendations to the persons in charge of the places (article 6-1 of the Act of 30th October 2007) and, if necessary, to the Ministers concerned (article 10 of the same Act).

3. Visits Conducted in 2014

3.1 Quantitative Data

Visits per Year and per Category of Institution

Category of institution	Total no. of inst.[47]	2008	2009	2010	2011	2012	2013	2014	TOTAL	of which inst. visited on 1 occasion[48]	% visits out of no. of inst.
Police custody facilities	**3,506**	**14**	**60**	**47**	**43**	**73**	**59**	**55**	**351**	**343**	**9.78%**
- of which police[49]	549	11	38	33	28	42	41	27	220	213	
– gendarmerie[50]	2,957	2	14	13	13	29	14	24	109	109	
– various[51]	Not specified	1	8	1	2	2	4	4	22	21	
Detention by customs	**179**	**4**	**2**	**4**	**5**	**3**	**7**	**11**	**36**	**35**	**19.55%**
- under police powers of criminal investigation	11	0	1	0	1	0	0	1	3	2	
– ordinary law	168	4	1	4	4	3	7	10	33	33	
Cells/jails of courts[52]	**197**	**2**	**7**	**11**	**10**	**19**	**15**	**4**	**68**	**68**	**34.52%**
Other[53]	**-**	**0**	**0**	**0**	**0**	**1**	**0**	**0**	**1**	**1**	**-**
Penal institutions	**190**	**16**	**40**	**37**	**32**	**25**	**29**	**31**	**210**	**199**	**104.74%**
– of which remand prisons	96	11	21	13	16	15	16	14	106	101	
- prisons (with sections incorporating different kinds of	45	1	7	9	7	7	4	8	43	42	

[47] *The number of institutions changed between 2013 and 2014. The figures presented below have been updated with regard to CEFs (on 3rd September 2014) and prisons (on 1st November 2014).*

[48] *The number of follow-up visits was respectively one in 2009, five in 2010, six in 2011, ten in 2012, seven in 2013 and **thirty-seven** in 2014. **Due to the closure of certain institutions in the course of these seven years, the number of places visited at least once may be higher than the number of institutions to be inspected.***

[49] *Data provided by the IGPN solely concerning the police custody facilities of the DCSP national police directorate (September 2013) and the DCPAF border police directorate (December 2014) that is to say, 493 and 56 premises respectively.*

[50] *Data provided by the DGGN, December 2014.*

[51] This concerns facilities of the central departments of the national police force (criminal investigation department, PAF etc.) and gendarmerie facilities other than territorial headquarters.

[52] *Cases where the jails and cells of TGIs and Courts of Appeal are located on the same site have not been taken into account.*

[53] *Military arrest premises etc.*

prison regime)										
long-term detention centres	25	2	5	8	6	1	3	4	29	28
– long-stay prisons	6	0	3	3	0	0	1	1	8	7
– prisons for minors	6	1	3	1	2	0	0	2	9	7
– open prisons	11	1	1	2	1	2	5	1	13	13
-EPSNF	1			1			0	1	2	1
Detention of illegal immigrants	**99**	**11**	**24**	**15**	**11**	**9**	**1**	**9**	**80**	**72**
– Of which CRA	24	5	12	9	7	5	0	6	44	38	**72.73%**
– LRA[54]	24	4	6	4	2	3	0	2	21	20	
– ZA[55]	51	2	6	2	2	1	1	1	15	14	
Deportation procedures	-	-	-	-	-	-	-	**3**	**3**	**3**	-
Health institutions[56]	**429**	**5**	**22**	**18**	**39**	**22**	**17**	**15**	**138**	**136**	
– of which CHS	270	5	7	7	6	7	5	6	43	42	
– Hospitals (psychiatric dept.)		0	5	4	8	3	2	2	24	24	
– Hospitals (secure rooms)	87	0	2	4	17	6	4	3	36	36	**31.70%**
– UHSI	8	0	3	3	1	0	0	1	8	7	
– UMD	10	0	2	0	1	5	2	0	10	10	
– UMJ	47	0	2	0	6	0	1	0	9	9	
– IPPP	1	0	1	0	0	0	0	0	1	1	
– UHSA	6	0	0	0	0	1	3	3	7	7	
Young offenders' institutions	**49**	**0**	**8**	**8**	**11**	**7**	**12**	**9**	**55**	**48**	**97.96%**
OVERALL TOTAL	**4,644**	**52**	**163**	**140**	**151**	**159**	**140**	**137**	**942**	**905**	**59.32%**[57]

[54] *Because detention facilities for illegal immigrants are opened and closed by prefectural order, it is a delicate task to count them, even for the competent Ministry, which undertook to provide the general Inspectorate with the precise number thereof. The figure given here therefore represents an order of magnitude.*

[55] *The number of 51 waiting areas should not give rise to any illusions: virtually all of the foreigners detained are held in the waiting zones of Roissy-Charles-de-Gaulle and Orly airports.*

[56] *Data provided by the DGOS for psychiatric institutions with day and night reception capacity for patients hospitalised without consent, hospitals possessing secure rooms and UMJs (December 2014).*

[57] *The ratio is not calculated from the total of the institutions inspected on at least one occasion between 2008 and 2014, which is shown in the previous column, but on the basis of these inspections after deduction of inspections of police custody facilities, customs detention facilities, court jails and cells and military arrest facilities; that is to say 455 inspections out of a total of 767 places of deprivation of liberty.*

The number of places of police custody and detention by the national police, the national gendarmerie and customs, as well as the number of health institutions, has changed considerably as compared with that shown in the Annual Reports published since 2010. In the space of five years, the number of police custody cells and secure rooms has thus fallen by 14% from 4,095 to 3,506; that of customs detention facilities by 25%, falling from 236 to 179; on the other hand, the number of health institutions has increased by 16%, rising from 369 to 429, that of young offenders' institutions has increased by 11%, rising from 44 to 49, and that of court jails has increased by 8%, rising from 182 to 197.

Among health institutions, the number of psychiatric hospitals and hospitals possessing psychiatric departments, as well as the number of secure rooms, has increased considerably, whereas the number of UHSI, UHSA, UMD and UMJ remains stable.

The number of prisons, detention centres and waiting areas remains stable.

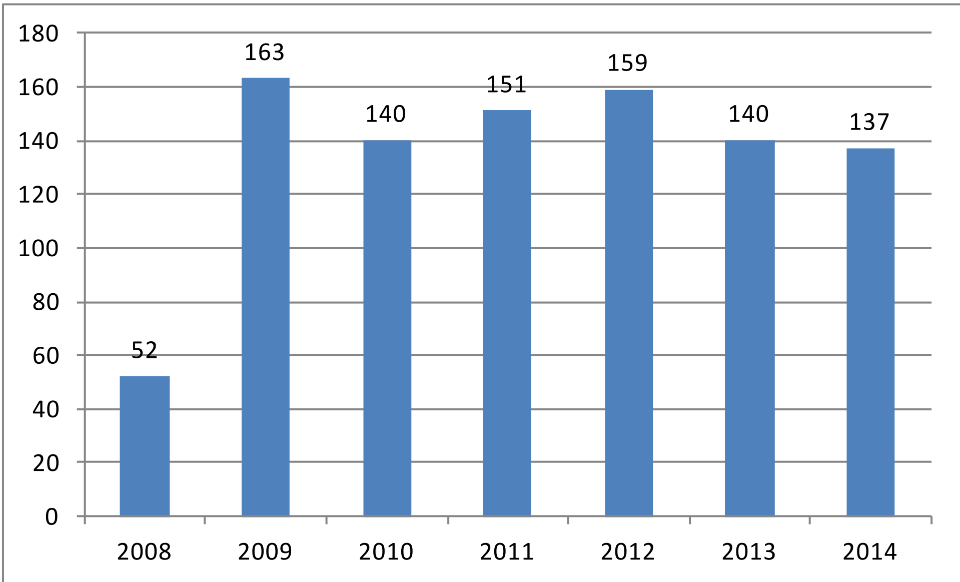
These numbers will continue to change, since premises undergo renovation at regular intervals, while others close and still others are opened.

The type of institutions visited has changed little in comparison to the year 2013, for the reasons set out in the 2013 Annual Report (cf. table on pages 262 *et seq.*). The number of prisons, police custody facilities and CEFs remains similar. Visits were conducted to gendarmeries with low levels of cases of police custody: they should not be neglected on the grounds that their activity in the field of police custody is not the same as that of police stations and gendarmeries situated in areas with high levels of crime.

Two exceptions are to be noted: the number of CRAs visited in 2014 increased to 9, whereas only one was visited in 2013; conversely, the number of health institutions decreased, falling to 15 in 2014, as compared with 17 in 2013 and 22 in 2012, this was due to the departure of two permanent doctor-inspectors and of the external hospital director inspector.

3.1.1 Number of Inspections

	2008	2009	2010	2011	2012	2013	2014
Number of visits	52	163	140	151	159	140	137



As in 2013, the number of visits conducted in 2014 was below the target of 150, for a number of different reasons, in particular the departure of six permanent inspectors in the course of the year 2014, following that of three other inspectors at the end of the year 2013; seven external inspectors also left the *Contrôle Général* in the course of 2014. Inspectors are rarely replaced immediately and a "training" period of almost six months is necessary before gaining mastery of the various different aspects of the profession. The number of inspectors per assignment was therefore often increased in order to enable the training of new colleagues by experienced inspectors before their departure. The new duties defined by the Act of May 2014, involving control of the deportation of foreigners until their handover to the authorities of the State of destination, also placed demands upon available staff and working time.

The arrival of the *Contrôleure Générale* appointed by the decree of 17th July 2014, more than a month after the end of her predecessor's term of office, stimulated the institution and led to a reduction in the number of weeks of inspections (by two weeks), both in order to make up for delay in the drafting of reports and to ensure continuity.

3.1.2 Average Length of Inspections (in days)

	2009	2010	2011	2012	2013	2014
Young offenders' institutions	2	3	4	4	3.25	3.56
Court jails and cells	1	2	2	1.5	2	1.75
Prisons	4	4	5	5	5	5.2
Police custody facilities	1	2	2	2	2	2.33
Detention of illegal immigrants	2	2	2	3	5[58]	3.11
Detention by customs	1	2	1	1.5	2	1.95
Health institutions	2	3	3	4	4	4.52
Deportation procedures	-	-	-	-	-	2
Overall average	2	3	3	3	3	3.33

In 2014, the inspectors spent:

- 161 days in prisons;
- 128 days in police custody facilities;
- 68 days in health institutions;
- 32 days in young offenders' institutions;
- 28 days in detention centres for illegal immigrants;
- 21 days in customs detention facilities;
- 7 days in jails and cells of courts;
- 6 days on deportation procedures.

That is to say a total of 451 days in places of deprivation of liberty.

[58] *Only the waiting zone of Roissy was visited in 2013, over a five-day period.*

The average length of visits increased slightly as compared with previous years, without this being attributable to any special cause. Medium and small-sized institutions were visited in 2014 (the largest being visited by ten inspectors over a two-week period).

Deportation procedures are shown for the first time in the Annual Report table, since inspection thereof was entrusted to the *Contrôle Général* by Act no. 2014-528 of 26th May 2014 amending Act no. 2007-1545 of 30th October 2007 instituting the *Contrôleur général des lieux de privation de liberté*. Although the time spent on inspections properly speaking is apparently small – the travel time – they require considerable preparation time, since inspection of deportation operations requires long notice periods, in the order of several days, and the operations may be cancelled at the last minute.

3.2 Nature of Visits (since 2008)

	Police custody, TGI cells, customs…	Young offenders' institutions	Health institutions	Prisons	Local detention centres, waiting areas…	TOTAL
Unexpected	455	49	77	105	77	763
Scheduled	1	6	62	104	6	179

In total, 81% of the institutions were visited in an unexpected manner and 19% in a scheduled manner. These percentages are to be adjusted according to the type of institution concerned. Visits conducted in an unexpected manner thus comprise the following percentages:

- 99.78% with regard to police custody facilities, court cells and customs;
- 89.10% with regard to young offenders' institutions;
- 55.40% with regard to health institutions;
- 50.24% with regard to prisons;
- 92.77% with regard to detention centres for illegal immigrants, waiting areas and deportation procedures.

The percentage of unexpected visits varies little from one year to the next, although the year 2014 seems to mark a record at 81% (for previous years the percentages were 75% in 2013, 77% in 2012, 74% in 2011 and 71% in 2010). The reasons for these percentages were given in the previous Annual Reports.

3.3 Categories of Institutions Visited

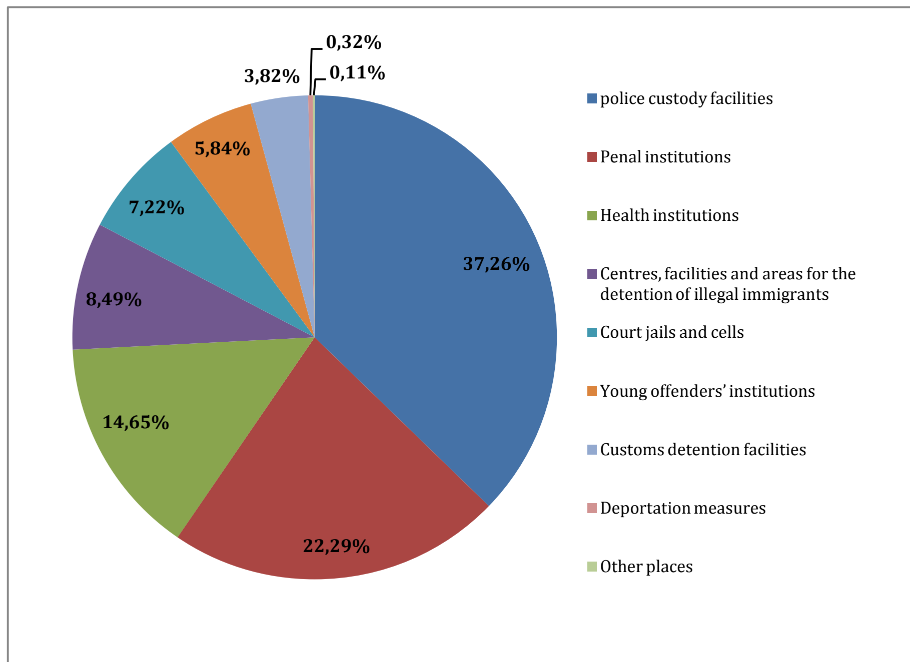
A total of **942** visits have been conducted since 2008. They are distributed as follows:

- 37.26% concerned police custody facilities;
- 22.29% concerned prisons;
- 14.65% concerned health institutions;
- 8.49% concerned detention centres and facilities for illegal immigrants and waiting zones;

- 7.22% concerned court jails and cells;
- 5.84% concerned young offenders' institutions;
- 3.82% concerned customs detention facilities;
- 0.32% concerned deportation measures;
- 0.11% concerned other places.

The remarks made in previous reports need only to be briefly recalled here. The number of visits in relation to the number of institutions is one aspect; the relative proportion of different categories of institutions in the visits as a whole is another. The largest percentage of visits concerned police custody facilities (more than a third); followed by prison facilities. These two categories of institutions alone represent 60% of visits.

This is hardly surprising. Police, gendarmerie and prison facilities are the places with the highest security requirements and, therefore, the greatest constraints; the risks of infringement of fundamental rights are accordingly very high in them.



3.4 Follow-Up Visits in 2014

Follow-up visits were conducted in the following institutions, which had already been visited previously (the year of the first visit is indicated in brackets):

- Hospital of Sainte-Marie de Nice (2010);
- young offenders' institution of Saint-Denis le Thiboult (2010);
- young offenders' institution of Gévezé (2010);
- young offenders' institution of Sainte Gauburge (2009);
- young offenders' institution of Fragny (2009);
- young offenders' institution of L'Hôpital-le-Grand (2009);
- young offenders' institution of La Chapelle Saint-Mesmin (2009);
- young offenders' institution of Savigny-sur-Orge (2010);
- detention centre for illegal immigrants of Nice (2009);
- detention centre for illegal immigrants of Saint-Jacques de la Lande (2009);
- detention centre for illegal immigrants of Marseille (2009, 2010);
- detention centre for illegal immigrants of Mesnil-Amelot 2 and 3 (2011);
- detention centre for illegal immigrants of Plaisir (2008, 2010);
- detention centre for illegal immigrants of Hendaye (2009);
- detention facility for illegal immigrants of Châteauroux (2010);
- waiting area of Marseille-Provence airport (2009);
- police custody facilities of the departmental headquarters of the border police (*direction départementale de la police aux frontières* / DDPAF) of the Pyrénées-Atlantiques at Hendaye (2009);
- police custody facilities of the police station of Boulogne-Billancourt (2008);
- police custody facilities of the police station of Saint-Denis de la Réunion (2010);
- police custody facilities of the police station of Châteauroux (2010);
- police custody facilities of the police station of Niort (2011);
- police custody facilities of the police station of Créteil (2010);
- police custody facilities of the police station of Mantes-la-Jolie (2010);
- police custody facilities of the police station of Meaux (2009);
- customs detention facilities of the national directorate of customs intelligence and investigations (*direction nationale du renseignement et des enquêtes douanières* / DNRED)[59] (2010);
- remand prison of Tours (2009);

[59] *It is to be noted that between the first and second visits, the DNRED moved from the 11th arrondissement of Paris to Ivry-sur-Seine.*

- remand prison of Grasse (2009);
- remand prison of Bonneville (2010);
- remand prison of Dijon (2010);
- remand prison of Lyon-Corbas (2009);
- long-stay prison of Poissy (2009);
- prison of Mont-de-Marsan (2009);
- long-term detention centre of Joux-la-Ville (2009);
- prison for minors of Meyzieu (2009);
- prison for minors of Porcheville (2010);
- national public health institution at the remand prison of Fresnes (EPSNF) (2010);
- interregional secure hospital unit (UHSI) of Pitié Salpêtrière (2009).

The number of follow-up visits – the effectiveness of which is well known for assessment of the manner in which the administration takes, or fails to take, the *Contrôle Général*'s recommendations into account – increased as compared with 2013 (rising from six to thirty-seven). In 2014 sites were targeted whose initial visits had been conducted some time ago, and which appeared highly sensitive in view of various different pieces of information reaching the *Contrôle Général*.

4 Resources Allocated to the *Contrôle Général* in 2014

2014 marked the institution's sixth year of operation and was an unusual year insofar as it was exercised under the authority of two different *Contrôleurs Généraux*. Jean-Marie Delarue's term of office came to an end on 13th June 2014 and his successor, Adeline Hazan, was appointed on 17th July 2014.

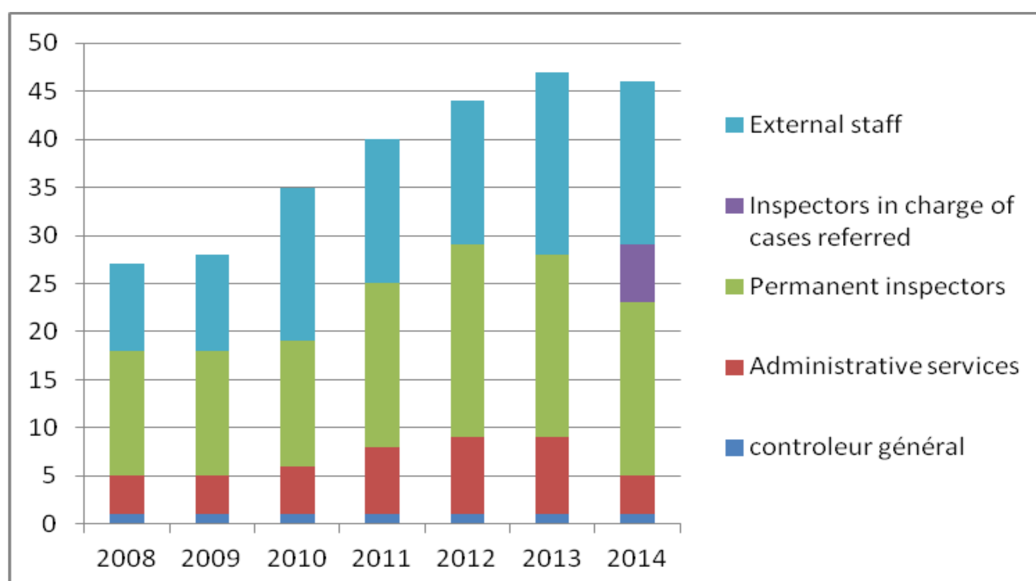
4.1 Staff

Although the authorised staff limit was not increased in the Budget Bill for 2014, staff were recruited this year because of a certain number of departures.

4.1.1 Permanent Positions and External Staff

As far as permanent positions are concerned, five inspectors departed, returning to their former positions within their respective administrations, including the General Secretary, in order to continue their careers in the latter, after periods of between three and six years in the *Contrôle Général*. One of them, who had received a promotion, was authorised by their administration of origin to postpone taking up their position, in order to enable them to close their inspection files. Two other inspectors, who had been present since the beginning, returned to their former positions in order to validate their retirement entitlements after rich professional careers.

The hospital doctor wanted to end his secondment, and therefore once again took up a position within the publicly-owned hospitals of Marseille (*Assistance Publique – Hôpitaux de Marseille*). He was replaced in the final quarter by another hospital doctor from the Sainte Anne de Paris hospital group.



These departures were offset by arrivals. Several months sometimes passed between the departure and the arrival of the member of staff's successor, between one and three months for certain posts, giving rise to problematic vacancies in terms of both full-time equivalent hours worked and the wage bill (cf. *supra*). As explained last year, rigorous selection of candidates for the position of inspector is a slow process.

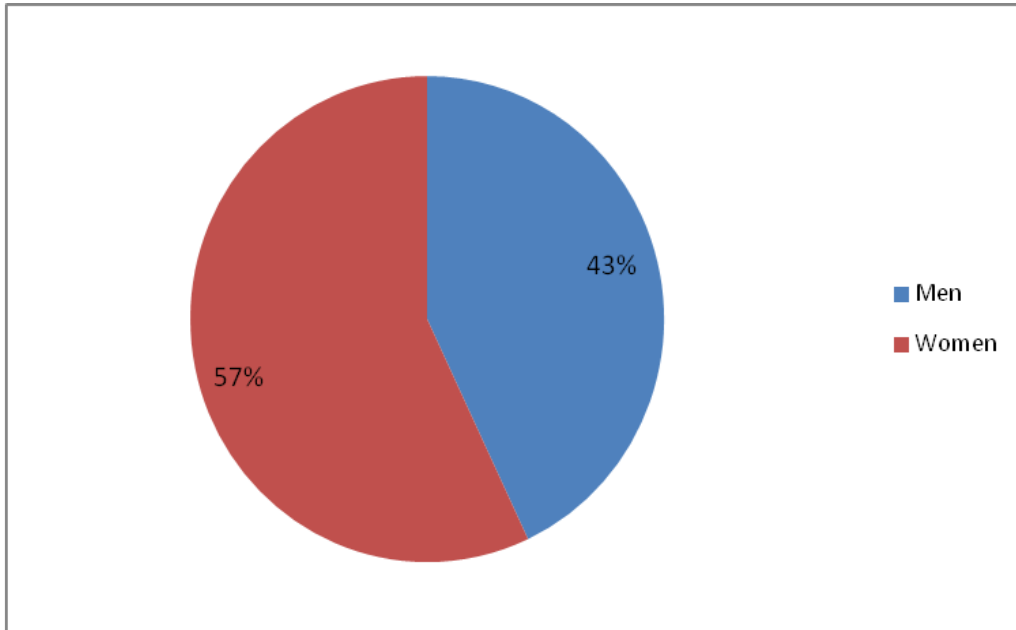
At the beginning of the year, after a recruitment phase launched in 2013, the *Contrôle Général* was joined by a new assistant in charge, in particular, of answering the numerous telephone calls from persons deprived of liberty.

Five new inspectors with different professional backgrounds were recruited: one civil administrative officer having worked in the Ministry of the Interior, one police chief superintendent, an officer of the prisons administration, a doctor and inspector of public health and a health executive.

A chief inspector of the French armed forces was made available by the Ministry of Defence.

As far as external staff are concerned, several (5) of them were already retired and wished to take full advantage of their retirement after a long collaboration, from which the *Contrôle Général* has greatly benefited. Two other colleagues wished to leave, in order to devote themselves to their main professional activities.

Two recruitment phases took place in 2014. A former member of the national legal service and a former prison officer arrived in the first half of this year. Due to the extension of the *Contrôle Général*'s competence (Act of May 2014), medical professionals were subsequently recruited (2). Finally, a chief inspector of social welfare and a youth worker joined the team in December. The recruitments are continuing in order to secure a larger range of staff working on an occasional or continuous basis. This pool of staff will make it possible to put teams together comprising specific professional profiles for special duties.



Male/Female Composition of the *Contrôleur Général*'s Staff

4.1.2 Trainees and Occasional Staff Members

In the course of the year the *Contrôleur Général des lieux de privation de liberté* welcomed 13 trainees, from vocational training institutes, the schools of the French civil service (in initial training or in-service training) and French and foreign universities.

	Vocational training institutes (Bar School)	Schools of the French civil service (ENM, ENS, IRA)	University
Number of trainees received	3	8	2

In order to carry out the secretarial work, occasional employment was used to fill vacant positions pending the commencement of the assistant in her position. A second occasional position was used in order to reinforce the centre for referred cases, pending the creation of posts in 2015.

4.2 Financial Resources

4.2.1 Wage Bill

The funds for staff can be broken down into three parts: remuneration of permanent staff, contributions to the special "pensions" appropriation account and funds to repay the cost of the salaries of external staff.

> In 2014, the year closed with the available sum of €346,155 of which €108,797 in the special pensions appropriation account.

The consumption of funds for repayment of the cost of salaries of external staff was lower than the projected €199,466. This is justified on several grounds.

On the one hand, the departure of highly available members of staff, led to de facto under-consumption. Moreover, the number of inspection missions and the length thereof contribute to the total amount of funds required to repay the salaries of external staff. This is difficult to foresee at the beginning of the year, since the places to be visited are only scheduled a month in advance. Finally, use of retired members of staff is variable according to their respective personal commitments.

Moreover, it should be emphasised that the limits set by the decision (*arrêté*) of 13th November 2008 do not make it possible to repay the salaries of external staff for inspections of more than 9 days in length. Steps were thus undertaken in the final quarter in order to make an amendment to this regulation, so as to enable payment for the work actually done by staff.

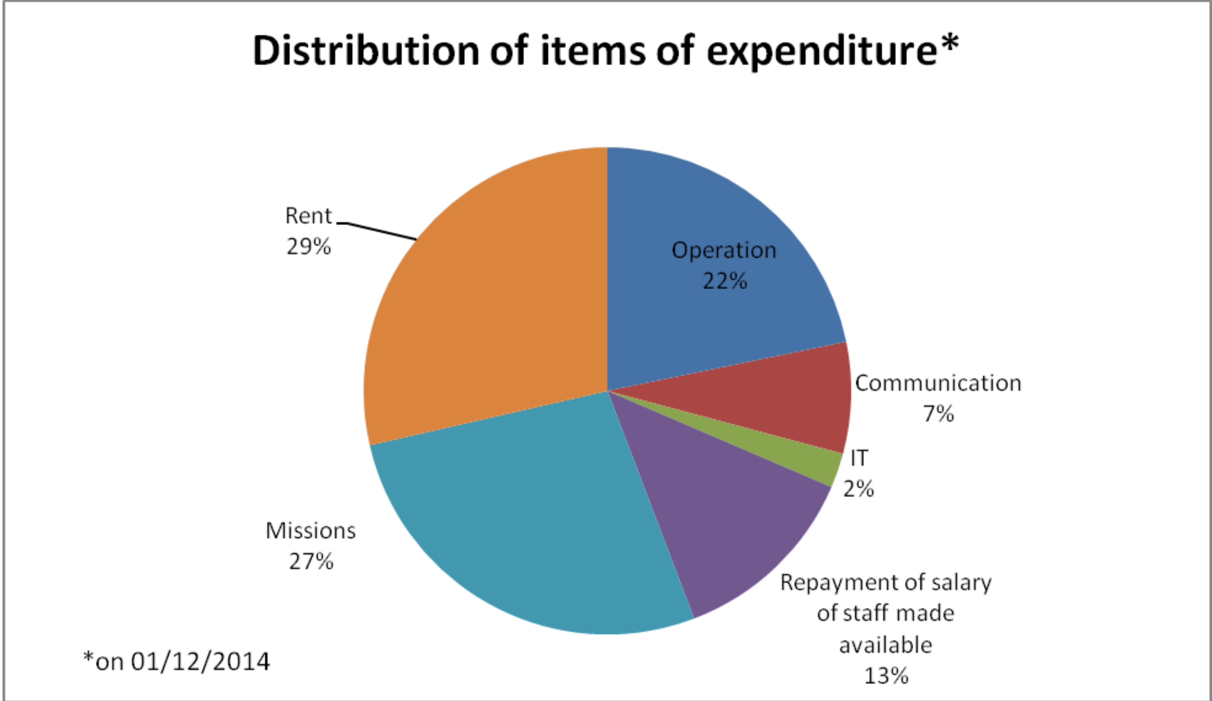
This package of funds is essential to the operation of the institution since it makes it possible to ensure the flexibility needed in order to adapt the size of teams to the requirements of inspections.

4.2.2 Funds excluding internal Staff Costs

81% (€1,271,105) of the funding commitments (AE / *autorisations d'engagements*) were consumed and 75% (€748,067) of the funding appropriations (CP / *crédits de paiement*).

A special feature of this year needs to be emphasised: on the one hand, the transition connected with the change of *Contrôleur Général* reduced commitments (only emergencies and costs strictly necessary to the operation of the institution were laid out), and therefore consumption, for a period of around one month. On the other hand, the renegotiation of the lease in December, made it possible to return to the 2008 cost of rent.

The funding appropriations were principally devoted to three types of expenditure: rent, travel costs and normal operating expenditure.



Expenditure connected with travel and missions came to €194,813.

> The first missions of accompaniment of foreigners escorted back to their countries of origin were conducted in the final quarter of 2014. These sensitive missions are rather complex from a logistical point of view.

They are organised in collaboration with the services of the travel agent holding the contract mutualised by the management departments of the administrative and financial departments of the Prime Minister's Office. Indeed, the tickets are reserved at the last moment on the basis of routings received from the Ministry of the Interior. These missions are often cancelled at the last moment and can therefore lead to expenses (partial reimbursement of tickets and part payments required by foreign hotels).

Within the ordinary expenditure, it would be appropriate to explain certain initiatives which are emblematic in terms of both communication and the possibility of access to the *Contrôle Général* for foreigners.

In communication terms, a booklet was produced in partnership with the Association for the Prevention of Torture. It brings together the whole of the opinions and recommendations published during the first *Contrôleur Général*'s term of office. It has been translated into English and Spanish, in order to enable wide dissemination at the international level. Its financing was taken care of by the APT (€2,065) and the *Contrôle Général* (€6,298.33).

> Since 2014 specific expenditure (€10,244) has been undertaken to ensure the accessibility of the *Contrôleur général des lieux de liberté* to non-French-speaking persons deprived of liberty. Letters written by these persons in their mother tongue are thus translated. Responses sent back to them are accompanied with a translation. The time necessary for the latter should not lead to any increase of the response waiting time.

Apart from these ordinary costs, it is to be emphasised that 66% of the funds provided for entertainment allowances (€14,000) were consumed.

The end of the *Contrôleur Général*'s term of office was also an occasion for the holding of receptions with the partner institutions and associations as a whole. This expenditure also includes the costs for welcoming foreign guests within the framework of exchanges (Honduras, Morocco) as well as the organisation of the annual seminar in September, for which the regional department for youth and sports (*Direction régionale de la jeunesse et des sports*) placed its meeting rooms in the 13th arrondissement of Paris at the *Contrôle Général*'s disposal free of charge.

Section 3

Autonomy and Places of Deprivation of Liberty

In the spring of 2014, while visiting a specially-equipped hospitalisation unit (UHSA), that is to say a psychiatric treatment unit for prisoners, the inspectors were present during a scene which took place in the dining room: the patients had sat down at the table; one of them was balancing on the two back legs of a chair, with his feet on the ground. Three members of medical staff were present for the meal, gathered together in a corner of the room and watching over and/or supervising the patients. One of the members of medical staff then raised his voice from their place in the room, in an unkind manner, in order to enjoin the person concerned to sit properly. The man, who was about forty years old, immediately and silently obeyed.

What argument could be used to justify this man being thus publicly treated like a child? His illness? His usual behaviour? Any possible risk?

A little later in the day, the inspectors had interviews with the medical staff. None of them had attached any special importance to this scene. Nothing in the patient's previous history or personality appeared to have justified this admonition. General justifications of a security nature were subsequently put forward: it was important to "control the situation", "to avoid things getting out of hand", one could never tell what might happen. On the assumption that action had been necessary, all were agreed that it would have been preferable to have done it in a more discreet manner.

> A scene of this kind is neither exceptional nor caricatured. It is no way intended to stigmatise any individual medical workers, whose capacities for dialogue were moreover noted by the inspectors. It simply illustrates how far the combination of routine and tensions may lead to regrettable behaviours, which are sometimes devoid of all sense. It is perhaps only a reflection, or consequence at the individual level, of the concerns that guide and limit the action of the administrations and departments: "security" and "effectiveness".

Security concerns are naturally understandable, with regard to institutions catering for persons considered to be dangerous, particularly when the staff are few in number and inadequately trained. They nevertheless cannot apply in a uniform manner and without distinction to all patients hospitalised in psychiatric wards and all prisoners.

Effectiveness refers to the need to cater for what are sometimes large groups of persons, often in difficult circumstances in view of the number of officers and the working conditions. It is, of course, a legitimate concern.

However, it raises the question of determining how far and to what point the individual becomes secondary in the face of these considerations. How far are demands for individual liberty legitimate or, on the contrary, disqualified and prohibited? It is beyond doubt that the same person would have been just as sharply snubbed, had they wanted to go to the toilet or eat some cheese after their desert.

It is not a question of disputing the need for rules - which are a factor of organisation and order and a frame of reference -, but of establishing what it is that they protect, what they allow and what they prevent since, as Simone Weil wrote, "liberty is not greater or lesser according to

the narrowness or broadness of its limits. Its completeness depends upon conditions which are less easily measurable".

In the same work, the philosopher, who views initiative and liberty as "vital needs of the soul", defines rules as needing to be rational enough for the person to whom they apply to be able "on the one hand, to understand their corresponding usefulness and, on the other hand, the practical needs that impose them".

According to the terms of the *Petit Robert* dictionary, autonomy is the right, for an individual, to freely determine the rules to which they submit. The concept of autonomy implies the notions of right, choice, capacity to act and emancipation, and can thus be defined as the ability to live by oneself, in accordance with one's own motivation and ethics.

This concept may seem a priori to contradict the idea of imprisonment. However, it should be recalled that deprivation of liberty consists of deprivation of the right to come and go, and should not deny the person all capacity for initiative. Captivity, which is a temporary condition, too often leads to infantilisation and the destruction of a person's sense of responsibility, whereas this time should be put to advantage in order to restore the possibility of directing one's own life and acting on one's own initiative, while complying with the rules decreed by society.

Deprivation of liberty and autonomy should not in any way be considered incompatible; for this reason, this chapter will specifically examine the ways in which personal autonomy needs to be protected insofar as it is a corollary of respect for fundamental rights.

> In the course of their visits, the inspectors ascertained a large number of restrictions placed upon liberty, of which the reasons and meaning were not always clearly apparent. For this reason they wanted to examine the living conditions of persons staying in places of deprivation of liberty, of whatever nature, and analyse them with regard to the margin of autonomy that is left to them, this notion here being understood to mean the possibility of choice, action and practical exercise of a liberty.

Respect for autonomy will also be examined from the point of view of the fundamental rights which it is the CGLPL's duty to ensure are respected, and which the European Court of Human Rights has regularly confirmed via the notion of personal autonomy.

1. Autonomy in Prisons

The Act of 5th June 1875, concerning the departmental prisons regime, set out the principle of placement in individual cells for the first time in the history of French prisons. Article 1 thereof decrees that: "Defendants and persons charged and awaiting trial shall in future be individually separated day and night". Article 2 extends these provisions to "convicted prisoners sentenced to imprisonment for a year and a day or less" and article 3 provides that convicted prisoners sentenced to imprisonment of longer than one year shall be entitled to this possibility "at their request".

Prison was considered to be a "school of crime" and the objective was to limit contact between prisoners as much as possible, in order to protect them from the harmful effects of bad company. Prison life was therefore organised according to rules of solitary confinement, solitude and silence, which prohibited all sociability between persons. The meaning of the sentence lays in punishing persons who had sinned; the penal system leading to penitence through work and

prayer, and submission to prison rules, which left no place for any individual autonomy outside of the cell.

> An examination of articles 22 and 100 of the Prisons Act of 24th November 2009 shows that the notion of placement in individual cells no longer has the same meaning today. Originally intended as a punitive measure, individual cell placement has now become a demand relating to human dignity and protection of the person and a guarantee of respect for their privacy and physical well-being.

The objective of social rehabilitation, for its part, appeared after the Liberation, at the time of the Amor Reform of 1945. It authorised forms of collective life, even making the latter a principle of the new penal system. This period marks the beginning of a real opening of prisons with the development of health care, education, vocational training and leisure activity schemes etc. within institutions and the involvement of new actors (members of the national legal service, social workers, associations and companies etc.), including within the actual prison staff.

The Prisons Act of 24th November 2009 resulted from these changes. Article 1 of the Act assigns an objective to the deprivation of liberty and states that: "The regime of enforcement of custodial sentences reconciles the protection of society, the punishment of the convicted prisoners and the interests of victims, with the need to prepare the prisoner's integration and rehabilitation in order to enable them to lead a responsible life and prevent the commission of new offences". Moreover, article 2 assigns a very different mission to the prisons administration than that of 1875: "The public prisons service contributes to the execution of criminal judgements. It contributes to the integration and rehabilitation of persons entrusted to it by the courts, to the prevention of recidivism and to public security, in accordance with the interests of society, victims' rights and prisoners' rights. It is organised in such a way as to ensure adaptation of sentences to individual requirements and reduction of convicted prisoners' sentences."

The CGLPL finds that, generally speaking the organisation of imprisonment does not fulfil the objective of promoting prisoners' autonomy (I), although this objective constitutes a requirement concerning them in view of their fundamental rights and, in the case of convicted prisoners, gives meaning to the serving of their sentences (II).

1.1 The Institutional Approach: an Organisation of Imprisonment that is hardly conducive to Personal Autonomy

1.1.1 *Prison Architecture that does not promote Personal Autonomy*

1.1.1.1 *Old Institutions*

In spite of major renewal of France's prisons since 1987 (following four plans for the construction of new institutions), the vast majority of remand prisons are housed in old and cramped premises, which are sometimes several centuries old, or built according to the cellular model prevailing at the end of the 19th century. In certain places, architectural layouts of this kind determine the position taken by officers: the prisoner's "place" is in their cell and any movement is perceived as an anomaly and a constraint. It therefore perpetuates the frame of mind of 1875, that of prison as a place of penitence and punishment.

> Although the numerous "small" remand prisons, located in town centres, near the court to which they are administratively attached, encourage respect for certain fundamental rights, and in the first place the right to the maintenance of family ties, on the other hand they are in general hardly

> conducive to the organisation of an autonomous life, which requires internal and external areas providing a space for social life. Aggravating factor: the majority of these institutions are affected by prison overcrowding, which is not without impact upon the conditions of imprisonment in view of the fact that these prison areas quickly become congested, which limits the possibilities for autonomy still further.

There are admittedly exceptions, after the model of one remand prison in the East of France, where prisoners leave their cells, every morning, in order to go to a "day area", where they spend the day conversing, playing cards and watching television etc. These (limited) activities and the mode of access thereto (subject to strictly organised timeslots) can nevertheless hardly be considered factors of autonomy, especially as all prisoners are obliged to go to this "day area" and therefore do not have the right to remain in their cells if they so wish.

However, depending on the institution and type of relations existing between warders and prisoners, the experience of imprisonment is not always the same. Here and there, the unavoidability of closeness due to lack of space gives rise to relations that take the difficulties of existence of some, and even the poor working conditions of others, into account, and lead to more flexible application of the rules, as a way of offsetting dilapidation and lack of privacy. Prisoners encountered in recent institutions frequently state that their social relations have considerably deteriorated as a result of leaving their previous institutions, despite the poor material conditions which they experienced in the latter.

> Conversely, certain old institutions – and institutions for convicted prisoners in particular, many of which were not initially intended to be prisons (former barracks or abbey etc.) – constitute examples of the opposite scenario, since they are of vast dimensions and therefore less limited in terms of space. Greater liberty of internal movement and the existence of open spaces are conducive to personal autonomy and sociability.

This is the case with regard to areas used as exercise yards, which are also axes of communication for all movements within the institution, as noted in the 2013 Annual Report of the *Contrôleur général des lieux de privation de liberté*: "it would […] be appropriate to think about changing over from a "yard approach" to a "park approach" (…). Within this approach, a central square serves as a link between the various different accommodation wings, like a small public garden whose social function is to be a special place of exchanges between prisoners, actors and staff, the latter organising surveillance by community policing".

In such a context, prisoners move about more freely between the accommodation sector and the exercise yard, and certain institutions usefully implement intermediate movement timeslots.

This type of initiative encourages prisoners to respect the premises and make them their own.

1.1.1.2 Recent Institutions

For the last twenty-five years, new prisons have been built according to a model that contrasts with the old institutions described above. Their theoretical capacity was considerably increased with dimensions of 400 to 600 places in the construction programmes of the end of the 20th century, or even 690 places in more recent programmes. In view of the chronic state of overcrowding, this means the actual presence of between 800 and 900 prisoners. The layout of these institutions gives rise to certain particularly restrictive common features, such as the

slowness of movement, the difficulty of reaching premises that are, in principle, open to all and the distance imposed upon prisoners confined to their accommodation sectors.

This contemporary prison model – "the industrialisation of captivity" (Jean-Marie Delarue) – was described in the 2013 Annual Report of the CGLPL, in particular from the point of view of prisons with sections incorporating different kinds of prison regime, which group together remand, long-term detention, long-stay prison, open and reduced sentence wings… – in separate but virtually identical buildings – and separate wings accommodating categories of persons between whom communication is strictly prohibited (men/women, adults/minors): "The segmentation of spaces has led to the creation of many obstacles and made long access routes inevitable, with large numbers of doors and bars – seventeen, in one institution inspected, between the main entrance and the door of the cell! – as well as interminable waiting times in real bottlenecks caused by a remote-controlled electrical opening system which makes the opening of one door an obstacle to the simultaneous opening of another".

These new buildings, concrete premises where the prison population is increasingly grouped together according to categories or "profiles", contrast with the institutions for convicted prisoners of the past – in general long-term detention centres – with large external areas and considerable collective facilities. In the latter, persons are not dealt with according to the nature of their offence or their age, but according to their ability to achieve autonomy. Although, due to the relative age of these institutions, today they do not appear to be "up to the mark", it would be worthwhile consolidating and developing the principles promoted by the special kind of relation to space and autonomy found in them.

On several occasions, the CGLPL has already made known its position in favour of prisons of limited size which, from an architectural point of view, encourage prisoners' autonomy. It here reaffirms this position.

1.1.2 A Prison Regime that prioritises Personal Security and Autonomy

The prevailing regime in remand prisons is closed-door, individual cell placement, subject to the application of articles 716 and 717-2 of the Code of Criminal Procedure. Conversely, with regard to the prison regime for long-stay prisons and long-term detention centres, the Code of Criminal Procedure asserts the same objective of "social rehabilitation" for all convicted prisoners, without making any real distinction between the two types of institution: "Long-stay prisons and long-stay wings have a reinforced organisation and security regime, whose details of internal implementation also enable maintenance and development of the possibilities of social rehabilitation for convicted prisoners" (Article D. 71); "Long-term detention centres have a regime principally oriented towards social rehabilitation and, where appropriate, the preparation of convicted prisoners for release" (Article D. 72).

1.1.2.1 The Closed Regime in Long-Stay Prisons and Remand Prisons

For security reasons, remand prisons and long-stay prisons function, in principle (with more or less strictness), according to the so-called "closed doors" regime, as opposed to the "open doors" regime prevailing in long-term detention centres. This regime is hardly conducive to sociability and solidarity.

The cell doors are opened several times a day in order to go to activities or to the exercise yard. Apart from these movements, the doors are closed. However, in long-stay prisons, prisoners can choose whether to stay inside their cells – with the exception of mealtimes, the end of the afternoon and at night, when they have to be inside their cells.

> This system of sequenced opening periods within long-stay prisons may give the casual observer the impression that prisoners have a real possibility of organising their time and their use of space as they desire: indeed, they can choose to go to the weight training room or the painting workshop, the library or the workshop, the exercise yard or the gymnasium etc.
>
> In reality, this freedom for prisoners is only relative, and subjects them to considerable inconvenience on a daily basis: if one of them uses an open timeslot in order to go to any particular place, they are often only able to return to their cell at the time of scheduled movements, in general in the middle or at the end of the morning or afternoon. Furthermore, it is not possible for them to go to neighbouring cells to share a meal, engage in an activity with its occupant or simply talk.

These constraints are so real for convicted prisoners serving long sentences that, in the majority of long-stay prisons, in the course of time the "closed doors" regime ends up being less strictly applied by prison officers, who then often leave the doors open during the day. This situation infringes the statutory provisions and is not officially acknowledged by the administration which does not, therefore, place keys to cells at prisoners' disposal, as in the case of long-term detention centres operating with the "open doors" system. Insofar as the cell doors remain open in the morning and afternoon, thefts regularly occur, which gives rise to tensions, and even violence, and fear of leaving the cell in view of these risks; certain persons even asking to be locked in their cells for their own safety.

In long-stay prisons, cell opening times may also be used in order to go to living areas, shared rooms inside prisons and collective areas in exercise yards (exercise areas, temporary huts etc.), which the administration has set up or allowed prisoners to set up. These are places for activities, preparation of meals (sometimes with the possibility of storage of personal food), eating meals in common, ironing or playing electronic games etc.

Long-stay prison wings (QMC / *quartiers maison centrale*) have been designed in prisons since the beginning of the 2010s. In general, QMCs are composed of collective areas on the ground floor, with accommodation wings on the upper floors, all of which have a limited number of cells (a maximum of fourteen) and also function according to the principle of closed cells and collective areas. Movements are strictly supervised with a twofold operational division into different sectors: separation of the wing from the rest of the prison, and separation of different parts of the wing.

> The persons encountered in these wings mentioned their difficulty in living within a system experienced as oppressive. The environment is characterised by its cramped nature and the dullness of the external exercise and sports areas. Moreover, daily life gives rise to continuous exposure to public view, as from the moment of going through the cell door, as expressed by the following reaction heard during a visit: "We suffocate here, we're confined, we're marking time!"

The staff of these institutions, exclusively assigned to QMCs, are aware of these difficulties, and are often surprised that everything has not been done in order to ensure that prisoners are occupied and taken care of and fear their absence of prospects: the inspectors heard phrases such as "there needs to be a social life in this institution" and "the institution mustn't be seen as a place for people to die" on the part of these members of staff.

The CGLPL recommends that communal living areas, fitted out in such a way as to promote autonomy, should be systematically provided for in all prisons and in every wing, and that access to them should be facilitated, while also being made secure, for all prisoners[60].

In one QMC visited by the inspectors, the internal rules and regulations showed a prison regime imposing "stricter rules of life, principally consisting of specific supervision by prison staff in the form of constant escorting of prisoners at the time of their movements". It would be appropriate to raise the question of the compatibility of these principles with the objective set by the Code of Criminal Procedure for long-stay prisons of "maintenance and development of the possibilities of social rehabilitation for convicted prisoners".

Another long-stay prison in the South of France was recently reorganised upon a radically different basis, consisting of "involving prisoners by making them active in detention, rather than passive", with the goal of offsetting the effects of the "closed doors" regime. Several initiatives were taken in this direction, such as the appointment of "prisoners responsible for leisure activities", the involvement of certain prisoners in various different committees (meals, prison shops etc.) and the putting in place of personalised support for sports activities, for older persons in particular.

Three initiatives appear particularly innovative: the establishment of "facilitator prisoners", who may be defined as prisoners working for the integration of other imprisoned persons; the creation of common training programmes for staff and prisoners; and the putting in place of "interpersonal relations mediation" between individual members of staff and prisoners, both of whom take part on their own initiative, following incidents that may have given rise to appearances before the disciplinary committee: the prisoner can thus give their point of view about the origin of the incident and their current and future intentions, without the authority and position of staff within the institution being called into question.

It would be worthwhile testing and developing individual and collective measures of this kind in other institutions, since they can only contribute to the prevention of violence.

1.1.2.2 The Differentiated Regime in Long-Term Detention Centres

Until the 2000s, the majority of long-term detention centres used what was referred to as the "open doors" regime, which was manifested in free movement of the prison population within the various accommodation buildings and direct access to places of activity. Under this system, the floor ward opens the cells when making the roll call, at the beginning of the morning or afternoon, and checks and locks them again before going off duty. In the meantime, the prisoners – who have so-called "convenience" key to their cells –, are free to come and go, locking the door behind them. Due to their architectural layout (cf. *supra*), several centres still function according to this model today.

Long-term detention centres have nevertheless undergone profound changes, as differentiated regimes have been progressively put in place as a result of the will to both gather persons together in the same sector, according to their "profile", and to channel internal movements of the prison population, in order to prevent persons classed under different categories from meeting each other. This has resulted in freedom of movement being reduced to the boundary of the floor. Prisoners' movements to common areas (activity rooms, sports fields and exercise yards) have been "sequenced", as in long-stay prisons, thus regulating their leaving

[60] *A recommendation of this kind has already been issued in the Annual Report of the* Contrôleur Général *for 2013 (p. 148 et seq.).*

their place of accommodation, going to activity areas and, if necessary, going from one activity to another.

The CGLPL considers that bringing a mode of operation based upon differentiated regimes into general use within long-term detention centres is in contradiction with the latter's intended purpose, which is oriented towards autonomy and rehabilitation. It therefore recommends a return to the principle of a mode of operation based upon the "open doors" regime within these institutions as a whole[61].

In general, the differentiated regime combines three prison sub-regimes which often correspond to separate floors or sectors. The principle of free opening of cells throughout the day is the principal characteristic of what is variously referred to, depending upon the institution, as the regime of "trust" or "responsibility", or simply the "open" or "common" regime; in the "intermediate", "reduced" or "semi-open" regime, the doors are left open for half of the day (usually the afternoon); the "closed" or "controlled" regime corresponds to a remand prison regime.

The autonomy allowed to individuals by the differentiated regime is therefore highly relative, including for those who, *a priori*, are trusted by the administration. Apart from the cell opening times, the essential issue lies in the right to share meals in cells, to have the benefit of longer timeslots for access to telephones, in particular in the middle of the day and at the end of the afternoon, and to gain access to the launderette and activity rooms more freely.

Furthermore, in "long-term detention" wings (QCD /*quartiers* "*centre de détention*") within prisons with sections incorporating different kinds of prison regime, the area in which movement is permitted is sometimes limited to the accommodation wing.

If the administration does not re-establish the operation of an "open doors" regime, it should draw the logical consequences of its preference for the differentiated regime: in order for autonomy to be a reality in long-term detention wings (QCD), persons placed under the regime of trust should be granted greater responsibilities. It would thus be possible to look into several possible courses of action, which are often mentioned at the time of controls, by both prisoners and members of staff: authorisation of greater liberty of movement, enabling prisoners to leave the accommodation sector and gain access to the exercise yard and activity areas in particular; removal of the gratings on windows, since the reasons given to justify their presence always involve considerations of hygiene connected with the bad behaviour of certain prisoners; and the fitting out of kitchen facilities and real dining rooms.

There are two main reasons having led to these changes. The first of these reasons is connected with the building of prisons containing long-term detention wings (QCD), placed side-by-side with wings intended for different purposes, which provided the justification for organising strict prohibition of communication.

The second reason relates to the transfer of persons serving short sentences, or serving the last part of their sentences, from overcrowded remand prisons to long-term detention centres or QCD wings, in order to "reduce congestion" in the former institutions.

[61] *The CGLPL has already set out its position on this issue in its Annual Report for 2013, in the section on the Assessment of the Application of the Prisons Act (pages 117* et seq.*)*

The management of overcrowding in remand prisons currently constitutes the principle criterion for assignment to long-term detention centres. This phenomenon is not without impact upon the atmosphere prevailing in detention facilities and upon the administration's bias in favour of a regime aimed at guaranteeing order and discipline.

The prisons administration's will to give priority to the management of overcrowding in remand prisons has thus led it to partially abandon any real policy of orientation based upon the sentence enforcement programmes of convicted prisoners. Within long-term detention centres, this has resulted in prisoners with very different penal situations living together, and a highly heterogeneous prison population, which is principally composed of two types of profile: in the first place, the traditional inmates of institutions for convicted prisoners, composed of persons serving long sentences, who "move in" to live for long periods in prison and adopt a relatively stable kind of behaviour; in the second place, an inmate population composed of younger persons, sentenced to shorter sentences, or with little time left to serve, destined to stay for shorter lengths of time, who contribute to the atmosphere of the institution resembling that of a remand prison, with its share of tension, trafficking, threats and racketeering.

This situation calls into question the traditional balance that used to characterise most long-term detention centres and causes disorientation for staff and prisoners belonging to the first category. In response to this problem, the old prison regime - which encouraged communal living -, is often revoked and replaced with another, with more disciplinary objectives. Apart from the management problem, this lack of any policy of orientation often renders the elaboration of any real prison sentence enforcement project illusory, a situation which can only be detrimental to preparation for release.

This change is illustrated by the following remarks, made by a person encountered at the time of a control conducted in a long-term detention centre: "When the centre was devoted to long sentences, it was fair to say that the idea of rehabilitation existed; but since the institution has been regionalised and caters for persons serving short sentences, all of them sent from wings in difficulty, the atmosphere has radically changed. The young people run extortion rackets against the older inmates, readily damage the premises and sometimes exert intolerable pressure on "the nonces"[62], to such an extent that the latter end up abandoning activities out of fear of reprisals and physical threats."

In accordance with the example set by one long-term detention centre in the South-West of France visited in 2014, the rules for internal assignment of the prison population should not be fixed according to distinctions such as the nature of the prisoner's offence or age, but on the basis of an assessment of each person's capacity to become autonomous.

Furthermore, the CGLPL recalls that, in an opinion of 22nd May 2012, it examined the major impact of prison overcrowding with regard to the course of sentences and compliance with the mission entrusted to the prisons administration. It therefore repeats its recommendations on this issue.

However, the possibility of putting in place a prison regime of this kind, based upon autonomy, would involve a twofold obligation on the part of the prisons administration:

- on the one hand, that of **making autonomy an active principle** rather than being, as is currently the case, a situation only accessible to certain prisoners, but too far out of reach for others, who have no other choice than to "cope" all by themselves;

[62] "Les pointeurs"*: slang term for sex offenders.*

- on the other hand, that of therefore defining warders' duties in terms of **supporting prisoners towards becoming autonomous**, making prison areas their own once again – in particular the accommodation sectors and exercise yards; and also redefining the regulations, which should be both a means of guaranteeing security and, moreover, supporting civility and respect for all.

1.2 A Personal Requirement: the Right of Persons Deprived of Liberty to an Autonomous Life

> The right to autonomy for persons deprived of liberty implies the possibility of developing and promoting the free exercise of acts of daily life and choice of lifestyle in prisons, as long as collective living and the security of institutions is not thereby harmed.

Yet, numerous prohibitions of a general nature, several of which remain unexplained (except, very often, for reasons intended to simplify the management of the prison population as a whole), tend to severely limit this right.

In institutions in which long sentences are served, security requirements should be balanced with the need to avoid social alienation of the person, in view of the prospect (even distant) of their release. It is therefore essential that an autonomous disposition be recovered in the pre-release period. Autonomy also – and above all – needs to be maintained throughout the time of serving the sentence, whether long or short, for reasons relating both to the fundamental rights of persons (right to respect of human dignity, right to privacy, right to social life, right to individual initiative, right of expression and right of access to healthcare etc.) and with a view to successful release. When manifestly non-autonomous persons are imprisoned, it would be appropriate for the conditions of their detention, in prisons for convicted prisoners and remand prisons, to encourage them to learn to become autonomous and responsible, in particular with a view to their return to free society.

A series of measures aimed at the achievement, maintenance and recovery of autonomy will be set out in this part, organised on the basis of certain fundamental rights. There are nevertheless certain pre-requirements for these initiatives. In the first place, **the consent of the persons involved needs to be sought in a systematic manner**. At the same time, **collective and individual expression need to be encouraged**[63]. Individuals should also have adequate access to information useful to them, by means of putting technical resources existing in free environments in place, or the use of translators and interpreters, for example. Personalisation of the measures provided for prisoners also requires recognition of each person's specific status (with regard to retirement, disability, nationality etc.) and plans (student, work, self-employed "*auto-entrepreneur*" etc.), which gives them specific entitlements and duties. In any case, the involvement of professionals (prison staff, external actors etc.) is essential in order to enable the development of autonomy.

1.2.1 Right to Respect of Dignity

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[63] The possibility of expressing grievances and wishes will be dealt with more specifically in the section of this Annual Report devoted to the processing of applications. The CGLPL will therefore here limit itself to pointing out the importance that it places upon prisoners' free access to computer terminals for the processing of applications, while having the right to be assisted by another prisoner, an interpreter or a member of prison staff if necessary.

Dignity is more than a right: it is a condition inherent to the human being. Every human being has their dignity and there is no justification for violating respect for this dignity. This principle is incorporated in article 22 of the Prisons Act: only the exercise of rights – and not respect for dignity – may be subject to restrictions.

> Yet, the dignity of prisoners is not properly respected today, with far from negligible consequences in terms of autonomy.

By way of example, with regard to the autonomy of disabled persons, the inspectors noted that numerous prisons did not have real cells adapted to persons with restricted mobility (PMR /*personnes à mobilité réduite*); the latter are obliged to live in cells without any support bars next to the toilets, in which it is impossible to move around in a wheelchair and where the alarm button and intercom device are not placed at wheelchair height etc. Furthermore, these persons are often compelled to remain in their cell or on their floor, due to the fact that in certain institutions access to the lift is prohibited for them (leading to limitations in terms of access to activities, visiting rooms etc.). Although most PMR cells are located on the ground floor, the "closed doors" regime generally applied in this sector results in a de facto limitation of their autonomy and increases their isolation.

Following the recommendations issued in the section on architecture in its Annual Report for the year 2013, the CGLPL reasserts its position with regard to the fitting out of spaces designed to cater for persons with restricted mobility.

Certain persons suffering from physical or mental disabilities are no longer capable of keeping themselves or their cells clean, and sometimes live in disgracefully dirty conditions without anything being organised to make up for this loss of autonomy. In the absence of home help schemes, the expedient resorted to is often that of fellow prisoners helping fragile and dependent persons, whether voluntarily or not.

The CGLPL recalls the recommendations issued in its Annual Report for 2011, in the section on access to welfare rights for persons deprived of liberty, and considers that aged and dependent persons should be catered for under conditions similar to those that they would encounter in a free environment.

Certain basic hygiene products, such as toilet paper, are (more or less systematically) distributed, without any regard to determining whether the quantity distributed is adequate.

It would be more judicious and respectful of the dignity and autonomy of the person to regularly issue free distribution vouchers, enabling each person to take care of their own hygiene and order what they actually need.

It is regrettable that all prisoners cannot take charge of cleaning their own clothes: either by making a washing machine, tumble dryer and ironing facilities available, or by putting in place a system for leaving string bags of dirty linen and picking up clean linen at an office counter.

Schemes of this kind should be put in place everywhere.

Respect for the dignity of all also involves being able to make choices with regard to the repair of one's clothes. For example, one man, serving a long prison sentence in the long-term detention wing of a prison in the East of France, wanted to make minor sewing repairs upon his worn clothes. After having applied to purchase an item necessary for sewing, by means of exceptional prison shop facilities, his request was refused on the grounds that the item was prohibited. He then inquired about the solutions open to him since, as no members of his family came to visit him, he was unable to entrust the repair of his clothes or underclothes to any close

relation. He suggested to the management that he might carry out the sewing repairs under the surveillance of prison staff, in premises such as the laundry room; this solution was rejected. On the other hand, it was suggested that he might hand over his worn clothes for the women in the remand wing to repair within the framework of their "dressmaking" workshop. Apart from the somewhat sexist character of this "solution", it raises questions about the balance between security and autonomy.

1.2.2 Right to Privacy

Respect for the right to privacy presupposes the existence of an area where persons can escape from other people's view and be free of the rules pertaining to public areas. In the case of prisons, this area is of course the cell. However, in practice, cell life remains subject to a large number of constraints, which place limits upon personal autonomy.

The liberties allowed to prisoners with regard to arranging their cells differs from one institution to another, in particular in institutions for convicted prisoners, without any question of personalisation of practices or adaptation of the rules to the types of profiles catered for within different institutions. By way of example, the cells in the long-term detention wing of one institution of the French overseas departments and territories do not have enough furniture and facilities to enable prisoners to put their possessions away; moreover it is prohibited to purchase or make one's own furniture within the institution. Conversely, in one long-term detention centre in the South-West of France, prisoners are permitted to repaint the cell in which they are accommodated, order items of bedding and buy items of furniture in prison shops, as well as being able to make furniture themselves. However, the considerable scope thus left for autonomy has certain negative consequences: the difficulties of gaining access to basic items of furniture for non-autonomous and/or uninitiated persons; the question of transport of this furniture at the time of transfers etc.

The rules applied in most long-term detention centres are relaxed as far as autonomy is concerned: prisoners having the right to procure curtains in order to block off windows at night, to have the key to a "convenience lock"[64], making it possible to lock the private area constituted by the cell, to receive visits from fellow prisoners in the cell and to cultivate a horticultural area etc. However, measures of this kind are not adopted in all institutions, without it being possible to identify any reason for this. Some of them, despite having been pioneers with regard to allowing prisoners autonomy, have recently abandoned these practices: removal of curtains and green plants, sudden impossibility of making or possessing handmade furniture, standardisation of items supposed to be present in common areas, withdrawal of foodstuffs stored in common areas, sudden prohibition of previously authorised items etc. The CGLPL questions the reasons for a regression of this kind.

> The CGLPL recommends that the initial aim of these institutions should continue to be respected and that measures promoting autonomy should be maintained and brought into general use in other institutions for convicted prisoners.

The issue of autonomy in cells should be placed in perspective with the fact that, when individual initiative is hindered and the acquisition of items of daily life prohibited, the rules are in general circumvented. Portable stoves thus spring up everywhere in prisons when hotplates are prohibited, lamps made from food tins appear when the lighting provided is inadequate and home-made curtains made from bath towels when net curtains are not authorised etc.

[64] *Which is only useful if it works properly, which was not the case in certain institutions visited by the CGLPL.*

Strategies for getting around the rules are therefore both a way of dealing with deprivation of autonomy and the most remarkable expression of the inalienable character thereof, even in an environment of dependency. Like the "yo-yos", which the prisons administration has tried in vain to bring to an end, by means of a marked increase in the use of gratings and disciplinary sanctions, despite the fact that they only make up for the human impossibility of communicating between neighbours, it appears difficult to overcome these subversive expressions of autonomy.

It is illusory to think that it is possible to completely deprive people of their autonomy; on the contrary, to attempt to do so leads to the proliferation of clandestine practices, which undermine the security of the institution. For this reason, the CGLPL considers that, far from endangering the security of institutions, a relaxation of the rules in favour of a consolidation of the autonomy allowed to prisoners would, on the contrary, pacify prisons, while promoting personal fulfilment and respect for imprisoned persons' fundamental rights.

Unlike free persons, prisoners cannot have the benefit of the effective right to a sex life, whether in cells or in visiting rooms. Indeed, sexual relations are prohibited on the grounds of the possibility of offending visitors' sense of propriety or that of prison staff in charge of supervising visiting rooms or making checks through the cell peephole. This insidious rule constitutes an obstacle to the autonomy of persons to conduct the private, family and emotional life of their choice, including within the supposedly private area of the cell.

At the present time, there are still too few family life units (UVF)[65] in prisons, and in remand prisons in particular. On 1st June 2013, only twenty-two prisons had the benefit of a UVF[66]. Moreover, in new prisons where the number of persons accommodated very often exceeds the theoretical number of places, the number of UVFs is inadequate in view of the requests from prisoners who cannot, therefore, have the benefit of "*at least one visit every three months*" in a UVF or family visiting room[67], as provided for under article 36 of the Prisons Act of 24th October 2009.

The CGLPL considers that the construction of UVFs in existing institutions and new prisons should be a priority. Moreover, it recommends free access to condoms within health units as well as UVFs and family visiting rooms, as is already the case in certain institutions, in order to deal with the risks of sexually transmitted diseases and unwanted pregnancies.

The specific case of transsexual persons, whose change of civil status has not yet been recognised, needs to be raised once again. The latter are imprisoned in sectors intended to cater for persons of their sex of origin, which hardly corresponds to their current physical appearance, and in general have the right to clothe and attire themselves, within their cells, according to the gender norms of their reassigned sex. Nevertheless, certain persons encounter difficulties in this area. In particular, the situation was referred to the CGLPL of one transsexual person imprisoned within a men's wing. The latter was unable to purchase bodily hygiene products and clothes for women on the grounds that they had given up the plan of completing a sex change protocol and

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[65] *"Premises specially designed in order to enable prisoners to receive visits, without continuous direct surveillance, from adult members of their family and close relations accompanied, if necessary, by one or several children, for periods of between six and seventy-two hours" in accordance with article R. 57-8-14 of the Code of Criminal Procedure.*

[66] *The seventy-four existing UVFs are distributed as follows: sixteen in prisons with sections incorporating different kinds of prison regime, three in long-stay prisons and three in long-term detention centres.*

[67] *At 1st June 2013 nine prisons had family visiting rooms, distributed as follows: three in prisons with sections incorporating different kinds of prison regime, one in a long-term detention centre and five in long-stay prisons. Among the latter, two also have a UVF.*

were not therefore officially recognised as being transsexual by the medical profession or therefore by the prison team. Moreover, a case was referred to the CGLPL of the difficulties encountered by a – non-transsexual – man in purchasing a magazine considered to be for women. This situation shows that the problem goes beyond the case of transsexual persons alone. These two cases provide illustrations of violations of prisoners' right to privacy and a private life.

> The CGLPL recommends that, in the private area represented by their cells, prisoners should have the right to buy and have clothing accessories, hygiene and care products and items of their choice, whatever the gender for which the latter are usually intended, without any limits other than those imposed by security.

Finally, although persons are, in principle free to dress as they wish within the cell that they occupy, they are, on the other hand, obliged to submit to local internal rules and regulations when moving around in common areas and visiting rooms. Yet these provisions are stricter than those current outside of prisons, for reasons which it is sometimes difficult to grasp. For example, the internal rules and regulations of the women's remand wing of a prison in the South of France states that "prisoners shall be dressed in decent and appropriate clothing from the top of the body down to the knees". Yet the CGLPL notes differences in the interpretation of these criteria: for example, when women wear sleeveless shirts, skirts that end above the knee or short dresses over leggings or stockings etc. they are sometimes asked to change their clothes.

> The CGLPL considers that tolerance should be increased with regard to clothing and brought into line with the criteria prevailing outside, on the condition that the clothing concerned complies with the security imperatives specific to the prisons administration (it should not resemble uniforms, prohibition of the colour navy blue etc.).

1.2.3 The Right to a Social Life

> The objective of the reintegration of persons deprived of liberty presupposes an environment that protects their autonomy or enables them to recover it and to take material responsibility for themselves. During periods in which they are temporarily deprived of their liberty, persons should not lose the habit of carrying out the day-to-day actions that they will have complete when they are free: getting up on time, cooking, washing, hanging out and ironing their linen, doing their shopping etc.

This requirement was recalled in the last Annual Report of the CGLPL with regard to the architectural design of the premises[68]: "In all places of deprivation of liberty where persons stay on a long-term basis, return to autonomy or maintenance thereof therefore makes it necessary to make premises available, such as a kitchen, laundry room and shop".

Places for social life could be arranged. These might be social rooms, for playing, sharing meals or watching television, which are to be found – though sometimes in very poor condition – in the accommodation sectors of long-term detention centres, except when they have been reconverted into additional cells.

Certain institutions have put the organisation of self-managed activities in place, which do not depend upon the presence and availability of staff or external actors, whether they be sports (free access to facilities, making specific equipment available) or leisure (music, Aikido, etc.) activities.

[68] *Cf. Annual Report 2013 "Architecture and Places of Deprivation of Liberty", pages 143 et seq.*

The right to eat meals together is granted in certain long-term detention centres, which have arranged refectories organised in such a way as to respect the balance between personal autonomy and forms of collective control: allocation according to accommodation sector, with the right to change refectory; free choice of table and the appointment of a head of table, in charge of access to utensils and cooking equipment (ovens, refrigerators, storage cupboards), which are locked away; the right to choose to eat one's meals in the refectory, where they are delivered, or to go and collect them to be eaten later in their cell etc.

These are factors that characterise a real social life, as illustrated by the following finding made in the course of a control conducted in a long-term detention centre in 2014: "It seemed clear to the inspectors that life in the refectories is subject to rules elaborated by the prisoners themselves and that they establish a kind of hierarchy between themselves. […] It constitutes a space that is shared – though not excessively – whose use corresponds to orders of precedence and the choices made by participants, who are more or less easily able to share tables, food and conversations. These choices are obviously essential for persons who have to share a communal life for very long periods. There is thus a mixture of shared and chosen private relations and relations subject to prison hierarchies."

Spending an evening in common is possible in certain centres, where the doors are closed at 11 p.m., which makes it possible to organise "entertainment evenings" around a chosen topic, watch a football match together etc. Here and there it is sometimes noted that initiatives of this kind have been abandoned, due to a lack of proposed events, in order to avoid the establishment of a type of self-organisation harmful to the most vulnerable persons.

The CGLPL recommends the fitting out of more facilities of this kind and the promotion of a mode of organisation enabling the emergence of collective life within accommodation wings.

Rather than the traditional delivery of items purchased in prison shops to cells by the warders, certain institutions have already put counters in place for picking up items purchased. **This type of initiative should be developed and extended in the form of real places of purchase, of the minimarket type, in which everybody is able to choose and compare the products on sale, order their purchases directly, pay by means of a magnetic card-type system and receive immediate delivery.**

The putting in place of external spaces contributes to the emergence of social life within institutions, such as the vast exercise yards and gardens in long-stay prisons and long-term detention centres visited, containing trees and lawns and provided with tables and benches or garden seats, which can enable meals to be eaten together outdoors in the summer. In one long-term detention centre, a pond (with fish) gave the place a verdant appearance rarely seen in prisons. In allotment garden-type areas, numerous people engage in cultivating flowers as well as vegetables and it is rarely reported that this leads to vindictive acts, destruction of plants or boundary disputes.

Wherever it exists, the practice of gardening appears to be a calming influence in prison, which encourages prisoners to collectively make the yard their own, as illustrated by the following extract from the report on an inspection of 2014: "The existence of these areas, the absence of damage and rubbish, the presence of trees and plants and the free movement of prisoners are in complete contradiction with the restricted and concrete-covered areas of more contemporary and security-oriented architecture,

> providing another view of the imprisonment of persons serving long sentences."

The CGLPL therefore recommends that these initiatives should be brought into general use.

However, for the administration, the need for persons serving long sentences to be able to make their living areas their own is not self-evident. Long-stay prisons all have established places within accommodation buildings or exercise yards – known as "hovels" ("*gourbis*") in some institutions and "*casinos*" elsewhere… – which the staff do not enter when prisoners are present. In most cases, the management of these places is deliberately left to prisoners, in a subtle game of appropriation by the prison and tolerance on the part of the administration, the latter assenting not to keep a close watch on them but, after the occurrence of incidents, regularly having to take action, or even deciding to close them. This allows convicted prisoners to have an area of liberty and sociability, considered essential when being deprived of liberty for such long periods. As far as staff are concerned, certain officers consider that these places provide a "pressure release valve" needed for the management of prisons catering for persons serving long sentences; others, on the other hand, denounce their characteristic of being hidden from view, which for them constitutes a festering source of insecurity in the heart of the prison.

The absence of official recognition of these areas by the administration is manifested in their very poor condition, no renovation or maintenance work ever being planned for them. Making them official would, moreover, make it possible to regulate their operation to a greater extent, which is currently characterised by a form of co-optation among the persons allowed to go to them.

1.2.4 Right to the Free Management of Personal Property

The recognition of prisoners' autonomy should extend to the management of property they possess inside and outside of the prison.

Second-hand purchases, loans and gifts are prohibited with regard to IT equipment[69], but in practice authorised for games consoles[70]. The CGLPL set out its views on this issue in particular in a report drafted following on-site verifications concerning IT access in a prison in the West of France[71].

The CGLPL considers that imprisoned persons should be able to resell, offer as gifts or lend the whole of their property, including their IT equipment, after the performance of checks on the equipment concerned and verifications with regard to the motivations for such acts.

The right to make gifts and loans is related to the question of ownership documents. Indeed, it appears that, in certain institutions, quotes and invoices are not drawn up in the

[69] Circular issued by the prisons administration department on 13th October 2009 concerning access to IT facilities for persons in custody.
[70] The only games consoles authorised in prison are no longer produced today.
[71] In this report, the CGLPL recommended in particular "an examination of the possibilities enabling wider access to the IT tool for the most impoverished and isolated prisoners, by means of the possibility of lending IT equipment for example. It hopes that the current regulations will be amended in order to authorise gifts and second-hand purchases, this equipment being, in any case, subject to control by the prisons administration. It should in no way be possible for any inadequacies of these means of control to stand in the way of the acquisition of this second-hand equipment". It also noted that: "foreign prisoners with little or no command of French would certainly benefit from measures of this kind, enabling, amongst other things, the use of French language-learning software".

purchaser's name, but in that of the prison or private service provider in charge of these types of purchases. For this reason, the persons do not have any official documents which they can produce in case of need, in particular should they wish to have the benefit of the clauses provided under the guarantee, before or after their release. For example, cases were referred to the CGLPL of persons who had to pay for the purchase of a second hotplate after being unable to obtain the exchange or reimbursement of the first, which was no longer in working order, despite the fact that the equipment was covered by a guarantee.

The CGLPL therefore recommends that estimates in their name and invoices in due form should be handed over to purchasers, at the time of delivery of the product at the latest.

Nor is effective autonomy conceivable without financial autonomy, either in prison or at the time of release. This presupposes individuals being placed in the position of being able to earn or receive enough money to live in a dignified manner within prison and subsequently outside[72], as well as them being authorised to spend, save or pass it on to their close relations, as they so desire, subject to the legal and statutory provisions to which they remain subject.

In a case recently referred to the Minister of Justice, the CGLPL recommended the adoption of a new circular concerning the fight against poverty in prison, in particular for a reassessment of the provisions (amount, timescale, criteria, possibility of saving etc.) providing a framework for the allocation of cash allowances to persons considered to lack adequate financial resources. It considers that this would promote the autonomy of the most financially impoverished individuals.

Cases were referred to the CGLPL concerning the difficulties encountered by several persons within the framework of the establishment of a bank account outside prison. Article D.324 of the Code of Criminal Procedure provides that "the sums constituting the release allowance are placed in a special account; when they exceed a sum fixed by order of the Minister of Justice they are paid into a "*livret A*" savings account". Article A. 41 of the Code of Criminal Procedure fixes this threshold at 229 euros. An agreement concerning the management of prisoners' compulsory savings was signed between the prisons administration department and the *Banque Postale* bank on 23rd December 2008. Its purpose is to give a formal framework to the procedures for opening and operating these savings accounts. The agreement provides that, when the person concerned already has a "*Livret A*" savings account, a different type of account may be opened. However, it appears that this provision is seldom or never applied. Indeed, in spite of the agreement, which specifies that persons should be asked about their ownership of savings accounts and make a formal declaration that they have not already opened a *Livret A* account, the CGLPL has sometimes noted the opening of a second account of this type (*Livret A* "prison account") when the persons concerned already had one at their time of arrival at the institution. Furthermore, the systematic opening of a first or second *Livret A* savings account takes away prisoners' sense of responsibility, since they are unable to adapt their financial investments to their plans (e.g. taking out a home savings scheme (*plan épargne logement*) if they intend to become homeowners, investment in a sustainable development savings account (*livret de développement durable*) if they consider its rate and mode of management more suitable for their situation in prison or after their release etc.).

The CGLPL therefore recommends that individuals should be placed in a position to choose the type of savings account that they wish to open. It would also appear appropriate for them to receive a second copy of their savings account statements, to date sent by the

[72] *The CGLPL also reasserts its recommendations with regard to work in prison, in particular those set out in the Annual Report for the year 2011 concerning rates and modes of remuneration, determination of rates of work and the adoption of a circular on employment etc.*

Banque Postale to the prisons administration manager alone. The putting in place of financial advice provided by banking sector professionals would also be worthwhile with regard to autonomy in the management of finances. For all of these reasons, the CGLPL recommends that a legislative amendment should be considered in order to take these various different findings into account, to which should be added the fact that the compulsory payment into the savings account should be made rapidly, in order to enable the persons concerned to have the benefit of the interest generated by this investment.

Financial autonomy is decisive at the time of release from prison. Yet, nothing appears to be done to help prisoners take steps towards financial autonomy in prison, as illustrated by the fixing of the sums authorised by the prisons administration at the time of temporary releases in view of the estimates drawn up by the persons concerned. The Code of Criminal Procedure provides that, on their return from temporary release, the beneficiaries shall give proof of their expenditure.

Although the CGLPL is aware of the need to supervise expenditure laid out at the time of temporary release for security reasons, it nevertheless observes that these measures, by hampering the autonomy of individuals at the very time when they are placed in the situation of being able to exercise their own free will in the external environment, give rise to strong feelings of infantilisation and dispossession. This choice should been made within the framework of dialogue between the judge responsible for the execution of sentences, the prison service for rehabilitation and probation and the person concerned, in order to enable the latter to assert their needs and motivations.

The question of the money at the disposal of persons placed under electronic tagging was also brought to the CGLPL's attention. Indeed, current legal texts do not provide for their release allowance to be handed over to them[73], a sum which could nonetheless enable them to have greater financial autonomy. In the course of the month of December 2012, a senator took this point up with the Minister of Justice. In response, the latter declared her perplexity and that she is engaging in reflection with regard to the appropriateness of handing over release allowances at the time of reduced sentencing. To date, no text has amended the existing provisions.

1.2.5 The Right to Individual Initiative and the Exercise of one's Responsibilities

Today, the Internet has entered personal life to the point of becoming an essential tool for the promotion of access to bodies governed by ordinary law and to higher education, and for staying in touch with the technological changes affecting society[74] etc. It therefore represents a precious tool for rehabilitation and becoming autonomous, which is not incompatible with security imperatives, as shown by one experiment currently in course in a remand prison in the Paris region, aimed at equipping certain individual cells with secure Internet access.

[73] *Article D. 122 of the Code of Criminal Procedure: "As an exception to the provisions of article D. 318, prisoners having the benefit of partial release measures or unsupervised non-custodial postings in application of article D. 136, of electronic tagging in application of article 723-7 or beneficiaries of temporary release are authorised to have a sum of money enabling them to lay out the expenditure necessary outside of the institution and, in particular, pay for meals eaten outside, use means of transport and deal with any medical costs. The head of the institution shall assess, at the time of leaving the institution by the persons concerned, the amount of the sum to be handed over to them, debited from their available allowance".*

[74] *The CGLPL set out its position on IT access for prisoners in its opinion of 20th June 2011.*

As is the case in certain American prisons, prisoners should be able to send and receive e-mails using computers placed at their disposal, in the same way as telephones, and with a system of control comparable to that for postal letters.

Furthermore, the circular of 13th October 2009 concerning prisoners' access to IT facilities provides that prisoners may have access to IT equipment connected to external networks in dedicated rooms, after validation by security staff and the IT systems security officer (RSSI/*responsable de la sécurité des systèmes d'information*).

This possibility of Internet access should be put into effect, as recommended by the CGLPL since its opinion of 20th June 2011 concerning IT access for prisoners[75].

The manner in which the system of access to telephones has been put in place constitutes an obstacle to personal autonomy. Telephones are only accessible at certain times, which do not necessarily correspond to the availability of the person to be contacted and, moreover, do not enable prisoners to receive calls, making it impossible for a couple imprisoned into different institutions to telephone each other, except through the intermediary of the administration.

In the absence of authorisation of possession of mobile phones or installation of telephones in cells, the CGLPL has made recommendations on several occasions[76] with regard to extension of the timeslots for telephone access, in order to enable people to contact their close relations outside of working hours and school time.

Moreover, it is impossible to make the choices demanded by answering machines (to press on specific keys) from phone points, in particular when calling administrative bodies and banking institutions.

The CGLPL recommends that the prison telephone system should include the technical possibility of access to interactive voice response.

The CGLPL is also concerned to ensure the acknowledgement of prisoners' emotional and family life. It therefore regrets that the exercise of parental authority, for fathers in particular, is adversely affected by imprisonment.

According to article 371-1 of the Civil Code, parental authority "is a set of rights and duties whose finality is the welfare of the child". For parents it involves protecting the child's safety, health and morals and taking care of their education and development. It is therefore a question of providing daily support for the child until they reach adulthood. However, when one of the children is imprisoned, the exercise of this authority actually falls to the parent with whom the child normally resides. Except in case of a court decision restricting parental authority, the other parent in principle retains, at the very least, the right to be informed and have their opinion taken into account with regard to the making of important choices affecting the child's life and to contribute to the costs of the latter's maintenance and education.

The first difficulty is attributable to a lack of knowledge on the part of imprisoned parents of the continuance of their rights and duties with regard to the child, in the absence of withdrawal of parental authority by a competent court. Imprisonment is very often experienced as being a denial of all legitimate entitlement to exercise one's rights; and parental authority in no way forms an exception to the rule. Moreover, when cases of separation of couples or disputes

[75] *Opinion published in the* Journal Officiel *of 12th July 2011.*

[76] *Opinion of 10th January 2011 concerning the use of the telephones by persons deprived of liberty and reports concerning on-site verifications with regard to mothers imprisoned with their children within Rennes women's prison, and on the subject of persons of foreign nationality imprisoned within the remand prison of Villepinte.*

between parents are also involved, the formalities to be undertaken in order to demand effective rights constitute an additional difficulty on top of these feelings.

> It is essential for imprisoned parents to be informed of their rights and duties towards their children at the commencement of their imprisonment and, subject to any rulings made by the juvenile court judge, for them to be supported in the formalities necessary to the maintenance of their rights and duties, in accordance with the interests of the child.

Furthermore, imprisoned parents very often encounter difficulties in being informed of important decisions concerning their child in terms of health and education, as well as leisure activities, and even more so in being involved in taking these decisions. These difficulties are of course influenced by the marital situation encountered and the willingness of the parent living "outside" to share these decisions (in terms of providing information and requesting involvement) with the imprisoned parent. In addition, imprisoned parents are too often informed of decisions taken after the event.

> In order to remedy this problem, it would be necessary to enable access to digital homework notebooks by means of secure Internet access and put partnerships in place with schools whereby they send the child's school report to the imprisoned parent and inform the latter of the progress of their education.

Maintenance obligations with regard to the child also mean that the parent needs to be able to have the benefit of employment and be free to purchase goods for their child.

> The CGLPL therefore recommends that the criterion of parenthood should be taken into account in the granting of employment and that imprisoned parents should be able to have easy access to catalogues of toys and other goods (books, subscription to magazines etc.) with a view to being able to make gifts and contribute to the development of their children while re-establishing or maintaining close parental bonds.

When imprisoned parents retain parental authority, they can also have the benefit of visits from their child, whether mediated or with the child being accompanied by a close relation. Yet, it is to be noted that visiting rooms are seldom or inadequately equipped to cater for children (absence of toys and space as well as privacy in collective visiting rooms). The length of these visits is also rarely adapted to the needs of such meetings: in the vast majority of cases, the time is too short to establish the trust needed for the recommencement of bonds disrupted by imprisonment and geographical distance.

> In the children's interest, and subject to rulings to the contrary on the part of juvenile court judges, it would be appropriate to adapt the frequency, place and length of meetings between imprisoned parents and their children, in liaison with the person accompanying them, in order to enable the establishment and maintenance of emotional bonds.
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> Finally, the CGLPL recommends that reflection should be undertaken in association with imprisoned parents in order to ensure that the latter, and fathers in particular, have a greater sense of responsibility with regard to their parental role and regain autonomy in this regard.

1.2.6 Freedom of Expression

Since the coming into force of the Prisons Act of 24th November 2009, "subject to the maintenance of good order and security in institutions, prisoners are consulted by the prisons

administration with regard to activities proposed for them[77]". The prisons administration department has selected about ten experimental sites for the implementation of collective freedom of expression for prisoners, a principle incorporated in the European Prison Rules (EPR)[78].

Prior to this, prisoners had already had opportunities for expression in certain institutions by means of internal newspapers or within the framework of activities organised by associations for leisure activities. In general, "prison newspapers" are created and, in most cases, continue for as long as the persons behind them – in some cases a local teaching manager with a passion for the project, in others an enthusiastic official librarian – retain their impetus and energy, while trying to renew the topics addressed and the persons involved, in order to avoid the routine inherent to operation in an environment cut off from the outside world. Certain institutions, often the oldest institutions catering for convicted prisoners, involve prisoners in the organisation of associations for leisure activities, for membership of which they pay a subscription. However, it can only be noted that, while these associations have been falling apart for several years (a fact connected with the loss of the income derived from the rental of television sets), it is becoming increasingly rare for prisoners to be represented in their management committees or invited to general assemblies. The reports of these meetings are sometimes not even distributed in prison.

> Various different committees, involving the prisons administration, its partners and prisoners, have emerged in recent years, addressing a number of different topics: the scheduling of activities (in the fields of leisure, sports, education and professional training, as well as the scheduling of cultural events) as well as choice of menus, lists of products sold in prison shops and the organisation of visits etc. Conversely, certain subjects may be excluded, with regard to employment in prison in particular, when private service providers are involved, as well as questions concerning prison security and individual situations.

Certain institutions catering for prisoners serving long sentences have put participatory meetings in place with regard to daily life, thus establishing the collective expression of prisoners as a management method based upon institutional dialogue with the representatives of the administration. Within the framework of their visits, the inspectors thus had the opportunity to attend certain meetings of this type, which showed a high quality of listening and great mutual respect. In the case of issues that do not exclusively concern prisoners or which have an impact in terms of the organisation of work for staff (e.g., proposals for the improvement of visits in visiting rooms), internal collective expression may also be accompanied with the consultation of partners, other actors (families in particular) and prison staff.

The mode of appointment of the prisoners taking part in these committees is an essential issue with regard to proper operation thereof, requiring both credibility in the eyes of the prison population and acceptance on the part of prison staff. Apart from the fact that the persons appointed have to be willing to take part, the methods of appointment differ between institutions: on the one hand, they are sometimes selected by the management, which changes the persons appointed at regular intervals; on the other, a "college" of representatives, with a limited term of office, may be elected, requiring regular attendance at meetings, as well as consultation of and provision of information to the prison population as a whole; elsewhere, after addressing a call for candidatures to the prison population, the administration finally appointed the prisoners

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[77] *Article 29 of Act no. 2009-1436.*

[78] *"Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to their general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters" (rule. no. 50).*

itself, considering that the first method left an overly predominant place to individuals considered to be "negative leaders", while making sure that they were sufficiently representative in terms of legitimacy in the eyes of the prison population... In another institution, the inspectors witnessed prisoners' refusal of elections, on the grounds that this method of appointment would mean submitting a candidature and "conducting a campaign", with the risk of becoming a "leader" in the eyes of members of staff, with all of the risks involved therein. On the other hand, the rules of organisation – calls to attend, agenda, and reports – are in general the same. The reports are drafted by a representative of the administration and signed by the management, and sometimes also by the prisoners; they are often displayed in the accommodation sectors, disseminated to staff in all departments, or even passed on to professional organisations.

However, these initiatives have their limits. Corresponding to the observed loss of interest in activities organised in prison, all of the persons encountered reported withdrawal from collective life on the part of prisoners and retreat into isolated individualism, difficulty in agreeing on common projects etc., all consequences of a mode of prison organisation leaving little place for individual autonomy and an administration with little desire for change in the institutional landscape[79]. Prisoners engaged in the mechanisms of collective expression are sometimes disappointed, since their efforts to involve their fellow prisoners often come up against scepticism, due to a priori rejection of the institution. Such reservations may also be attributable to fear of pushing oneself forward and thus being exposed to problems.

> Exchanges between imprisoned persons should be encouraged and extended, insofar as organs of collective expression for prisoners enable institutional dialogue with the administration, which contributes to improving daily life and relations with staff.

This is illustrated by a request sent by a prisoner to the head of a long-stay prison, which reads as follows: "As I have personally had occasion to note in previous institutions, this participation enables prisoners to be actively involved in their daily environment, to take a constructive position with regard to the activities proposed, to show greater respect for the equipment placed at their disposal, and to improve their relations with all of the members of the prison administration".

Finally, personal image rights, in particular when documentaries or films are made within prisons, are regulated by article 41 of the Prisons Act of 24th November 2009.

The CGLPL has already noted the fact that these provisions were not respected, in the section devoted to the application of the aforementioned Act in the Annual Report for 2013. It will not therefore repeat these observations here.

1.2.7 Right of Access to Healthcare and Control of one's own Body

Personal autonomy presupposes the right to make choices with regard to health. In the same way as they should have the right to eat in accordance with their personal convictions, as a preventive measure (vegetables grown according to the criteria of organic farming for example), prisoners should be able to consult the doctor of their choice. This right is limited by article D. 365[80] of the Code of Criminal Procedure. Prisoners are thus subject to diagnoses and prescriptions issued by

[79] *The attempted creation of a prisoners' union, at the initiative of several imprisoned persons in a long-stay prison controlled in 2014, was thus refused by the management. This decision has been challenged before the administrative court (case in progress).*

[80] *"Apart from cases where they are outside of a prison in application of articles 723 and 723-3, prisoners can only be examined or treated by a doctor of their choice after a decision by the director of the interregional department of prison services with territorial jurisdiction. They shall then take financial responsibility for the costs incumbent upon them for this treatment".*

the medical staff working in prisons, without actually being able to consult other doctors in case of disagreement (desire to end drug addiction progressively by means of opioid replacement therapies, desire to obtain a non-generic medicine in order to avoid certain observed side-effects etc.).

Autonomy in terms of health also means access to equipment and treatment. The inspectors sometimes ascertained that individuals had limited access to treatment, due to the organisation of movements, which made them dependent upon the prison staff in charge of calling for them when medical consultations were scheduled.

> The CGLPL recommends access to the health unit according to the two following procedures: free access for half of the day and consultations by appointment for the other half of the day. This organisation, already put in place in certain institutions, constitutes a good practice and promotes personal autonomy.

The question of medical emergencies represents another difficulty in prison. When the health unit is not freely accessible, it is incumbent upon warders to assess the level of urgency when they are called upon for questions of a medical nature.

> The CGLPL recommends that, when requests for emergency consultations with the health unit are made to staff orally, they should be automatically granted. It recommends that, when the medical staff working in the institution are absent and a person requests an emergency consultation, they should be systematically placed in contact with the *Centre 15* urgent medical aid service call centre, in order to explain their symptoms themselves.

The constraints inherent to prison (organisation of removal from prison for medical consultations, possibility of following complex health procedures etc.) constitute an obstacle to the implementation of certain choices with regard to the right to control one's own body. This is shown by the situation of imprisoned couples who wish to make use of medically assisted procreation (MAP).

> With regard to choices as private and important as that of conceiving a child, which come within the right to private and family life, the CGLPL considers that it is incumbent upon the prisons administration to take all steps in order to make such plans accessible to persons for whom it is responsible, on the same basis as under ordinary law, under conditions ensuring respect for the dignity of the persons concerned and proper conduct of their medical procedures (advance scheduling or, on the contrary, sudden execution of necessary removals from prison for medical reasons, notification of persons, limited and justified use of means of physical restraint, absence of prison staff during medical examinations, etc.).

1.2.8 Access to Information and Legal Information and Advice

Autonomy can only be effective if individuals are aware of the rights to which they are entitled and the duties incumbent upon them. Defence rights and the right of access to useful personal and/or legal documents have already been addressed by the CGLPL in the Annual Reports for the years 2012 and 2013, and in the opinion of 13th June 2013[81]. It will not therefore return to this issue here.

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[81] *Section on access to defence rights: Page 147 et seq. of the Annual Report for the Year 2012; Section on architecture: page 127 et seq. of the Annual Report for the year 2013. The CGLPL also stated its position on the need to facilitate access to personal and/or confidential documents entrusted to the registry in its opinion of 13th June 2013 concerning the possession of personal documents by prisoners and their access to documents that can be made available for discovery and inspection.*

Access to services promoting the provision of information and knowledge of rights (public letter writer, interpreter, legal information and advice access points, the French national employment agency (*Pôle emploi*) etc.) sometimes presents difficulties, in particular when requests for meetings have to be made formal in writing and/or be passed on by intermediaries[82]. As a pre-requirement for access to these services, information concerning the existence thereof and the procedures for making use of them needs to be accessible to all. The CGLPL has ascertained that the resources for this purpose, both in human terms (public letter writer, persons having studied at university etc.) and with regard to information and the law (local and national press, legal codes, "Prisoner's Handbook" (*Guide du prisonnier*) etc.) are in general gathered together in prison libraries. **The CGLPL therefore recommends free access to these premises**.

In the interests of autonomy, the CGLPL also recommends that the information useful to prisoners should be incorporated in the documents handed over to new arrivals and that it should be displayed in prison in several languages, as well as being provided orally at the time of "new arrivals" interviews, and in the course of hearings with non-French-speaking and illiterate persons in prison.

It would also be appropriate for the names of the main actors of the institution (director, head of the health unit, etc.) and the contact details of certain local and national actors (public prosecutor at the court of first instance, chairperson of the Bar, Regional Health Agency, CGLPL etc.) to be displayed in prison, as is already the case in certain institutions.

Moreover, situations are regularly brought to the attention of the CGLPL concerning persons encountering difficulties in obtaining copies of documents of all kinds (letters, medical certificates etc.). These difficulties are due, in particular, to the confidentiality of the documents to be copied (it not being possible, for this reason, for them to be entrusted to third parties) and/or to the fact that the persons have to apply for the debiting of the sum, corresponding to the number of copies that they wish to make, from their personal account. A number of valuable initiatives have been observed in prisons: for example, the possibility of purchasing a magnetic debit card enabling a pre-determined number of photocopies to be made using a photocopier freely accessible in the library.

The CGLPL considers that this initiative constitutes a good practice, which should be extended.

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In order to promote personal autonomy, the first requirement therefore seems to be the assessment of an individual's degree of autonomy on their arrival in prison, and adaptation of the inherent constraints of their imprisonment (surveillance, freedom of movement, access to objects and services etc.) to their profile (risk of commission of acts of violence and vulnerability, as well as level of autonomy). Assessments of this kind could be made within the framework of "new arrivals" interviews, and within the framework of the person's sentence enforcement programme in the course of their imprisonment. Such measures would enable personalisation of the practical details of imprisonment, according to each individual's personality and needs and, therefore, optimisation of the available human and material resources. Indeed, if the most autonomous persons were placed in the position of being able to carry out the actions necessary for their daily life, or for their preparation for release, on their own initiative, the prison and medical staff would usefully be able to devote more time and energy to dealing with persons lacking such abilities.

[82] *The question of the processing of applications and the channels thereof is addressed in the corresponding section of this Annual Report.*

2. Development of Autonomy among Minors Deprived of Liberty

Young offenders' institutions (CEF) and prisons for minors (EPM) were created by the Act laying down the basic principles for government action in the field of Justice of 9th September 2002. Both types of institution cater for minors between 13 and 18 years of age.

According to the report appended to the Act, which constitutes the grounds for the latter, the creation of these institutions was based upon an observed increase in both criminality among minors and the visibility thereof. They fulfil the need to make a "firm response" to crime among minors and "to reassert the value of punishment, while continuing and extending prevention and rehabilitation initiatives".

CEFs were initially designed to provide an alternative to prison for young multiple recidivists and repeat offenders subject to judicial supervision or probation orders, until the system was extended by various different legislative provisions – the Acts of 9th March 2004, 5th March 2007 and 10th August 2011 – to conditional release and day-release, as well as to minors guilty of certain categories of offences[83] without conditions of previous history.

The Act of 9th September 2002 provides that these minors shall be subject to "measures of surveillance and control making it possible to organise the provision of a reinforced educational and pedagogical follow-up programme adapted to their personality", in an institution offering conditions of education and security adapted to their intended purpose, that is to say enabling verification that they are actually present. In a ruling of 29th August 2002, the Constitutional Council validated the measure while, however, specifying that: "the centre shall be legally rather than materially closed, in the sense that running away may lead to the rebellious minor's imprisonment". In practice, it is possible to climb over walls and wire meshes, but they are nevertheless present.

The Act provides that infringement of the obligations incumbent upon the minor pursuant to measures having led to their placement in the CEF may, depending on the case, lead to the minor being placed on remand or imprisoned[84].

The same Act provides that the imprisonment of minors shall take place either in a special wing of a remand prison or within specialised independent institutions whose creation is expressly envisaged. These new prisons for minors – EPM – are characterised according to the terms of the report appended to the Act by "continuous action on the part of the departments of the judicial youth protection service with the whole of the imprisoned minors, since the latter justify the provision of a multidisciplinary programme and personalised support".

While creating these firmly coercive measures, the Act reasserts the importance placed upon the guiding principles of the statutory instrument of 1945, that is to say the primacy of the educational over the repressive approach. For this reason, the legislature asserted its will to give an educational dimension to imprisonment minors.

> According to the Convention on the Rights of the Child[85], education means "the development of the child's personality, talents and mental and physical

[83] *Offences and harm to persons of a certain level of seriousness, including indictable offences.*
[84] *It is to be noted that the measure allows the imprisonment of minors under 16 years of age with regard to indictable offences, which was not previously authorised by the statutory instrument (ordonnance) of 2nd February 1945.*
[85] *Adopted by the United Nations General Assembly on 20th November 1989 and ratified by France on 2nd July 1990.*

abilities to their fullest potential"; as well as "the preparation of the child for responsible life in a free society…"

It is difficult to envisage an ambition of this kind without the margin of autonomy required for any learning process, with its share of trial and error and mistakes. At the same time, access to adulthood is also measured by a person's capacity to accept frustrations; there cannot therefore be any education without the learning of limits.

It may therefore be said that education under constraint constitutes both a paradox and a balance (1) while, in any case, supporting the child towards becoming autonomous constitutes an educational requirement in a free society (2).

2.1 Education under Constraint, Insoluble Paradox or Delicate Balance?

Although minors imprisoned in EPMs have the benefit of multidisciplinary measures jointly put in place for them by the judicial youth protection service and the national education system, the penal aspect proves to be predominant. It is manifested in the predominant role of prison staff, the existence of bodies and methods of constraint specific to the prisons administration (disciplinary committee and punishment wing, searches, monitored visits, accompaniment by a prison officer at the time of movements, locking up in cells, at night and apart from activity and exercise times, use of handcuffs at the time of removal from prison etc.).

The architecture of the buildings was originally intended to be less "penal" than in traditional institutions – EPMs are of limited size (sixty places in the majority of cases), the accommodation units are small (six to ten persons) and, in general, have a green area or sports ground next to them –, although over the years they have tended to take on a more penal character: "passages of movement" marked off by wire fences have gradually been put in place, in order to organise the internal area and make it secure. Each institution has the benefit of a well-equipped sports hall, a collective area able to host a wide range of activities (library, table tennis etc.) and a local educational unit. In addition, each accommodation unit has a dining room and a common activities room.

Although the educational dimension is affirmed, with the intention of "anticipating, promoting and preparing the conditions of their social integration at the time of their release", it is implemented by means of compulsory educational activities, vocational training, sports and socio-educational activities, for which failure to attend may lead to disciplinary sanctions[86]. Support towards becoming autonomous, as a right for adolescents to analyse, understand and choose the rules to which they agree to submit, disappears behind a more limited objective of social integration. **We shall therefore, for the most part, address the question of the process of becoming autonomous through the examination of CEFs.**

Indeed, CEFs are at the crossroads between two different approaches, the punitive and the educational, and in this respect constitute a sui generis[87] category of institutions, pursuing a double purpose:

- the restriction of liberty, accompanied by control measures resulting from a criminal judgement;

- the putting in place of a reinforced and personalised educational and pedagogical project coming within the field of social welfare.

[86] *Cf. circular of 24th May 2013 concerning the prison regime for minors.*
[87] *The only new category of institution created by a law.*

CEF placements are subject to a strict series of rules imposed upon minors and tutors, who are bound to implement an educational project within a specific framework, fixed by law and the court (A). This project is intended for vulnerable inmates where strict control measures will not be enough to make them into autonomous citizens (B).

2.1.1 A Legal Framework giving Priority to Security without Denying the Educational Dimension

The Act of 9th September 2002 and its circulars of application incorporate CEFs within a double legal framework: on the one hand, a penal legal framework – the statutory instrument (*ordonnance*) of 2nd February 1945 – on the other hand, the Act of 2nd January 2002 reforming social and medico-social initiatives.

A certain number of restrictive consequences result from the legal framework:

- minors, placed in CEFs within the framework of judicial supervision, probation orders, or reduced sentencing measures, have to comply with a certain number of obligations fixed by the judge, the first of which, inherent to the measure, is compliance with the placement, both in principle and in the practical details thereof;
- failure to comply with the obligations may lead to revocation of the measure and imprisonment;
- the judge is kept informed of the minor's behaviour and, more particularly, any incident liable to lead to revocation of the measure;
- in practice, most minors placed in CEFs have other criminal proceedings in progress and are well aware that their behaviour may have heavy consequences upon the way they are dealt with.

The penal framework therefore weighs upon the placement in a crucial manner; the fear or threat of revocation is constantly present and undeniably gives a dimension of constraint to the placement.

The **judge** has nevertheless chosen a CEF rather than imprisonment. The latter knows that the bars can easily be crossed and that, after an initial reception phase, the young person will be entitled to go out in a more or less supervised manner and allowed a few timeslots of liberty, if only at the time of visits to their family and professional training. When judges give grounds for rulings (which is not always the case), in general they condemn the parents' inability to fix a stable educational framework for the minor as well as the young person's difficulty in complying with the rules fixed; they often point out the need to put the minor back on an educational or professional path. It is therefore a question of supporting the minor towards sensible and legally acceptable plans for their life.

Whatever the objectives fixed by the judge, the **required conditions** oblige CEFs to put in place an "intensive and structured educational project", aimed at "preventing the continuation and repeat of criminal behaviours" by means of "the social integration of the minor through activities including work-based initial vocational training in basic knowledge and training in professional acts, as well as educational work concerning health and the body on the basis of sports activities etc.". These required conditions specify that: "the objective of the placement is to work upon the minor's personality and personal development, both at the psychological and family and social levels; it will therefore be aimed at developing the minor's potential with regard to knowledge, the ability to establish relations with others based upon the notion of respect and the capacity to position themselves with a view to personal plans for integration into society".

A certain number of obligations of another kind[88], are a consequence of the social nature of CEFs, which tend to make the minor into a user, entitled to rights:

- personalised provision of measures and support, promoting their development, autonomy and social integration;
- that the minor's consent and direct participation be sought, with the help of their legal representative, in the design and implementation of the measures and support put in place for them.
- more generally, the minor's participation in the operation of the institution, through a social life committee or any other method of participation.

There is a sensitive balance between these two approaches. The penal framework is above all aimed at the prevention of recidivism; the advocated approach to education places greater emphasis upon the search for social integration specific to EPMs than upon the search for autonomy advocated by the Social Action and Family Code (CASF / *Code de l'action sociale et des familles*).

In practice, constraint tends to take even greater precedence over the search for autonomy insofar as a more or less clearly stated injunction weighs upon CEFs, arising from social and/or political demands, to ensure the security of citizens in priority. Finally, the search for autonomy also comes up against difficulties specific to the minors catered for.

2.1.2 A Vulnerable Population, above all requiring the provision of Educational and Psychological Measures

Whether with regard to CEFs or EPMs, the examination of inmates' situations shows chequered family histories (broken families, uncertainty of filiation, domestic violence, psychological frailties etc.) and materially and culturally impoverished families; all forms of social exclusion are to be found: lack of work, accommodation and health problems, administrative problems etc. The father is frequently absent, whether this absence is actual – imprisonment, death, separation accompanied with abandonment of the parental educational role – or symbolic – father's paternal role denied due to immaturity, unemployment, alcoholism, etc. The mothers, who often have to take care of the education of the children on their own, regularly appear to be extremely protective, sometimes allowing the child to take a "man's place". Conversely, although less frequently, parents are sometimes encountered who still have adolescent problems themselves, leading them to give priority to their own personal lives, to the detriment of the interests of their children. In their family, these minors were in practice left to themselves, and were allowed total "freedom" without anything in return. It is therefore all the more difficult to lead them towards becoming autonomous since, initially, limits have to be set.

Moreover, the educational and emotional deprivation suffered by these young people often gives rise to the lack of a secure image of their personal identity, maintaining them in a state of immaturity which is not solely attributable to their age. It can also be manifested in feelings of omnipotence, a certain tendency to pass easily from thought to the commission of serious acts, difficulty in taking "others" into account, difficulty in envisaging the future and therefore in elaborating educational and professional plans, in short: difficulty in becoming autonomous.

It is also likely that a certain model of social "success", based upon appearances and money, does not encourage these young people to engage in educational plans which would not

[88] *These obligations result from articles L311-1 et seq. of the Social Action and Family Code (*Code de l'action sociale et des familles*).*

immediately lead to this form of success. The majority of these young people have a striking absence of hope in a better future.

> In this context, the priority appears to be care and educational and psychological support. The latter constitute the preconditions for enabling minors with major difficulties in CEFs and in EPMs to become autonomous.

2.2 Support towards Becoming Autonomous, an Educational Requirement

As pointed out above, EPMs only allow a limited margin of autonomy, and the question is not fundamentally different for them than in traditional prisons, and more particularly in what are referred to as "new concept" wings, which are specifically oriented towards social rehabilitation[89]. Their educational purpose is nonetheless asserted and the practices observed by the inspectors shall, for the most part, be addressed by means of comparison with practices in CEFs.

Conversely, the fact that CEFs are subject to the provisions of the Social Action and Family Code leads them to guarantee autonomy by means of internal measures, which only involve restrictions insofar as the child's interest so requires and subject to respect for the latter's fundamental rights. This is not always what appears in practice (A). It must be admitted that it is not an easy task; it presupposes great professionalism on the part of the educational teams and real commitment on the part of the authorities and partners (B).

2.2.1 Support towards Becoming Autonomous tested in Practice

The educational methods implemented by institutions have to be shown in certain specific documents; the latter are not free from ambiguity and contradictions. Moreover, they are not always implemented in accordance with their professed intentions.

2.2.1.1 Internal Documents

Each **CEF** has to draw up a "**service plan**[90]" defining its objectives and setting out its methods of organisation and operation in view of the stipulations made in the required conditions.

In the majority of institutions, the initial service plans, frequently referred to as the "institutional project" or "educational project", have been drawn up by persons or teams – presumed management or management association etc. – that do not always exercise concrete and permanent activities within the institution. Generally speaking, it is intended as a theoretical and practical frame of reference.

> As far as the educational aims are concerned, the notions of learning to respect limits, socialisation, social integration and avoidance of recidivism appear much more frequently than the notions of becoming responsible and autonomous. Conversely, a rare few institutions promote the notion of "care" (in the sense of protection).

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[89] Within the framework of the so-called "13000" prisons programme, this involves the creation of institutions more specifically adapted to short sentences and to the end of sentences, specially orientated towards social rehabilitation by means of collective and individual activities, both inside and outside of the prison.
[90] Obligation resulting from the required conditions, in accordance with article L 311-8 of the Social Action and Family Code (CASF).

Whatever educational aims are prioritised, the proclaimed methods are the same: personalised educational support, schooling and/or raising of professional awareness, varied activities and psychological support, all of which are conducted with the clearly stated aim of respecting the place of families. The compulsory character of the minor's participation in the whole of these activities is rarely approached from the point of view of concern for the latter's interest. In many institutions, the teams have not truly assimilated the service plan (often considered complex) and actual practice is far removed from it. This plan is neither passed on to the young people nor to their families.

Moreover, in all CEFs, the director has to draw up **"rules of operation"** for the purpose of fixing the practical details of collective life, as well as the rights and obligations of the minors accommodated; it has to be appended to the booklet for new arrivals. In general, the rules of operation and booklet for new arrivals are supplemented by the charter of rights and liberties of persons committed to institutions (*charte des droits et libertés de la personne accueillie*). The whole of these documents are handed over to the young person and, in principle, to their family.

In practice, the rules of operation often consist of a statement of rights and prohibitions, more attention being devoted in general to the latter than the former. A rare few institutions give a real place to minors' rights by clearly setting out the right to information, respect of privacy, private life and family bonds, freedom of expression, religion and access to personal files, all of which are rights whose exercise constitutes support towards becoming autonomous.

Article 8 of **the charter of rights and liberties of persons committed to institutions** expressly mentions the right to autonomy; however, this right comes within the limits set by the court and the framework of the measures provided; its scope is therefore limited as far as CEF placements are concerned.

In general, the **booklet for new arrivals** provides elements of information of a practical order concerning the life of the institution, daily organisation and the operation of the measures put in place to deal with the minor. Although it mentions the notions of social rehabilitation, in particular through schooling and training, it makes little reference to the notion of autonomy, giving priority to that of control.

Finally, the specific and personalised objectives of the placement should, for each person, be shown in a "**document of individual measures for dealing with young offenders**" or "**personalised educational project**", the drafting of these documents having been recommended by the director of the judicial youth protection service (DPJJ), by means of the note of 7th March 2007. In practice, the inspectors have observed that these documents are completed in a very irregular manner, that the objectives thereof are relatively stereotyped ("think about the foolish things I've done, take up my schooling again" etc.) and that they are not subject to any formalised updating. Although there is an underlying concern with the search for autonomy, it is rarely specifically mentioned as such and accompanied with appropriate objectives and means.

By way of comparison, it is to be noted that the internal documents governing life in an **EPM** are comprised of the **internal rules and regulations** – a prison document of which the framework is set by the prisons administration –, and an **institutional project** drawn up jointly by the prisons administration and the educational department of the PJJ in order to define the organisation of the EPM, and **service plans** by means of which each department determines its methods of organisation and the intentions of its action with young people[91]. In practice, the institutional project is often slow to appear, as a result of the difficulty of putting a real "prison

[91] *Cf. circular of 24th May 2013.*

officer-tutor" partnership in place (and then, probably, of education under constraint). The educational objectives, determined by the circular of 24th March 2013, are in priority oriented towards "prevention of the shock of imprisonment", "restoration and maintenance of family ties" and "social integration and preparation for release". It makes no mention either of the search for autonomy or of personal liberty as an essential part thereof.

> The CGLPL recommends the drawing up of internal documents – service plan and/or institutional project, internal rules and regulations and booklet for new arrivals – focused upon minors' interests. These documents should be known, understood and accepted by the teams supposed to implement them. They should constitute a day-to-day working tool, serving as a reference for practices.

2.2.1.2 Implementation of Autonomy and Respect for Fundamental Rights

In CEFs, the closed character of the institution should not constitute an obstacle to provision of support towards becoming autonomous; this principle was reasserted in the report of the assessment mission published in January 2013[92]. Yet, in practice, it still does not appear to be a decisive aspect of the system; conversely, in some cases the margin of autonomy left to the young person gives cause for concern.

As far as EPMs are concerned, minors are in all cases only left a small margin of autonomy, due to the penal character of the institution. It would be regrettable were this explanation in the form of an alibi to hinder all change.

Access to rooms and right to privacy. In EPMs, presence in the cells (which are always individual) is in general compulsory outside of the timeslots for activities, meals and exercise; opening of the doors is exclusively dependent upon prison officers. Although the cell leaves a margin of autonomy (watching the television programme of one's choice, writing, reading or doing nothing), it is not considered to be a private area (in the positive sense) but rather an area associated with punishment and/or exclusion. It is not impossible that the damage and lack of maintenance often observed in cells may, at least in part, be explained by this absence of recognition of a real right to privacy.

> In CEFs, rooms are individual and access is always regulated, ranging from pure and simple prohibition during the day, until 8 p.m. in some cases, to a certain flexibility, which always presupposes authorisation from a tutor for a limited and monitored period of time in the room. The grounds given involve providing minors with a routine similar to that of young people of their own age, who go to school or work. In practice, in the middle of the day and evening, the inspectors have often seen young people unoccupied (without any other possibility than the television in the common room, table football or ping-pong) or tense (unavoidably confronted with the unchosen presence of other young people), without the possibility of being alone or devoting themselves to some activity, or inactivity, without being in the view of third parties.

A margin of autonomy is left to minors in CEFs for the decoration of their rooms, with the entirely understandable limitation of the absence of damage and the nature of posters (no pornography). The inspectors observed that these rooms were in better condition than in most EPMs, where they also have a certain margin of liberty in this domain.

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[92] *Page 5 of this report, drawn up by the IGSJ, the IGAS and the IPJJ, states that "CEFs pursue two objectives... Putting in place a reinforced and personalised educational and pedagogical project adapted to the personality of the minors catered for, in order to lead them towards a process of becoming autonomous".*

During the day, access to toilets sometimes constitutes a problem, including in CEFs: the inspectors noted that, in one of these institutions, the young people were obliged to ask a tutor for toilet paper. The reason given was distrust, made into a principle: “If we leave it at their disposal, they’ll block the toilets”. This calls the **right to dignity** into question.

> The CGLPL recommends that a certain flexibility should be applied with regard to access to rooms and cells and, all the more so, to toilets, taking both general security and the minor’s circumstances and personality into account.

Right to private and family life. In EPMs, the operation of visiting rooms is modelled on that of prisons and the same difficulties are to be found in them, in particular with regard to restrictions of access and lack of confidentiality. With regard to minors, whose number is moreover limited, for whom the maintenance or restoration of family ties appears essential, it is regrettable that greater flexibility is not considered appropriate, and all the more so as the homes of certain families are very distant from the institution.

In CEFs, the idea is generally admitted of suspension of the exercise of home visit rights in the course of the first weeks of placement. This restriction is justified by family inadequacies and the need to cut the young people off from their environment of origin. However, the inspectors are surprised that judges rarely address this aspect of rights, leaving it to the institution. They also observed that, in certain institutions, returns from weekends gave rise to **searches prejudicial to the young people’s dignity** (obliged to undress and put on a bath robe); it being impossible to justify the systematic application of this practice on the grounds of giving priority to security. Conversely, it should be emphasised that the arrangement of an apartment intended for the exercise of visiting rights by families living far from institutions is a practice that respects the right to family life.

> The CGLPL recommends an extension of family visiting rights inside institutions and the creation of premises suitable for confidential and friendly meetings.
>
> These visits should provide an opportunity for exchanges with the educational and/or pedagogical teams and promote the passing on of information, with the intention of both respect for parental authority and the exercise of educational action.

As far as other methods of maintaining bonds are concerned, mobile phones are prohibited in all CEFs (and all the more so in EPMs). Several reasons are given: compliance with the prohibition of entering its relations with the persons appointed by the court, possibility of engaging in various different types of trafficking, protection of image rights and Internet access. Although access to the telephone of the institution is possible, the choice of persons who may be contacted is limited to close relations and sometimes exclusively the parents. The young person cannot choose the time of the call and its length is sometimes limited. The reason for these restrictions often remains vague (respect for communal life, need to establish distance etc.). In certain CEFs, calls have to be made in the presence of a tutor and the reasons given in support of this practice are no more precise (“There is sometimes blackmail”, “We find out about the quality of the relations” etc.). Other institutions have much more respectful practices: calls are made to the institution, the call is passed to the young person by means of a cordless telephone and the conversation takes place in complete confidentiality (which, from an educational point of view, does not prevent the tutor from being attentive to the young person’s state at the end of the call and subsequently taking the question up with them). In EPMs, the telephone is in general placed in a small hall located in the immediate vicinity of the “prison officer-tutor” team’s office, and

not far from communal areas. As in any prison, the conversation may be listened to[93]. In the absence of reflection within the institutions (which has not been ascertained by the inspectors), it appears that respect for the confidentiality of conversations is dependent upon goodwill on the part of the prison officer or tutor, which is in no way a satisfactory situation.

In EPMs, correspondence is subject to the same principles of control as in all prisons and poses the same difficulties.

In CEFs, it is opened, in most cases in the young person's presence, by persons and according to procedures which are rarely precisely defined (sometimes a secretary or a head of department). The argument put forward involves respect for the prohibitions made by courts: is thus a question of verifying the identity of the sender or addressee. It is in general, pointed out that the content is not checked, unless it is a parcel (verification of the lawful character of the contents) or when the tutors' attention has been drawn to a specific difficulty.

> The CGLPL recalls that any violation of the freedom of correspondence should be justified on precise grounds, involving the minor's interest or the duty of the institution, and that the judge should be informed thereof.

As far as minors are concerned, the place of the family is not limited to the maintenance of bonds, but should be manifested in the exercise of parental authority, at least insofar as exercise thereof is compatible with the measure. In EPMs, the place of parents is often limited to notification issued, in writing, at the time of imprisonment of their child (concerning the operation of visiting rooms and the overall operation of the institution); in general, the teaching teams send school reports, and some of them provide meetings. Beyond this, family ties are considered to come within the jurisdiction of the PJJ. No specific projects have been passed on to the inspectors determining the manner in which these institutions intend to protect the parental authority.

The inspectors ascertained that, even in CEFs, the place of parents was not always respected; it is apparently often easier for the teams to "work in place of" the parents than to "work with" them; this temptation is all the greater insofar as institutions are distant from the parental home and visits from open environment tutors are sometimes rare, either to the CEF or EPM, or to the family (one CEF tutor stated that "when the minor is here, they drop the case" with regard to his counterparts outside of the institutional environment charged with following the child's development); this ignorance of the family is all the more regrettable insofar as the majority of young people return to their environment of origin at the end of the placement.

> The CGLPL recommends that a specific information booklet should be sent to the holders of parental authority. Insofar as possible, they should be involved in the educational initiatives undertaken and, as a minimum, be kept regularly informed of the minor's progress and the projects implemented.

Right to information and access to legal advice. In EPMs and CEFs alike, the right to information is implemented in a rather haphazard manner: Internet access is in general prohibited (EPM) or limited (CEF); however, the inspectors noted that certain CEFs made use of this tool in a pertinent manner in accordance with their educational role, for example in order to look for work placements and prepare for a cultural outings. In both types of institution access to newspapers and journals is limited, in libraries as well as, - in the case of EPMs-, prison shops. However, the fact that the local newspaper was made available in one EPM is to be emphasised.

[93] *Cf. Section on autonomy in prisons.*

This type of initiative (access to Internet and to the press) would be worth extending to all institutions catering for minors; it should be combined with educational initiatives likely to awaken a critical mind in the face of the media and, more generally, promote access to legal information and advice and citizenship.

More generally, knowledge of one's rights is indisputably one of the essential tools for autonomy and cannot be reduced, as is too often the case, to the handing over of the internal rules and regulations and the booklet for new arrivals. Putting this principle into practice is far from simple with young people more ready to demand their rights than to fulfil their duties; it constitutes an educational challenge that is rarely taken up. The value of initiatives working in this direction should therefore be appreciated, such as the organisation of conferences providing access to legal information and advice within one EPM, in liaison with the local Bar. Supervised access to personal files could also be promoted in favour of young persons, as a tool for understanding their personal history as much as their rights; unfortunately, in one CEF, – which had the merit of including access to personal files among minors' rights –, the inspectors ascertained that this right was limited to the administrative part… which considerably reduced its significance.

The right to the assistance of a lawyer is included in the internal rules and regulations of EPMs and minors are informed thereof; the local Bar roll of counsels entitled to practice is in general displayed in the units, which is not enough to facilitate young persons' access to *their* lawyer, when the latter is a member of another Bar (which is frequently the case, in view of the young people's geographical origin). This information should therefore be provided on an individual basis in a formal manner.

This provision of information is in general less formalised in CEFs (the Bar roll is not displayed), where it is considered that tutors will pass on young persons' applications. This method does not appear likely to encourage autonomy.

The inspectors ascertained that access to lawyers was limited to the moments immediately preceding hearings. It is certain that the escort conditions (escort or educational presence) do not promote the confidentiality of interviews, unless the lawyers express their expectations in this regard.

In both types of institution, and especially in CEFs, the inspectors noted that young people were sometimes dissuaded from making applications to the judge; yet, while it is desirable for tutors to support young people in making such applications, and to inform them of the opinions that they intend to give in this regard, they should not stand in their way. Minors should therefore have all useful elements at their disposal for this purpose; the information should be issued in a systematic and formalised manner (handing over of a document including the court contact details).

Finally, it should be noted that in both types of institution minors, and even tutors, appear to be unaware of the right of appeal pertaining to minors in criminal matters.

The CGLPL recommends the putting in place of means of access to information (the media) and, more particularly, access to legal information and advice. Each young person should be placed in a position to be able to make contact with the lawyer of their choice, as well as with the member of the national legal service in charge of their files. Unless it is contrary to their best interests, they should be able to have the benefit of supervised access to their files. The CGLPL also recommends consolidation of the legal training of the teams.

The Right to Express One's Opinion. In EPMs, the exercise of this right is provided for by article 29 of the Prisons Act of 24th November 2009. It might have been assumed that, in institutions of limited size with educational aims, the putting in place of this means of consultation would not present any difficulties; actual practice tends to lead to the opposite conclusion: a few "menu committees" are put in place, which can hardly be claimed to fulfil the desirable objective of promoting a sense of responsibility. However, a few initiatives need to be emphasised, such as the putting in place of an internal newspaper and, still more, the intentions of one EPM visited, which at the time of the control was thinking about putting a real social life committee in place, following the example of those existing in certain CEFs.

Indeed, in CEFs it should be possible for freedom of expression to be manifested through "social life committees" advocated by the Act of 2nd January 2002, or any equivalent body. In practice, the inspectors ascertained that they were not always effective, or in accordance with their purpose. Certain institutions organise meetings at regular intervals on topics proposed by the young people and/or tutors concerning current affairs and life in the institution. Other professionals try to put more limited expression groups in place, with clearly educational aims (involving "teaching the young people to listen, argue, think etc."). A few rare institutions have put an internal newspaper in place with limited circulation. Initiatives of this kind should be encouraged.

As far as freedom of religion is concerned, one can only note that in EPMs the possibility of practising the religion of one's choice sometimes comes up against the absence of a Muslim chaplain. In CEFs, secularism is promoted, more often in order to avoid any religious occasions than to permit them all. In CEFs and EPMs alike, for young people of Muslim faith, freedom of religion in most cases amounts to being able to exclude pork from their diet.

> Ascertaining that the right to assert one's opinion is seldom implemented within prisons for minors, the CGLPL recommends the putting in place of "social life committees" enabling young people to express their opinions in compliance with the common interest.

The Right to Education and Training. These rights appear to be essential tools for autonomy. In EPMs, teaching is entrusted to a team, in general qualified and placed under the supervision of a head teacher or local teaching manager present on the site. Although vacant posts are to be noted, the framework is in general satisfactory and occasional difficulties do not affect the teaching in its principle. Education is compulsory in these institutions and personalised insofar as possible; it incorporates a dimension of vocational preparation; the taking of exams is taken into account with regard to transfers and, overall, it appears to operate in accordance with the requirements of the preparation of minors for autonomy.

In CEFs, these duties are entrusted to a single teacher, whose training is not guaranteed[94] and who is isolated in the exercise of their profession. In principle, education is compulsory. The inspectors nonetheless ascertained that certain CEFs showed a certain "tolerance", apparently more as an easy way out than as part of any educational method. The inspectors also ascertained that one CEF, catering for minors between 13 and 16 years of age, had had no teachers whatsoever for a period of several months. These double findings (post permanently vacant in an institution catering for young people subject to compulsory schooling and professional isolation of individual teachers working in a difficult context, requiring sharing and control of practices) are particularly regrettable and paradoxical with regard to minors, in general placed for periods of six months, for whom school constitutes a major issue.

[94] *Several teachers encountered informed the inspectors that they had not received any specific training.*

However, it must be emphasised that, in spite of pupils' difficulties (academic failure, interference of major personal difficulties etc.) and in spite of their lack of training and support, certain teachers in CEFs succeed in restoring these children's interest in school, thanks to great patience, real tolerance and pedagogical imagination ("one has to accept that there is a bridge that has to be crossed, not setting them traditional schoolwork straight away, starting on the basis of what they want"). As these remarks show, teachers of this kind deliberately take a position of supporting children towards becoming autonomous: "we agree upon an objective, but I decide the method", to which was added: "my goal is to facilitate their personal development and social and professional integration[95]". It is to be regretted that such conceptions are not more widespread.

The CGLPL recalls that education constitutes a major issue for minors and an obligation for the youngest among them. It recommends that teachers appointed in prisons for minors should have the benefit of specific training and support.

Apart from respect for fundamental rights, support towards becoming autonomous should also find expression through daily and social life.

In both types of institution, the times for getting up and going to bed scarcely leave minors any room for manoeuvre; the intention is to set or re-establish a rhythm of life for them that corresponds to their age, something which is entirely in accordance with their interest. However, certain prohibitions raise questions, such as the case of one CEF where the possession of alarm clocks is only authorised after a certain waiting time, subject to good behaviour (in case of poor behaviour, the minor being woken by a tutor); it appears regrettable for the availability of alarm clocks to be reduced to the simple possession of an object, when they clearly constitute a useful tool for autonomy.

As far as bedtime is concerned, CEF tutors know that it is a moment laden with anxiety, and most of them authorise "play", which means that it is delayed. One institution has set up a library-lounge on the same floor as the rooms, enabling the most mature, or the most anxious, to have the benefit of a period of autonomy before sleep. The tutors or night watch officers do not hesitate to talk to minors whose state so requires. This is far from being the case in EPMs, although these cater for the same minors, faced with the same anxieties; bedtime takes place at a fixed time, television constituting the only diversion, which neither clarifies nor resolves any difficulty. Only extreme incidents (screaming, self-harm etc.) give rise to action.

Keeping the room and collective areas in good condition and participating in daily life in all of its forms are promoted as opportunities for learning to become autonomous within CEFs. In practice, this learning relies upon the support of tutors or a "house mistress". In one of the CEFs inspected, it was reported that this participation in daily life (cooking, washing up, cleaning, etc.) on a "stimulated voluntary basis", under the eye of an adult and with the latter's benevolent assistance, had a clear impact upon the respect shown to staff and, moreover, upon ideas of the division of masculine/feminine roles, both within the institution and in couples, families and society. In other institutions, maintenance of rooms is set down as an obligation and controlled after the event, giving rise to assessment that may lead to reward or punishment. As opposed to the previous example, this "carrot and stick" approach appears less conducive to autonomy.

[95] *It is to be noted that this definition of education is, almost to the exact letter, that advocated by article 29 of the Convention on the Rights of the Child quoted above.*

In EPMs, maintenance of cells is an obligation incumbent upon the minors, to whom maintenance products are handed over on request. The inspectors were surprised by the filthy state of certain cells, which not only bears witness to lack of supervision, but manifestly also to lack of controls.

Daily life in EPMs is broken up by the activities generally organised, the quality of which is highly dependent upon the dynamism of the prison officer-tutor team and, more particularly, the PJJ[96]. Access to the exercise yard is, in most cases, strictly regulated within timeslots for which there is no serious justification. Apart from activities, the minors' ordinary social life consists of no more than conversations and "yo-yoing", in spite of the gratings.

> In CEFs, it is not rare for minors to be left in completely unproductive inactivity (leading one juvenile court judge to tell the inspectors that he preferred to imprison a minor in an EPM, in all awareness of this type of situation, rather than in a CEF of this kind; it is not unworthy of note that, for his part, the director of the EPM concerned, whom the inspectors also met, was in favour of periods of boredom-inducing inactivity as a source of reflection).

With the occasional exception, the question of outings only arises in CEFs (although there is nothing, apart from the cumbersome nature of temporary release authorisations and procedures, to prohibit the putting in place of escorted cultural or sports outings in EPMs). In CEFs therefore, outings are in principle prohibited at least at the beginning of placements; the idea being to set down a framework in priority. According to the minor's behaviour, escorted outings are subsequently put in place, at the same time as more or less controlled return visits to the family. In certain CEFs, outings appear to be a "reward" shown in the "catalogue" of entitlements earned in connection with the "points licence[97]". In others, outings are clearly identified as educational tools, thanks to their underlying objectives in particular (outings of a cultural nature or centred on the notion of citizenship). The latter approach obviously appears more conducive to autonomy than the former.

Certain CEFs allow young people to go out on their own, in most cases for school or work placements/training courses and, more exceptionally, leisure activities ("we take them to the swimming pool and go and get them afterwards, we have to show them a bit of trust at the end of the placement"). This question is entirely dependent upon the quality of the analysis governing decisions of this kind and upon controls conducted after the event. The inspectors thus questioned the legitimacy of the "weekends of preparation for autonomy" organised in one institution which, moreover, took a particularly harsh and inappropriate position with regard to controls (strip searches on return from weekends), in which relations of domination were not absent; certain young people, in general those with no prospect of returning to the family home, were authorised to go to a hotel for two days, subject to remaining in close contact with the tutors (in the form of shared meals in particular). This practice had been validated by the judge.

> The CGLPL recommends a mode of organisation guaranteeing progressive support of minors towards becoming autonomous, while respecting their duties and rights. Minors should be obliged to take care of the maintenance of their rooms or cells and contribute to tasks of collective interest, under the supervision and with the support of the teams. Moreover, they should have the benefit of activities – school or training, cultural, sports and

[96] In several institutions, the inspectors noted this service's difficulty in using collective activities as an aid for educational relations. In other places, it was observed that a form of rivalry led certain prison officers to stand in the way of personal educational interviews.

[97] A system of positive and negative sanctions corresponding to certain behaviours.

leisure activities – likely to promote their personal development and responsible participation in a free society.

Autonomy and Sexuality. The inspectors observed that few initiatives were conducted on this issue in institutions catering for minors, despite the fact that their age, and in certain cases the offences which led them to be sent to the institution, would justify the putting in place of preventive actions and the provision of information, or even access to contraception[98]. Apart from this fact, professionals working with adolescents cannot be unaware of the social questions regularly echoed in the media: the influence of pornography on the commencement of sexual relations among minors, the calling into question of equality between women and men. It is therefore less a question of promoting sexual relations, which will inevitably occur, than of implementing initiatives enabling adolescents to engage in a sex life in a responsible manner.

Apart from actions that may be conducted within the framework of care, the CGLPL recommends the organisation of educational initiatives providing information on sex.

2.2.2 Support Towards Becoming Autonomous, a Demanding Objective, Dependent upon the Quality of Teams and of Support from the Authorities

In order for placements or imprisonment to constitute something more than a mere period of exclusion, in order to enable the young person to really learn to become autonomous and come out a little more mature and equipped with a minimum of self-confidence and confidence in others, without which there can be no real integration into society, it appears necessary to ensure that certain conditions are respected.

On the part of the institution catering for the young person:

- in the case of CEFs in particular, **an educational project that places an educational approach at the centre of its objectives and accepts the risks thereof**: there cannot be any education without granting a minimum of trust nor, on the other hand, without some mistakes; projects of this kind need to be defended in the face of the supervising authorities and partners as a whole, the members of steering committees; adopting a position of this kind does not appear to be easy, it being much simpler to prohibit than to support; thus, in one institution where the tutors spent much of their time opening and closing doors, a director remarked: "previously we placed the emphasis on "closed" in "CEF" [literally "closed educational centre"], we tend somewhat to forget that we are here to engage in education, we cannot limit ourselves to prohibitions; but the team has difficulty in keeping up; and so do the authorities". Insofar as compliance with strictly penal constraints allows, it would be desirable for EPMs to reflect upon the manner in which they could, - apart from teaching and the putting in place of traditional activities -, intensify the provision of educational measures;
- **qualified, coordinated, stable, beneficent teams**, capable of building strong educational ties with the minors: minors, whether or not they are offenders, need to feel that they matter to somebody; making somebody happy and being acknowledged in return is essential, but because these young people have complex and painful backgrounds, **the educational teams in particular, need to have a sound theoretical frame of reference, enabling them to make hypotheses,**

[98] *A question that arises in CEFs, at the time of outings of young people over fifteen years of age.*

continuously call the latter into question and act while maintaining appropriate distance. They also need to be able to rely upon **a management structure which guides and controls their initiatives**, guaranteeing the consistency and justification thereof. Teams that are left entirely to themselves expose minors to the risk of incompetence, inconsistency and arbitrariness. The risks inherent to improvised teams, whose action is for the most part based upon the manager's intuition and charisma, are also well known: they have given rise to abuses which in some cases have ended up before the courts.

- **tools for the assessment of minors' capacity for autonomy**: the "points licences" often used in CEFs are more oriented towards punishment of bad behaviour than analysis thereof; assessment of a young person's capacities for autonomy demands real observational skills and the ability to give an account of one's observations in shared media (manual or IT liaison register); this not only presupposes the elaboration of criteria, but also means these criteria need to be shared by the various different persons who act in succession[99] to contribute to the assessment; in one CEF, the inspectors thus encountered a young person whose "capacities for autonomy" meant that he was allowed to return to the CEF on his own after college; he arrived late, ate on his own and then went immediately to his room (unlike the others), officially in order to do his homework; his autonomy was emphasised in order to justify this unusual status; after verifications, it emerged that this young person was hanging around after lessons, was not doing his homework and was in fact in a situation of academic failure; moreover, this minor was at the centre of a group conflict which the team had not managed to control, and it appeared that the tutors had accepted this situation of pseudo-autonomy without providing themselves with the means for real assessment;
- **respect for the rights of the person:** encouraging a minor' autonomy means placing the latter in the position of a person capable of owning and exercising rights and being subject to obligations; the minor needs to be able to have information at their disposal, thus giving them a certain independence – including in relation to the team working with them – and establishing their citizenship; it would be desirable to organise access to legal information in particular, as well as more general information; the place of the holders of parental authority should be respected;

On the part of the authorities:

- **judges need to demand to be specifically informed of the content of the educational action conducted; in CEFs more particularly, they need to be placed in a position to be able to assess the risks and, if they consider the proposal to be in accordance with the minor's interest, to support the team**; the inspectors ascertained that judges often content themselves with cursory regular reports; in CEFs, numerous teams expressed their regret to the inspectors that judges do not interview the young person when they are informed of significant incidents; in reality, it appears that, for the most part, the authorities assess the credibility of CEFs in terms of the number of cases of minors running away and other visible incidents and that they scarcely question, or even ignore, the details of educational projects; the worst case scenario is, in general, when judges entrust the young person to a distant institution, unknown to the latter… and sometimes to the judges of the administrative district itself, who do not use it;

[99] *In CEFs, day tutor, technical tutor, teacher, employer etc.; in EPMs, prison officer, tutor, teacher etc.*

- **The PJJ department and/or associations managing CEFs, need to support teams** which take "the risk" of promoting autonomy, by checking the validity of the educational projects, the dissemination thereof and their actual assimilation by the teams; assistance in putting reliable teams together, support via the organisation of training and supervision, as well as control and assessment of the actions conducted are essential.

Following the aforementioned assessment mission, the director of the judicial youth protection service (DPJJ) recommended consolidation of the governance of CEFs[100], in particular by means of reinforcing the management of the system and putting follow-up measures in place at the national level; updating of the required conditions was also planned. In spite of several studies concerning EPMs[101], no overall assessment of their action appears to have been undertaken to date. It would be desirable for the educational dimension of these institutions to be more clearly asserted and for appropriate means to be put in place, bearing witness to the ability of society to provide assistance to its young people, by means other than temporary exclusion, even when they go astray.

3. Autonomy of Persons Deprived of Liberty: the Special Case of Patients Committed to Psychiatric Institutions within the Framework of Treatment without Consent

From Act no. 7443 of 30th June 1838, referred to as the "insane persons Act" (*loi des aliénés*), until the Act of 27th June 1990 concerning the rights and protection of persons hospitalised due to mental disorders, the asylum tradition was the most extreme version of the heteronomy of patients, one of the traditions allowing the least possible initiative to the latter and acknowledging the medical worker's capacity to act on their behalf and for their own good.

> "In upholding asylum law, psychiatrists simultaneously reign as doctors and judges, autocrats with absolute power over the life of their patients, and for their own good."[102]

The first notable transformation, by means of a simple circular of 15th March 1960, was the creation and organisation of psychiatric sectors, one of the principles of which is refusal of the seclusion of patients, involving a will to ensure their rehabilitation, maintenance and return to their family and social environment.

Act no. 85-702 of 25th July 1985 reinforced the original texts by giving legal status to psychiatric sectors and defining both the intra and extra-hospital dimensions thereof.

However, it was not until Act no. 90-527 of 27th June 1990 concerning the rights and protection of persons hospitalised due to mental disorders and their conditions of hospitalisation, that the notions of prevention, treatment and reintegration were asserted: "the fight against mental illnesses comprises actions of prevention, diagnosis, treatment, re-adaptation and reintegration".

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[100] *Note issued by the DPJJ on 21st February 2014.*

[101] *In particular a joint ISP and ISPJJ assessment report concerning violence against staff in EPMs, published in 2011.*

[102] *Castel (R.),* La gestion des risques. De l'antipsychiatrie à l'après-psychanalyse*, Paris, Editions de minuit, 1981*

Since then, the place allotted to the person has grown continuously and the most important official texts have been published concerning the rights of persons suffering from illness.

> Act no. 2002-303 of 4th March 2002 concerning patients' rights and the quality of the health system is aimed at the establishment of a truly democratic approach to health. It transformed the rights of persons suffering from illness into patients' rights and is for the most part concerned with the assertion of the right to be informed, making provision for patients to be able to enlist the help of a trusted person appointed as legal representative. It bears witness to a major sociological change in doctor-patient relations.

This Act is non-specialised in nature, and does not make any provisions specific to psychiatry, apart from the restrictions of liberty made necessary during treatment and the conditions of hospitalisation without consent. It does not deal with the question of autonomy and of making patients aware of their responsibilities in psychiatric institutions with a view to their social readjustment.

For its part, Act no. 2011-803 of 5th July 2011 amends the provisions of the Public Health Code concerning the rights of patients in psychiatric hospitalisation and the rules governing hospitalisation without consent resulting from the Act of 27th June 1990.[103]

In search of balance between the exercise of the patient's fundamental freedoms and the constraints involved in psychiatric treatment without consent, it aims to reinforce the rights and guarantees granted to these persons and completely changes the conditions under which they are dealt with, in particular through the establishment of systematic control of committals by the liberty and custody judge (JLD). Furthermore, it asserts patients' rights in relation to these rules, both in terms of communication with the authorities and with departmental committees for psychiatric treatment (CDSP), as well as with the CGLPL. It also recalls that patients have voting rights, the right to correspondence and the right to engage in religious and philosophical activity.

Finally, certain provisions of the Act of 5th July 2011 were improved by Act no. 2013-869 of 27th September 2013. Article L. 3211-3 of the amended Public Health Code expressly states the objective of the patient's reintegration and specifies that "any restriction upon the exercise of their individual liberties shall be adapted, necessary and proportioned to their mental state and to the implementation of the required treatment. In all circumstances, the dignity of the person shall be respected and their rehabilitation sought."

> Today psychiatry is thus no longer based upon the asylum model and authoritarian paternalism, but incorporates the **demand of autonomy** for persons in western societies.[104]

Within psychiatric institutions, although autonomy is often radically impaired, the objective of reintegration, fixed by the Act of 27th September 2013, consists of restoring patients' capacity for initiative and making them actors in their own lives.

Within the framework of a study concerning psychiatric hospitalisation, the author emphasises that restoration of autonomy is promoted by the existence of reference points in the progress of the treatment, freedom of movement and provision of information concerning

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[103] *CGLPL Annual Report 2013 - The Rights of the Sick and those Suffering from Mental Health Problems. Dalloz, Paris, p. 215.*

[104] *Summary Report (*Rapport d'information*) on mental health and the future of psychiatry presented by Mr Denys ROBILIARD, deputy, French National Assembly, 18th December 2013.*

therapeutic plans. Moreover, it specifies that more active listening would be conducive to giving hospitalised persons increased awareness of their responsibilities.[105]

The notion of autonomy may thus be understood through the acknowledged fundamental rights of all patients: right to information, right to choice of doctor, choice of lawyer, right to dignity, right not to be subjected to torture or inhuman or degrading treatment, right to respect of private and family life, right of expression, right to vote etc.

It emerges from the visits conducted by the CGLPL that the conditions of operation of psychiatric institutions, as well as their geographical location in certain cases, lead to restriction or deprivation of autonomy for persons hospitalised without their consent.

We shall examine these findings by means of an institutional approach, for the most part marked by restrictions of autonomy (I), followed by their consequences on patient's lives and fundamental rights (II).

3.1 The Institutional Approach

From the point of view of the institution, several elements may be put forward in order to explain the restrictions placed upon autonomy: hesitation about change, the constraints of the legal framework of deprivation of liberty and the layout of premises as well as scarcity of human resources. As for decisions of a medical order that limit personal autonomy, they shall only be questioned insofar as they are non-personalised and/or based upon considerations other than those strictly pertaining to the patient's interests (for example, in order to make the management of a department more fluid) and may be considered unjustified infringements of personal rights.

In the first place, there are reasons for questioning the way in which legislative changes and the reinforcement of patients' rights have been taken into account within the psychiatric environment.

Reluctance to change was expressed at the time of publication of the Act of 4th March 2002 and then increased, in a part of the world of psychiatry, as from the inception of the Act of 5th July 2011. Indeed, questions concerning the extension of patients' rights and even opposition thereto emerged at the time of the debates about the aforementioned Acts, as shown by certain articles in specialised works: "With the abandonment of a position of medical infantilisation, the "citizen-person suffering from illness" is being replaced by the "person suffering from illness-citizen", but with the inevitable consequence of an increase in the importance of legal norms and citizens' rights and the risk of reducing the person to nothing more than a legal entity with rights and obligations"; moreover, "situations of conflict caused by opposition between the duty to provide assistance and the duty to protect society" were denounced.[106]

Have these doubts continued? Have the legislative objectives focused upon increasing rights, reintegration and making patients more aware of their responsibilities, met with any response within the framework of treatment?

> Although, generally speaking, psychiatric institutions have adapted to the new provisions, the CGLPL has ascertained great heterogeneity of practices.

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[105] *Cano N, et al, " L'hospitalisation en psychiatrie : point de vue des patients et perspectives éthiques ", Annales médico-psychologiques, no. 171/8, 2013; Cano N, et al, "L'isolement en psychiatrie : point de vue des patients et perspectives éthiques", Encéphale (2010)*

[106] *Le livre blanc de la fédération française de psychiatrie, Fédération française de psychiatrie, 2003.*

> Certain doctors regret the interference of the courts in the medical field. They dispute the competence of judges to decide the fate of patients and, for their part, consider themselves in an unsuitable position to note down patients' observations with a view to hearings before the JLD.

The recent **legal framework** leads to new constraints for institutions. Instead of the hospitalisation by court order (HO) process, which systematically leads to complete hospitalisation, the Acts of 5th July 2011 and 27th September 2013 prefer a procedure in which complete hospitalisation is no longer automatic, but constitutes one of the methods of psychiatric treatment without consent. Persons suffering from psychiatric disorders which render their consent to treatment difficult, or even impossible, are henceforth committed to complete hospitalisation, whether by means of committal for psychiatric treatment at the request of a representative of the State (ASPDRE) or committal for psychiatric treatment at the request of a third party (ASPDT), or in case of imminent danger, for an observation period of seventy-two hours. This period is used in order to assess whether the treatment measure is justified. Apart from this, treatment may be provided on an outpatient basis, using a treatment programme drawn up by the psychiatrist.

> Because complete hospitalisation constitutes a measure involving actual deprivation of liberty, the Act of 5th July 2011 provides for systematic control by the judge. The legislature's intention was not only to control deprivation of liberty, but also to enable the patient to be treated and prepare for their rehabilitation within society, while working for the maintenance or restoration of their autonomy.

As far as medical staff are concerned, the legal framework requires them to provide responses to the JLD within a limited period of time after committal and, moreover, results in constraints that are sometimes felt to be unjustified insofar as they are unrelated to their field. This is the case with regard to the issuing of information of a legal and non-medical nature to patients, informing them of their rights, drafting successive medical certificates with a view to hearings, the noting down of observations and obligations concerning the escorting of persons to hearings.

> It is often reported to the CGLPL that all of these necessities are time-consuming and carry the risk of being carried out to the detriment of the patient. The CGLPL nonetheless considers that they guarantee patients' fundamental rights. The right to information, for its part, is a pre-requirement for any possibility of autonomy.

Where the **layout of premises** has maintained an asylum character, it constitutes a hindrance to the autonomy of the patients as a whole, whether admitted for treatment freely or without consent. Such buildings were designed in such a way as to close off and isolate institutions from towns. It is notable that those located in the heart of cities leave more place to autonomy and raising patients' awareness of their responsibilities than those established on the outskirts or in the countryside.

The possibility of movement, connected with the existence of space and the shape of the latter, is one of the primary factors of autonomy and social rehabilitation of persons. Being able to go for a walk in the grounds, to choose to be alone or to meet other patients constitutes a necessary prerequisite of such rehabilitation. In its Annual Report for 2013, the CGLPL has

already pointed out that the architecture of the premises in which patients stay is not always adapted to these objectives.[107]

Moreover, at the time of visits the CGLPL ascertained that, in general hospitals, funds for the renovation of premises are more often allocated to medical, surgical and obstetrics departments (MCO/ *médecine-chirurgie-obstétrique*) than other departments, to the detriment of psychiatry departments in particular. It is therefore difficult to build or fit out new areas for movement in these premises.

It is worrying that, in one institution visited within a general hospital in Île-de-France, which lacked any grounds, patients committed without consent were obliged to remain upstairs, or go down to the cafeteria, without ever having access to the open air. Since the department is located within a general hospital, it operates under a "closed doors" regime in order, according to the remarks heard, to avoid psychiatric patients going to the central cafeteria and frightening other patients.

In another institution in the Paris region, the head of the department initiated a process of reflection on opening its units. He pointed out to the inspectors that "the management of an open doors unit requires in-depth work with the doctors and medical staff, whose minds are put at rest by closure, as well as personalised therapeutic work with patients hospitalised without consent, in order to avoid the consumption of addictive products, violence in the grounds and running away".

> Some units visited operate according to open methods, only restricting going out into the grounds and garden if the patient's state makes it impossible. This autonomy of movement is nevertheless felt by certain psychiatrists to be "taking a risk" which needs to be assessed on a team basis. This remark clearly shows that, although architecture may constitute a hindrance to the autonomy patients, the margins of autonomy are above all dependent upon the decisions and practices of the medical staff, whatever the layout of the premises.

Human resources constitute one of the variables stressed by institutions in order to explain the reduced autonomy of patients. The number of medical staff, whether doctors, nurses, psychologists or social workers, has been falling considerably for several years. This leads to vacant posts, which unavoidably results in a mode of organisation that limits the provision of measures other than absolutely essential treatment.

Many of the social workers, who are ever fewer in number, in charge of planning patients' adjustment in liaison with families, no longer have the time necessary for personalisation of measures of a social nature.

In one institution visited, two units had one full-time social worker who, apart from the administrative work, was in a position to be able to meet patients, accompany them to their homes and advise them on their discharge plans. Conversely, in one less well-equipped institution, three of the four social workers had been recruited within the framework of four-month temporary employment contracts. Apart from the social precarity of their situation, they mentioned their low wages and their lack of time for meeting patients and their families and planning their discharge from hospitalisation. They were reduced to the tasks of verification and application of welfare rights, preventing the implementation of any real support promoting personal autonomy.

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[107] *Annual Report of the Contrôleur général des lieux de privation de liberté, Architecture and Places of Deprivation of Liberty, Dalloz, Paris, 2013, p.127*

Restrictions of autonomy may also be a result of the team's difficulty in making patients aware of their responsibilities within the framework of treatment without consent. In general, lack of staff is put forward as an explanation of the difficulty of implementation of projects aimed at promoting the autonomy of persons whose state, moreover, makes close supervision necessary.

Indeed, the CGLPL has regularly ascertained that the surveillance of patients constitutes the main priority within departments. Although, in theory, the objective of the treatment framework is the restoration of autonomous self-management by means of treatment, as well as by means of the carer-patient relation, which brings the patient back into life in society, it is frequently used as a justification for this surveillance and, therefore, for measures restricting autonomy. It is claimed that the increased imperative of surveillance and the prohibition of going outside inherent thereto are required to prevent running away and in order to avoid laying the institution open to liability in case of an incident caused by a patient outside. Furthermore, the task of helping patients to readjust is frequently passed on to open institutions within the sector.

Although institutions justify the restriction of autonomy by the constraints inherent to the framework of treatment without consent, the layout of premises and limited human resources, the fact remains that the conditions of life imposed upon patients often give cause for concern.

> The smallest act of daily life subjects patients to the intervention of medical staff. Yet, limitations on the expression of individuality, powerlessness, and self-effacement contribute to patients' torpor and acceptance of dependence, behaviours that are diametrically opposed to the expected result of psychiatric treatment, whether with or without consent.

However, in a system where everything is controlled, a kind of autonomy remains possible within the faults of the institution, by breaking and getting around the rules. Certain patients excel in the art of exploiting the system, accomplishing feats while elaborating stratagems that demonstrate their knowledge of the rules. In the first place, this involves taking advantage of areas where the authority of staff is less apparent, such as the grounds or the time taken for going to the property office, what Goffmann[108] refers to as "the geography of liberty".

The clandestine life of the hospital and, in particular, the use of tobacco (smoking in the toilets or rooms with the window open), the consumption of alcohol (hidden in the grounds, for example) and the bringing of food from the dining room back to rooms etc., sheds light upon patients' attempts to assert their autonomy.

Since certain patients have the right to go out, they may also be used for any sort of trafficking, for the purpose of winning margins of clandestine autonomy and, similarly, those possessing mobile phones may be led to "swap" calls for other services.

3.2 A Personal Requirement: Patients' Right to Autonomy

The CGLPL's visits to psychiatric institutions have brought to light the variable application of legislative provisions as well as revealing unjustified restrictions of autonomy and, conversely, valuable practices that could be brought into more general use.

In this part, the maintenance and restoration of autonomy, from the point of view of fundamental rights, will be compared with the CGLPL's findings.

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[108] *Goffmann E.,* Asiles*, Paris Minuit, 1968.*

The Right to Information

The provision of information of good quality is an essential pre-requirement in order to place hospitalised persons in the position of being able to defend their rights, inform themselves of the rules of life during their stay in hospital and understand the treatment given to them. The demand for specific and accessible information should thus enable patients, insofar as possible, to make enlightened choices with regard to the acts that concern them. Indeed, although persons committed "without consent" are considered unable to express their consent to the treatment they require, their opinion should be sought and taken into account with regard to the practical details of the treatment.

Information concerning State of Health

The Act of 4th March 2002 concerning patients' rights and the quality of the health system establishes the right of patients to be informed of their state of health: "This information concerns the various different investigations, treatments and preventive actions proposed, the usefulness thereof, the urgency if necessary, the consequences, any foreseeable frequent and serious risks that they involve, as well as other possible solutions and the foreseeable consequences in case of refusal […]"[109].

Persons hospitalised without their consent thus have the right to obtain information appropriate to their capacity for understanding with regard to the diagnosis made, the medicines given to them (including the intended effects and any undesirable effects) and the treatment plan implemented.

> As far as the place of families is concerned, it was observed that psychiatrists may have conflicting policies, sometimes within the same unit. Some of them consider that since, due to their illness, it is not possible to take the patient's autonomy as established, it is appropriate to closely involve the family in the provision of medical treatment, considering it essential for the latter to be informed of the diagnosis and treatments given to their hospitalised close relation. On the other hand, other psychiatrists consider that, when the person hospitalised is an adult, it is incumbent upon them to manage their illness alone, and there is no reason for close relations to receive information. The inspectors have thus encountered families who, for this reason, had not been informed of the date of discharge of their hospitalised relation, despite the fact that the patient was going to return to live with them.

An interesting experiment is to be noted: in one institution in the Parisian suburbs, the head of department co-organises a programme of exchanges and meetings with the president of the UNAFAM in order to promote and explain patients' treatment programmes for their families and friends. According to the remarks noted, not only do these meetings enable exchanges and the passing on of information, but also make it possible for the constraints faced by professionals and families to be taken into account.

> The CGLPL considers that initiatives of this kind should be extended.

The *Haute Autorité de Santé* [French independent scientific public authority contributing to regulation of the quality of the health system] recommends that trusted persons appointed as legal representatives[110] should be consulted when patients are not in a state to be informed

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[109] *Article L. 1111-2 of the Public Health Code.*

[110] *The Act of 4th March 2002 provides that any adult person may appoint a trusted person as legal representative, in order to help them in their decisions, receive information on the spot and be consulted when the patient is not in a*

themselves, and specifies that "in the absence of a trusted person appointed as legal representative, the health professional shall consult the close relations present. The reason for which the health professional needed to consult the latter, and the contents of the information given, shall be stated in the medical file"[111].

In any case, the Act of 4th March 2002 provides that patients shall be interviewed by a health professional individually, which demands great receptiveness insofar as it is important for the person to understand the information given to them. Cases are regularly referred to the CGLPL by persons hospitalised without their consent, explaining their anxiety and their questions about the treatments given to them and the course of their stay in hospital: "why am I here, how long am I going to stay here, what is expected of me, how can I be discharged?"

> When the psychiatrists do not spend much time in the departments, patients have little information at their disposal enabling them to make enlightened choices (once the period of crisis is over) and agree to the treatments given to them, with regard in particular to any major side-effects caused thereby.

Similarly, the CGLPL observes that the right of access to medical files, as provided for by the Act of 4th March 2002, is subject to a procedure whose implementation is generally slow. Indeed, the principle of provision of information means giving patients direct access to their medical files and to health information concerning them. However, article L. 1111-7 of the Public Health Code provides that, in the case of persons hospitalised without consent, the consultation of information may be subject to the presence of a doctor appointed by the applicant in case of any specific serious risk[112]. Nevertheless, it should be pointed out that disclosure application procedures on the part of persons hospitalised without consent are very rare.

> The CGLPL recalls that the Act of 4th March 2002 **concerning patients' rights and the quality of the health system, in particular with regard to its provisions concerning information and trusted persons appointed as legal representatives** should be applied in a manner appropriate to institutions catering for persons hospitalised without their consent.

Provision of Information in Seclusion Rooms

Persons placed in seclusion rooms should receive special notification enabling them to understand the measures applied to them and prevent the anxiety-inducing, or even traumatic effects thereof.

In general, seclusion room placement procedures provide for information to be given at the time of the placement, since the patient should receive "information coordinated by the professionals concerning their treatment and state of health throughout the time of their treatment" and that, finally, an interview should be conducted when the patient returns to their room of origin, in order to take note of "the patient's experience in the seclusion room".

However, these provisions are not always implemented in health institutions. The CGLPL observes that visits by psychiatrists to seclusion rooms are very uneven; twice per day in some institutions, every 24 hours, in order to decide whether to maintain or bring the measure to an end in others. Similarly, there are great differences in the time devoted by doctors to end of seclusion interviews, when such interviews are held.

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state to express their will. This person may be a parent, close relation, general practitioner etc. If the patient so wishes, the trusted person appointed as a legal representative may also assist them in the accomplishment of formalities and be present at medical interviews, in order to help them make decisions.

[111] *Recommendation concerning the issuing of information to persons on their state of mental health, May 2012.*

[112] *In case of refusal of the application, the case is referred to the departmental committee for psychiatric treatment.*

The CGLPL has collected numerous testimonies from patients who consider themselves to have been totally neglected during their stay in a seclusion room: some of them expressed the feeling of having been punished by health staff; many reported restrictions that were difficult to accept without understanding the grounds for them (restrictions on going out of the room, no objects authorised, prohibition of smoking, loss of dignity due to obligation to use a slop pail, poor material conditions, etc.); the vast majority report having suffered due to lack of information and respect. Although the spoken word is essential in order for patients to understand placement in seclusion rooms and to relieve anxieties, visits from nurses to patients in seclusion are too often limited to the satisfaction of elementary needs and surveillance of permanent features.

> In view of the restriction of autonomy to which seclusion gives rise and the anxieties that it may create, the CGLPL recommends that placement in seclusion rooms should be accompanied by effective follow-up care and systematic interviews at the beginning and end, and throughout the time of the person's stay.

Provision of Information on the Committal system and Means of Remedy

Persons committed for psychiatric treatment should be able to be informed about the committal procedure in a clear and precise manner, in order to enable them to understand their situation and thus commence the treatment process. When they are hospitalised by decision of a representative of the State, the grounds for their hospitalisation should be explained to them, with regard to the necessity of treatment and the threat to the security of persons or public order; in case of committal at the request of a third party, the third party's identity should be revealed to them as an element of the actual situation. The issuing of this information requires time, consideration and great care; in general, it is done during an initial meeting within the unit with a psychiatrist, nurse or health manager. A protocol should be established for this notification procedure in order to specify each actor's role.

Persons hospitalised without consent should also be in a position to dispute the measure applied to them before the competent judge[113]. Yet, the CGLPL observes that, in general, notification of rulings of committal to psychiatric treatment without consent and procedures for issuing information concerning means of remedy and patients' rights are not formalised, so that institutions are not always in a position to be able to provide proof that patients have indeed been notified of these elements.

Moreover, various different practices are followed for the notification procedures. Indeed, committal decisions may be handed over to patients by a doctor or health manager, with more or less explanation of the means of remedy, the competent authorities and the practical details of access to lawyers. Furthermore, the list of the lawyers of the local Bar is not systematically displayed in units.

> The CGLPL recommends that the Ministry of Health should draw up a model document explaining the various different types of hospitalisation without consent and the means of remedy open to patients, in simple terms, with each hospital being responsible for supplementing and adapting it to specific local conditions by adding, in particular, the addresses of the competent authorities.

[113] *On access to defence rights for persons deprived of liberty cf. CGLPL Annual Report 2012, Section 4.*

Information on Rules of Life

The right to consult the internal rules and regulations of the institution and be informed of the explanations pertaining thereto appears among the inviolable rights provided for under article L. 3211-3 of the Public Health Code.

In principle, at the time of the patient's arrival in the treatment unit, the health manager or nurse explains the operation of the unit to them and hands over the hospital booklet for new arrivals – which in general includes the Hospitalised Patients' Charter – and the internal rules and regulations of the unit, sometimes referred to as the "rules of life". These documents should enable hospitalised persons to determine the rights to which they are entitled as well as providing the information useful to them during their stay, such as the services provided within the institution and the practical details of operation of the unit in which they are accommodated. However, in order to enable persons committed for psychiatric treatment to exercise their liberty, the information issued to them needs to be reliable, regularly updated and accessible.

> At the time of their visits to institutions, the inspectors ascertained that patients did not always have useful information concerning their stay at their disposal, either because the documents had not been handed over to them, or because they had been lost since their arrival. In order to compensate for these difficulties, certain units have taken the initiative of displaying the rules of life in each room, under a plastic cover. **The CGLPL recommends that this initiative should be brought into general use.**

Moreover, article 1 of the regulation (*arrêté*) of 15th April 2008 concerning the content of new arrivals booklets in health institutions provides that these booklets shall be regularly updated and specifies that "specific written information, concerning the nature of the activities of the institution, the various different modes of treatment and the type of patients shall be provided as a supplement, insofar as necessary". Yet, it was observed that, **in the majority of health institutions, the new arrivals booklets handed over to patients were incomplete, obsolete and/or inappropriate**. In the first place, new arrivals booklets handed over in hospitals contain practical information applicable to the institution as a whole, inappropriate to persons committed for psychiatric treatment without consent (activities provided, visiting times, access to television and telephone etc.). Furthermore, in general, even in public mental health institutions, the new arrivals booklets are not updated; the names of the doctors working within the units are often out of date and the applicable law is rarely or incompletely mentioned.

> The CGLPL recommends that specific psychiatry new arrivals booklets should be published in general hospitals. Furthermore, in order to avoid any additional cost connected with regular reprinting, detachable and easily modifiable inserts could be usefully inserted at the end of new arrivals booklets in order to enable the regular updating of certain pieces of information (names of medical staff, legislative and statutory updates).

Legal Information and Advice

Autonomy and taking responsibility presuppose access to greater knowledge of one's rights and duties. Measures for the provision of general information, referred to as legal information and advice access points, have been put in place throughout the territory of France. Most of them are schemes concerned with general law, open to the public at large, others are specialised, in prisons and, since 2012, legal information and advice access points have also begun to be put in place in psychiatric institutions (in Île-de-France and the Nord and Charente departments) at the initiative of departmental councils for access to legal information and advice (*Conseils départementaux de l'accès au droit*).

Lawyers' duty periods are organised within hospitals and, in order to deal with any questions arising between duty periods, a "pedagogical pack" is entrusted to medical staff in order to enable them to provide answers.

These legal information and advice access points enable patients to obtain general information on legal questions of concern to them, as well as information about the rights pertaining to their specific situation.

The CGLPL supports the implementation of legal information and advice access points in mental health institutions and recommends an assessment of the benefits thereof.

Free Choice of Psychiatrist

Freedom of choice of one's doctor, recalled by the Act of 5th July 2011, enables any person to approach the public or private, doctor or mental health team of their choice, both within and outside the psychiatric sector corresponding to their place of residence.

In reality, the psychiatrist in charge is automatically the person responsible for the sector corresponding to the patient's place of residence, or at best the psychiatrist providing care for them in alternative bodies and, generally speaking, the person that deals with them on their arrival in the unit, without any opportunity to choose.

The CGLPL recommends that, insofar as possible, patients should have the possibility to choose their psychiatrist when several of the latter work within the same unit.

The Right to Privacy and Respect of Private Life

The right to respect of private life is guaranteed by article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and is one of the rights and liberties constitutionally guaranteed on the basis of article 2 of the Declaration of the Rights of Man and of the Citizen of 26th August 1789[114]. The limitations that may be placed upon this right in application of article L. 3211-3 of the Public Health Code cannot, therefore, be of a general and absolute nature and should be subject to regular reassessments in view of patients' pathologies and the degree of seriousness thereof. Such is not always the case.

The Private Nature of the Room

Although, according to case law, the patient's room is considered equivalent to a private place, patients are not always authorised to leave or remain in their living area when they so desire. In certain institutions, all patients are obliged to rest in their rooms after lunch. Conversely, access to rooms may be prohibited at certain times of day in order to encourage patients to go to activities and communal areas. It was thus noted that in some units, patients only have access to their rooms after the evening meal, leaving them no possibility of being alone or resting.

At the time of their visits, the inspectors encountered patients obliged to leave their rooms in spite of their manifest state of tiredness; some of them were lying on armchairs in the living room in disgraceful conditions, others wandered around the corridors or fell asleep in front of the television. The general rule of prohibition of access to rooms cannot prevent all desire for or expression of autonomy.

The CGLPL considers that hospitalised persons should be able to have free access to their rooms in accordance with their desire, their clinical condition and their treatment.

[114] Conseil constitutionnel *(Constitutional Council),* décision *(ruling) no. 94-352 of 18th January 1995 and* décision *no. 99-416 of 23rd July 1999.*

Reflection should be undertaken at the time of assessment meetings in order to personalise and adapt any restrictions with regard to the opening of rooms to each patient catered for.

At night, security measures or special surveillance should be put in place in order to prevent unexpected intrusions in rooms. Certain institutions have put bolts in place, enabling patients to lock the doors of their rooms from the inside. However, this solution is not always appropriate, depending upon individual fears and pathologies. In one institution visited, a motion detection system had been placed in the corridor; it is switched on every evening at 11 p.m. and alerts staff when movements are recorded; the latter can then go to the given place, in order to find out the reasons for leaving the room. However, this system is only possible in so far as the rooms are equipped with toilets.

Generally speaking, the CGLPL considers that rooms catering for persons hospitalised without their consent should be equipped with bathroom facilities including, as a minimum, a sink and toilet. Priority should be given to the presence of staff for the organisation of night surveillance in units; however, movement detection systems may be envisaged, as long as, and on the sole condition that the premises concerned are located out of view of staff at night.

Since the room belongs to the patient's private sphere, and is acknowledged as a living area, it should be possible for it to be occupied in a personal manner. Yet, it is striking to ascertain that rooms in hospitals are rarely decorated and contain few personal items. Indeed, on pretexts relating to cleanliness or aesthetics, few institutions visited authorise any personal decoration. In particular, it is rare to find institutions that have installed noticeboards, enabling postcards, drawings and photos to be pinned up. In one of the institutions visited, the recently repainted walls no longer had the noticeboards which, before the repainting, had enabled decoration of the room. Some institutions consider that double rooms cannot provide patients with the opportunity of making a space their own, others only authorise family photos.

In one unit for difficult psychiatric patients (UMD), the rooms are bare and impersonal, with no photos or any personal items, the cupboards even being located outside of the rooms.

The CGLPL raises the question of the possibility of restoring a personal and positive image to neutral, empty premises, in which all expression of individuality is banned. Moreover, it considers that the right to have personal items, in places where people stay for long periods, contributes to respect for the individual's right to privacy and private life. For this reason, it considers that rooms should be equipped with noticeboards on the walls enabling patients to decorate their living area, whatever the length of their stay. Furthermore, patients staying in hospitals on a long-term basis should be encouraged to bring personal items, enabling them to personalise and make their rooms their own.

The Right to Sexuality

Sexual relations between patients are in general prohibited in psychiatric departments, this prohibition sometimes being formalised in the institution's internal rules and regulations or rules of life. The European Court of Human Rights has on several different occasions asserted that the right to sexuality, "which is one of the most intimate aspects of the private sphere", is a fundamental freedom protected by article 8 of the European Convention on Human Rights[115].

[115] *See for example ECtHR 1st Feb. 2005, KA and Ad, App. no. 4275/98, 45558/99; ECtHR 22nd Oct. Dudgeon v. United Kingdom, App. no. 7525/76.*

> Acknowledgement of patients' sexuality requires a change in mentalities. Persons suffering from mental disorders are often considered to be "de-sexualised" and the question of their sexuality is therefore no longer addressed. The complexity of the issue lies in the fact that, on the one hand, the persons concerned are often in a state of difficulty in expressing their needs and desires and, on the other hand, living conditions within institutions in practice limit autonomy and individual liberties. Although, in theory, sexual relations are free as long as they are freely consented to and do not disturb public order, in practice this is not the case.

Medical staff are still reluctant to admit the idea of allowing free licence to the emotional and sexual life of patients and the principle of prohibition of all practices with sexual connotations remains. This specious "rule" constitutes an obstacle to the autonomy of persons to lead the emotional life of their choice and leads them to practices which compromise their dignity, such as engaging in sexual relations hidden between the trees on the grounds, as reported to the inspectors by medical staff.

At the time of one visit, the inspectors encountered one patient who complained of "not being able to pick anybody up" due to their physical appearance linked to their pathology. Another wrote to the CGLPL in order to demand their right to sexual fulfilment and complain about the prohibition – included in the internal rules and regulations – of having sexual relations due to their status as a person hospitalised without consent.

Although it is indeed legitimate to protect patients whose capacity to consent is impaired from abuses to which they might be subjected, it is not acceptable to deprive patients hospitalised for long periods from all sex life, the latter being a part of human life. Moreover, in one institution visited, the inspectors noted that this question was taken into account, a shared room having been allocated to two patients who had announced their desire to live together.

> Actions for the prevention of sexually transmitted diseases and provision of information on contraception are very unevenly practiced in units, and depend upon the generalist doctor's time of presence and involvement.

Reflection on this topic is far from being general. However, the CGLPL noted that training for medical staff did include a concern for patients' sexuality, as was the case in one institution in the West of France and, more recently, at the EPSAN conference in November 2013.[116] Medical staff describe themselves as being "torn" between two different ideas of protection and promotion of autonomy and are searching for the most appropriate position: "Let us engage in enlightened support striking the right balance between nothing at all, not enough and too much"[117].

General and absolute prohibition of sexual relations is contrary to article 8 of the European Convention on Human Rights. Learning about or engaging in sexual relations is a part of the autonomy and rehabilitation of hospitalised persons.

The CGLPL considers that medical staff confronted with this question should focus upon the consent of the persons concerned and upon the means that might be at their disposal in order to manage their emotional and sexual lives. Generalist doctors and nurses should be involved in terms of provision of information to patients and risk prevention.

[116] *Public health institution of Alsace-Nord (*Etablissement public de santé Alsace-Nord*).*

[117] *5th EPSAN medical work Conference, Catherine AGHT, sex education specialist, adult education trainer, BRUMATH, 21st and 22nd November 2013.*

The Right to Respect of Dignity

Protection of the dignity of the person against all forms of subservience and degradation constitutes a principle with constitutional value[118]. Article L. 3211-3 of the Public Health Code recalls that it is incumbent upon authorities and health professionals, in the fulfilment of their duties and the exercise of their respective roles, to make sure that the dignity of persons hospitalised without their consent is respected under all circumstances.

Clothing

The right to dignity presupposes being able to dress in a satisfactory manner and in accordance with one's own dress code.

> In numerous hospitals visited, the patients are maintained in pyjamas, in most cases those supplied by the institution, manifestly without taking the dignity of the persons and the de-personalising impact of this dress into account.

As observed in one institution in the Paris region, although an observation period (referred to as the "pyjama period") fixed by the psychiatrist, in accordance with the patient's state, is understandable, its maintenance throughout the period of hospitalisation constitutes a serious violation of dignity. This is the case in certain units of psychiatric institutions in the Rhône-Alpes region, which impose the wearing of pyjamas, even in the corridors of the hospital and the cafeteria. According to the remarks made to the inspectors, this is intended to prevent running away and to enable patients leaving the hospital without authorisation to be found more rapidly. In one hospital in the South West of France, certain doctors justify putting patients in pyjamas by the fact that they can thus remind patients that they are receiving treatment in a hospital; others pointed out that pyjamas enabled them to distinguish patients from visitors and persons working in the hospital. Finally, the inspectors also ascertained the use of pyjamas in certain units as a means of punishing "unruly" patients.

> Most patients interviewed by the CGLPL said that they felt these pyjamas to be a humiliation. Moreover, the inspectors ascertained particularly shameful situations, where the sizes of pyjamas supplied by the institutions are unsuitable for stout or short people.

The wearing of pyjamas should be strictly proportionate to the required need for treatment. When this practice is not appropriate to the patient's state, it constitutes a treatment that may be described as degrading. The CGLPL considers that the wearing of pyjamas is only justified for a short period after committal and during periods in which patients are placed in seclusion rooms.

Dress being an essential element of the psychological well-being of any individual, special attention should be paid to this question in units catering for persons hospitalised without consent. In one UMD visited, it was observed that tracksuits were the only clothes worn by patients; in another, clothes on which the name of the institution was shown were systematically used, as well as hospital underwear. Moreover, it was observed that, when patients do not receive any visits and do not have any spare linen, the clothes lent or given to them by the institution are often worn out and ill-assorted. Yet, hospitalised persons usually have a little money and might therefore wish to buy clothes in order to be able to dress decently and according to their choice.

The CGLPL recommends that, in the absence of visits, the purchase of clothes should be systematically proposed to persons that have financial resources.

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[118] Conseil constitutionnel, Décision *no. 93-343/344 DC of 27th July 1994.*

Bodily Hygiene

It appears important to promote the restoration of a person's positive image by daily bodily rituals. In some units, aesthetic care activities are organised by nursing auxiliaries.

Respect for personal autonomy should also lead to adaptation of the hours of access to showers to the patient's state. In numerous institutions visited, patients are not authorised to take showers in the afternoon and evening. Although restrictions may legitimately be imposed in order to enable proper organisation of the department – in particular, at the time of distribution of meals –, it is not proper to refuse a patient a shower for the sole reason that "their access is no longer authorised after 11 a.m.". Furthermore, the inspectors ascertained that baths are underused in the units and that patients who ask to have a bath are rarely heard.

> The CGLPL recommends that hours of access to showers should be extended and adapted to the patients' state.

Certain public mental health institutions have a hairdressing salon and/or get a local hairdresser to come in return for payment. However, in one of the latter institutions it was pointed out that the haircuts offered – clippers for all men and bobs for all women – protected "neither personal dignity, nor self-esteem"; the staff therefore preferred escorted outings to a hairdresser in the town. However, visits to hairdressers are only possible when the hospital is not too far from a town centre; in certain cases, hairdressers do not come to the institution and outings to the town are rare, due to the location of the institution and its staff requirements.

> The CGLPL considers that pleasure and well-being are important elements with regard to learning to become autonomous or recovering one's autonomy. Any initiative that makes it possible to promote these elements should therefore be encouraged.

Showing Respect for Persons

Although the inspectors ascertained that hospital teams are very receptive to the question of human dignity, the fact remains that psychiatric hospitals, like any closed institution, are not exempt from various different forms of abuse of power.

One example of a measure violating dignity was brought to light at the time of a visit to a UMD: the inspectors ascertained that patients only had a spoon with which to eat the whole of their meals, obliging them in most cases to use their hands. In another institution of the same type, serious violations of dignity were observed, such as the obligation placed upon patients to undress in the corridors before going to bed. These measures, which are generally justified by reasons of protection of the person (prevention of suicide in particular), as well as security with regard to possible attacks, cannot legitimise the harm thus inflicted on patients' self-esteem.

> Furthermore, it is sometimes normal practice to address patients using the familiar "*tu*" form, reinforcing feelings of being treated like a child and loss of autonomy.

The CGLPL regularly receives letters from patients reporting that they feel belittled or threatened – with being placed in seclusion rooms in particular – if they do not show themselves to be sufficiently "docile" towards medical staff. Respect for the dignity of persons hospitalised without their consent means taking patients' feelings of humiliation into consideration, beyond the objective reality of the situation.

> The CGLPL recalls that personal dignity is intimately linked to the notion of respect. It recommends that the formal "*vous*" form should be used for clearer relations between medical staff and patients and with a view to their readjustment to life in society.

The Right to the Maintenance of Relations outside of the Institution

The maintenance of relations outside of the institution makes up for patients' isolation by enabling them to keep in touch with family, friends and even more broadly speaking, - by means of the Internet-, with current trends and social changes. It is appropriate, and even more so with regard to relations with the outside than in other domains, to reconcile the requirements of the framework of constraint with that of maintenance of autonomy and preparation for discharge.

Yet, the inspectors ascertained great differences in the application of rights with regard to communication with the exterior in the institutions visited, with regard to both telephone calls and visits, as well as Internet access and outings. There were disparities between different centres, as well as between units within the same department, leading to a lack of equality between patients without any apparent justification, of a medical order in particular.

Visits and Telephone Calls

Psychiatrists are justified in recalling that the possibility of telephoning and family visits are medical decisions linked to the patient's state of health. However, the right to maintenance of family ties is a fundamental right with regard to which any restrictions have to be appropriate, necessary and proportionate. Such is not the case when persons committed for psychiatric treatment without their consent are systematically deprived of their telephone and visiting rights for an observation period that, depending on the institution, may vary from a few hours to several days.

In one institution visited, the head of department justified the prohibition of communication with the outside (visits, letters and telephone), for fifteen days following the patient's arrival, on the grounds that they had to "find themselves alone with themselves". No remedy exists against decisions to prohibit visits made by psychiatrists, and the testimonies of hospitalised persons and their close relations reveal great distress and incomprehension in the face of prohibition to communicate: "I just wanted to tell my friend to cancel an important meeting that I had the next day"; "I had my wife hospitalised in the night of 15th September and it was impossible for me to see her before 13th October, without being able to obtain any explanation".

> The CGLPL considers that general and absolute prohibition of visits and telephone access imposed upon all patients, whatever their pathology, violates article 8 of the European Convention on Human Rights and article L. 3211-3 of the Public Health Code. Restrictions of this kind can only be individual and justified and should, if necessary, be explained to the patient and close relations concerned.

Visits constitute the occasion for moments of intimacy, both for patients and for their close relations, and it appears essential, when children are present in particular, that these moments should be protected in suitable areas. In order to make up for the unsuitability of the premises used to cater for families, certain departments encourage visits in the hospital cafeteria or grounds; these practices should be encouraged. It would be appropriate to protect the confidentiality of meetings inside departments and to allow freedom of movement with visitors outside. In this spirit, certain institutions have made special provision for the availability of children's games in the gardens, as ascertained in one institution in Picardy.

The specific operation of UMDs shows more or less restrictive rules, which reduce patients' autonomy and constrain their close relations. In one UMD in the South of France, visits may be made formal in a special and restrictive manner: families have to apply for visits in writing, and the doctor's response depends upon the patient's clinical state. The doctor completes a form entitled "Visiting Application Response", specially provided for this purpose, and sends it

to the family. It specifies whether or not the request is authorised, the manner in which it is scheduled and the date, time and length of the visit.

Within another unit of the same kind, visits may be mediated and take place in the presence of a nurse. The inspectors were informed that, apart from being a security measure, this was above all intended to reassure the families.

In the latter UMD, the door is left open during visits. Smoking, eating, drinking, using telephones, taking photographs and making videos is prohibited during visits.

> Following the section that it devoted to the maintenance of family ties in the Annual Report for 2010, the CGLPL considers that all useful measures should be implemented in order to ensure that visits to hospitalised close relations take place under conditions promoting the maintenance of family and emotional ties. Accordingly restrictions such as the prohibition of items, the presence of a third party or restrictive procedures with regard to visiting authorisations can only be tolerated on a case-by-case basis, following a justified decision on the part of the medical professionals.

Similarly, the placing of limitations upon the frequency of telephone calls should be the result of a medical decision and come within the framework of a treatment protocol.

Yet, the CGLPL observes that, far from encouraging telephone communications, numerous institutions impose restrictions due either to material considerations, or fear of improper use.

The rules applicable to the possession of mobile phones are very diverse, sometimes between units within the same institution, without it always being possible to understand the reasons for which cellular phones are authorised in one department – subject to precautions for the prevention of thefts – and formally prohibited in another. In certain units visited, telephones are thus kept in the nurse's office, and handed back on request, even in the case of voluntarily hospitalised patients; in other units they are strictly prohibited, without it being possible to determine any general therapeutic grounds for these disparities.

A few examples can be used to illustrate these differences.

In one institution in the East of France the use of mobile phones is prohibited and the latter have to be handed over to the family or medical staff, even in the case of voluntarily hospitalised patients. Within one institution in Picardy, all mobile phones are taken away on principle on patients' arrival and, depending on the unit, they may or may not be handed back, on the basis of a medical opinion, when they are allowed out into the grounds, for those who have access to the latter.

For its part, one institution in the South of France, only authorises telephone calls by means of the department's mobile phone, and on the basis of a medical opinion in the case of long-stay patients.

In UMDs, patients have their mobile phones taken away, which are placed in a safe until their discharge from the institution. The presentation booklet given to them specifies that telephone access is subject to authorisation by the doctor and managed by the medical teams.

The example of one institution in the Paris suburbs constitutes good practice to be promoted. Patients can keep their mobile phones, the only restriction being the prohibition of using them to take photographs. Indeed, the possibility that these apparatuses offer of photographing other patients and staff, without their knowledge, is apparently the original reason for the prohibition of their use in most institutions. This argument is admissible within the framework of image rights and should be given special attention within treatment units.

Generally speaking, patients therefore either have to use the telephone of the unit at authorised times, or *phone points* installed in the corridors of institutions. This results in conditions which do not enable confidentiality and respect for privacy. This issue is all the more sensitive insofar as it does not enable the required strict confidentiality with lawyers, within the framework of preparation for hearings before the JLD.

To these obstacles are added difficulties linked to material vagaries: absence of sale of telephone cards required by the apparatuses, or restriction of times at which calls may be made. In one hospital visited, the internal rules and regulations thus provide that "calls are made between 7 and 8 p.m." and that "the time is limited to 5 minutes in order to avoid saturation of the line".

For families, the possibility of contacting hospitalised close relations is also unpredictable, since they have to call the collective card-operated phone and the receiver may be picked up by any patient, without passing the call on to the person concerned.

> The CGLPL recommends that measures should be undertaken in order to protect the confidentiality of telephone conversations and provide decent visiting conditions for families. Reflection should be undertaken concerning the possibility of authorising patients to use or even keep their mobile phones in their rooms.

The Right to Send and Receive Letters

The right to send and receive letters is not subject to any restrictions, according to the meaning of article L. 3211-3 of the Public Health Code. The inspectors did not ascertain any particular difficulties in the sending and receipt of letters.

Conversely, medical decisions involving the taking away of items such as paper supplies (pens in seclusion rooms in particular), pose the question of balance between protection of the patient and medical staff and respect for fundamental rights. In this case, once again, the CGLPL considers that decisions of this kind should be personalised, justified and regularly reassessed by the medical professionals. Finally, although strictly speaking the confidentiality of letters is respected, the inspectors ascertained that parcels were opened in order to note their contents, at best in the presence of the addressee.

IT and Internet Access

Similarly, access to IT and the Internet cannot be subject to general rules applicable to all without personalisation.

> In this case, once again, practices are diverse and vary from one unit to the next. In some institutions, when patients have laptop computers in their possession at the time of their arrival, the latter are taken away and may be provisionally handed back on a case-by-case basis; in others, patients are not authorised to have computers.

Within one UMD in the South of France, patients do not have Internet access, for reasons involving their protection and security. At the time of the visit, some of them regretted being unable to use a tool of this kind, both for the maintenance of their family ties and in order to prepare for their release.

Nevertheless, the CGLPL noted practices that it would be worthwhile copying and putting to good use. Thus, in the two sectors of a Paris Hospital, the use of laptop computers may be authorised for a "reasonable" limited length of time. The patients sign a discharge form

concerning the risk of theft of equipment for which they remain responsible[119]. There is no Wi-Fi access. An IT workstation connected to the Internet is accessible in the activity area, during opening times, for a quarter of an hour per patient. No restriction of communication was reported.

Within another institution in the Paris suburbs, the patients may, on medical authorisation, use a personal computer and a 3G mobile broadband connect card. They may also use the Internet within the framework of a therapeutic IT workshop. The accomplishment of personal formalities via the Internet is also possible through the intermediary of the institution's social welfare officer. Finally, although computers are taken away on arrival, in one unit visited an exception was made for students, in order to enable them to continue to follow their courses.

> In view of the liberty of expression and communication guaranteed by article 11 of the Declaration of the Rights of Man and of the Citizen, the prohibition of possessing a computer and accessing online services cannot have a general character.
>
> The CGLPL considers that access to IT and the Internet should be encouraged in public mental health institutions.

Moreover, the question was referred to the CGLPL of control of the contents of the personal computers of patients hospitalised without their consent. In this regard, it is recalled that persons suffering from mental illnesses have the right to respect of their private life and infringements of this right should be necessary and proportionate. In a hospital, "searches" of hard disks can only be viewed as necessary with regard to the person's health (serious harm to the patient's health, to their course of therapeutic treatment or to the health and safety of other patients) and the prevention of criminal offences[120]. Furthermore it should be proportionate, that is to say that the intrusion should not be excessive in relation to the previously defined disorder.

Freedom of Movement

Even when the layout of the premises allows, patients committed to treatment without consent can only go out at certain times of the day, in accordance with the orders left by their doctor. In one closed unit in the Paris region, both patients committed without consent and patients voluntarily admitted for treatment are affected by the restrictions placed upon autonomy, the latter having to make a request for the department door to be opened if they wish to go to the cafeteria or the grounds. On their return, they ring the bell in order to alert the staff to open the door for them[121].

Although these restrictions may be understandable from a therapeutic point of view, strict application thereof may prove contrary to the objective of social rehabilitation. These obstacles may be illustrated by two examples observed in a specialised institution in Île-de-France. One patient complained of only being able to meet his cousin in the grounds from time to time, due to the latter's hours of work and the times at which he was permitted to go out, which he had not been allowed to change. During a party open to all on the grounds, another patient regretted having to go back to the unit in order to comply with the requirements of the timeslots imposed

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[119] *In this respect the CGLPL considers that it would be useful to install safes or small metal lockers with keys or padlocks in the rooms, in order to prevent thefts between patients.*

[120] *However, doctors have no role with regard to cracking down on criminal offences. If evidence leads them to believe that a patient has files in their computer coming under the definition given by article 227-23 of the Penal Code (*Code pénal*), it is incumbent upon them to refer the matter to the competent member of the national legal service.*

[121] *On the consequences of the closing of psychiatric hospital units for "freely-admitted" patients, see the opinion issued by the CGLPL on 15th February 2011 concerning certain methods of compulsory admission to hospital, published in the* Journal officiel de la République française *on 20th March 2011.*

for going outside, they lamented not being able to continue to listen to the music and having to wait for the next timeslot in order to be able to go back to the party.

A visit to one institution in the Paris suburbs illustrates the possibility of adapting the restrictions placed upon autonomy and liberty on a daily basis. Every morning, a team meeting thus reviewed the situation of all patients, in particular with regard to restrictions placed upon liberty. The latter are discussed according to the patient's level of mental imbalance, the risk of running away and their understanding of the need to be hospitalised for treatment.

> In the first place, the CGLPL emphasises the absolute necessity of allowing patients to have access to the open air, which units located on the upper floors do not always enable.
>
> In the second place, it considers that personalisation of the restrictions placed upon liberty of movement, by means of assessment meetings, constitutes good practice, which should be brought into general use in psychiatric hospital units as a whole.

Moreover, the possibility of access to the exterior has a direct impact upon the possibility of smoking. Smoking is, of course, prohibited within the units. A visit to one unit, located within a general hospital, enabled the inspectors to ascertain that the situation on the upper floors neither enabled patients committed without consent to go out into the open air, which constitutes a fundamental health problem, nor to have access to any smoking area. Their only possibility of smoking a cigarette was on the landing of a fire escape, at regulated times and in the presence of a member of staff. Some closed units have secure internal patios enabling patients to go out to smoke either at defined times or as they wish. In a number of institutions inspected, there was a right to smoke on fenced balconies set aside for smoking or in a fenced courtyard. This courtyard, enclosed by a coloured fencing, according to remarks reported to inspectors, is difficult to accept by patients given the "cage" aspect that it produces, but on the other hand, it offers all patients the possibility of going outside when they wish.

Moreover it has been observed that except in exceptional cases, isolation rooms do not have any neighbouring courtyard and depending on the institution, persons are taken outside to smoke or have their treatment increased or are authorised to smoke in the isolation room. In some cases nicotine substitution treatment is offered.

> Generally the CGPL finds difficulties in applying the Act of 10th January 1991 relating to the fight against alcoholism and tobacco addiction known as the "*Evin* Act", in closed units.

Autonomy in money management

Whereas autonomy in managing property is not always possible and the presence of a guardian or custodian has been ordered, the fact remains that patients should not lose all sense of money during their stay in psychiatric care. Autonomy, which should include management of property that they have, requires that they hold sums of money which are essential for purchasing products that are necessary for their daily well-being.

The majority of institutions provide this opportunity either directly or via a patients' association but inspections have found that there are exceptions, the reasons being the risk of theft. Normally patients are able to withdraw money when on accompanied visits or for organised activities set up by the association of which they are a member. The frequency of these withdrawals and the sum allotted to them depend not only on their resources and their needs but also on their ability to manage this money based on their type of illness. However it has been found that carers sometimes encounter problems in receiving sums which are necessary to meet the basic needs of protected adults from guardians and custodians.

> Purchasing is usually within the institution, in the cafeteria or from drink and snack distributors, purchasing stamps, newspapers etc. Staff can also organise accompanied visits to supermarkets to enable the sick to make their own choice from the numerous products on offer; these visits have, however become more rare because of reductions in staff. To empower patients and maintain their autonomy, one Paris hospital encourages patients, whose state of health allows, to make their small purchases in the locality, which enables them, in particular, to purchase their tobacco; this is an example that institution situated near shopping areas should take up. [122]

Upon the arrival of patients, cash is provided to the hospital administration or, where it is small sum, to health care staff. Thus, in the institutions inspected, patients' money is kept in a safe within the institution except for sums of about €20 held in a named locker in the nurse's office. This sum is handed over upon request and is essentially, for cafeteria purchases or to purchase cigarettes, either directly or indirectly.

Some institutions have a "patient bank", generally situated near the cafeteria enabling those who are hospitalised to deposit money and to withdraw sums in cash to meet their small expenses during their hospitalisation.

> The CGLPL believes that patients with financial resources should have access to sums enabling them to live decently. It notes that the existence of patient banks encourages the autonomy of those who are hospitalised without their consent.

Liberty of choice of meals

As has already been demonstrated in other areas, practices in relation to meals vary from one institution to another but differences between specialist institutions and units within a general hospital should also be noted. General hospital centralised kitchens often provide less choice to psychiatric centres than they would have with autonomous cooking. Thus, members of staff in the kitchens of a general hospital have told the CGLPL that an order form setting out possible choices is distributed to hospital departments except for psychiatric departments. For the latter, the choice has been made to create communal dishes per table, a choice which certainly matches the conviviality aspect often mentioned as playing a therapeutic role, but nevertheless it deprives patients of a choice of menu except for those on special diets.

> The CGLPL has found that in a large number of institutions inspected, patients not subject to medical restrictions did not always have a choice of menu. Autonomy should also exist in the context of meals and patients should be able to feed themselves in line with their personal convictions and in particular their religious beliefs. However, frequently pork-less menus are supplied without meals being offered based on the religious food beliefs of patients.

On the other hand, a hospital in the south of France includes individual choice (vegetarian and vegan), based on patients' meal instructions in addition to required medical diets and as well as food codes relating to their religion. On the meal instructions also appears the wording "Does not like". Patients, from the time of their admission, can also let staff know of their aversion to this or that dish which is then replaced by another. In some institutions, patients can take their meals in the institution cafeteria accompanied by staff. This facility is preferred by

[122] *The sale of tobacco is prohibited in these institutions.*

healthcare professionals where the person's medical situation allows, with the objective of a "progressive move towards autonomy"

> The CGLPL believes that respect for the autonomy of patients involves liberty to choose meals. The right of patients to take their meals in a self-service canteen or in the institution cafeteria is an initiative which should be welcomed.

Preparing for leaving: daily life activities

Therapeutic activity may result from medical prescription (they are in this case prescribed by doctors) or from patient choice. The CGLPL has found that these are often insufficient in number and quality and that the patient's own choice is seldom sought.

Sporting activities such as swimming or team ball games in a gymnasium or on a pitch are only marginally accessible to patients admitted without consent insofar as the necessary authorisations make the possibilities of last-minute visits complex or impossible according to healthcare professionals. Individual or team activities offered are therefore for the most part within units or specialised units: card games, board games and on a more complex basis, artistic activities, coordinated by occupational therapists. One experiment deserves to be highlighted, in a hospital in the West of France where the accent is placed on conviviality and on discussion with patients, where professionals join with patients in activities that are liable to develop confidence in themselves and increase their autonomy.

But these activities should also aim at participating in rehabilitation to real-life, to daily social life and to social reintegration. Moreover they are a means of assessing patients' autonomy and capacity for human relations and must be capable of developing their self-confidence.

> How can this paradox be avoided which consists on the one hand of rehabilitation and on the other of reducing the level of self-responsibility? Leaving the institution involves relearning daily skills and actually being responsible for oneself when for months or even years patients have been infantilised and assisted in all areas: washing, laundry, cleaning their rooms, shopping, cooking etc. We know that for these patients the success of plans for rehabilitation into society depends on their capacity to face actual problems of daily life and to regain their lost skills.

Some institutions have integrated this necessity by developing activities linked to preparing meals with patients after making the purchases that are necessary in their company, in the context of "cooking workshops" In others, where possible, patients are asked to take part in providing services by carrying out simple tasks: putting out the tablecloth or laying the table.

Involving families and friends in the patient's path and throughout hospitalisation can be a major benefit in supporting the increase in autonomy and self- responsibility in patients. Moreover, the partnership which is built by healthcare professionals by activities is an essential link when planning to leave the institution. Once care has been put in place, the objective could be, based on the patient's capacity, that of rehabilitation to social life, moving forward step by step. A practical programme accompanied by an assessment of progress accepted by doctors and patients would in particular enable them to plan for a future outside the walls of the institution.

> The CGLPL would like to see activities enabling social rehabilitation whilst respecting patient choice to be preferred where a patient's condition is stable.

4. Autonomy for individuals held in detention centres for illegal immigrants

Article L551-1 of the Code relating to the entry and stay of foreigners and the right to asylum (CESEDA), sets out the provisions under which a foreign national may be subject to forced deportation measures. This Article provides that "where they are not subject to a compulsory residence order in application of Article L 561-2, foreigners not able to immediately leave French territory may be placed in detention by the administrative authorities in places that are not prison administration premises [...]".

The purpose of placement in these illegal immigrant detention centres (CRA) is to organise the deportation of persons as quickly as possible whilst avoiding them being able to escape from execution of enforcement measures.

Illegal immigrant detention centres were made legal by the Act of 29th October 1981 which sets out the provisions for the detention of illegal immigrants.

For a number of years, the number of places and the length of stay in CRAs have increased. The total number of places was 1200 in 2005. A programme for the extension and creation of new CRAs provided for 1800 places at the end of 2006 and 1817 places over 27 detention centres in 2013.

The maximum term over which a person may be detained was set originally at seven days. This increased to 10 and then to 12 days between 1993 and 1998. The Act 26th November 2003 increased it to 32 days and then that of 16th June 2011 relating to immigration, integration and nationality to 45 days, adding a new right to place in detention for a period that was not to exceed six months for foreigners who, after a criminal sentence for an act of terrorism, are either ordered not to remain in the country or are expelled

From being transit holding areas, they have become more permanent places of stay for a large number of people[123]. In this respect, foreigners accommodated their need to have a certain amount of autonomy whether in relation to their daily life or to the exercise of their rights. The architectural design of CRAs and their organisation do not however allow this (I) whilst a need for autonomy is an integral part of being an individual human being (II)

4.1 The institutional approach: a detention organisation which does not encourage the autonomy of the detainee.

4.1.1 An architectural design which puts security first.

The security dimension of detention centres is omnipresent. It is found in its many aspects in similar forms to those which can be seen within prison institutions and therefore produce similar effects: a decrease in the autonomy of those deprived of their liberty. The first CRAs have moreover been set up in a secure environment within former barracks or police cells. The dilapidated state and smallness of these places of detention do not allow sufficient space to support individuals' autonomy. The decision to increase the number of places in 2006 has led to the building of new centres meeting more demanding standards. These are currently provided for under article R 553-3 of the CESEDA.

[123] *Almost half of removed persons are deported prior to the expiry of the 5-day period involving the liberty and custody judge.*

> In their overall design, the most recent centres are similar to the prison model. They are built away from urban areas near airports. Their containing wall or fencing is sometimes made secure by rolls of concertina wire; buildings are separated from one another by fenced enclosures; the whole unit (collective areas and accommodation building corridors) are under video surveillance.

As in prisons, illegal immigrant areas of detention are clearly separated. The first generally comprises a registration area, management and supervision offices and a room known as a "surveillance" room. This area is only accessible to detainees on request (by the individual or by the administration) and is subject to being accompanied by a police officer. Detainees therefore have little autonomy in relation to access to the authorities.

The detention area itself is organised into a number of separate areas:

- accommodation units comprising rooms, WCs, bathroom and television room;
- common areas generally comprising a dining room, a lounge, laundry room and exercise courtyard and possibly a sports field;
- buildings or area(s) set aside for visiting rooms and offices for the various services acting within the CRA in relation to compliance with health rights: The French Immigration and Integration office, the OFII, present under Article R. 553-13 of the CESEDA, the association approved under Article R. 553-13 of the CESEDA, medical services present under the free healthcare provisions of Article R. 553-12.

Accommodation is shared. Detainees do not have a key to their room and whereas access to rooms is freely available (subject to cleaning times) during the day, opening and closing times for the accommodation unit are decided by the administration. Generally, access to the various areas in the detention area is subject to opening and closing times and being accompanied. The presence of an isolation room which is used by decision of the centre manager in the event of problems tends to strengthen the security aspect of the premises.

4.1.2 The dominance of the role of the police

CRAs are under police authority. Other members of staff working there do so in roles required by law but act under the control of the centre manager.

Whereas the medical service is autonomous, access to it is not freely guaranteed. The situation is even more delicate when it comes to having access to other participants.

> The OFII essentially acts to facilitate detainees' stay and departure. Sometimes it acts closely with the police whose officers accompany those of the OFII in some of the procedures (the case has been cited to the inspectors of baggage collection). On the other hand when an OFII agent is absent, police regularly purchase cigarettes or enable access to telephones for new arrivals.

In contrast, relations are generally more distant between associations and police. The former are often perceived by the latter as working solely to free detainees whilst the police are sometimes considered by association staff as being primarily preoccupied with succeeding in deportation. In practice, associations feel more tolerated than welcome on the premises; some mentioned various obstacles that the police put in their path to hinder their work in the name of security. The inspectors have noted that access for detainees to associations is variable, being

more or less easy according to the centre. Access to all services is subject to approval by the police which *de facto* limits individuals' autonomy.

The human aspect of managing detainees by police officers has different facets dependant on the centre and the officer. Because of a lack of training, of interest or refusal, some police officers, generally the young ones, keep their distance from detainees fulfilling strictly the role of guard and escort; they do not involve themselves much in areas of life where detainees are abandoned to their inactivity. Some police officers have, moreover, confided to the inspectors: "my work is no different from that of a prison warder". Finding themselves carrying out work which in no way corresponds to the reasons for which they entered the police force and which often they have not chosen, they are disappointed and at a loss.

On the other hand, the inspectors observed that some officers, often the most experienced, knew how to keep their distance without excluding conversation with detainees. Additionally some centres use plain clothes officers to take closer part in areas of life. Specific security tasks are assigned to them (pinpointing individual problems, preventing public order problems). However, in practice, these officers often carry out the role of informant for detainees and maintain contact with them to calm the atmosphere in detention, which is behaviour liable to help their autonomy.

> The CGLPL considers that appropriate training should be provided to officers allocated to the CRA. Moreover job descriptions should give a better definition of all of the work to be carried out by police officers in these places where people of all nationalities and all conditions are staying.

4.1.3 Internal regulations which do not take account of a requirement for autonomy for detainees

Each CRA is governed by internal regulations, the model for which is set by a joint order of the Ministry of Immigration, the Ministry of the Interior and the Ministry of Defence. Under the provisions of Article R. 553-4 of the CESEDA, internal regulations "organise daily life under conditions which comply with occupants' dignity and security; in particular it records the rights and duties of foreign detainees as well as the practical methods to be practised by the latter in relation to their rights; in particular it mentions the conditions under which foreigners have access within the centre and in particular access to areas in the fresh air." The provisions and recommendations provided for in the CESEDA in relation to autonomy will be set out in the following paragraphs; a later chapter will place them in the light of observations made by the inspectors in the CRAs and will enable their actual application to be examined and consequently, the actual degree of autonomy that detainees generally have.

> Article R. 553-4 provides for internal regulations to be posted in common areas and to be translated into languages most currently used; these are decided by order of the Ministry for Immigration (in addition to French, there is English, Arabic, Mandarin, Spanish, some Portuguese and some Russian).

Internal regulations, which are similar in the various centres inspected, open with a chapter devoted to "conditions for admission". This part essentially includes admission formalities (documents required, providing notices of rights, security measures, inventory etc.) and sets out regulations relating to security: provisions made, for example, for detainees to be subject to a pat-down search at the beginning and end of visits.

This chapter also sets out regulations relating to personal effects: in all centres official documents likely to enable identification of the person are to be handed in to the registry.

Baggage is to be deposited in a specific place; access to this place is always by agreement and under the control of a police officer; access times vary according to the centre inspected from 2 to 4 hours per day. Provision is made for cash to be deposited in a safe.

In all centres, internal regulations require detainees to hand in any sharp or blunt instrument and more generally any object which "threatens the security of the centre".

A second chapter entitled "daily life" guarantees that a bed will be provided and basic essentials (bedclothes, health products); in particular it deals with the organisation of the premises, the times for distributing meals, the conditions for accessing telephones, it being specified that portable telephones with photographic attachments are prohibited. Exercise times and conditions for access to the various areas situated outside of the accommodation area are not set out in detail.

> In the "daily life" chapter, regulations in some centres provide for a "shaving kit" to be provided every morning to male detainees which indirectly may be interpreted as a prohibition on having such objects.

In this chapter provision is made that in the event of absolute need, a foreign national may ask the OFII to purchase consumable goods upon condition "that they are not incompatible with administrative measures then being carried out".

This chapter also contains a provision enabling the centre manager to isolate a person in the event of public order problems or threat to the security of detainees.

A third chapter is entitled **"health and social provisions"**. It defines the role of the OFII specifying that it may respond to any question relating to life at the centre and organisation for departure and that it is authorised to carry out procedures for detainees, in particular recovering baggage or closing a bank account.

In addition to this definition, this chapter limits itself to setting out the access times to the medical department and to the OFII. These access times vary by institution; some provide for daily access including Sundays and public holidays. Conditions of access however are not defined.

This chapter provides that the distribution of possible medical treatment is the responsibility of the medical staff.

A last chapter, entitled "**specific rights and legal procedures**" covers the rights of detainees. Internal regulations guarantee detainees the right to apply to the courts and also give assurances of providing information as soon as possible in the event of being convened by a court. They set out hours of access to the association with which the State has signed an agreement under Article R. 553-4 of the CESEDA (legal aid). In practice, these hours of access vary according to the approved body but are generally limited to weekdays (from Monday to Friday).

Visits are always possible. Visits are possible at any time for consular authorities, interpreters and lawyers. For other persons, stretches of a number of hours are provided for, each day, morning and afternoon the length of which varies centre by centre. Except for consular authorities, internal regulations provide that visitors are subject to security measures (checkpoint security).

Finally, internal regulations provide that foreign nationals are to be advised as soon as possible by the centre administration of organisation relating to travel in the context of deportation procedures.

Overall it is essentially the efficiency of the deportation process and not personal autonomy which is guaranteed by the internal regulations through an organisation of life based

on security and access to rights recognised by the CESEDA. The way in which the regulations are designed (vocabulary and content) does not make this document easily understood. The inspectors have elsewhere found that copies posted, where they were not dilapidated, were very seldom consulted, detainees clearly preferring to refer to other detainees or to staff for information about life in the centre. Inspectors have also found that information provided about internal regulations (times of access to legal assistance associations in particular) was sometimes wrong.

> The CGLPL recommends that internal regulations should be drafted in simple terms that can be understood by all and be, in fact, accessible. They could usefully be translated into languages corresponding to the most representative nationalities in each centre.

4.2 A personal requirement: the right to autonomy for persons deprived of their liberty

4.2.1 Autonomy in the exercise of their rights

A person is detained because of the need to organise their deportation as soon as possible. Their stay, which is generally short, is filled with multiple processes and hearings: on the one hand those initiated by the prefecture with consular authorities of the country where nationality is claimed or offered and which deal with obtaining documents necessary for deportation; on the other hand those that take place in the context of checks carried out by the liberty and custody judge (JLD); finally, when appropriate, processes initiated by the detainee which are usually contesting a deportation decision or an application for asylum.

> All of these procedures are subject to delays in procedure being forced on the detainee. It is therefore essential that detainees have some autonomy in carrying out what they themselves have initiated or which might be favourable to them.

A first obstacle consists in the way in which **information relating to rights acknowledged under Article L. 551-2 of the CESEDA**[124] is provided. Most often it is via the provision of a standard document drawn up in one of the seven languages set out above. It is to be presupposed that in accepting this document, the individual acknowledges that they understand it, which appears in no way certain for minorities who in their daily life express themselves in another language (Arab dialect, Mongol, Chechen, Wolof, Swahili etc.). According to information received, an interpreter is rarely requested which would ensure that the individual has in fact understood the rights notified to them and in fact understood their meaning.

In the case of standard forms, some information supplied may not be correct with regard to the particular situation of individuals. Thus for a time limit for presenting an application for asylum which is uniformly set out as being five days whilst this delay might already have started to run against some individuals in particular in the event of transfer

[124] *Article L. 551-2 paragraph 2 provides: “Foreign nationals are to be informed in a language that they understand as soon as possible after their arrival at the place of detention and they may ask for the assistance of an interpreter, an adviser and a doctor. They are also to be informed that they can contact the Consulate or a person of their choice. A Council of State decree specifies as necessary, the way in which assistance by these participants is to be provided".*
Article R. 551-4 paragraph 1 provides: "Upon their arrival at the place of detention, each foreign national is given the opportunity to contact any person of their choice, the consular authorities of the country for which they declare that they have nationality and their lawyers, where they have one or if they do not, the legal advice office of the Regional Court Bar in the district in which the place of detention is situated".

The right throughout the period of detention, to ask for **the assistance of an interpreter or a lawyer** is actually notified, at least in a formal way; however the inspectors have noted the right to contact a lawyer of their choice or the legal aid office is sometimes considerably reduced or even impossible. In a detention centre in the Paris area, the telephone number provided to detainees was the Administration Department of the local Bar Order and not the lawyer in the legal aid office. When the inspectors dialled this number, the administration let them know that it was not authorised to provide the contact numbers of a lawyer to individuals even though it related to the legal aid office and whatever the situation (expiry of a time limit for appeal has been mentioned). In that same institution, the list of the Bar lawyers was not posted.

As for the right to claim the assistance of a professional interpreter[125] it has appeared in all of the institutions inspected very theoretical whether in relation to the various notifications or the intervention of OFII agents or employees of legal assistance associations. If need be, the latter use "networks" of staff and volunteers and even other detainees. Detainees do not directly ask for interpreters, even at their own cost. No list is posted.

> Autonomy can only be exercised where an individual is not given the opportunity of speaking with their contacts. The CGLPL considers it essential that an interpreter is used when a detainee cannot understand French. Moreover to ensure that this interpreter is provided, use of a co-detainee should be avoided whenever possible. A professional interpreter is always to be preferred. Failing this, members of an association or close relations chosen by the detainee should be involved.

When it comes to preparing for their departure or their opposition to it, detainees are strictly dependent on aid bodies present within the CRAs.

> In practice, the OFII and approved associations offices are open during the week but not over the weekend. Persons placed in a CRA on a Friday evening, Saturday or Sunday are therefore particularly injured parties in that they cannot benefit from access to the law.

The OFII can, in principle, come to the aid of detainees in contacting their family or recovering baggage and money. In practice, the inspectors noted that the field of action by this body is often limited. In one of the centres, it is possible for the OFII to travel over 50 km and to receive more than €80 per task. Its activity actually consists basically in supplying tobacco and newspapers to detainees.

> The CGLPL notes that these restrictions are contrary to Article R. 553-13 of the CESEDA which provides that the OFII is responsible for helping foreign nationals to prepare the physical aspects of the departure in particular in relation to recovering the baggage of detainees and carrying out administrative formalities.

No restriction in relation to access to the OFII or associations' offices is provided for by internal regulations. However, the inspectors have found that these vary greatly from institution to institution. In some centres, these bodies are freely accessible subject to opening times whereas in others their access is subject to a police officer taking part under conditions which are not clearly defined. According to information collected at the time of inspections, police officers would not always be aware of the urgent nature of some procedures, which are bound up in very

[125] *This right is provided for by Article R. 553-11: "The administration is to make available an interpreter to foreign nationals held in a centre or in a place of detention of illegal immigrants who cannot understand French solely in the context of procedures for non-admission and deportation to which they are subject. In other cases, payment of service providers is to be made by the foreign national..."*

short time limits to be complied with upon penalty of inadmissibility (48 hours from notification of a deportation decision in which to file an appeal before the administrative courts).

> The CGLPL recalls that the law gives detained foreign nationals the right to support and access to the law without the formality of services offered by entities having the duty to provide information. Institutions should ensure that these contacts are facilitated.

Whatever the type of procedure (administrative or legal) lack of autonomy seriously hinders the collection of documents to be produced in support of an application: certificate of accommodation, rent receipts, education certificates, medical certificate etc.

The right to contact close relations for this purpose depends on the possibility of access to a telephone. A mobile phone may not be brought into a centre if it has a photographic attachment. In respect to the procedures to be completed with the outside world, this also is a hindrance to autonomy and the exercise of rights, in particular where a person arrives during a weekend and cannot acquire a telephone card to use the centre telephones.

> The CGLPL recalls the terms of its notice dated 10th January 2011 relating to the use of telephones by persons deprived of their liberty[126]: in relation to foreign detainees "it is recommended that [mobile] phones be retained by their owners, these being advised where necessary that taking pictures is prohibited during their stay"

Access to personal documents is in itself a problem: it is mandatory that official documents are retained at the registry, which also holds the administrative and judicial procedures originating the placement in detention without organising access to it. With or without the aid of accredited associations, detainees are therefore often reduced to making an appeal before the administrative court or to contest an extension before the JLD without being able to have access to all appropriate documents (for which the courts, generally, do not fail to reproach them).

> The CGLPL recommends that detainees should be able to access personal documents and procedural documents relating to them. Internal regulations should define, for each centre, actual communication procedures which will guarantee respect of private life and the protection of documents.

Finally it has been found that lawyers did not travel to the CRAs and by definition imprisonment prevents detainees from going to their offices. In practice, meetings take place therefore in the court before hearings; their time, duration and quality depend on the number of files to be examined, and the number of lawyers appointed for legal advice. Certainly detainees are placed in a situation comparable to that of persons brought before a court after police custody where these too are given the opportunity to meet a lawyer during this period. The inspectors also observed that lawyers, when required to carry out successive defences of a number of persons could not conveniently play the role of explaining and advising for which in principle they are responsible at the start of the judgement (opportunities for appeal, organising departure etc.). Detainees are, at this stage, completely dependent on their escort and cannot just decide to wait until the lawyer is available to ask for appropriate information.

> The CGLPL recommends on the one hand that in the accommodation area a list of lawyers for bars which work for detainees should be posted and on the other hand that a system should be set up enabling detainees to have rapid, direct contact with a duty lawyer.

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[126] Journal officiel de la République française *of 23rd January 2011*

The right to consult a doctor - and not a doctor of their choice - is implemented via a medical service set up within the CRAs. Somatic medical availability in the strict sense is generally limited to half a day, daily from Monday to Friday. The rest of the time, detainees are seen by nursing staff. The investigators found that access to the medical department was, within some CRAs limited to one half hour per day and subject to a police filter, from the application being forwarded and assessment of their case. Intervention by psychiatrists or psychologists is only very rarely organised via an agreement and detainees' autonomy is even further reduced in this area. The question is important as, in addition to immediate healthcare, it can have an impact in revealing an illness whose treatment is not available in the country of deportation, which is a criterion liable to be an obstacle to deportation.[127]

The CGLPL renews its recommendation in relation to updating the circular dated 7th December 1999 issued by the Ministry of the Interior and Health relating to healthcare for detainees: "The circular should, in particular, provide details that detainees so wishing may speak directly to healthcare providers without having recourse to an intermediary and that letterboxes should be set up, that a health consultation should be systematically set in place upon arrival at the centre by detainees both to enable possible contagious illnesses to be detected and to carry out a health check and enable an appropriate care regime to be set up, including by specialists".[128]

Detainees have some **freedom of circulation** within a centre subject to restrictions provided for by internal regulations.

These define accessible areas as well as opening times; they give the centre manager the powers to make any provision such as to guarantee security and public order including physically separating from other detainees any person initiating a public order problem or problems for personal safety of others. The CRAs usually have a room known as a "separation room" comprising a bed and sanitary arrangements (wash basin, tap and WC); detainees are locked up there and placed under surveillance[129]

On a number of occasions, regrettable practices have been brought to the attention of the CGLPL of persons clearly suffering from behavioural problems being separated for a number of days.

The CGLPL has also been notified about persons who, because they have been separated have not been able to claim their rights. It would therefore appear essential that the body responsible for legal assistance be notified of such a decision and be able, as appropriate, to make provisions such as to enable the person to effectively exercise their rights in particular where they have already started these procedures.

As a result of numerous observations made by the CGLPL, the Ministry of Immigration published a circular dated 11th June 2010 relating to "standardising practices in force in CRAs". These require that measures taken in relation to isolation be entered in the detention register mentioning the grounds, the date and times of the start and end of these measures; they provide that the State Prosecutor is advised immediately of this measure.

The CGLPL recalls that the procedures and the length of placing in isolation should be defined in the regulatory part of the CESEDA. Moreover these measures should be set out in a special, separate register specifying - in addition to the grounds, the times of the start

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[127] *Please see Article 313-11 of the CESEDA.*
[128] *Annual Report of the* Contrôleur Général *for 2012: Healthcare for detainees, p. 300*
[129] *The room is generally placed under video surveillance except for the washing and WC area.*

and end of the placement- the authority having carried out the measures and the methods of surveillance in particular in relation to medical issues.

Isolation should not *ipso facto* be an obstacle to contact with the body responsible for legal assistance.

4.2.2 Autonomy and daily life

Access to personal effects

The first breach of the dignity and at the same time of the autonomy of detainees occurs when they are arrested outside their homes - on a work site, on a public street - and are then taken to the CRA without any baggage or spare clothes.

When they have baggage, detainees are separated from them upon arrival and leave them at the baggage area. Contrary to the provisions of internal regulations, depositing valuable items (jewels, cash, bank card) is often presented as being obligatory. The fact that this obligation or this strong encouragement is dictated by the interests of the detainee who is thus protected from theft is no less a breach of their autonomy. They are deprived of their personal effects on the basis of a list of prohibited objects, for certain of which, because of their dangerous nature, which it is perfectly understood, very widely: the inspectors found that it is on this basis that some centres prohibited persons to bring in a pen. On the grounds that they could be used to cause self-mutilation or to attack others, detainees have been deprived of their razors; shaving being carried out under police surveillance at precise times and in a specific place. Detainees have no access to their clothes or other objects left at the baggage area without making application, this being under escort of a police officer.

Generally access to the baggage area is guaranteed under internal regulations but is limited to a few hours a day. The same is the case for access to the laundry room to deposit and collect linen (sheets and towels).

As the CGLPL emphasised in its 2011 activity report, it is not normal that depositing goods that do not constitute objects that are dangerous for centre security is dependent upon third parties.

Private areas and respect for personal privacy

Illegal immigrant detention centres do not provide individual rooms; they are shared with a minimum of two persons and sometimes 4 to 6 persons. Comfort is often basic and furniture is sparse (a bed, an open bedside cabinet, a cupboard which is not lockable, a table and a chair). They are not designed as a place to live sustainably and are not private areas. In one of the institutions inspected, the rooms were situated between two doors, one giving onto a courtyard and the other onto a corridor giving the area the atmosphere of a passageway. Detainees have no key to their room. Whilst some of them stay there a number of weeks there is no personal appropriation of the area.

Accommodation units rarely have a bathroom attached to the room, such facilities being generally reserved for family rooms. Bathrooms, showers and WC's are therefore mostly communal. In one of the institutions inspected, the toilets in some buildings did not lock.

In practice, the inspectors have often noted that these areas were in very poor condition (doors and furniture broken, pipes blocked etc.). Whereas detainees have their share in responsibility for this dilapidated state, the inspectors also noted that materials used were not appropriate for their use, that maintenance was lacking and that products used for cleaning proved only relatively effective.

One would think that some margin of autonomy left for individuals in taking over and maintaining these places would enable them to be kept in a better state whilst supporting their rights to hygiene and respect of their dignity.

Autonomy, relations with the outside world and private life

Links with the outside world are important for a number of reasons: contact with a lawyer and finding documents in support of an appeal or an application for asylum, procedures for departure under best conditions and the maintenance of links with relations.

> As has already been stated, mobile phones are prohibited in accommodation areas on the grounds that they could be used to take photographs. In one of the CRAs inspected, the initiative had been taken to leave detainees with their cell phones with all functions without any problems being notified. In another it was envisaged to offer telephones that were solely for telephoning for sale via the OFII at a modest price. These initiatives should be encouraged.

Fixed telephones available in CRAs which are actually accessible at all times do not always meet the needs of detainees as they require a telephone card, generally sold by the OFII during the week but not over the weekend. Additionally the inspectors noted that where they were placed did not always guarantee confidentiality of conversations (without any cabin they are often situated near the entrance of accommodation buildings).

In the same way and even though internal regulations do not raise the question, Internet access is not authorised whilst it could encourage links with the exterior or even enable detainees to organise their return under best conditions.

> The CGLPL recommends that telephone cabins should be installed guaranteeing that conversations are confidential. Actual use of telephones should be guaranteed from the time of arrival at the centre.
>
> It also recommends that detainees should have access to the Internet.

Visits are guaranteed by internal regulations and in principle they are possible every day; however they are within defined times and some centres do not authorise them after 6 pm. They take place in office-like rooms under police surveillance; doors have a small inspection window. The maximum duration is 30 minutes; in practice police officers regularly accept that they extend beyond this insofar as no one else is waiting. Naturally this tolerance places detainees in a situation of dependence. Moreover, even if police officers defend themselves by making it a condition of entry, visitors are invited to show identity documents before passing beneath a metal detector; detainees are subjected to a pat down body search at the end of the visit. These restrictions are even more damaging as detainees are separated from their relations and placed in a situation which is particularly difficult at an emotional level.

> The CGLPL repeats its recommendations made in its 2010 activity report of "making places where visits take place comply with personal respect and privacy in meeting and authorising visits throughout the week and in particular on Sundays and public holidays without limit as to length unless there is a critical reason why not.

Autonomy and social life

Detainees, in particular when they come from outside of the European Union and do not speak any of the languages that are most usual in the CRA, may become very isolated. The rapid turnover of people of all nationalities and coexistence of very different peoples - some are leaving prison whilst others have been working illegally for a number of years – are factors for

destabilisation which may prove very disadvantageous for the latter. Police officers observe a tendency to group by nationality reporting "inter-ethnical conflict". In this context, the weakest can find it just as difficult to live as the thin presence of police officers in the living area maintains their dependence with respect to other detainees

> Generally people met by the inspectors often complained of boredom resulting from a complete absence of activity.

Detention centres are characterised by a lack of equipment and reduced access to communal areas and leisure areas which are generally closed after 9 pm or 10 pm. After this time, individuals are confined to their accommodation section. There they have a room for communal use provided with a television which is generally protected by a sheet of Plexiglas. However the smallness and configurations of the rooms does not enable everybody to see programs under good conditions. The television, with limited access to TNT channels is often the only occupation during the day. Remote controls are not always made available to detainees who sometimes break the protective screen placed in front of the television to gain access to the controls.

Additionally, CRAs have a communal relaxation or leisure room situated outside the accommodation areas with a television and dependent upon the centre, table football and table tennis; even if the plates of Plexiglas enable use of the table football to be saved, table tennis balls often do not.

> Some centres have sports fields but balls are distributed sparingly; courtyards, although frequented by men who are generally young, have no sporting equipment. The inspectors have found that detainees use the items which are present, seats for example, to carry out bodybuilding exercises.

No cultural or recreational activity is set up which would in any case cause difficulties given the diversity of cultures. The OFII sometimes creates a library thanks to gifts but information about them is not always disseminated to detainees. This body has some card games and board games which are also distributed sparingly, explaining that the games are quickly damaged and made incomplete.

Contrary to practice in prisons, participation by external persons, possibly volunteers, is not organised.

However the inspectors found here and there a few happy initiatives which have not been adopted more generally: an initiative which is unique to one detention centre, which installed video games; and another establishment acquired educational manuals placed in the family section.

> Generally, the feasibility of any installation or innovation is first viewed with regard to the risk of equipment being damaged and the risk of breach of security.

The CGLPL recommends that equipment should be installed and activities organised to meet the needs of people who often stay over a long term in these places.

If unexpectedly, someone makes themselves the spokesman with the authorities, it is to be understood how difficult it is for a disparate population comprising people of varied nationalities, cultures and languages whose situation is unknown in terms of its duration and the end of their stay, to express themselves jointly in terms of their autonomous requirements.

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The above developments show that, to all evidence, autonomy and deprivation of liberty seem ever more often perceived as being antonymous. It is clear that security risk and public health requirements limit the liberty of the individuals in question and we should be continually reminded that preparation for leaving should be one of the objectives of being deprived of liberty.

It is not to be envisaged that people can pass directly from being captive to being free. This is why some autonomy which will vary according to personal situation and institution must be preserved. The findings set out above show that this is not currently sufficiently the case.

Section 4

Handling requests made by persons deprived of their liberty

Co-existing with deprivation of liberty is deprivation of autonomy. However this deprivation varies in size according to the places of deprivation of liberty, their organisation, the length of stay and the reasons for being locked up. Dependence results in applications, requests, questions, wants, queries as it forces recourse to third parties to satisfy basic needs or to have them satisfied (drinking a glass of water in a police custody cell for example), secondary needs (registering for a correspondence course in prison) or requirements that the grounds for being placed in prison - and therefore in the place - generate (legal or administrative appeal, healthcare). Detainees have to ask others both to understand how the place of imprisonment works to organise their daily life, to manage what remains of their external life and to prepare for their leaving.

The purpose of places of deprivation of liberty is to imprison so that crimes are not committed or repeated or behaviour liable to threaten public order or to the individual themselves are stopped.

> With the aim of protecting society, setting individuals apart from society has taken priority over all other essentials; in some places their organisation adds the isolation of one captive from another and their separation from the warders. Thus, in a variable way based on their type and status, places of imprisonment not only isolate from the exterior but also as far as most of them are concerned, partition off the internal space. To maintain "internal order" they have developed architectural designs, organisations and methods of working which avoid or even exclude meetings, relations and conversation.

As a result of this an individual who has been imprisoned disappears, only existing via their status as a person arrested, sentenced, held, as a patient hospitalised without their consent, or minor placed under guardianship etc.

However institutions have had to take into account that even for those imprisoned the body continues to live and needs water, food and sleep. They have even had to understand that in addition to minimum requirements which increase over the duration of captivity, the people in question have rights which national and international legal standards require them to comply with.

With a view to efficiency rather than compliance with legality, places of deprivation of liberty have for the most part rationalised the needs of persons that they accommodate. The administration supplies material items for survival (meals are now provided in police custody and sometimes hygiene requirements) such as to "humanise" (telephone, television, electrical sockets), allowing even possible personalisation: detainees are no longer in uniform but keep their own clothes, patients can sometimes choose their own menu so that they are not required to eat what they dislike from the meals served to them.

This treatment is made into a protocol and is subject to standards and procedures governing methods, quality, quantity, times, duration and price of what is supplied or offered. This standardisation which self-certifies the quality of care also expresses, tangentially, the

institution's power. Because of its efficiency prisoners are not considered as being in a position of need. The institution has done what it knows is necessary for them and the rest is unnecessary: implicitly in relation to the reasons for his imprisonment, the prisoners have all they need. And so they have no basis for making any claims.

Consequently handling procedures meet one of the managers' preoccupations: by foreseeing the needs of prisoners they minimise the quantity of unnecessary requests - and therefore the workload created for staff - and in fact even invalidate their existence.

However even the prisoner is not standardised. And whatever may be done for them, a dependent individual will still present unexpected needs and have rights to be exercised. Additionally, standardisation where added to an obliteration of the individual by imprisonment is another threat to the prisoner's identity who, and we should be happy about this, reacts to it; they are making special requests expressing their special nature which are a way of restoring self-esteem, their symptom: "It is the quality of being different which constitutes the worth of a human being; idiosyncrasy is our malady of worth " André Gide

> If it is the case that some institutions take on this need to intervene personally and include it in their work this is very much the case for healthcare workers in mental health institutions - others only accept them marginally: for the forces of order and prison staff to meet a request is a subsidiary job to that of guarding and surveillance. Failing to include the work of replying to prisoners' demands within warders' workloads lets in arbitrariness, exasperation, extremity and violence.

And even where members of staff are attentive to the requests made by persons deprived of their liberty, the overload - resulting from there being insufficient staff or time -, the organisation of the premises or the disorganisation of procedures do not always enable them to respond with expected effectiveness. In certain cases making a request not only disturbs the Department but it also sends it a signal that it is imperfect - that is lacking something – it can even be a signal of non-submission.

To claim their rights and obtain satisfaction, the strongest or most tenacious of applicants will bypass the systems and apply to the upper echelon in the management hierarchy, a Member of Parliament or even the President of the Republic. They pay for the satisfaction that they obtain by getting a reputation as a litigious person without mentioning the subsequent cost.

> On the other hand, to avoid their observation being misunderstood whether in substance or in form or their being stigmatised in the eyes of the local authority, the weakest give up. As making a request is regarded as an extreme inconvenience that could result in reprisals, silence becomes a sort of compulsory response and self-effacement a gauge of peacefulness in daily life: « *Audi, vide, tace, si vis vivere in pace* » (« listen, look, say nothing, if you want to live in peace»), because whatever its price, there is no danger in silence.

Whereas it is not the prime duty of places of deprivation of liberty to manage the requests of those for whom they are responsible and whose situation of dependence *ipso facto* creates needs, the treatment of prisoner requests flows from respect of their fundamental rights (I). The fact that anticipating the needs of persons deprived of their liberty and their satisfaction is of only subsidiary interest to prison managers cannot disqualified the advances that have been made, the results of which are to be welcomed even if the handling of requests again calls for major improvements (II).

1. Although imprisonment intrinsically creates needs and requests from prisoners it is not the purpose of places of deprivation of liberty to take them into account

Satisfying their needs and requests is not a priority even though imprisonment creates them in placing the prisoner *de facto* at a distance from staff and those participating (locked up in a cell or isolation room) and having a dependent relationship to the latter; satisfying their needs and the exercise of their rights cannot be carried out directly but has to be via an intermediary.

1.1 In the face of the dependency caused by imprisonment, all prisoners become applicants by necessity

In the majority of cases, persons deprived of their liberty who can get no satisfaction for their condition will want to not only contest their imprisonment in principle but they will also look to limit its effects and make efforts to obtain what they no longer have (contact with the exterior; access to information; and access to personal effects and normal everyday objects) or to compensate for them *a fortiori* when imprisonment is prolonged.

1.1.1 Appeals against placement decisions and reasons for imprisonment

Reasons for imprisonment may in themselves generate requests. This is the case in illegal immigrant detention centres where the reason for placement (organising deportation) leads the detainee in question to attempt to escape this obligation by exercising one of a number of rights: an application to cancel the deportation measures, an application for asylum, applying to the liberty and custody judge.

In the same way, prisoners awaiting trial on remand try to show that the needs of the enquiry don't justify their being provisionally detained. Prisoners awaiting trial, assisted even more by lawyers than convicted prisoners serving their sentences, are also going to present regular applications to be set free

1.1.2 Requests created by deprivations imposed on arrival

Locked up in a cell or room, the prisoner cannot speak with third parties. The reason may be that for the deprivation of liberty and the type of institution where the person is imprisoned, first applications are generally to notify members of the family about the imprisonment and the place where they can be found.

Moreover most of the places of deprivation of liberty isolate those that they keep within their walls; access to information of all kinds becomes difficult for them, even impossible because their requests are often to obtain information that they cannot access on their own. Often, this access to persons deprived of their liberty to information is a difficult exercise full of pitfalls; and so a number of them make no requests at all because they don't know the rules, and this creates a feeling of uncertainty and vulnerability, censuring all intentions.

Additionally circumstances of placement may lead to people in places of deprivation of liberty not even to have simple objects of daily life in their possession. For many prisoners, imprisonment happens in an unforeseen way without physical or psychological preparation. This is the case for persons in police custody after arrest, those who at the end of their police custody are brought before a criminal court for immediate appearance and then incarceration. They find

themselves in detention often without any personal effects or everyday objects. In the same way, foreign nationals illegally present in the country are often placed, after their situation has been checked, in an illegal immigrants centre after arrest and are often distraught on arrival. Such is also the case for a number of persons hospitalised for an emergency on the basis of a provisional municipal order confirmed within 24 hours by a prefect or an order for admission to psychiatric care.

Moreover even where the parties in question have been able to anticipate their deprivation of liberty - persons convened to execute a sentence, transferred from one prison to another, a minor whose placement has been prepared etc. - some objects are taken from them upon arrival on grounds of security.

Because imprisonment creates a loss of bearings and deep dismay, the institution fears the risk of suicide by the new prisoner or an attempt to escape. So as a precautionary measure, the latter is deprived of all objects which might enable them, more or less it would seem, to succeed in this; and therefore they have to make a request to have access to them: clothes, personal toiletry items (nail cutters for example), mobile phones etc. For similar reasons, patients placed in isolation rooms in hospital are often deprived in the same way: even when these rooms are equipped with bathrooms, isolation protocols implemented provide that they are not accessible to patients without the presence of a healthcare professional.

1.1.3 Requests as a result of prolonged imprisonment

The length of imprisonment evolves the type of requests.

Whether the stay is a few days, some months or continues for years, the type of request made by the prisoner evolves. Where deprivation of liberty is relatively short it is a matter of them contesting their imprisonment and making sure of their relations with the exterior (telephone, visits by close friends and relations etc.). After some days or weeks it is then a matter of organising their daily life: obtaining work, participating in an activity, having clothes brought which are appropriate to the time of year or even carry out administrative procedures (suspending an insurance policy, closing a bank account) requiring as many requests to be made.

> When deprivation of liberty lasts even longer, claims relate more to the organisation and the overall functioning of the institution and may be communally made; the objective is to prepare for leaving prison.

Thus a person sentenced to long term criminal imprisonment will apply to have access to a computer in their cell and hi-fi equipment or particular books and CDs upon entry which the prison administration will not allow. Anyone wanting to be successful in their request often has to show great obstinacy by making multiple applications and producing documents in proof and estimates. More generally in relation to their daily life they will ask to be heard, as appropriate, in relation to decisions made; in practice the right to collective expression by the prison population - which presupposes that detainees are consulted by the prison authorities in particular in relation to activities offered to them- has been set up in prison institutions receiving those finally sentenced whose outstanding sentence is longer than two years and not on remand. And so, these persons, deprived of their liberty for a long time will try to project themselves into the future to "hold on" and therefore will ask to have access to bodies having access to the law, prison rehabilitation and probation councillors, judges (courts for the application of sentences and the State Prosecutor), to create a case for reducing the sentence, finding accommodation and work on leaving prison, applications which require registered letters, photocopies, consultation of criminal case files or personal documents which are all processes that, in captivity can only be

carried out upon application and presuppose, almost without exception, having access to the registry.

> In the same way, those that are new to a detention centre, when all of their appeals have failed, seek, when they are convinced that they will be deported, to settle their affairs: terminating a lease, recovering their debts, collecting pieces to take with them, as appropriate with the help of the French immigration and integration office whose role this is.

It also appears that some patients hospitalised for a number of months or years and detainees sentenced to long sentences, create numerous requests of the most diverse kinds or regularly ask for interviews; more than just satisfying a physical need, the purpose seems rather to check that they haven't been forgotten, to demonstrate that they are still there and to prove to themselves and to others that they still exist.

Requests caused by known dysfunctions

The longer that a prisoner remains imprisoned the better they understand how the institution works and, to the contrary, the less they tolerate the reasons for an absence of response.

The organisation of the services supplied by the institution - solely where it fails, is a source of requests, disputes and complaints; the number of requests that it arouses may even be a criterion for measuring dysfunctions. This is often the case with the prison shops, cell allocations, applications for employment and material in cloakrooms. In one institution it appeared that requests were, from anyone single author, often repetitive, which may perhaps be a sign of impatience but also that a good number of them were not satisfied The inspectors carefully examined a random sample of 12 detainees. One person had made 4 successive applications for work on 9th May, 15th May, 30th July and 7th August 2012; another had applied for access to sport on 17th May 2010, 30th March 2011, 30th May 2011 and 5th September 2012. Such repetitions were just as frequent in relation to the decreasing sentence: they were the subject of nine applications out of 43 issued by one person and 14 out of 99 by another. Applications also regularly related to adding telephone numbers to the list of those which detainees have the right to call (four out of ten applications made by one; fourteen out of forty three by another; four out of eleven for a third). The total number of applications made by detainees was on average, in this institution, twenty. Only two detainees had made none. Another had made ninety-nine. The others were close to the average. In another institution where the prison shops supplies were distributed under plastic wrap packaging, from hand to hand and where errors were corrected within a day, the prison shops were, on the other hand, not objected to, which is an exceptional situation.

The organisation for handling requests itself even if it is of high quality - fast and reliable - limits repeating requests which are improperly directed, poorly understood and treated late. In one prison visited, requests are handled by the detention management office which rewrites the application on the receipt sent to the applicant; if this is difficult to understand, it repeats the terms of the request before it is handled thus avoiding it being mishandled. Written applications placed in the letterboxes for the most part receive a response within a day after they are sent by the detainee in question. Handling requests there was never subject to any complaint, a situation which is quite exceptional.

In addition to requests that are inherent to imprisonment itself, the physical conditions of life and being imprisoned influences the possibility of making a request and obtaining a response; they constitute obstacles which complicate their handling and require a certain degree of formality. In proof of this, members of staff in prisons more easily use the term "request".

1.2 The way that the premises are designed and function does not allow for possible requests to be made

Whilst it is obvious that dependency related to imprisonment creates requests, places of deprivation of liberty are not always physically organised to enable their expression and acceptance. And so, prisoners need to adapt themselves to the environment in order to be heard or even to find ways to get around it for the same purpose with staff who, generally, do not consider that replying to requests is part of their job.

1.2.1 Whilst deprivation of liberty creates these needs, the places of imprisonment are rarely organised to enable the expression of requests and their acceptance.

The absence of facilities in some of these premises creates requests where basic requirements (drinking, washing) are not met. Facilities in these premises determine for the most part the degree of necessity to make appeal to third parties. Designers and decision-making authorities have not always taken into account the consequences, in particular, in short stay institutions.

Thus in police stations, whereas sobering-up cells are equipped with WC's, this is not generally the case in police custody. Police stations, which have been recently built, now have them but this number remains limited. Similarly, it is rare that cells are equipped with water, obliging individuals to call and ask the warder to simply have a drink or wash their face. Where equipment is installed, it does not always offer perfect quality[130] but enables requests to be prevented inevitably resulting from their absence - without however being able to prevent all complaints. Thus, if a water facility, for example enables hands to be washed, the position or size of the hole does not enable a drink to be taken without a beaker; in fact, beakers and bottles are generally prohibited in cells because they could be used for self harming or attacks on others. Equally, there may be a negative effect, the presence of these facilities enabling the duty officer to not reply to such requests.

In prison, to the contrary, cells are always equipped with at least a tap and WC or even a shower in more recent institutions. This equipment, in addition to the autonomy that they provide enables certain basic needs to be satisfied without a request being needed. Whereas on the one hand efforts undertaken by prison authorities are to be welcomed it remains regrettable that great disparities exist between institutions.

It should be emphasised that in hospitals the question of dealing with these very simple requests happens less and is not identified as being a completely separate problem that management needs to consider in depth and subject to a special protocol. In hospital, the staff have not only the job of monitoring and, as appropriate, containing an illness but also that of providing healthcare and in the same way, anticipating requests that might be linked to absence of equipment or ageing premises. The nursing profession presupposes in fact that these requirements are taken into account. In the reforms in 2009 this was redefined with reference to activities set out in annexe I of the order dated 31st July 2009 relating to the State nursing qualification. Amongst these activities is included comfort and well-being care including, in particular, hygiene.

> The layout of places of deprivation of liberty often places the prisoner apart from staff able to understand and meet their requests.

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[130] *The facility adopted is often situated above WC's in a hole in the wall activated by a movement detector which requires it to be placed on the WC tiles which are often wet and/or dirty whilst prisoners have had their shoes removed.*

In its most simple form a request may consist of an oral question to whoever happens to be there. However even in this extremely simple form, it presupposes that there is someone within earshot or who can be contacted by interphone. By their layout or where there is a lack of equipment, places of deprivation of liberty do not make this presence easy, in fact it is often impossible.

As the *Contrôleur général des lieux de privation de liberté* has had the occasion to emphasise "the architecture of places of deprivation of liberty gave preference to the functions which were first assigned to them: to imprison and provide surveillance for prisons, isolate and provide healthcare for psychiatric hospitals, and retaining for the justice system for those on remand and more recently for illegal immigration detention centres."[131] The prevalence of emphasis on the need for security at the expense of caring for the individual explains this situation for the most part.

> Thus, the CGLPL has often expressed regrets that in certain types of prison institutions - and in particular the most recent- as in certain illegal immigrant detention centres, persons deprived of their liberty are physically separated from staff.

In these illegal immigration centres, members of the surveillance staff are without exception placed outside the "detention area". To have their requests heard, detainees need to wait until police officers come by, which is not frequently, call them by interphone if the centre is equipped with one, or place themselves before a surveillance camera - without any certainty of being understood - or knock on the quarter door, as inspectors often noted.

In illegal immigrant detention centres where surveillance positions were placed within the detention area, the treatment of simple requests (access to a mobile phone, to "petite fouille" small search) was immediate.

In some centres and open wings, the same problem was found. In open wings, members of the surveillance staff do not continuously stay on site and detainees experience increased isolation.

In regional brigades of the gendarmerie, no members of staff are present during the night - even when there is somebody on remand within its premises. Whereas normally there is provision for a policeman to pass by regularly to make a visual check, it is nonetheless the case that between two visits, those on remand are left to themselves without the possibility of notifying the least need or discomfort.

> In hospital psychiatric departments, it is inadmissible that all isolation rooms are not equipped with a help switch or that help switches are not accessible to the bed-ridden, more importantly when they are bound to the bed.

Some places of deprivation of liberty set up video surveillance systems to be able to monitor imprisoned individuals and detect, as appropriate, particular problems. Reservations, which have already been stated by the CGLPL on this subject, should be recalled: such systems cannot replace personal attention to persons in a captive situation. Moreover it is recommended that persons deprived of their liberty be granted a minimum degree of autonomy consisting in the right to speak to someone.

When the premises isolate them from staff and there is no system enabling them to be heard, those who are captive attempt to adapt their methods of expressing their requests to be understood.

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[131] *Annual Report of the Contrôleur général des lieux de privation de liberté for 2012, p. 127.*

> Lack of facilities, time or staff, finding it impossible to express themselves or receive a reply results in frustration and discontent; where it is not enough to make a gesture they speak out, when is not enough to shout they tap on the walls, grills, doors even going so far as to break their hands which is what happened to one person who is being held on remand.

Sometimes the prisoner tries to draw the attention of the next person who passes. In prisons a practice has been developed known as the "flag" which consists of slipping a simple sheet of paper or card between the closed door and its door frame at eye height in order to draw attention to the warder in passing. But when this system proves insufficient to get a reaction, detainees shout loudly or knock on the door of their cell when they hear them passing.

Where video surveillance has replaced the actual presence of staff, detainees unable to be heard or understood get round the proper use of this system to obtain a reaction. Thus in open wings, someone needing to go to work and not being able to speak to a warder for them to open the door and saying that this person would be late, ended up by obstructing the camera lens to get a fast reaction. The same tactics have been equally effectively used by persons placed on remand after they found that the alarm did not work, or at all events, did not work properly.

> Where they are not immediately visible or heard on a continuing basis, persons deprived of liberty need to be able to communicate their need for assistance by using interphone systems or alarms which also work at night

1.2.2 Staff who have neither been made aware nor trained do not consider that it is their job to answer requests.

The first condition to be met for a prisoner to be heard is the proximity of staff looking after them, the latter being available for the first. Staff availability is naturally based on workload, the design of their work by the institution and by prioritising work arising from this and this is the determining factor.

The **proximity** and attention of those acting as guardians - warders, police, healthcare professionals - is a factor simplifying relations.

In remand prisons, the warder that one comes across in the corridor or presenting themselves at the door of a cell is often responsible for specific tasks that any unexpected request will interrupt. They distribute meals, open doors for this or that person called to the visiting room, look for individuals to take them to meetings etc. For policeman and gendarmes, their priority in carrying out their work is the security or enquiry that they have to carry out; replying to requests from those on remand is accessory, or literally, secondary.

> However making requests is just as spontaneous as the places of deprivation of liberty makes them inevitable. Staff need to include this dimension and developments in this area have been noted.

Thus prison members of staff of all grades are now asked to be constantly available to the prison population day and night. Most requests made "at the door" by detainees is often quite ordinary and consist in asking for information about the time, a summary explanation of a point of internal regulations or simply a logistical question. Often warders claim that they do not have enough time or insufficient staff when trying to avoid replying. It is difficult to understand this argument as the officer remains responsible for their floor or their division and manages their time as they wishes, organising how they divide up their work. Therefore nothing should stop them from replying to a simple question.

The possibility of speaking to an officer by a person deprived of their liberty should be considered as a right based on their situation of dependence; however for this right to be exercised effectively, the individual needs to have information on what they can or cannot ask for and be able to make themselves understood. It is the responsibility of staff to ensure that each person deprived of their liberty has full knowledge of what they can or cannot ask for and is able to do it; they therefore need to be vigilant and to check that where no request is made it does not hide a difficulty in self-expression.

> Vigilance by staff is even more essential than the detention regime itself, the degree of imprisonment imposed determining the level of dependence of the prisoner.

In prisons, detainees under closed-door regimes have to ask warders to supervise their movements (visiting rooms, meetings, putting letters in the ad hoc letterbox) whilst always being in fear of being late or that the request, where it is written, will not get to its recipient.

In open prisons, access to the warden's office is immediate and requests are more easily and rapidly taken into account. Meetings with other detainees also enable certain requests to be avoided: by sharing information, resources and borrowing objects. Detainees in illegal immigrant detention centres explain the procedures to one another and translate or read the documents supplied to those who are illiterate.

In young offenders institutions, the presence of numerous adults (educators, housekeepers, teachers, health professionals etc.) in the minors' vicinity enables the latter to make their requests more easily.

In the same way, when it comes to movements within prison, where the detainee, during the course of a day moves from taking exercise, going to the visiting room or a meeting - before the board of supervisors, or graded officers, to the letterbox or the notice board, they may, when the information they're looking for can be supplied to them, not need to expressly refer to a warder or to make a request in writing.

In one institution for convicted prisoners inspected, detainees had a programmed card enabling them to open doors giving access to places where they had meetings at given times: the health block, educational department or activity area, without having to ask a warder's permission.

On the other hand, where movements are slow or cancelled, where doors are not opened at the right time and because of this prisoners cannot satisfy their needs, get to their medical consultations or use their special area of activity, the latter increase their requests in complaint and demand that this damaging situation is put right (obtaining a new consultation for example).

> As already explained[132], the organisation services supplied by an institution or, to the contrary, their poor organisation is a source of requests, disputes and complaints; the number of requests that they create is in itself a criterion for measuring their dysfunction: this is often the case with the prison shop, cell allocation, applications for work and the issue of clothing.

In illegal immigrant detention centres, generally, the police responsible for surveillance and management do not see that replying to foreign detainees' requests is part of their job except for requests relating to their legal situation made to registration staff. In addition to the language barrier which is an obstacle to relations for a number of foreigners detained, replying to request is not necessarily considered as being a priority by police officers as the legal aid office work is

[132] *Please see above 1-1-3: Requests as a result of prolonged imprisonment*

usually devolved to an accredited association which has presence at the centre (Cimade, France Terre d'Asile etc.), the French Office for Immigration and Integration (OFII) is responsible for administrative help and is also represented and physical care - meals, health and hygiene - is most often subcontracted to a private company.

However foreign detainees are very often "claimants" principally to obtain information relating to changes in their administrative position which need to be covered with urgency as time limits for exercising appeals are extremely short. Association representatives are often insufficient in number; OFII representatives generally restrict themselves to logistical work (purchasing cigarettes or basic commodities) rather than responding to requests on how the detainee's administrative situation is developing. Their offices are rarely set up in the detention area and foreigners find themselves obliged to make a request to consult an association or the OFII before even being able to submit their request.

Foreign detainees are therefore left to themselves in a closed area where sometimes police presence is non-existent, only covering the regulation of entrance and exit to the centre.

In these circumstances requests are presented to the first person that the detainees meets, the cleaning lady, or a nurse that comes to distribute medicines, visitors or the maintenance man coming to repair the furniture. According to the degree of involvement by that person or their "mood" a reply will be given which generally will be "I don't know... I don't understand what you're saying... ask somebody else"

In all events, where there is a failure to find a contact to speak and willing to understand, a person deprived of their liberty's question remains unanswered and they continue in a state of frustration which one can only imagine. The multiplication of requests which is liable to result is not always without risk for the person persisting in asking - and indeed is exasperating, seeking to get action from authorities which are ever more highly placed - their obduracy and irritation might stigmatise them as being "litigious" with all of the prejudices that imply or result in their being isolated even more, as in placement in a separation room which is the fate of foreigners who become too excitable.

However it should be noted that the question of handling requests from persons deprived of their liberty is starting to be tackled in some institutions even if results are still somewhat mixed.

2. Acknowledgement of the right to make requests is a step forward but their handling calls for major improvement.

This acknowledgement of the right to make requests is undeniably a step forward which hands back to a person deprived of their liberty some part of their humanity and in their reestablishment in their status as a human being who has rights. However, in spite of all the work that has already been accomplished, areas of progress still exist and improvements still need to be made to the way in which they are treated.

2.1 Prisoners' needs are acknowledged

Recognising the needs of persons deprived of their liberty, some of which are common to all, institutions have set up various procedures, some to reply in advance others organising the acceptance of requests.

2.1.1 *Information supplied in response to requests which therefore no longer need to be made*

Persons deprived of their liberty and in particular those imprisoned for the first time find themselves in a peculiar world with its rules, mechanisms and vocabulary. Lack of knowledge about the place results in requests for information relating to working regulations. Supplying this information on arrival enables two objectives to be achieved: replying to questions before they are made in the form of requests and explaining how to make these applications.

Whatever local initiatives may be and, in relation to prison institutions, the application of European prison regulations, the law requires, in certain circumstances of deprivation of liberty that the parties in question are to be notified to what extent they are subject to these related rights. This is the case for those admitted for psychiatric care without consent, foreigners placed in a legal immigrant detention centres and persons in police custody.

> This information is to be sufficiently complete, precise and comprehensible - and for foreigners, in a language which they understand - for appeal against any decision affecting their lives to be made as appropriate. Amongst these rights, at all events, there are those of being assisted by a lawyer and of notifying close relatives and friends of their situation.

In addition to this notification, **more general information** is to be provided on arrival. Exercise of these rights however, which are then to extend throughout the term of stay, are difficult and full of pitfalls because access to the various sources is often complicated.

In prisons, arrivals go through a real "system" in a special area known as the "arrival area" for a number of days. There they meet various contacts in a series of interviews during which they receive explanations and information on how the institution works.

> In one long-stay prison inspected the "detainee facilitators" take part in welcoming arrivals and give particular help to those with difficulties in adapting. It is recommended that this initiative - which is still exceptional and is only useful where detainees, often having a long prison record behind them, are used to the place and the procedures - be extended.

Persons entering a psychiatric department or a young offenders' institution also receive verbal explanations at an entry interview which is generally set out in a protocol. In illegal immigrant centres, visiting the registrar upon entry can be the opportunity to also respond to questions posed by foreigners, at the registrar's initiative and if they so wish.

> In all cases, these explanations are given quickly and succinctly. They are not necessarily always fully assimilated.

In addition to initial explanations, **written documents**, some of them provided for by law, set out the institution regulations and are distributed and/or posted for future reference: internal regulations, rules for living and or a reception booklet.

In psychiatric care institutions, rules for daily life, a short document setting out daily workings of the institution, are generally widely distributed and sometimes posted in each patient's room; they are explained by the healthcare professionals at the reception interview. In prison institutions, internal regulations are regularly "being amended" as the inspectors noted which is another way of saying that they are not up-to-date. They are rarely available in the offices of warders or in the library. In illegal immigrant detention centres, internal regulations are to be posted in six languages which, however, on the one hand is not always the case and on the other hand does not cover all linguistic requirements.

> These documents as a whole remain too often difficult to access; they are not always provided and certain of their rules are difficult to understand. As

a result of this whilst it is a step forward, not providing oral or written information continues to create questions and more of them.

Posting information relating to how the institution works and the provisions for daily life is another area of information but its use is ad hoc and disparate within the same institution and variable from one stage to another in a detention centre or in one unit to another in the same centre in a health institution; information which is sometimes obsolete; difficult to get hold of based on the type of institution and the liberty of movement granted to the parties in question.

These practices are however sufficiently useful for it to be recommended that they be systematised and used generally. In this respect, it is to be regretted that in no institution does there exist a collection of applicable legislation and regulations which is accessible to persons deprived of their liberty. Knowing these regulations, however, is essential basic information.

Moreover written information does not always reach, *ipso facto*, everybody who might need them and in particular persons not speaking French. In an opinion published in the *Journal Officiel* dated 3rd June 2014, the *Contrôleur général des lieux de privation de liberté* had the occasion to recall the special situation of foreign national prisoners and more particularly those not speaking French. He also had the occasion to recommend, in his report on an enquiry into the provisions for the management of imprisoned foreign nationals that prison authorities should use all efforts to make documents available to these persons, enabling them, with the help of explicit drawings and/or translations into multiple languages, including signs, to draw up the subject of their request.

Initiatives taken in some institutions deserve to be mentioned. Thus in a detention centre in the Paris region, the reception booklet was available in four languages: French, English, Spanish and Arabic as was an extract of the internal regulations. The officers in the property office had vocabulary listings in 20 languages available to them, containing the principal phrases relating to daily life enabling them to express their requests, pointing to the French phrase relating to their application, written in their own language. Additionally the electronic liaison register (CEL) enables prison staff to have such standard documents at their disposal. Efforts have also been observed for non-French speaking persons in an illegal immigration centre where a police officer has created illustrated documents facilitating understanding of regulations without this good practice being repeated centrally and other centres have not been informed of it to reproduce it.

Moreover the use of written documents does not exclude **other methods of communication**.

Prison institutions have thus developed a newspaper or internal network relating to television channels. Distribution of this information in this way is variable; some, voluntarily, devote resources to it and obtain results because of attractive presentation whilst others have done nothing. Good practices have been noted in an institution in the south of France. It uses an internal newspaper edited by detainees for media. Published four to six times per annum, it sets aside a section for questions by prisoners to management which provides replies. And answers are also collected and filed by the librarian and classified by heading. Replies made by management may be brief but this is still an original method of providing information as the questions published are of general interest. In another institution an audio CD is provided to newcomers instead of the reception booklet.

Looking beyond these individual requests, Article 29 of the prison act dated 24th November 2009 also introduced the principle of a collective method of expression by detainees acknowledging a need to be heard which has not

> been taken into account up until now. "Advisors" have been instituted in some institutions even if their number is still too low.

The role of these advisers is to create a dialogue between prison administration and detainees on limited subjects but including, in principle, basic conditions relating to detention: the state of cells, maintaining family links, food, prison shops etc. Prisoners' representatives may also submit their comments and claims to this advisor for their response.

These advisors, comprising members of the prison administration staff and prisoner representatives, meet on a variable basis not exceeding three months as for example has happened at the Val-de-Reuil detention centre, the largest in Europe, for a number of years.

It should however be noted that appointing these representatives by the prison administration can itself be in conflict with the representation which is sought.

> Nevertheless whereas, on the one hand these advisers are given duties and have an impact which is smaller or larger according to the institution, they constitute a collective method of expression that should be encouraged. The great majority of prison institutions which have not yet appointed advisory councils should do so now.
>
> Such procedures, which help to calm the atmosphere within places of detention whilst favouring the words of persons deprived of their liberty and their being taken into account by the authorities should be implemented and developed.

2.1.2 *Recognition of needs via accepting requests*

In addition to taking into account in advance all questions by prisoners, is to be added **recognition by institutions** of their needs to answer them and therefore the need to accept that they are expressed.

> In their most spontaneous form, requests are expressed orally.

In some short stay centres and/or those where members of staff are in the immediate proximity of applicants, no other possibility is on offer.

The same is the case for **police custody** where prisoners are only able to speak to the duty officer or the Investigating officer in charge of the case.

The same is the case for **closed educational centres** where minors are constantly in the presence of an adult able to accept their requests.

In **illegal immigration detention centres**, although detention members of staff are not in proximity with foreign detainees the latter have no other possibility than addressing requests to police officers as best they can in spite of physical and linguistic problems.

In **psychiatric hospitals**, patients speak directly to healthcare staff present in the unit for the following reasons: requests principally relate to living conditions; those relating to the legal position of patients have essentially emerged with the Act of 5th July 2011 coming into force and their acceptance is not, for the most part, subject to any more formalised procedure.

However, **mental health institutions** give special treatment to requests which are identified as being claims, whose acceptance and later analysis fall within the context of quality procedures. For such requests, systems are in place and treatment follows well-defined procedures. These claims, which it is to be supposed are in the first place addressed verbally to contacts met on a daily basis - doctors, nursing staff - are then generally followed up by the formality of being written down, a formality which may be provided for by institution internal regulations on the basis of the claim made or the contact applied to. Given the difficulty that

some of these patients may have and the need to submit to this formality, requests may be made on behalf of patients by their close family and friends. The latter may also refer to associations like the UNAFAM or a third party body like the commissions for relations with users and quality of healthcare *(*CRUQPEC*)*. Attention to individual requests and in particular by CRUQPECs is good practice observed in some institutions which set up early meetings with mediators whether medical or non-medical. It has been observed in one institution in the Paris region that patients were seen within no more than eight days. Requests may also be made to the quality department which would then transfer them to the legal department which, in their turn would contact the service concerned and send out reminders if their reply is slow.

Consequently for surveillance staff and warders, this acceptance of requests should be part of the express duties as is already the case for healthcare staff.

In prison institutions, written applications are the norm. The reasons for this are many: non-availability of staff, the size and organisation of the institution, scattered responsibility or the complexity of procedures. The wing warder, who is not always the first person asked is not always able to give a precise reply. Bound up in multiple tasks, they do not necessarily have the time to look for information in response. Additionally they do not always have the skills to reply. Therefore, of necessity, the solution is to "Write". They therefore need to make a written request for everything: for meetings with a doctor, registering for an activity, having clothes brought in etc. The prison administration is one of those rare institutions to have set up a complete system enabling those deprived of their liberty to ask questions and obtain replies.

Requiring these men and women to write, naturally forces them to make available the physical means to do so: paper, envelopes and pens. Everywhere, writing necessities are part of the package provided on arrival to imprisoned persons; their renewal is then the responsibility of each of them by purchasing in the prison shop or provisions for aid for the poorest. It would be judicious if this renewal was systematic and free of charge.

Some institutions have formalised acceptance of requests by providing detainees with *ad hoc* printed forms offering, for their ease of information, a list of recipients and possible subjects whilst adding a few lines for the prisoner to write freely.

These requests are either collected directly from the cell by the wing warder or placed in letterboxes available on each floor or entry to the building. But these letterboxes are often broken or used for other purposes (for hiding illegal products or objects) and not repaired. In these cases, it is up to the warders to collect letters. In one prison centre in the south of France, mail is randomly collected, carried off in rubbish sacks and sorted without any assurance that they will be dealt with. One wardress - it was not her job - told inspectors that she took responsibility for it herself to avoid applications made by detainees being thrown away.

Whatever the later fate of their mail, detainees often prefer to hand them directly to staff, in particular those for the health unit, in order to avoid that they are unduly found out about by co-detainees. Particular attention should be taken of the solidity of letterboxes and to place them near warders' offices to prevent their being broken.

These letters are then sent by those delivering mail directly to the departments involved or via a central organisation, generally the detention management office.

In other prison institutions, press button terminals have been set up for requests. These terminals, which are currently installed in a limited number of institutions enable detainees to make their requests, send them to the related department and keep evidence of them by a receipt which is immediately printed. Use of this system makes requests easier for some detainees used

to handling machines like this. For others, unfortunately, they add to the difficulty of access to computer software and those of writing.

Showing pictograms for selection limits inconveniences.

The location of these terminals, which is not always judicious, may make them difficult of access: setting them up away from passageways involves making a special journey. On the other hand setting them up in frequented areas does not necessarily guarantee confidentiality of use.

Places where they are set up should take account of these two requirements. Terminals should be made available to persons placed in specific areas (arrivals areas, isolation wings, disciplinary areas etc.). Additionally, access to terminals should be managed as a specific request in the same way as that enabling use of telephones. In particular this presupposes that in a remand prison or in closed doors areas a terminal is installed on each floor.

Difficulties in use can also arise. Explanatory notices are not always sufficiently clear for detainees to use the terminal. Terminals may also be limited by their functionality and all departments are not available for contact via them. An absence of paper may also not enable a receipt to be provided and the applicant may thus lose trace of filing their request.

Using this system presupposes reliable equipment in proper working order; which is not always the case. In a prison in the south of France, identity cards with barcodes that detainees had to use to identify themselves at the terminal deteriorated because they were not sufficiently rigid and quickly became unusable. Moreover failures in the electrical circuit created power cuts or short electrical cuts which might damage the system and stop its usability.

In the face of these limitations, some prisoners, already in difficulty, may be discouraged and decide not to use these terminals. Additionally whereas this new system is an additional method for receiving and sending requests it should not, at any event, become the sole method.

Without doubt training in the use of these terminals should be carried out during the arrival process and an explanatory leaflet provided.

It is also recommended that the initiative developed in a long stay prison in the south of France should be examined and extended: detainees used to play a role as reference subjects have had initial training in PowerPoint at the end of which their application has been accepted by the single multi-disciplinary commission: they are authorised to help other detainees in making their requests, explaining how the terminals work and helping them to use them.

But formalising requests has negative effects as well.

It imposes the use of writing and compliance with procedures. Those not being able to master these, risk not being able to make their requests known. The obligatory use of written applications excludes the illiterate or those not speaking French which are even more vulnerable as they often lack physical resources and therefore have special needs.

Procedures implemented in one prison institution consisting of rewriting the request on the form used for acknowledgement of receipt are therefore, in this respect, to be recommended. In this way the applicant can be sure that the administration has actually understood their question.

Another good practice allowing the illiterate or those not speaking French not to have to set out their requests in writing for an interview, should also be extended to all departments.

The requirement to make applications in writing risks excluding all other method of expressing requests, in particular verbal requests, which validates the attitude (which is however contestable) of the warders, who reply to all requests, even those that they can deal with immediately by the words "Put it in writing "

One consequence of this formality is to extend the time taken for procedures, preventing requests from succeeding. For example in one institution that was inspected, a detainee who asked for authorisation to hand back their credit card to their family at the following Tuesdays visiting day put their letter in a letterbox on the Friday in the middle of the morning and went for a walk. The mailman went to collect it on Monday morning as the collection was generally in the morning at 8 am. The officer responsible for registering this request in the morning then sent an application to the officer responsible for the property office where the bank card was. The latter therefore only heard of this on the Tuesday morning and replied "your request was made too late ... the visit being today". How is it possible to understand that the simple request could take so long to get to the right department before being dealt with? These situations, which are too numerous, create tension and conflict.

In spite of information provided relating to how the institution works and setting up procedures for receiving requests, there are some who never make any requests. These are, in particular, detainees who are particularly vulnerable because of their state of health, age, inability to use the language and who have a tendency to withdraw into themselves and hardly make an appearance before prison staff. It appears essential to ask what the actual reasons are that some people don't ask questions: surveillance staff should ensure that an absence of requests is actually the result of an absence of need and not difficulties in self-expression or ignorance of rights.

> These persons should be systematically identified and all steps in this direction encouraged. Thus in the context of socio-cultural activities in a remand prison in the Paris area, the cultural coordinator did not immediately withdraw persons who were absent from a workshop immediately from their register but wrote to them, several times where necessary, to know why.
>
> Registering requests can enable those not making any to be identified so that they can be systematically seen to be assured of their well-being.

> The care taken by prison administrations to inform persons deprived of their liberty and to collect their requests is a credit to them in spite of the difficulties and the cumbersome procedures. Results can still be improved, particularly in relation to the handling and quality of responses.

2.2 The handling of requests and replies made to them are still too often inappropriate.

In addition to accepting requests and their handling, **making a reply** and its quality are rooted in respect for the person as an individual. Developments in this area in the legislative arsenal, governing relations between citizens and the administration, has only translated conditions in this area: motivation requirements, requirements to respond, provide information and recently the legal effect of an absence of response; these developments of course relate to persons deprived of their liberty in their relations with the administration responsible for them and this is so much more the case when they do not have any relational or institutional alternative to have their rights respected.

2.2.1 *Handling arrangements should be specified and be known both by applicants and staff*

Handling requests made by persons deprived of their liberty is a requirement which needs to be acknowledged and recalled as should arrangements for implementation be similarly specified.

This is the case in **police custody** via memoranda which provide the instructions of the Ministry of the Interior locally in particular those of 11th March 2003 relating to guaranteeing the dignity of persons placed in custody. These set out in detail the replies to be made where prisoners want to feed or wash themselves and allocates to the police custody officer the duty, which is truly their role, of ensuring that detainees have been able to obtain what they asked for and have been able to exercise their rights.

In **prisons**, memoranda and, as appropriate, notes for the attention of detainees set out procedures for handling requests and in particular where these are complex, in particular in large size institution where the number of requests has imposed a rationalised way of treating them.

These handling procedures are in principle via the electronic liaison register (CEL), which is a software aiming to facilitate implementation of detention procedures, the prevention of at risk behaviours, having a single multi-disciplinary commission for the prison institution and the management of requests, hearings, meetings, inspections and mail of detainees[133]

It enables requests to be registered and distributed by computer. The memorandum from the prison administration dated 31st July 2009 states that "use of the electronic liaison register is mandatory for all detainees' requests, whether made orally or in writing, requiring reliable traceability and/or falling within the area of competence of the single multi-disciplinary commission." This is in particular the case with requests for changing cells, hearings, medical appointments, access to teaching, professional training, work or registering for sporting or socio-cultural activities.

Memoranda can then specify the way in which requests are to be handled using the CEL. For example, in one long-term prison in the south of France a memorandum for prison detainees sets out time limits for registering replies by administrative departments: in this it specifies that the time limit for inputting on the electronic liaison register is from 24 to 48 hours: for time limits to reply it is noted that the maximum legal time limit is 60 days even though administrative departments should commit themselves to replying more quickly.

> As the *Contrôleur général des lieux de privation de liberté* set out in his activity report for 2012, a significant volume of requests is therefore traceable in a number of institutions. However this practice differs from one institution to another and even one building to another within the same institution: some record all requests - it is principally Detention Management Offices (BGD) who input these registrations - others input them partly and others limit themselves to a minimum.

Thus, in a long-term prison in the south of France, procedures are in place to input all requests except for those for hearings. In fact, according to evidence collected, because of the shuttle system provided for by procedures and reply times being sometimes 15 days, this input system is short-circuited. Additionally letters are sorted by recipient within the building and placed in letterboxes for each department (BGD, SPIP, UCSA, sports etc.) on each floor in each building for the various departments to come to look for their mail. Additionally these

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[133] *Please see Article 2 of decree n° 2011-817 dated 6th July 2011 relating to the creation of personal data handling relating to software management of institutionalised detainees (GIDE).*

procedures are not reliable as it is not clear for all participants: thus whilst applications for registration for a sporting activity are handled by the administration staff, a letterbox for "sports" is set up in buildings where they relate to nobody, *ipso facto*. Requests which are handled by building officers - requests for maintenance, change of cell, work classification, getting objects out of the property room or information about transfer - are handled directly; they are rarely input into the CEL except for requests to change cells, when they are accepted.

In this institution as in those which have not issued any rules at all relating to handling requests, those persons who are responsible are not clearly identified; the fate of requests therefore often depends on the goodwill of the intended recipient who, additionally, is rarely unique, requests passing from the floor warder to the postman, the officer and the BGD operator etc.

Handling time limits are themselves not more clearly defined.

> It would be good practice for notifications to be created within the CEL - when a time limit for reply has been exceeded - and to set up a reminder system, which is never the case: not knowing whether their time limit has been exceeded or not, detainees will think that their request has not been received by its recipient and will write another request.

Criteria for decision-making are rarely explained. Absence of transparency creates an increase, once more, in the number of requests - the sender seeking to multiply their contacts in the belief that this increases their chances of success - and otherwise, increases tension and violence.

> These details, relating to procedures for handling requests, are essential to enable detainees to address the right person without losing time in order to avoid arbitrary decision-making - or the feeling that it is arbitrary - and to enable, as appropriate, exercise of methods of appeal against decisions which might have been made.

They should also enable staff to know their area of work and thus be able to carry them out without letting them drop because of ignorance (and possibly themselves register requests in the CEL rather than telling a detainee making a request to see a nurse to write again, but this time to the health unit...). Where there are no procedures for staff to follow, the quality of handling requests depends on the way they understand that this work should be carried out and their motivation in doing so. If this type of work is acknowledge as being a part of the activity to be carried out by healthcare staff as has been said above, awareness training is, on the other hand, necessary for warders and officers who do not easily accept this situation of being service providers which nonetheless is part of their work and which unfortunately they too often express as "he'll just have to wait, I'm not his servant".

2.2.2 *Replies need to be relevant*

Primarily requests should receive a reply; an absence of reply - in addition to being perceived as a sort of disrespect - creates a new request: where there is no reply, requests are presented repeatedly, demonstrating the impatience of those making them; they are addressed to contacts which are different each time and in particular, as appropriate, to those higher up the management hierarchy than those to whom detainees have first applied and even to external participants. As explained above, responses take too long, simple acknowledgements of receipt or redirections ("request sent to the department concerned") are liable to be equated with an absence of response.

> The behaviour of the "litigious person", already described in the *Contrôleur Général*'s activity report for 2013, illustrates this: by their repeated requests and insistence, the litigious persons show that they can and will have their legal rights prevail over the local arbitrary form underlying the balance of power which, by doing this, they wish to escape. Their stubbornness restores their dignity which is not primarily what the institution expects of them and it can make them pay where it appears, wrongly, to be insubordination.

Replies should be proper and courteous.

Sometimes replies to requests are not respectful or are offhand. Testimonies received attest to this.

One detainee, surprised at no longer receiving financial aid for the destitute, received as a sole response the following annotation to the letter that the latter had drafted "it's not automatic it's like antibiotics" rather than being given or reminded of the criteria for granting this aid.

Whatever this type of response may be, according to the case, whether overwork, or availability, or a conscious intention or not to maintain a position of domination, they show that prison staff have not been made aware of seeing detainees as having definite rights. Showing that they are in control of time limits for reply and its quality, implicitly remind the applicant that they are in a balance of power situation which they have to accept.

The content of the reply must be relevant

Insofar, as a matter of fact, parts of replies depend not only upon the competences of the officer making them but also upon their goodwill or fears which may vary and even be contradictory. In practice a reply may be considered as being satisfactory where it is fast, written, notified and explained clearly to the applicant whatever the type of imprisonment.

Replies should not be contradictory. Contradictions create incomprehension by detainees where the latter note that replies given to the same question are not the same and lead to the feeling that rules are tainted by arbitrariness.

We find an example of this with hybrid management (health and legal) in secure interregional hospital units *(*UHSI) when, on the one hand, the responsibilities of prison staff and those of healthcare staff, on the other hand, are not defined clearly and precisely. Thus for a detainee patient waiting for their new pair of glasses, a prison officer might ask them to make a written requests to the officer whilst a nurse offers direct contact to the prison health unit.

Such confusion of roles is found in **illegal immigrant detention centres** where according to the time of the week, applications made by detainees relating to legal appeals are to be submitted to employees of the association responsible for legal aid when they are present, or failing this, to duty police officers at the registry during their working hours or to police officers at the security post. It goes without saying that the competencies of the various participants are far from being identical, as are the care in replying to requests for physical assistance to complete their cases (supplying standard forms for appeal, photocopies of provisions being attacked etc.) and faxing the appeal to the court having jurisdiction. Replies given may therefore vary greatly based on the contact.

In the same way, in **police custody**, in the place of memoranda governing the conditions for detention or applications relating to rights referring to a measure (Articles 63-1 *et seq.* of the Criminal Procedural Code), one notes that varied replies have been made in relation to the question of supplying water to persons held in police custody: a gendarme stated "no water

beakers are provided, detainees may wound themselves" and another said quite the opposite "detainees in police custody are always offered water".

Replies should take account of the criteria for decision-making which should be known to all, objective and identical to all. Often replies may be based on the behaviour of the applicant and their relationship with staff.

Thus, in one of the three buildings in a detention centre, criteria for decisions relating to extending visiting depended solely on the behaviour of detainees. In the two others, they depended on the number of visiting rooms and the number of extended visits already granted or again, the "boss" granted extended visits to detainees on the basis of those registering first until there was no more availability. This absence of equity in treating requests is taken as unjust by detainees and contributes to deteriorating the atmosphere within institutions.

In **psychiatric care institutions**, patients submitted for psychiatric care without consent are, again because of their status, in a position of dependence on health staff. Very often requests relate to prohibitions by doctors from which, in practice they have no way of defending themselves (absence of appeal, well-founded reasons for patient safety). The same is the case for the availability of mobile phones and the possibility of visits or outings. If reply times are relatively reasonable, patient refusals may be a source of incomprehension or even conflict with care staff to whom the role of supplying responses falls, whilst often sidestepping the reasons.

The same thought process is met in **police custody**: permitting smoking in custody can become evidence in conducting the enquiry, the right to refuse on safety grounds being always open to the investigating officer.

Replies should not be summary but detailed and reasons given. In fact, replies are rarely explained, feeding a feeling of incomprehension or even anger by those receiving them. This way of proceeding makes the detainee think that he has no right to receive explanations and that he should content himself with the information provided.

For example, a person placed in isolation asked on numerous occasions to be able to take part in sport more regularly which was authorised by section regulations. This person was refused on a number of occasions without any reason being provided, creating frustration and tension. It was not until much later that the latter understood that the decision had been made based on the advice of a doctor in the health unit. A simple explanation would have enabled this conflicting situation to be disarmed.

Another detainee, having changed prisons, asked to recover the computer that they had previously bought and which they could then use in their cell. They were repeatedly refused without knowing, first, whether the computer had indeed been transferred and was still with their possessions and then without telling him that the equipment had been refused for reasons of security. Explanations would have enabled these repetitive requests to be avoided.

In spite of a tendency, which is often quite equally divided between detainees and staff, to prefer simplicity of immediate handling of oral requests where possible, it can be in the interest of detainees to have a trace of their request and its reply. This would also enable - as opposed to a verbal request later input by staff on computer - to leave the choice of how it is made to the detainee.

2.2.3 *There must be traceability with not only accepting the request but also in enabling verification, to the satisfaction of the applicant*

Traceability, a procedure for monitoring the handling of a request, has a number of advantages

In one prison institution, the letters in which applications for work were made were simply kept between the pages of a notebook without any acknowledgement of receipt being provided and at best, detainees were informed orally by a warder or a police officer that the request had been received. Where a position was available, an officer chose from amongst the writers of the letters which had been retained, those to whom work would be allocated, applying criteria which were undoubtedly relevant but not written.

Traceability should enable the progress of a request to be monitored throughout its various stages. In this way all information should be retained relating to its receipt (date, type of request), its identification (sender and recipient), its handling (transfer to the department responsible, time taken for handling, acknowledgement) and the reply given (content, identification of the respondent). This procedure which is undoubtedly lengthy is the sole guarantee of rights for persons to which it applies.

This recording is also a guarantee for the administration which can, as a result, justify their response to the various requests. It enables them to analyse their own methods of handling requests with respect to time limits set, responsibilities of each one, as, depending on internal organisation and in relation with department heads, the head of the establishment appoints those persons or departments authorised to reply to the various types of requests. In relation to monitoring handling requests, the CEL module "Monitoring requests" enables departments to have this recourse and, in particular, to be informed about requests that have not yet been dealt with.

Moreover, traceability systems as set up by prison administrations with CEL enable all requests that have been recorded on computer to be read by all staff having access in the context of sharing and circulating information which might benefit the detainee.

Once input, requests can be easily handled: thus, in one long-term prison in the south of France they are recorded directly in the agenda for the next Single Multidisciplinary Committee where they are examined and a decision is made.

On the other hand traceability enables people not making any requests and who may be in a position of distress or great vulnerability to be identified.

But traceability has its inconveniences

Generally, responses to requests too often tend to substitute written responses by oral responses in particular in **remand prisons**. This bureaucracy is detrimental to direct contact and results in an unfortunate tendency to dehumanise contacts between guards and those being guarded. The feeling of having to follow a **dehumanised system** being substituted for direct contact increases prisoners' impression that they are not being treated as people.

Additionally, the written word can be somewhat blunt when not passed on by word of mouth. In this respect the recommendations already issued in the 2012 activity report in which the necessary dialogue between detainees and staff should be at the very centre of practices, should be recalled. At all events, handling requests is not satisfactory simply in writing. The administration should supply explanations necessary to understanding them.

Thus, **to be effective without falling into the trap of excessive bureaucracy, a framework for traceability needs to be strictly applied**.

Traceability cannot be used for all types of places and requests.

It goes without saying that handling requests cannot be the same for different requests and different places of imprisonment.

Some requests, in that they make a request for information relating to organisation and functioning of places of deprivation of liberty, need to be traceable. Particular attention should be given to recording replies and their notification where they arise from a right to information.

At all events, requests relating to the applicant's legal position should be recorded and be traceable. In fact, failure to be able to retain traceability of their requests means that persons deprived of their liberty cannot present their defence or appeal against the situation. Requests relating to the exercise of rights, in particular relating to implementing rights of defence should also be recorded. This recording is provided for in police station custody registers; in the same way it should be formalised in those of regional gendarmeries. In relation to other special requests requiring a precise and appropriate reply, their recording should be in the duty register or the administrative register at the police custody.

On the other hand, for convenience, word-of-mouth should still be possible and be preferred in handling simple or immediate requests or those that are urgent and require a direct reply from staff without the delaying tactic of "Put it in writing!" being used.

Even though ***information recorded should be limited to that which is necessary*** (please see the information set out above); the type of request, dates: the date of the request, of its receipt, of its handling (sending to the department concerned and return) and notification of the reply to the applicant; the identity of those involved: the person originating the request, the department responsible, the identity of the person handling the request, signatures; the content of the reply. Two points appear essential in traceability procedures for handling requests: issuing an acknowledgement of receipt and notifying the reply.

> In addition to a guarantee that a request made by a person deprived of their liberty is received, the acknowledgement of receipt enables it to be put on the waiting list. In this way it ends worries, whether well-founded or not, by persons making these requests on the possibility that their requests have disappeared etc.

In prison institutions where detainees use the terminal for inputting requests, a receipt is printed at the end of inputting which the prison administration advises detainees to retain. This acknowledgement of receipt includes the identity of the detainee, its sequential number, date and hour of the application being input, the type of request, the department responsible for handling it and the maximum time limit for handling.

Acknowledgements of receipt should be systematically issued and provided to applicants when requests (whether written or oral) have been traced.

In relation to replies, these should be drafted on the reply note, printed and notified to the detainee; a second copy should be filed in their personal file. The CEL Specifications provide that this notification of the reply is to be either by the central department for requests or by the department responsible for the reply or a warder or any other person appointed by the head of the institution.

Rather than multiplying the number of persons notifying requests, it would be sensible to appoint one reference person from among the staff responsible for dealing with requests to reply directly or department responsible and above all to explain to the persons deprived of their liberty the procedures to implement and the implications of the reply, that is to say to support written information with oral information.

Moreover special attention should be made to systematic filing of reply slips in the personal case files of detainees.

The behaviour of persons deprived of their liberty - with regard to what they asked for or not - should be identified and recorded.

Thus, special attention should be taken of requests which are made repetitively, for example by persons admitted to psychiatric care without their consent, beyond including them in the nursing liaison file or the transfer register, to ensure that information is transferred between healthcare teams.

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Handling requests is primarily based on the fundamental rights of detainees and also on the quality of management of places of deprivation of liberty and transparency within the institution. One notes that even if there have been positive developments in acknowledging this right, actuality has not yet reached satisfactory level and progress in a number of areas remains to be made.

This quite simply has to do with the dignity of the imprisoned person. Undoubtedly the appointment of a third party as mediator, tempering and clarifying, would meet this essential need. They could pay attention to the weakest, most fragile and those who have been forgotten.

Section 5

“Dear Contrôleure générale…”

Letters received

Issues relating to being placed in an individual cell

“Dear Sir or Madam,

“I am addressing this letter to you if I may because we need your help urgently, here at the G remand prison.

"We have been informed that the cells are going to be doubled up and this is unthinkable.

"The prison is new and the cells are therefore built to European standards being 9 m² per detainee and now they want to put two of us in but as you could see on your last inspection the cells are really too small for two!

"Also, you will have noticed that this prison is quiet and that there is respect for prison staff but the buildings are not adapted for larger numbers. Already with just 82 detainees some of us do not have access to physical development sessions and the same is the case for the library and is the same for work. In one year there has only been one week of workshop work.

"Since we have taken up residence in new premises we have regained our human dignity. Personally I find that being on my own enables me to think about myself and move forward avoiding rackets and power struggles and it’s just got to stay like that!

"Additionally for those so wishing there is the possibility of doubling up but this is at the detainee’s goodwill and above all is not imposed.

"As unfortunately I've known other remand prisons I can tell you that G is exemplary, tensions between detainees are marginal and warders listen to you. Here if you call a warder they come quickly as opposed to other remand prisons. Now if you were to double the numbers I strongly doubt that the prison staff would be able to be available for listening with this excess work.

"Every day in the media I constantly hear tell of recidivism, rehabilitation and promiscuity; I, for example know why I am a recidivist, it’s because I have lived like an animal 5 to a cell, keeping a watch out for the others even at night For me it was a shock, above all as I was a tradesman and father of a large family. Those conditions of detention that we have had to experience have created hate towards this system for which I have paid my taxes like other citizens and because I've made a mistake in my life they've treated me like a curiosity.

"Now in these new premises, I have really changed. I feel that I have been punished because I have done wrong and that now they are giving me the opportunity to rebuild my life.

"I also think that the fact of being alone for some people, forces them to get out of their cell to talk to other people who would otherwise remain enclosed taking pills.

“I just can't understand why they really want to double up cells when the law says that they have to be 9 m² per detainee. We're here because we have broken the law and it makes you

wonder why the State makes a mockery of European law to the detriment of the lives of human beings. Additionally, this way of going about things does not solve the problem of prison overpopulation but just shuffles it around.

"I sincerely hope that you are going to be able to help us before it's too late and I hope also that my statement will be useful to you.

"We really need you to stop cells being doubled up.

"Thank you.

"I look forward to hearing from you.

"Yours sincerely…"

Rehabilitation procedures

"Dear Madam,

"I am currently imprisoned in M and I am writing to you as I am having a number of problems in this institution.

« (...) For more than a year I have been doing everything to prepare for a reduction in my sentence and I have tried everything for my rehabilitation, but in vain. I asked for a transfer to R over two years ago and I finally signed my transfer on...... 2014 since when I have been waiting for them to transfer me. My friend has written to the director at M so that he can make all necessary provisions to speed up my transfer so that I can continue my working rehabilitation. I've had no reply from him or an interview to tell me what my possible date of transfer might be.

"I'm doing my sentence without causing any problems I'm paying my debt to society and avoiding problems. I have been sentenced to be deprived of my liberty but not of my rights.

"For over five years I've done everything necessary to refer and look forward to my life outside but the prison authorities do everything they can to demotivate me, they should encourage me and help me towards my leaving but they prefer to belittle me. I am someone who doesn't give any problems and my behaviour is good. I have swallowed my pride, accepted humiliation and kept my mouth shut concentrating on my future plans. I'm moving forward, which helps me to carry on.

"In ...2013 alone in preparing to leave prison, I found an employer with the help of my friends and family and therefore I made an application for permission to leave, to employment, as I have already done two thirds of my sentence and I qualified in ...2014 without anybody telling me about it. The prison rehabilitation and probation adviser (CPIP) has all of the documents that I have supplied to her (I handed the work over to her) for the sentencing commission (CAP) in ...2013, the reply to which was "rejected" because first you have to have a sports pass and then you can ask for an employment pass. The CPIP has told me nothing about the procedures that I need to follow. I took it all on myself and finally went out on a sports pass on ... 2013. I really appreciated every moment of this wonderful day at liberty and then nothing for another eight months.

"I asked for the CAP on ... 2013 an employment pass, which was "adjourned" because the employer enquiry was not made and yet they had had all the documents for (several months). I did all of the work again, myself and once again I had a refusal. The CPIP had been transferred without knowing what they were going to do about my application and my case file had been put on one side. So I took the initiative of asking for an employment pass again and a temporary CPIP took up my file again whilst awaiting the arrival of another full-time CPIP. A pass which was once again adjourned as the employment enquiry still had not been made!

"When the enquiry was handed in ... 2014 it was not convincing so I asked the employer to give up my case as they needed to supply more and more documents. The authorities knew very well that this employer wouldn't do and yet the latter was serious. But they left me in hope for six months. I impatiently waited for the decision of the CAP which was not capable of telling me directly to look for another job and made me lose a lot of time and energy. I have often felt depressed. Full of thoughts rushing around my head I have been fully involved and my friends and family have being completely committed but nothing has succeeded. What do I need to do to improve my situation? I have thought of going on hunger strike to express my lack of understanding but I don't think that would be the right solution.

"In spite of all that I have had to suffer both emotionally and psychologically I continue to fight because I know that the end of my suffering is close. It is really difficult and if you are not strong mentally you crack up and give in. I am fighting for rehabilitation and I am fighting every day to hold on.

« (...) so I found an employer and sent the contract to the new CPIP*,* the director and to the sentencing court. And so I asked for an employment pass from the CAP on ... 2014 which was adjourned because there had been no employer enquiry! I asked myself how an employment pass could be offered without the enquiry being made and the CPIP should have dealt with the enquiry and then offered my case file to the CAP. I'm not mad at the CPIP, as it didn't know me and this was already the third CPIP. Then an enquiry was ordered by the sentencing court. I will spare you the slowness and the lack of motivation shown by the CPIP who slowed down my application by sending a report to the sentencing court without documents in proof relating to information given by the employer at the time of interview. It did all it could to discourage the employer for two and a half hours showing them my criminal record and giving them the reasons why I had been sentenced. The CPIP could have been taking my employer as a possible partner. You take on this work of adviser because you believe in rehabilitation. If that's not the case you should think about another job!

"I finally left prison to meet my employer (...) Then, I left prison on a family pass for one single day. Then I asked for another family pass (...) "Adjourned" because the court couldn't understand why I was asking (to go) to my mother and not to my girlfriend. When I went out, in the month of.... the fact that I was going to my mother's place presented no problems. The fact that they wanted to meddle in my private life again made me really angry. So I have had enough of them wasting my time. I cancelled everything.... my pass, my application for reduction in sentence in ... 2014. I'm not going to ask them for anything else, no more permits, no more family meetings, no more visits, no more UVFs. I think that I have made enormous efforts and got nothing back in return. I just ask that they comply with and apply the law. At the end of the day, I'm just going to wait peacefully for my transfer or I will peacefully wait for my finally leaving prison.

"I am in a state of complete incomprehension. I am doing all I can to rehabilitate myself and I am a dynamic, motivated person who never gives up. But they just do everything to discourage me, dissuade me and nothing is done to encourage me but rather to shove me down. Why?

"I have found and met an employer and I have a good file and I keep myself to myself and every morning for the past ....years. I have been working in the prison shop and in the afternoon doing sports... I have met a qualified psychiatrist for reducing my sentence. I have tried to follow the procedures but I can see that the road is long and full of pitfalls towards liberty.

"Why do these authorities want to keep me at M when my transfer to R has been agreed? What are they waiting for? Are they trying to test my resistance? They are playing about with my nerves; I am a patient person but my patience has its limits.

« (...) I have yet another CPIP. I refuse to start telling the story of my case to another CPIP. My case has been messed up by a lack of human resources and I shouldn't have to suffer because of this dysfunction and yet my preparation to leave prison is partly bound to fail because of changes in the CPIP. One says it's white, the other says it's black and as for me I can say nothing because they don't hear me or don't understand me. (...)

Thank you for the attention that you give to my case, yours sincerely…"

"Doubly Victim"

"Dear Sir or Madam.

"(...) I was attacked whilst exercising resulting in five fractures to my face. The fact is that I have been transferred to D for my safety and to keep me physically safe; but since when have victims been sent a few kilometres from their home, without visitors or exercise and all this because I'm not from the town of D. and I'm going to be attacked if I leave!? And the attacker is still at F without a care in the world, he's got no problems, everything is going well for him; he is near his own home town, he's got visits, he's got everything. In that case if I was going to attack people at least I'd be happy, no transfer, or anything. Why is it me that's been transferred? Why is it me and my family that have the problems? I don't understand! (…)

"It's been almost 3 months that I have been in so-called transit (...) I don't leave my cell. I take pills to get over all that, here I'm in even more danger than I was at F. This is an SOS that I am writing and not a letter. Do what is necessary please you are my last hope if not I'm going to have to do something extremely serious however it's the only solution I'm afraid (...). If I only had six months to do I would do them here. I don't care, but I'm afraid of doing something that is irreversible to myself or to others.

"(...) I just want to be transferred, that's not a lot to ask.

"(...) Thank you for paying attention to my letter even if it appears confused because I'm confused too as well as my situation.

"Yours sincerely"

My son's hospitalisation

"Dear Madam.

"I already knew your organisation as I have read an article which appeared in the "UNAFAM" review "*Un autre regard*". It is important to be concerned about psychiatric hospitals which are in a way places of deprivation of liberty. But in fact it is not (or rarely) the patients who are able to contact you. Families on the other hand can do so; they don't actually see the problems of the family members but they are capable of understanding their problems and their anxieties. They cannot have an overall impression as each case is different but by their regular visits to the hospital environment they can have some understanding of the life (which is often difficult) in hospital and problems which are common to a number of patients. Relatives are also aware of the difficulties that staff have (doctors and healthcare providers) and aware of the wish to help but also, without accusing them, of their powerlessness in many cases; a powerlessness which one would prefer sometimes that they did not hide. At the moment in a number of cases there are no solutions to be found. On the other hand, contacts between families and doctors are still somewhat difficult and rather infrequent even if some progress must be acknowledged.

"In relation to my son, who has had schizophrenia for about 20 years (one form of schizophrenia from among many others) the problem is still the very pronounced unwillingness

that he has always had to be in a medical environment and to be treated. The healthcare workers tell me that they have been working to improve matters but there have been no results.

"For about three years my son has been monitored very regularly at the V Hospital and I believe this is at the request of the prefecture. What happened is that he heard voices and attacked somebody in the street, luckily without too many physical consequences for them. I would not defend my son if the attack had been to steal from or hurt this person but there is no "understandable" reason explaining this attack. My son had "heard" this person insulting him in a moment of delusion. This phenomenon of hearing voices happens with schizophrenics and luckily does not always lead to violent behaviour.

"At the trial (we had to find a lawyer and pay them) he was acknowledged as being ill and regular medical monitoring was set up (whether or not this was the consequence of the court judgement I've never really had confirmation).

"Since then he has to regularly go to hospital to take medicines and if he doesn't come they go to look for him at home and he is taken back into care. This happens often. As, in addition, he is still against medical surveillance he is sometimes placed in isolation because he is violent.

"He can't see what use a treatment might be whose effectiveness he doesn't experience. Quite to the contrary, he attributes his problems (isolations, memory difficulties, tiredness etc.) to the treatment. It has to be admitted that current treatment does not always give results in certain cases of schizophrenia.

"And so we are (and he is) in an impasse

"Refusing treatment and therefore refusing to go to hospital for automatic rehabilitation (sometimes placed in isolation) not understood are experienced as a violation of his liberty.

"Unfortunately this process has become cyclical. I saw that at the start of his symptoms when he was about 20 years old (my son is now 45) that after hospitalisation he was better and went back to work, but they never warned me that regular treatment would be needed (which would at that time no doubt have been light treatment) that would help him. Then things got worse.

This is more a witness statement than an accusation against the hospital. The illness is complex and long-lasting. To hope for any results a two-way conversation needs to be added to just giving medicines (difficult it's true) and attempts made to keep the patient occupied and not let them be completely idle. Could this be a solution? With some patients it is true and this is very difficult but if it were possible to work in this direction costs could also be avoided as hospitalisation is expensive.

"I could say a lot more and I could, if you wish, later develop certain points and tackle other problems.

“Yours faithfully.”

Section 6

Places of Deprivation of Liberty in France: Statistics

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This data uses principal statistical sources including data on measures of deprivation of liberty and the persons concerned. Sources were described in more detail in section 10 of the *Contrôleur général des lieux de privation de liberté*'s reports for 2009 and 2011. Changes noted were commented upon in these reports to which the reader is invited to refer.

As for the other reports, this edition updates the same basic data on the basis of availability of the various sources. The tables or graphs are accompanied by informative notes on methods and short comments.

Bringing together data relating to the deprivation of liberty in the penal area in one single document (custody and incarceration) and in the health area (psychiatric care without consent) and in the area of deportation of foreign nationals (the execution of measures and detention in illegal immigration centres) should not mask the fact that there are important differences in statistical concepts characterising them.

It is still important to ask oneself what sort of numbering methods are being used: moving from liberty to deprivation of liberty (flows of persons or measures) or indeed counting persons deprived of their liberty at any given moment. One well understands that the connection between the two is not at all the same according to the areas which arise and from the duration of deprivation of liberty which differs widely for remand, detention, illegal immigrant detention or care under constraint. It is not possible with the state of the available sources to make a parallel of these sizes for the various places of deprivation of liberty in a single table.

1. Deprivation of Liberty in Criminal Cases

1.1 Number of persons implicated in offences, police custody measures and persons imprisoned

Source: Etat 4001, Ministry of the Interior and ONDRP, series B. Aubusson.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences), Metropolitan France.

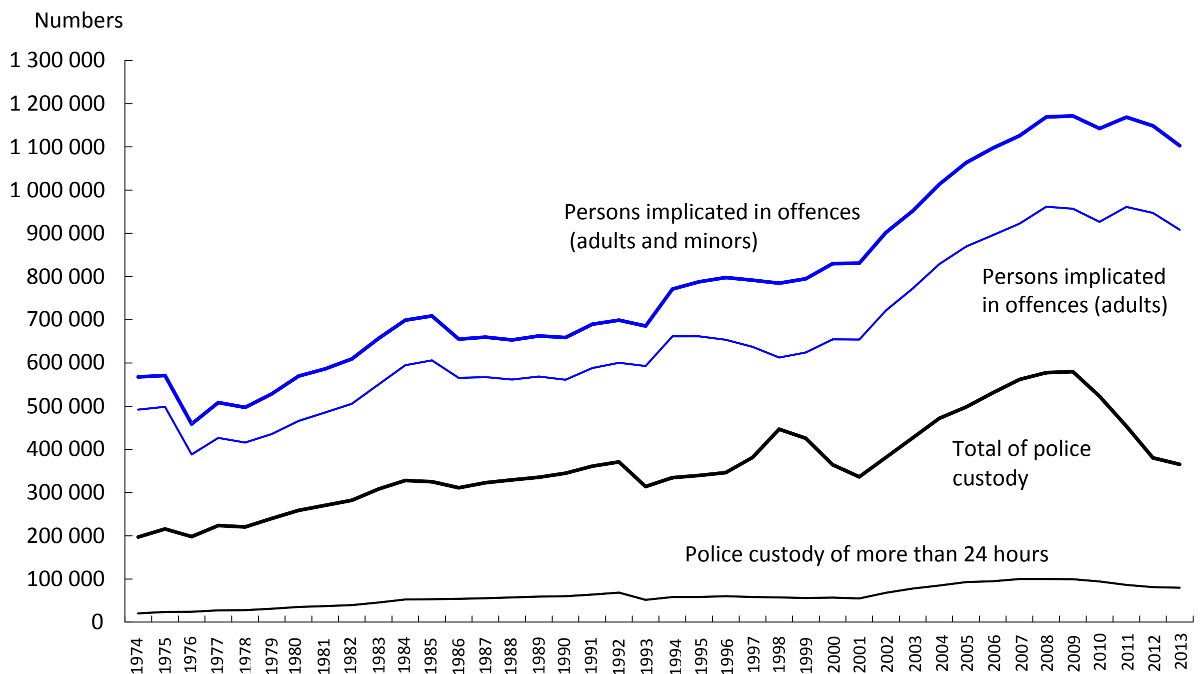
Five-yearly averages from 1975 to 1999, followed by annual results.

PERIOD	PERSONS IMPLICATED IN OFFENCES	POLICY CUSTODY	of which less than or equal to 24 hours	of which more than 24 hours	PERSONS IMPRISONED
1975-1979	593,005	221,598	193,875	27,724	79,554
1980-1984	806,064	294,115	251,119	42,997	95,885
1985-1989	809,795	327,190	270,196	56,994	92,053
1990-1994	740,619	346,266	284,901	61,365	80,149
1995-1999	796,675	388,895	329,986	58,910	64,219
2000	834,549	364,535	306,604	57,931	53,806
2001	835,839	336,718	280,883	55,835	50,546
2002	906,969	381,342	312,341	69,001	60,998
2003	956,423	426,671	347,749	78,922	63,672
2004	1,017,940	472,064	386,080	85,984	66,898
2005	1,066,902	498,555	404,701	93,854	67,433
2006	1,100,398	530,994	435,336	95,658	63,794
2007	1,128,871	562,083	461,417	100,666	62,153
2008	1,172,393	577,816	477,223	100,593	62,403
2009	1,174,837	580,108	479,728	100,380	59,933
2010	1,146,315	523,069	427,756	95,313	60,752
2011	1,172,547	453,817	366,833	86,984	61,274
2012	1152159	380374	298,228	82,146	63,090
2013	1,106,022	365,368	284,865	80,503	55,629

1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned

Source: Etat 4001, Ministry of the Interior and ONDRP, series B. Aubusson.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences). Bad cheques are also excluded for reasons of homogeneity, Metropolitan France.



Note: When counting persons involved in criminal activity or an offence in police investigative procedures ("persons implicated"), one single person may be involved in any one year for different cases and counted several times. For police custody, the charges decided upon (there being the possibility of a number of successive charges for one single person in a case). The source excludes implication for contraventions, driving offences and contraventions uncovered by the specialist services (customs, work inspection, fraud investigation etc.)

The "Persons imprisoned" column shows the decision at the end of the custody period, the majority of measures resulting in release followed or not afterwards by court proceedings. The persons "imprisoned" have, by necessity, been presented before the court at the end of custody (brought before the court) but all of the referred accused are not then imprisoned by court order. The court or jurisdiction may decide to free the accused. Counting those imprisoned in police statistics presents a few problems; in some places of police jurisdiction all referred accused are counted or have been counted as imprisoned unless the investigating police department has knowledge of the results of the appearance before a judge or public prosecutor or possibly the court appearance where individuals are held by another department (when a case is filed before the courts). It is however somewhat surprising to see existing, at criminal investigating department level (national police and gendarmerie) the collection of statistical information relating to criminal justice. But for the time being there are no equivalent statistics at public prosecutor level.

1.3 Number of Police Custody Measures and Rate of Use according to Type of Offence

Source: Etat 4001, Ministry of the Interior and ONDRP, series B. Aubusson.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences), Metropolitan France.

Type of offence	1994			2008			2013		
	Persons implicated in offences	Police custody measures	%	Persons implicated in offences	Police custody measures	%	Persons implicated in offences	Police custody measures	%
Homicide	2,075	2,401	115.7%	1,819	2,134	117.3%	1,889	2,129	112.7%
Procurement	901	976	108.3%	759	768	101.2%	917	824	89.9%
Thefts with violence	18,618	14,044	75.4%	20,058	18,290	91.2%	20,568	17,351	84.4%
Drug trafficking	13,314	11,543	86.7%	23,160	15,570	67.2%	16,751	12,180	72.7%
Burglaries	55,272	34,611	62.6%	36,692	27,485	74.9%	42,915	28,551	66.5%
Thefts from Vehicles	35,033	22,879	65.3%	20,714	16,188	78.2%	17,803	11,573	65.0%
Sexual assaults	10,943	8,132	74.3%	14,969	12,242	81.8%	17,681	11,086	62.7%
Rape and Indecent Assault	21,535	10,670	49.5%	42,348	29,574	69.8%	37,574	22,520	59.9%
Car theft	40,076	24,721	61.7%	20,764	15,654	75.4%	14,514	8,367	57.6%
Arson, explosives	2,906	1,699	58.5%	7,881	6,249	79.3%	5,676	3,208	56.5%
Other offences against morality	5,186	2,637	50.8%	12,095	8,660	71.6%	9,335	4,877	52.2%
Other thefts	89,278	40,032	44.8%	113,808	61,689	54.2%	116,089	47,587	41.0%
Forged documents	9,368	4,249	45.4%	8,260	4,777	57.8%	12,174	4,979	40.9%
Foreign nationals	48,514	37,389	77.1%	119,761	82,084	68.5%	26,242	9,642	36.7%
Bodily harm	50,209	14,766	29.4%	150,264	73,141	48.7%	150,797	53,029	35.2%
Weapons	12,117	5,928	48.9%	23,455	10,103	43.1%	24,022	6,323	26.3%
Shoplifting	55,654	11,082	19.9%	58,674	20,661	35.2%	63,091	16,348	25.9%
Use of drugs	55,505	32,824	59.1%	149,753	68,711	45.9%	181,199	43,620	24.1%
Destruction, criminal damage	45,591	12,453	27.3%	74,115	29,319	39.6%	52,790	12,663	24.0%

Other personal attacks	28,094	5,920	21.1%	65,066	20,511	31.5%	69,773	15,728	22.5%
Fraud, breach of trust	54,866	17,115	31.2%	63,123	21,916	34.7%	59,626	11,454	19.2%
Fraud, financial offences	40,353	6,636	16.4%	33,334	9,700	29.1%	39,281	6,017	15.3%
Other general police matters	15,524	3,028	19.5%	6,190	926	15.0%	7,414	961	13.0%
Family children	27,893	1,707	6.1%	43,121	4,176	9.7%	55,857	3,382	6.1%
Unpaid cheques	4,803	431	9.0%	3,135	457	14.6%	3,270	156	4.8%
Total	775,701	334,785	43.2%	1,172,393	577,816	49.3%	1,106,022	365,368	33.0%

Note: In drawing up this table, the headings for the offence names (known as “Index 107”) have been restated in a wider way to attenuate breaks relating to changes in Index 107 and changes in recording practices. Under the heading "unpaid cheques" are included cheques without funds, before they were decriminalised in 1992. The large number of persons arrested was shown under this heading (over 200,000 in the middle of the 1980s) and so as not to obscure results relating to custody, very seldom used in that respect, this table has been drawn up excluding them.

Comments: The table by category of offence confirms the general effect of the Act of 14th April 2011 which had been preceded by the decision by the Constitutional Council (30th July 2010) on a question of constitutional priority relating to articles in the criminal procedural code relating to custody. After a maximum recorded in 2009, use of this measure decreased from 2010 for all types of offences but differences still remain between them. For offences showing the highest rate of appeal in custody (the first six lines in the table) the reduction in this rate is proportionately smaller. It is also worth remarking and in compliance with legislative developments that the decrease in custody, in absolute numbers and by proportion primarily concerns offences relating to foreign nationals staying in the country and the use of drugs which respectively contribute 34% and 12% in the total drop between 2008 and 2013. In the case of foreign nationals’ residence, the drop has been extended under the effect of its replacement by one used for illegal immigrant verification (please see section 3.1).

1.4 Placements in prisons are according to criminal category and estimates of placements in detention ("flow").

Source: "Quarterly Statistics of the Population dealt with in Penal Institutions", French Ministry of Justice, Prisons Administration Department. *PMJ5* (*Bureau des études et de la prospective. Sous-direction des personnes placées sous main de justice* ["Office for research and advance planning of the prisons administration department vice-directorate for persons placed in custody"]) Series: B. Aubusson

Field: Prison institutions in the metropolis (1970-2000) and then for France as a whole

Period	Unconvicted prisoners: immediate hearing	Unconvicted prisoners: preparation of case for trial	Convicted prisoners	of which imprisoned Convicted prisoners Placed in Detention	Imprisonment for debt(*)	Overall
Metropolis						
1970-1974	12,551	44,826	14,181		2,778	74,335
1975-1979	11,963	49,360	16,755		2,601	80,679
1980-1984	10,406	58,441	14,747		1,994	85,587
1985-1989	10,067	55,547	17,828		753	84,195
1990-1994	19,153	45,868	18,859		319	84,199
1995-1999	19,783	37,102	20,018		83	76,986
2000	19,419	28,583	17,192		57	65,251
France as a whole						
2000	20,539	30,424	17,742	not defined	60	68,765
2001	21,477	24,994	20,802	not defined	35	67,308
2002	27,078	31,332	23,080	not defined	43	81,533
2003	28,616	30,732	22,538	not defined	19	81,905
2004	27,755	30,836	26,108	not defined	11	84,710
2005	29,951	30,997	24,588	not defined	4	85,540
2006	27,596	29,156	29,828	24,650	14	86,594
2007	26,927	28,636	34,691	27,436	16	90,270

2008	24,231	27,884	36,909	27,535	30	89,054
2009	22,085	25,976	36,274	24,673	19	84,354
2010	21,310	26,095	35,237	21,718	83	82,725
2011	21,432	25,883	40,627	24,704	116	88,058
2012	21,133	25,543	44,259	26,038	47	90,982
2013	21,250	25,748	42,218	22,747	74	89,290

(*) Imprisonment of solvent persons for non-payment of certain fines (contrainte judiciaire) as from 2005

Note: The numbers counted are by imprisonment judgement. This legal placement under the responsibility of a penitentiary institution does not always involve accommodation. According to an estimate by the Prison Authorities Department (PMJ5*)* relating to the whole of France, placements in detention (imprisonment without reduction of sentence *ab initio* or within seven days) represent 78% of imprisonments in 2013. This percentage was still 94% in 2006. Before the introduction, at the start of the 2000's, of electronic surveillance for detainees (Act of 19th December 1997), it was almost 100%.

This estimate of placements in detention enables, from 2006 in this table, a series to be offered for those arrested and sentenced, placed in detention, that is, according to the methodology used, not having a reduction of sentence *ab initio* or within the seven days following imprisonment (external placement or placement under electronic surveillance).

Comments: This new series enable us to see that the new level of placements in detention of those sentenced has not fundamentally changed since the development of sentence reduction. The long-term drop in placements in temporary detention in the context of committal proceedings seems to have arrived at a ceiling and those making their appearance in court immediately are also stabilising. The drop in "imprisoned" in police statistics has not been confirmed (but the definition is not the same). Finally placements in detention of "remand prisoners" (in the context of committal proceedings or immediate appearance in court before final sentencing) are clearly the majority among those detained.

References: These series, as with all of those from the prison statistics, have been reconstituted by the author for the oldest period from printed sources. They are now regularly distributed by the studies and estimates office of the prison administration (DAP-PMJ5*)* in a document entitled "Statistical series of persons appearing before the courts" ("*Séries statistiques des personnes placées sous main de justice*"*).* [134]

In relation to temporary detention, other series are presented in the commission report for 2013 relating to monitoring temporary detention (March 2014). [135]

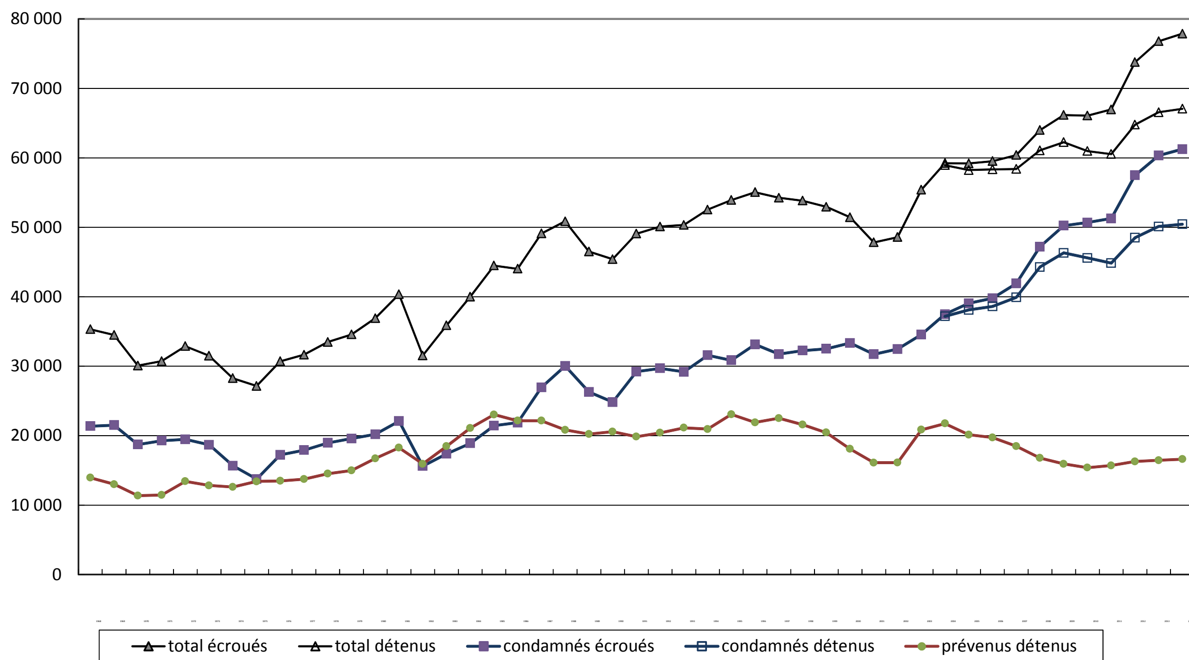
[134] *Statistical series available for 2014 on the Ministry of Justice website at:* http://www.justice.gouv.fr/prison-et-reinsertion-10036/les-chiffres-clefs-10041/series-statistiques-des-personnes-placees-sous-main-de-justice-26147.html

[135] *The 2013 report from the commission monitoring temporary detention is available on the CESDIP website at:* http://www.cesdip.fr/IMG/pdf/Rapport_CSDP_2013.pdf

1.5 Population serving sentences or on remand and prisoners on 1st January of each year ("stocks")

Source: Monthly Statistics of the Population of Persons Serving Sentences or on Remand and Prisoners in France, French ministry of Justice, *Annuaire statistique de la Justice* and the Prisons Administration Department. *PMJ5.*

Field: All penal institutions, the whole of France (progressive inclusion of French overseas territories as from 1990, completed in 2003).



écroués = Total persons on remand and persons serving sentences

détenus = Total prisoners

Condamnés écroués = Convicted persons serving sentences

Condamnées détenus = Convicted prisoners

Prévenus détenus = Prisoners on remand

Note: as of 2004, the gap between the two curves for those sentenced, represents all of those sentenced and imprisoned under remission of sentence without accommodation (placement externally or placement under electronic surveillance); this gap will be found for total figures of those imprisoned. Remand prisoners (for immediate committal or court appearance, awaiting sentence or final order) are all included.

Comments: Over the past 40 years, the growth in the number of detainees sentenced has not stopped growing. The growth profile of the number of "remand" detainees (detained before final judgement) is different: its stabilisation between 1985 and 1997 and then its drop up until 2010 (with a sharp rise from 2002 to 2004), shows a slight rise, less marked than that for those sentenced.

1.6 Distribution of Convicted Persons according to the Duration of the Sentence being served (including reduced sentencing without accommodation)

Source: "Quarterly Statistics of the Population dealt with in Penal Institutions", French Ministry of Justice, Prisons Administration Department, *PMJ5* (*Bureau des études et de la prospective. Sous-direction des personnes placées sous main de justice* ["Office for research and advance planning of the prisons administration department vice-directorate for persons placed in custody"])

Field: all persons imprisoned; 1970-1980, penal institutions in Metropolitan France, the whole of France from 1980 (progressive inclusion of French overseas territories as from 1990, completed in 2003).

Year	Duration of the sentence: number of prisoners					Percentage distribution			
	Less than 1 year	At least 1 year 3 years	At least 3 years 5 years	5 years and over	All convicted prisoners	Less than 1 year	At least 1 year 3 years	At least 3 years 5 years	5 years and over
1970	6,239	5,459	1,660	4,616	17,974	***34.7%***	***30.4%***	***9.2%***	***25.7%***
1980	7,210	5,169	1,713	5,324	19,416	***37.1%***	***26.6%***	***8.8%***	***27.4%***
1980	7,427	5,316	1,791	5,662	20,196	***36.8%***	***26.3%***	***8.9%***	***28.0%***
1990	6,992	5,913	3,084	8,642	24,631	***28.4%***	***24.0%***	***12.5%***	***35.1%***
2000	8,365	6,766	4,139	13,856	33,126	***25.3%***	***20.4%***	***12.5%***	***41.8%***
2010	17,445	14,174	5,628	13,442	50,689	***34.4%***	***28.0%***	***11.1%***	***26.5%***
2011	17,535	14,780	5,709	13,248	51,272	***34.2%***	***28.8%***	***11.1%***	***25.8%***
2012	20,641	17,226	6,202	13,428	57,497	***35.9%***	***30.0%***	***10.8%***	***23.4%***
2013	21,961	18,169	6,647	13,563	60,340	***36.4%***	***30.1%***	***11.0%***	***22.5%***
2014	22,213	18,288	6,868	13,902	61,261	***36.3%***	***29.9%***	***11.2%***	***22.7%***

Note: This analysis of those sentenced includes those whose sentence has been reduced, without accommodation. On 1 January 2014, out of the 61,261 sentenced to imprisonment, 10,808 were not detained under reduction of sentence and 2,130 were in semi-liberty or placed in external accommodation. Therefore 48,373 of those sentenced were detained without reduction of sentence: the analysis of this group by the quantum of sentence being carried out is not shown by this statistical source

Comments: This table shows the trend reversing from 2000. During the last three decades of the 20th century, the growth in the number of those imprisoned serving long sentences was constant and marked. The voluntary policy of developing the reduction of short sentences (firstly less than one year and then less than two years) following regrowth in short sentencing demonstrated by the statistics of sentencing, whilst long sentences have stabilised at a high level. The reconciliation between counting movements and those in stock shows that the

average duration of imprisonment doubled between 1970 and 2008 (2009 CGLPL Report, Page 251, note 2 in the French version). Indicators then continued to increase to 10.4 months in 2013. This increase is confirmed for the average duration of detention within its strict meaning: this increased from 8.6 months in 2006 to 11.5 months in 2013 (DAP-PMJ5.2014).

Additional reference: "Reductions of sentence: should they be counted differently? Long term prospects, " *Criminocorpus* 2013 (http://criminocorpus.revues.org/2477).

1.7 Incarceration densities and over-occupation of prison institutions

Statistical data used by prison authorities, total number of detainees at any given time and operational capacity of institutions, enables them to calculate an "incarceration density" defined as the comparison between these two indicators (numbers present per 100 operational places).

The density for all institutions - 116.6 on 1 January 2014 - has no great significance as the indicator varies a great deal according to the type of institution: 93.9 for detention centres and detention centre quarters, 80.24 long-stay prisons. 72.84 for institutions for minors, whilst for remand prisons and remand prison wings the average density was 134.5.

Additionally this average by type of institution includes variations within each category:

- of the 109 sentencing institutions only seven had a density higher than 100 including four detention centre wings abroad and two semi-liberty centres and a centre for reduced sentences in the Ile de France. In Metropolitan France this over-occupation related to 280 detainees being 1.4% of detainees placed in sentencing institutions.

- of the 138 remand prisons and remand prison wings, 30 had a density lower than or equal to 100 and 108 had a density greater than 100 of which 39 had a density higher than 150. Six remand prisons and remand prison wings exceeded 200, that is a population of detainees more than double the number of operational places (four in metropolitan France and two overseas).

Over-occupation of prison institutions is therefore limited to remand prisons by application of *numerus clausus* to sentencing institutions which are a little below declared operating capacity. For remand prisons, the increase in operational capacity (+ 2,110 places between 1 January 2005 and 1 January 2014) was less than that of the number of detainees (+ 4,517) and density is therefore higher in 2014 than in 2005.

Over-occupation of an institution has consequences for all detainees in it, even if some cells have normal occupation (arrival wings. isolation wings etc.). It is therefore relevant to note the proportion of detainees based on the percentage of occupation of the remand prison where they are. On 1 January 2014, the great majority were affected by this situation of over-occupation (91%); more than one third (36%) of detainees in remand prisons or remand prison wings were in institutions whose density was greater than or equal to 150.

Reference: “Prison statistics and total incarceration, between clearance and over occupation (1996-2012)”, *Criminocorpus 2014* (http://criminocorpus.revues.org/2734).

1.8 Distribution of detainees in remand prisons by institution density

Source: Numbers, monthly statistics of persons imprisoned (DAP-PMJ5), DAP-EMS1, operational places.

Field: The whole of France, remand prisons and remand prison wings, detainees.

On Remand on 01/01	Total		Density>100		Density>120		Density>150		Density>200		
	Number of detainees	%	Number of detainees	% of total %	Number of detainees	% of total %	Number of detainees	% of total %	Number of detainees	% of total %	Number of operational places
2005	41,063	100 %	38,777	94%	27,907	68%	12,227	30%	3,014	7%	31,768
2006	40,910	100 %	36,785	90%	23,431	57%	10,303	25%	1,498	4%	32,625
2007	40,653	100 %	36,337	89%	27,156	67%	10,592	26%	1,769	4%	31,792
2008	42,860	100 %	40,123	94%	33,966	79%	13,273	31%	2,600	6%	31,582
2009	43,680	100 %	41,860	96%	35,793	82%	14,324	33%	1,782	4%	32,240
2010	41,401	100 %	37,321	90%	25,606	62%	8,550	21%	1,268	3%	33,265
2011	40,437	100 %	32,665	81%	27,137	67%	4,872	12%	549	1%	34,028
2012	43,929	100 %	38,850	88%	34,412	78%	9,550	22%	1,853	4%	34,228
2013	45,128	100 %	42,356	94%	35,369	78%	11,216	25%	2,241	5%	33,866
2014	45,580	100 %	41,579	91%	37,330	82%	16,279	36%	1,714	4%	33,878

Explanation: on 1 January 2005, out of 41,063 detainees in remand prisons or remand prison wings, 38,777 were in institutions with a density greater than 100, being 94%, of which 27,907 were in institutions with a density greater than 120 (68%).

2. Compulsory Committal to Psychiatric Hospitalisation

2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2007 to 2011

Source: DREES. SAE, ("Annual Statistics on Health Institutions"), table Q9.2.

Field: All institutions, Metropolitan France and French overseas departments.

Mode of hospitalisation	Year	Number of patients	Number of admissions	Number of days
Hospitalisation at the request of a third party (HDT) since the Act of 5th July 2011 this has now become committal for psychiatric treatment at the request of a third party (ASPDT)	2006	43,957	52,744	1,638,929
	2007	53,788	58,849	2,167,195
	2008	55,230	60,881	2,298,410
	2009	62,155	63,158	2,490,930
	2010	63,752	68,695	2,684,736
	2011	63,345	65,621	2,520,930
Hospitalisation by court order (HO) (art. L.3213-1 and L.3213-2) since the Act of 5th July 2011 this has now become committal for psychiatric treatment at the request of a representative of the State (ASPDRE)	2006	10,578	12,010	756,120
	2007	13,783	14,331	910,127
	2008	13,430	14,512	1,000,859
	2009	15,570	14,576	1,083,025
	2010	15,451	15,714	1,177,286
	2011	14,967	14,577	1,062,486
Hospitalisation by court order / ASPDRE according to art. 122.1 of the CPP and article L3213-7 of the CSP	2006	221	146	56,477
	2007	353	303	59,844
	2008	453	458	75,409
	2009	589	477	104,400
	2010	707	685	125,114
	2011	764	783	124,181
Hospitalisation by judicial court order According to article 706-135 of the CPP	2006			
	2007			
	2008	103	104	6 705
	2009	38	23	18 256
	2010	68	39	9 572
	2011	194	251	21 950

The table continues on the following page …/…

Mode of hospitalisation	Year	Number of patients	Number of admissions	Number of days
Provisional Committal Order	2006	518	1 295	22,929
	2007	654	1 083	31,629
	2008	396	411	13,214
	2009	371	378	14,837
	2010	370	774	13,342
	2011	289	317	14,772
Hospitalisation according to art. D.398 of the CPP (prisoners)	2006	830	1,047	19,145
	2007	1,035	1,189	26,689
	2008	1,489	1,717	39,483
	2009	1,883	2,254	48,439
	2010	2,028	2,493	47,492
	2011	2,070	2,411	46,709

Note: Statistical information relating to hospitalisation without consent was previously collected from departmental commissions for psychiatric hospitalisation (please see 2009 CGLPL Report, page 258 for the French version). The year 2006 marks the introduction in the Statistics for hospital institutions of a table relating to methods of psychiatric hospitalisation. Act dated 5thJuly 2011 has only been included in hospitalisation provisions for 2012, with, at the same time a change in the way data is collected which does not ensure that they are comparable with previous years. Whilst waiting for reconstruction, this source is not immediately available.

Comments: The series in this table were commented upon in the 2011 report (pages 314 to 316 in the French version). The 2009 report (page 260 in the French version) set out the ranges of departmental commissions and their changes between 1997 and 2005.

2.2 Hospitalisation without Consent or under restraint

Source: *Agence technique de l'information sur l'hospitalisation* (French Agency for Information on Hospitalisation), *PMSI,* (medical information system programme) statistics

Field: Metropolitan France and French overseas departments, public and private institutions, full hospitalisation.

In 2010:

Hospitalisation without Consent or under restraint	Number of stays	Number of days (thousands)	Number of patients	Average age	% men	% stays brought to an end
Hospitalisation at the request of a third party	76,733	2,898.3	62,842	42.6	54.4	60.6
Hospitalisation by court order	19,494	1,234.7	16,460	39.3	80.9	51.1
Hospitalisation of persons judged not to be criminally responsible	548	72.8	419	36.3	93.1	45.7
Provisional Committal Order	271	7.2	205	16.9	54.6	83.6
Hospitalisation of prisoners	1,682	32.8	1,365	32.0	93.9	88.7
Total	92,461	4,245.7	79,017	41.7	60.3	59.0

Source: ATIH : http://stats.atih.sante.fr/psy/mahos/nat/2010/tab8a.html

In 2011:

Hospitalisation without consent or under restraint	Number of stays	Number of days (thousands)	Number of patients	Average age	% men	% stays brought to an end
Hospitalisation at the request of a third party	74,585	2,553.9	60,709	42.7	54.5	61.6
Hospitalisation by court order	19,192	1,180.1	15,975	39.4	82.4	56.4
Hospitalisation of persons judged not to be criminally responsible	619	69.1	436	37.0	93.8	51.0
Provisional Committal Order	298	10.7	244	21.4	65.3	71.0
Hospitalisation of prisoners	1,747	34.3	1,390	32.4	94.0	89.2
Total	95,333	3,848.1	76,670	41.8	60.9	61.1

Source: ATIH : http://stats.atih.sante.fr/psy/mahos/nat/2011/tab8a.html

Note: For 2011, this table was distributed by the ATIH with categories that were in use before application of the Act dated 5th July 2011 that came into force on 1st August 2011.

In 2012 (after changing categories following the Act dated 5th July 2011)

Legal method of healthcare in full hospitalisation	Number of stays	Number of days (thousands)	Number of patients	Average age	% men
Admissions to psychiatric care by decision of a State representative (ASPDRE)	19,272	1,020.7	13,361	40.2	*83.1*
Psychiatric care for imminent danger	9,810	213.8	8,436	43.7	*54.1*
Committal for psychiatric treatment at the request of a third party (ASPDT)	69,664	2,039.4	52,528	42.9	*55.0*
Psychiatric care for persons deemed not to be criminally responsible	1,230	102.4	655	39.1	*91.0*
Psychiatric care in the context of a temporary committal order	360	11.2	277	22.3	*58.6*
Psychiatric care to detainees	2,401	51.5	1,905	33.0	*90.7*
Total psychiatric care without consent	101,457	3,439.1	74,034	42.1	*61.3*
Psychiatric care with consent	578,045	15,198.4	356,579	44.9	*50.0*

Source: ATIH http://stats.atih.sante.fr/psy/mahos/nat/2012/tab8a.html

In 2013.

Legal method of healthcare in full hospitalisation	Number of stays	Number of days (thousands)	Number of patients	Average age	% men
Admission to psychiatric care by decision of a State representative	19,879	1,061.2	13,375	39.9	*81.9*
Psychiatric care for imminent danger	17,698	417.8	14,657	43.6	*54*
Committal for psychiatric treatment at the request of a third party	70,475	2,131.6	52,155	42.4	*55.7*
Psychiatric care for persons deemed not to be criminally responsible	1,176	108.9	682	37.6	*94.1*
Psychiatric care in the context of a temporary committal order	647	16.6	433	29.1	*70.2*
Psychiatric care to detainees	2,639	55.9	2,086	32.8	*92.9*
Total psychiatric care without consent	111,245	3,791.9	79,860	41.8	*61.3*
Psychiatric care with consent	576,432	15,128	357,837	44.8	*49.9*

Source: ATIH http://stats.atih.sante.fr/psy/mahos/nat/2013/tab8a.html

Note: In these tables, which result from using individual anonymous files in the information systems medical programme, days of full hospitalisation are divided according to the legal method of care. A stay may comprise different sequences in this respect; a patient may have made several stays within one year (under the same regime or different regimes); the "total psychiatric care without consent" line is not therefore the total of the sub headings of these two columns. It enables us to say for example that in 2013, 79,860 patients were affected by at least one stay with sequence of care without consent.

The comparison of numbers of full hospitalisation days to the number of patients gives an indication of average length of stay (47 days for all patients having received treatment without consent in 2013). It should be emphasised that this method of calculation only concerns periods of hospitalisation during 2013 and not the total duration of stay for the patients in question. Moreover it only relates to periods of hospitalisation under restraint, stays for voluntary treatment might also have related to these same patients in 2013.

Comments: It is very difficult to offer a long-term perspective because of the disparate nature of hospital sources (SAE and ATIH-PMSI). Changing the categories from 2011 to 2012 does not enable comment on short-term changes. In 2013 the new category for hospitalisation for imminent danger seems to have "bitten into" (statistically speaking) hospitalisation upon request by third parties and automatic hospitalisation (by decision of a State representative), but as a whole is slightly lower compared with 2011. On the other hand, the hospitalisation of persons deemed to be not criminally responsible and detainees are up. Finally all hospitalisations without consent were, in 2013, at a level equivalent to those of 2010 in terms of the number of patients (79,860 compared with 79,017). The number of days is a little lower according to this data (3,791.9 thousand in 2013 compared with 4,245.7 thousand in 2010). This therefore produces a drop in estimates of average duration defined above: later confirmation is necessary before concluding that there is a significant trend.

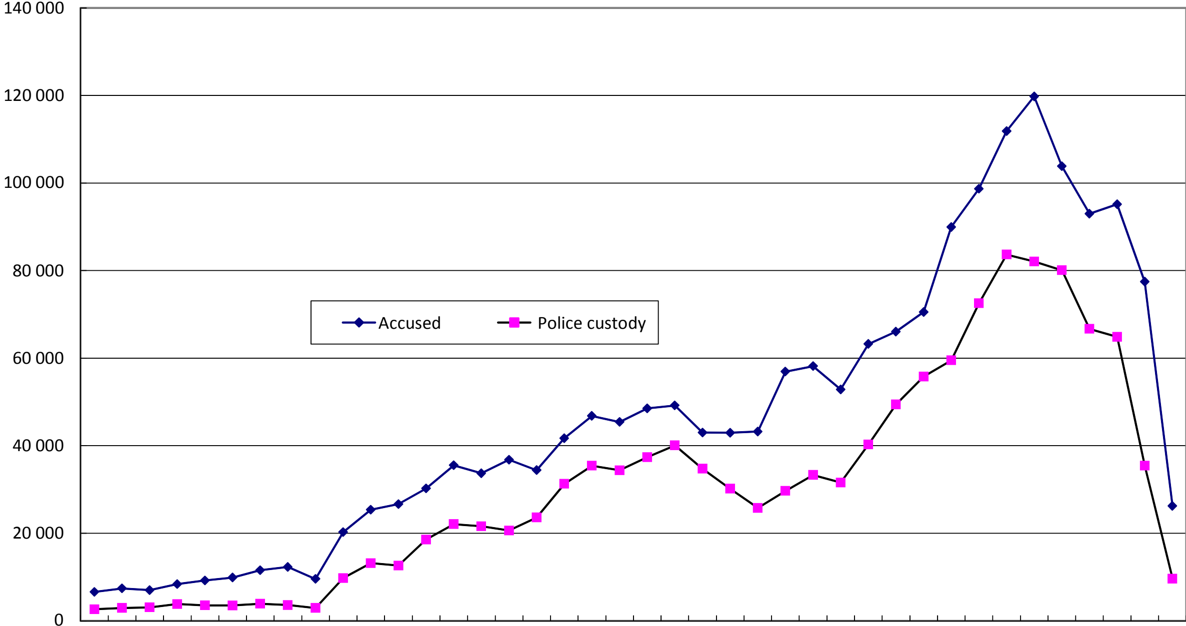
Translated into the average number of those present for a given day for treatment without consent, data for 2013 (total number of days divided by 365) indicate a little more than 10,000 patients.

3. Detention of illegal immigrants

3.1 Number of persons implicated in offences by the immigration department and number of police custody measures

Source: Etat 4001, Ministry of the Interior.

Field: Metropolitan France



Note: Implementation of Act no 2012-1560 dated 31st December 2012 relating to the detention for verification of rights to stay was anticipated in 2012 with a sharp decrease in the number of persons accused and custody measures. In 2013, these can no longer relate simply to illegal immigration.

Comments: In the *Contrôleur général's* report for 2009 (pages 263 to 267 in the French version) there was set out how the treatment of illegal immigrants derived by stages from the criminal process. Criminal process remained only, firstly, at policing level with the massive use of placing in custody. This way of handling the problem was the basis, in 2007- 2008 for one placement in police custody out of seven. After a general decrease in police custody and then the application of Act dated 31st December 2012, following the order by the Court of Cassation dated 5th June of that same year, finding that simple illegal immigration could not justify placing in custody, restriction of liberty took the form of detention for illegal immigrant verifications (some 30,000 in 2013 according to a communiqué from the Ministry of the Interior dated 31st January 2014). In 2013, police custody measures represented on this graph and set out in table 1.3 (9,642 compared with 26,242 accused) relate to other breaches relating to foreign nationals' immigration regulations. This rate of custody is close to that observed for all persons accused.

3.2 Implementation of Measures for Deportation of foreign nationals (2002-2012)

Source: Annual Reports of the French Inter-ministerial Committee for the Management of Immigration (CICI), Central department of the French border police (DCPAF).

Field: Metropolitan France

Year	Measures	ITF	APRF	OQTF	APRF + OQTF	Deportation order	Readmission	Forced deportations (subtotal)	Voluntary (aided) returns	Total deportations
2002	pronounced	6,198	42,485	-	42,485	441		49,124		49,124
	enforced	2,071	7,611	-	7,611	385		10,067		10,067
	%enforcement	*33,4%*	*17,9%*	-	*17,9%*	*87,3%*		*20,5%*		
2003	pronounced	6,536	49,017	-	49,017	385		55,938		55,938
	enforced	2,098	9,352	-	9,352	242		11,692		11,692
	%enforcement	*32,1%*	*19,1%*	-	*19,1%*	*62,9%*		*20,9%*		
2004	pronounced	5,089	64,221	-	64,221	292		69,602		69,602
	enforced	2,360	13,069	-	13,069	231		15,660		15,660
	%enforcement	*46,4%*	*20,4%*	-	*20,4%*	*79,1%*		*22,5%*		
2005	pronounced	5,278	61,595	-	61,595	285	6,547	73,705		73,705
	enforced	2,250	14,897	-	14,897	252	2,442	19,841		19,841
	%enforcement	*42,6%*	*24,2%*	-	*24,2%*	*88,4%*		*26,9%*		
2006	pronounced	4,697	64,609	-	64,609	292	11,348	80,946		80,946
	enforced	1,892	16,616	-	16,616	223	3,681	22,412	1 419	23,831
	%enforcement	*40,3%*	*25,7%*	-	*25,7%*	*76,4%*		*27,7%*		
2007	pronounced	3,580	50,771	46 263	97,034	258	11,138	112,010		112,010
	enforced	1,544	11,891	1 816	13,707	206	4,428	19,885	3 311	23,196
	%enforcement	*43,1%*	*23,4%*	*3,9%*	*14,1%*	*79,8%*		*17,8%*		
2008	pronounced	2,611	43,739	42 130	85,869	237	12,822	101,539		101,539
	enforced	1,386	9,844	3 050	12,894	168	5,276	19,724	10 072	29,796
	%enforcement	*53,1%*	*22,5%*	*7,2%*	*15,0%*	*70,9%*		*19,4%*		
2009	pronounced	2,009	40,116	40 191	80,307	215	12,162	94,693		94,693
	enforced	1,330	10,424	4 946	15,370	198	4,156	21,054	8 278	29,332
	%enforcement	*66,2%*	*26,0%*	*12,2%*	*19,1%*	*92,1%*		*22,2%*		
2010	pronounced	1,683	32,519	39 083	71,602	212	10,849	84,346		84,346
	enforced	1,201	9,370	5 383	14,753	164	3,504	19,622	8 404	28,026
	%enforcement	*71,4%*	*28,8%*	*13,8%*	*20,6%*	*77,4%*		*23,3%*		
2011	pronounced	1,500	24,441	59 998	84,439	195	7,970	94,104		94,104
	enforced	1,033	5,980	10 016	15,996	170	5,728	22,927	9 985	32,912
	%enforcement	*68,9%*	*24,5%*	*16,7%*	*18,9%*	*87,2%*		*24,4%*		
2012	pronounced	1,578	365	82 441	82,806	186	6,204	90,774		90,774
	enforced	1,043	850	18 434	19,184	155	6,319	26,801	10 021	36,822

	%enforcement	66,1%	205,5%	22,4%	23,2%	83,3%		29,5%		

ITF: Banishment from French territory (*interdiction du territoire français,* principal or additional measure by criminal courts)
APRF: Prefectural order to take back to the frontier (*arrêté préfectoral de reconduite à la frontière*, illegal immigration measure)
OQTF: Obligation to leave French territory (*obligation de quitter le territoire français*, illegal immigration measure).

Note: Measures implemented during one year may have been ordered during the previous year. This explains the implementation rate of 205.5% for APRF in 2012.

This table has been drawn up from CICI reports for 2003 to 2012. Their official presentation emphasises the rate of implementation of deportation measures and changes to them. From the fourth report, for 2006, this information was included in the general context of a policy of recording numbers in relation to deportations. The total number of deportations set out in the annual report for 2006 (23,831) therefore includes, in addition to 22,412 measures of various types ordered and implemented, 1,419 voluntary returns. Then these "voluntary returns" were counted as being "aided returns", the annual report not being very clear on the content of this heading. This method of counting enabled for 2008 and following years to show "results" meeting objectives of 30,000 deportations. The table reconstituted here contains an additional column for ("forced deportations", which is in bold) excluding voluntary or aided returns.

At a press conference on 31/01/2014 the Minister of the Interior provided another set of data entitled "forced departures" stating that some deportation measures that had been executed had been counted in the past as forced deportations when in fact they were aided departures. In the 10th report drawn up under the provisions of article L.111-10 of the Code for the entry and stay of foreign nationals and right to asylum relating to 2012 and distributed in April 2014. Included, among other changes, was a new table introducing this distinction. For 2012 it was therefore identified that out of the 19,184 APRF and OQTF implemented, 4,954 cases related to "aided returns". This resulted in 21,847 "forced returns" being counted for 2012 instead of 26,801 as in the above table for the forced deportations column. According to this presentation, "forced returns" decreased significantly between 2009 (17,422) and 2010 (16,197) contrary to that previously shown (previous table) and therefore growth for 2011 is lower (19,328).

Comments: According to a document from the National Assembly (Impact study in support of the proposed Act no. 2183 dated 23/07/2014 relating to the rights of foreign nationals in France), the implementation rate for APRFs and OQTFs came to 17.5%. The absolute level of APRFs and OQTFs enforced (15,684 in 2013) seems not to have sustainably exceeded 16,000 per annum and the enforcement rate varies according the greater or lesser number of measures pronounced.

3.3 Detention Centres for Illegal Immigrants (Metropolitan France). Theoretical capacity, number of committals, average duration of detention, outcome of detention

Source: CICI Annual reports. Senate (in italics. please see note)

Field: Metropolitan France

Year	Theoretical capacity	Number of committals	Accompanied minors placed in CRA	Average occupancy rate	Average length of detention (in days)	Detainees removed excluding voluntary returns	% removals/committals
2002		25,131					
2003	775	28,155		64%	5.6		
2004	944	30,043		73%	8.5		
2005	1,016	29,257		83%	10.2		
2006	1,380	32,817		74%	9.9	*16,909*	*52%*
2007	1,691	35,246		76%	10.5	*15,170*	*43%*
2008	1,515	34,592		68%	10.3	*14,411*	*42%*
2009	1,574	30,270		60%	10.2		40%
2010	1,566	27,401		55%	10.0		*36%*
2011	1,726	24,544	478	46.7%	8.7		*40%*
2012	1,672	23,394	98	50.5	11		*47%*
2013		*24,173*					*41%*

Note: Annual reports of the CICI for 2003 to 2012, enable the first five columns in the table to be reconstituted, the column for accompanying minors not being present before 2011. The last two columns relating to the result of placing and holding in illegal immigrant detention

centres do not come from the same source. The report of the Senate Finance Committee dated 3rd July 2009, following work carried out by the *Cour des Comptes,* set out, for 2006-2008, the numbers in detention who were finally sent back excluding voluntary returns. The proportion can therefore be calculated of the number of placements (last column). The seventh CICI report dated March 2011 then set out this proportion for 2009 (page 77). The following report gave a rate of 42% for CRAs possessing inter-service removal units (*pôle interservices éloignement*) and 37% for the rest, but no overall rate. The items set out in the last column of the table for 2010- 2013 are from an informational report from the Senate on CRAs (No 775 dated 23/07/2014). This report also sets out the number of placements in 2013.

The number of placements in 2009 has been corrected here compared with previous editions: the new statement of 30,270 placements given initially as the total for the whole of France (CICI reports for 2009, 2010 and 2011) became in later editions (2011 and 2012) that for Metropolitan France, whilst the previous edition (27,699 placements) became that for French overseas departments.

Comments: The CICI annual reports do not show how the average rate of occupation is defined and assessed. By applying this rate to capacity, an estimate of the average numbers of persons present in CRAs should be obtained. However this estimate is unreliable as the capacity may have been given for a fixed date (it would not then be the average capacity for the year). Another estimate of numbers would be possible from this table as placements correspond to entries and average duration of stays has been supplied. A lower estimate is arrived at. For 2012, calculating the rate of occupation gives an average total number of 836 detainees, a calculation by average stay in detention gives a total number of 703 detainees. These two methods of calculation show an increase in these detainee numbers from 2003 (496 or 432 dependent upon the method of estimating) to 2007 (1285/1014) and then a drop to 2011 (811/585). Data for 2012 therefore shows a slight increase which would be in line with data relating to implementation of deportation measures.

Compulsory residence orders, being an alternative to detention, introduced in 2011 remain relatively little used, 668 measures in 2012 and then 1258 in 2013.[136]

[136] *Source: impact study for proposed legislation relating to the rights of foreign nationals in France filed with the National Assembly on 23rd July 2014*

Annexe 1

Summary Table of the Principal Recommendations of the CGLPL for the year 2014[137]

(see table on following pages)

[137] *These recommendations resulting from the topical sections of this report are in no way exclusive of those set out by the CGLPL in its assessments and recommendations published in the* Journal Officiel *in the course of the year 2014, whose content is recalled in the 1st section of this report and which are accessible on the institution's website www.cglpl.fr.*

Place concerned	Topic	Specific issue	Recommendation	Section
All places of deprivation of liberty	Legal information and advice	Notification of rights	In certain circumstances of deprivation of liberty, the law requires notification of interested parties of the measure to which they are subject and related rights This is the case for those admitted for psychiatric care without consent, foreign nationals placed in illegal immigrant detention centres and persons in police custody. This information is to be sufficiently complete, precise and comprehensible - and for foreigners in a language which they understand - for appeal against any decision affecting their lives to be made as appropriate. Among these rights, in any case, there are those of being assisted by a lawyer and of notifying close relatives and friends of their situation.	**4**
		Access to information	Posting notices dealing with how the institution works and the practical provisions for daily life is an informational method whose use is random. These practices are however sufficiently useful for it to be recommended that they be systematised and used generally. In this respect, it is to be regretted that in no institution does there exist a collection of applicable legislation and regulations which is accessible to persons deprived of their liberty. Knowing these regulations, however, is essential basic information.	**4**
	Handling requests	Receipts	Acknowledgements of receipt should be systematically issued and provided to applicants when requests (whether written or oral) have been traced.	**4**
		Registration procedures	Rather than multiplying the number of persons notifying requests, it would be sensible to appoint one reference person from among the staff responsible for dealing with requests to reply directly or the department responsible and above all to explain to the persons deprived of their liberty the procedures to implement and the implications of their reply, that is to say to support written information with oral information.	**4**
		Replies	Word-of-mouth should still be possible and be preferred in handling simple or immediate requests or those that are urgent and require a direct reply from staff without the delaying tactic of "Put it in writing!" being used. ».	**4**
			All requests should receive a reply; an absence of reply - other than what is perceived to be as a sort of scorn - creates a new request: where there is no reply, requests are made repetitively demonstrating the impatience of those making them. Responses take too long; simple acknowledgements of receipt or redirections ("request sent to the department concerned") are liable to be equated with an absence of response.	**4**
			Replies should be proper and courteous. Sometimes replies to requests are not respectful or are offhand.	**4**
			The content of the reply must be relevant Insofar, as a matter of fact, some replies depend not only upon the competences of the officer making them but also upon their goodwill or fears which may vary and even be contradictory.	**4**

All places of deprivation of liberty	Handling requests	Replies	Replies should not be contradictory. Contradictions create misunderstandings on the part of the detainees, where they note that replies given to the same question are not the same and that rules are tainted by arbitrariness.	**4**
			Replies should take account of the criteria for decision-making which should be known to all, objective and identical to all. Often replies may be based on the behaviour of the applicant and their relationship with staff.	**4**
			Replies should not be summary but detailed and reasons given. In fact, replies are rarely explained, feeding a feeling of incomprehension or even anger by those receiving them.	**4**
		Traceability of requests	Some requests, in that they seek information relating to organisation and functioning of places of deprivation of liberty, need to be traceable. Particular attention should be given to recording replies and their notification where they arise from right to information. At all events, requests relating to the applicant's legal position should be recorded and be traceable. In fact, failure to be able to retain traceability of their requests means that persons deprived of their liberty cannot present their defence or appeal against their situation. Requests relating to the exercise of rights, in particular relating to implementing rights of defence should also be recorded. This recording is provided for in police station custody registers; in the same way it should be formalised in those of regional gendarmeries.	**4**
Detention centres for illegal immigrants	Staff training		The CGLPL Considers that appropriate training should be provided to officers allocated to the CRA. Moreover job descriptions should give a better definition of all of the work to be carried out by police officers in these places where people of all nationalities and all conditions are staying.	**3**
	Internal rules and regulations		The CGLPL recommends that internal regulations should be redrafted in simple terms that can be understood by all and be, in fact, accessible. They could usefully be translated into languages corresponding to the most representative nationalities in each centre.	**3**
	Interpreter services		The CGLPL considers it essential that an interpreter be used when a detainee cannot understand French. To ensure that this interpreter is provided, use of a co-detainee should be avoided as far as possible. A professional interpreter is always to be preferred.	**3**

Detention centres for illegal immigrants	Legal information and advice	OFII 's Mission	The OFII can, in principle, come to the aid of detainees in contacting their family or recovering baggage and money. In practice, the inspectors found that the field of action by this body is often limited. In one of the centres, it is possible for the OFII to travel over 50 km and receive more than €80 per job. Its activity actually consists basically in supplying tobacco and newspapers to detainees. The CGLPL notes that these restrictions are contrary to Article R. 553-13 of the CESEDA which provides that the OFII is responsible for helping foreign nationals to prepare the physical conditions of their departure in particular in relation to recovering the baggage of detainees and carrying out administrative formalities.	**3**
		Associations	The CGLPL recalls that the law gives detained foreign nationals the right to support and access to the law without the formality of services offered by entities having the duty to provide information. Institutions should ensure that these contacts are facilitated	**3**
		Documents for court cases	The CGLPL recommends that detainees should be able to access personal documents and procedural documents relating to them. Internal regulations should define, for each centre, the actual communication procedures which will guarantee respect of private life and the protection of documents.	**3**
		Legal representation	The CGLPL recommends on the one hand that, in the accommodation area, a list of lawyers for bars which work for detainees should be posted and, on the other hand, that a system should be set up enabling detainees to have rapid, direct contact with a duty lawyer.	**3**
	Access to healthcare	Healthcare	The CGLPL renews its recommendation in relation to updating the circular dated 7th December 1999 issued by the Ministry of the Interior and Health relating to healthcare for detainees: "the circular should, in particular, provide details that detainees so wishing may speak directly to healthcare providers without having recourse to an intermediary and that letterboxes should be set up, a health consultation systematically set in place upon arrival at the centre for detainees both to enable possible contagious illnesses to be detected and to carry out a health check and enable an appropriate care regime to be set up including by specialists".	**3**
	Isolation	Procedures and duration	The CGLPL recalls that the procedures and the length of placing in isolation should be defined in the regulatory part of the CESEDA.	**3**
		Traceability	Measures should be set out in a special, separate register specifying - in addition to the grounds, the times of the start and finish of the placement- the authority having carried out the measures and the method of surveillance in particular in relation to medical issues.	**3**
		Access to associations	Isolation should not *ipso facto* be an obstacle to contact with the body responsible for legal assistance.	**3**

Category	Area	Topic	Recommendation	Level
Detention centres for illegal immigrants	Means of communication	Access to telephones	The CGLPL recalls the terms of its opinion dated 10th January 2011 relating to the use of telephones by persons deprived of their liberty: in relation to foreign detainees "[mobile] phones should be kept by their owners these being advised, where necessary, that taking pictures is prohibited during their stay" In one of the CRAs inspected, the initiative had been taken to leave detainees with their cell phones with all functions without any problems being notified. In another it was envisaged to offer telephones that were solely for sale via the OFII at a modest price. These initiatives should be encouraged.	**3**
Detention centres for illegal immigrants	Means of communication	Access to telephones	The CGLPL recommends that telephone cabins should be installed guaranteeing that conversations are confidential. Actual use of telephones should be guaranteed from the time of arrival at the centre.	**3**
Detention centres for illegal immigrants	Means of communication	Access to Internet	The CGLPL recommends that detainees should have access to the Internet	**3**
Detention centres for illegal immigrants	Daily life	Visits	The CGLPL repeats its recommendations made in its 2010 activity report for "making places where visits take place comply with personal respect and privacy in meeting [and] authorising visits throughout the week and in particular on Sundays and public holidays without limit as to length unless there is a critical reason why not".	**3**
Detention centres for illegal immigrants	Daily life	Personal effects	As the CGLPL emphasised in its 2011 activity report, it is not normal that placing effects that do not constitute objects that are a danger to centre security is dependent upon third parties.	**3**
Detention centres for illegal immigrants	Daily life	Activities	The CGLPL recommends that equipment should be installed and activities organised to meet the needs of people who often stay over a long term in these places.	**3**
Young offenders' institutions	How institutions operate	Proposals and general operational regulations	The CGLPL recommends that internal documents should be drawn up - departmental and or institution plans, internal regulations reception booklet - centred on minors' interests. These documents should be read, understood and accepted by staff supposed to implement them. They should be a working tool for daily life being reference to practices.	**3**
Young offenders' institutions	How institutions operate	Staff training	Educational staff in particular should have strong theoretical understanding enabling them to question hypotheses and to continually reinvestigate those hypotheses and act keeping a reasonable distance. They should also have a management structure which guides and controls their actions ensuring its consistency and strong foundation	**3**
Young offenders' institutions	How institutions operate	Management structure	The PJJ department and/ or CEF management association should support staff who take "the risk" of helping them towards autonomy by ensuring that educational projects are valid and distributed and actually accepted by staff; help in creating reliable staff, supporting training organisation and supervision, monitoring and assessing actions carried out, are essential.	**3**
	How institutions operate	Judicial Authority	The courts should require that they be precisely informed of the content of educational action carried out; most particularly in young offenders' institutions and should be placed in a position to measure risks and where they believe that proposals are in the best interests of minors they should support staff.	**3**

Young offenders' institutions	Respecting rights	Liberty of movement	The CGLPL recommends that access to rooms and *a fortiori,* access to bathroom facilities should be made more flexible taking into account both general security circumstances and the minor's personality.	**3**
		Liberty to correspond	The CGLPL recalls that any reduction of liberty to correspond must be justified on precise grounds relating to the best interests of the minor or the institution's mission and that the courts are to be informed.	**3**
		Access to information	In EPM as in CEF, the right to information is implemented in a somewhat random way: access to Internet is generally prohibited (EPM) or limited (CEF); investigators have however noted that some CEFs use software in a relevant way which conforms with the educational work, for example in finding a course or preparing for a cultural visit. In both types of institution access to newspapers and magazines is limited both in the library and where EPMs are concerned in the prison shop. It should however be emphasised that in one EPM, local papers are provided. This type of initiative (access to Internet and to use papers) deserves extending to all institutions receiving minors; this should be accompanied by educative work such as to awaken a critical approach to the media and more generally to support access to rights and citizenship.	**3**
		Legal information and advice	The CGLPL recommends that systems for accessing legal rights be set up. Each young person should be able to contact a legal adviser of their choice and the judge responsible for their case file. They should have assisted access to their case file unless it is contrary to their best interests. The CGLPL also recommends that staff legal training be increased.	**3**
		Consulting minors	Finding that the right to have their opinion heard is rarely implemented within institutions for minors, the CGLPL recommends that life coaching should be set up enabling young people to express their opinion in the context of collective interests.	
	Activities	Education	The CGLPL recalls that education is a major issue for minors and an obligation for the youngest of them. It recommends that teachers receive specific training and support.	**3**
		Leisure activities	Minors should be able to take part in activities - educational or training, cultural, sporting and leisure - to encourage their development and participation as a citizen in a free society.	**3**
		Making minors responsible	The CGLPL recommends that there should be a body guaranteeing minors progressive assistance towards autonomy respecting their rights and duties. Minors should clean their rooms or cell and contribute to tasks in the collective interest under the control of and with the assistance of staff.	**3**
		Health education	Additional to possible action in the area of healthcare, the CGLPL recommends that educational information activities should be organised relating to sexuality.	**3**
	Family links	Visits	The CGLPL recommends that family visits within institutions should be increased and the creation of places which are adapted to confidential, convivial meetings. These visits should be the occasion for discussions with educational and/or pedagogical staff	**3**

Young offenders' institutions			and should emphasise the transfer of information both for the respect of parental authority and exercise of educational activity.	
		Providing information to families	The CGLPL recommends that those with parental authority receive a specific informational booklet. As far as possible, they should be allied to educational activity and as a minimum kept regularly informed of minors' development and plans implemented.	**3**
Health institutions	Access to information	Internal living Regulations	The CGLPL recommends that specific psychiatric reception booklets should be published in the general hospital. Detachable inserts which are easily changeable could be inserted at the end of the reception booklet to enable regular update of some information (the names of healthcare providers, legislative and regulatory updates).	**3**
		Internal living Regulations	The inspectors noted that patients did not always have information that was appropriate to their stay either because the documents had not been provided to them or because they had been lost. Certain units have taken the initiative of posting internal living regulations in each room in a plastic container. The CGLPL recommends that this initiative be made general.	**3**
		Trusted person as legal representative	The CGLPL recalls that the Act of 4th march 2002 relating to rights of the sick and quality of health systems, in particular in its provisions relating to informing and trusted persons should be applied in an appropriate way in institutions receiving persons hospitalised without their consent.	**3**
		Compulsory Hospitalisation without Consent	The *Contrôleur Général* recommends that the Ministry of Health should draw up a model document explaining the various different types of hospitalisation without consent and the means of remedy open to patients, in simple terms, with each hospital being responsible for supplementing and adapting it to specific local conditions by adding, in particular, the addresses of the competent authorities.	**3**
		Access points to legal rights	The CGLPL supports implementation of access points to legal rights in mental health institutions and recommends an assessment of their benefits	**3**
	Dignity of persons	Hygiene	The CGLPL considers that rooms for persons hospitalised without their consent should have sanitary arrangements comprising as a minimum a wash basin and WC.	**3**
			The CGLPL recommends that times for accessing showers be widened and adapted to the conditions of patients.	**3**
		Clothing	Wearing pyjamas should be strictly proportional to the requirements of the healthcare provided. This practice, when it is not adapted to the patient's condition, constitutes treatment that might be qualified as being degrading. The CGLPL considers that wearing pyjamas is only justified on admission for a brief period and for periods when the patient is placed in an isolation room.	**3**
			The CGLPL recommends that if there is no inspection, the purchase of clothing should always be offered to those persons having sufficient financial resources.	**3**

		Using the "*Vous*" polite form	The CGLPL recalls that the dignity of persons is closely related to the concept of respect. It recommends that the "*vous*" polite form of address should be used to create a better positioning between patient and healthcare provider with the aim of their re-adaption to life in society.	**3**
	Private and family life	Personalisation of areas	The CGLPL is examining the possibility of restoring surroundings which support personal image in areas which are neutral and empty and where the expression of individuality is prohibited. Moreover it considers that the right to set out personal effects in long-stay premises is within the concept of respect of the right to privacy and private life for all, it believes that rooms should be provided with a wall panel enabling patients to decorate their living area whatever the length of their stay. Additionally patients needing to stay in hospital over a long-term should be encouraged to bring personal objects enabling them to take over and personalise the room.	**3**
		Sexual relations	The general, absolute prohibition of sexual relations is contrary to Article 8 of the European Convention on Human Rights. Learning about or exercising sexuality is part of autonomy and rehabilitation of hospitalised persons. The CGLPL Healthcare providers faced with this question should work on the consent of those concerned and on ways in which they might manage their emotional and sexual lives. General practitioners and nurses should be involved in information provided to patients and the prevention of risks.	**3**
		Visits	Following the section devoted to maintaining family links in its 2010 activity report, the CGLPL believes that all appropriate measures should be implemented to offer visiting conditions which respect families in order that visits to a hospitalised member of the family can be under conditions supporting maintenance of family and emotional links. Additionally, restrictions such as the prohibition on taking objects into meetings, the presence of a third party or restrictive procedures relating to authorising visits should only be tolerated on a case by case basis and by decision of the medical staff for which reasons are given.	**3**
		Providing information to families	One experience deserves to be mentioned: in one institution in the Paris suburbs, the department head coordinates a cycle of discussions and meetings to promote and explain the patient's treatment to family and friends, with the president of the UNAFAM. According to the persons concerned, these meetings enable not only an exchange but also to take into account the constraints under which professionals and families are working. The CGLPL considers that this initiative should be extended.	**3**
Health institutions	Isolation	Procedure	With respect to restrictions to autonomy engendered and anxiety that it might create, the CGLPL recommends that placing persons in an isolation room should be accompanied by effective monitoring and systematic interviews at the start, end and throughout the person's stay.	**3**
		Interphone	In hospital psychiatric departments, it is inadmissible that all isolation rooms are not equipped with a help switch or that help switches are not accessible to the bed ridden or not connected. Where they are not immediately visible or heard on a continuing basis,	**4**

Health institutions			persons deprived of freedom need to be able to communicate their need for assistance by using interphone systems or alarms which also work at night	
	Patient Care	Choice of Doctor	The CGLPL recommends that as far as possible, patients have a free choice of psychiatrist where there is more than one of them working in the same unit.	**3**
		Freedom of movement	The CGLPL considers that hospitalised persons should have free access to their room as they wish and according to their clinical condition and treatment. Considerations should be made at the time of summary meetings to individualise and adapt possible restrictions in relation to opening rooms to each patient.	**3**
			The CGLPL emphasises the absolute necessity of permitting patients to have access to the open air which units situated on upper floors do not always allow. It then considers that the individualisation of restrictions to freedom of movement at summary meetings is good practice and should be made general throughout all psychiatric hospital units.	**3**
		Activities	The CGLPL considers that pleasure and well-being are important elements in learning or restoring autonomy. Initiatives enabling these to be favoured are therefore to be encouraged.	**3**
			The CGLPL would like to see activities enabling social readaptation whilst respecting patient choice to be preferred where the patient's condition is stable.	**3**
		Food	The CGLPL believes that respect for the autonomy of patients involves freedom to choose meals.	**3**
			The right of patients to take their meals in a self-service canteen or in the establishment cafeteria is an initiative which should be welcomed.	**3**
		Managing property	The CGLPL believes that patients having financial resources should have access to sums enabling them to live decently. It notes that the existence of "patient banks" encourages the autonomy of those who are hospitalised without their consent.	**3**
		Monitoring	The presence of staff should be encouraged for surveillance of units at night; movement detection systems might however be envisaged where, and on the sole condition, that areas are situated outside of the site of staff at night.	**3**
Health institutions	Communication with the outside world	Access to telephones	The CGLPL considers that the general, absolute prohibition of visits and access to telephones which is placed on all patients whatever their illness is in breach of Article 8 of the European Convention on Human Rights and Article L. 3211-3 of the Public Health Code. Such restrictions should only be on an individual basis and reasons given and should, otherwise, be explained to the patient concerned and their family.	**3**
			The CGLPL recommends that efforts be made to keep telephone conversations private. Considerations should be made on the possibility of authorising patients to use or even to keep cell phones in their rooms.	**3**

	Communication with the outside world	Computers and Internet	In relation to respect of freedom of expression and communication guaranteed under Article 11 of the Declaration of the Rights of Man and of the Citizen, any prohibition from keeping computers and having access to online services should not be generalised. The CGLPL considers that access to computers and the internet should be encouraged in public mental health institutions.	**3**
Penal institutions	Architecture	The size of institutions	The CGLPL has, on a number of occasions, stated that it favours prison institutions which are not too large and which, from an architectural point of view, favour the autonomy of detainees. It now reaffirms its position.	**3**
		Space configuration	The CGLPL recommends that collective living areas should be set out in such a way as to systematically favour autonomy in all prison institutions and in each of their wings and that access to them be facilitated whilst being secure, for all detainees.	**3**
			Social living areas need to be designed: rooms designed for enjoyment where a meal may be shared, games played and television watched in accommodation areas of detention centres. Some institutions have set up self- managed activities, both sporting and socio-cultural. In certain institutions which have created refectories, there is the possibility of eating meals together. The CGLPL recommends that the equipment in this type of installation be developed and that an organisation enabling collective life within accommodation areas be encouraged.	**3**
			For the administration, the need for long-term detainees to be able to own their living area is not being taken for granted. Long stay prisons all have areas set up within accommodation buildings or in exercise areas - these are known as "gourbis" or "casinos" - where staff do not go when there are detainees present. An absence of official acknowledgement of these areas by the authorities results in these areas being in very poor condition and for which repair and maintenance work are never envisaged. Making these areas official would moreover enable their functioning to be regularised which at the moment is characterised by a sort of co-opting among those allowed to go there.	**3**
	Taking care of detainees	Overpopulation	The CGLPL recalls that it made mention, in its opinion dated 22nd May 2012, of the serious consequences of overpopulation of prisons in relation to serving sentences and compliance with duties granted to the prison administrators. It now repeats its recommendations on this subject.	**3**
		Individualising methods of detention	In order to develop individual autonomy, the first requirement appears to be to assess the degree of autonomy of persons on arrival in detention and to adapt inherent restrictions to their detention (surveillance, liberty of circulation, access to objects and services etc.) and to their personality (risk of violence, vulnerability and also their level of autonomy). This assessment should be carried out in the context of the "arrivals" interview, during the course of detention or in the context of carrying out their sentence. Such provisions would enable methods of detention to be individualised based on individual personalities and the needs of each and as a consequence optimise human and physical resource availability.	**3**

Penal institutions	Taking care of detainees	Allocation	As for instance in one detention centre in the south-west of France inspected in 2014, internal allocation rules for prisoners should be established, not on the basis of distinction by type of offence or by age, but on the basis of an assessment of the capacity of each to become autonomous.	**3**
		Mediation	Three things appear to be particularly innovative: creating "detainee facilitators" who might be defined as those who work in detention centres to help integrate other detainees; the creation of teams working both with staff and detainees; setting up "relational mediation" bringing staff and detainees voluntarily into relation following an incident that might give rise to appearance before a disciplinary commission: in this way a detainee would be able to explain the origin of the problem and their current and future intentions without the authority of staff and their position within the institution being threatened. Such individual and collective care deserves experimentation and to be developed in other institutions as it can do nothing but contribute to preventing violence.	**3**
			In one long-stay prison inspected, the "detainee facilitators" take part in welcoming arrivals and give particular help to those with difficulties in adapting. It is recommended that this initiative - which is still exceptional and is only useful where detainees often having a long prison record behind them and are used to the place and the procedures - be extended.	**4**
		Differentiated Regimes	The CGLPL believes that ways of working based on differentiated regimes widely in use within detention centres is contrary to the purpose of these centres which should be concentrated on autonomy and rehabilitation. It therefore recommends return to the principle of working on an "open doors" basis within all of these institutions.	**3**
			If the administration does not re-establish "open doors" working they will have to bear the logical consequences of their choice in favour of a differentiated regime: In order that autonomy might become a reality in QCDs, a regime based on confidence should result in giving more responsibility to those included in it. As often raised during inspections both by detainees and by members of staff, a number of avenues could thus be examined: authorising wider liberty to circulate in order to leave the accommodation area and in particular to access the exercise area and activities areas; removing gratings from windows, whose installation is always explained as being for health considerations relating to the bad behaviour of some detainees; improving kitchen equipment and creating real dining rooms.	**3**
		Living Regulations	Most detention centres are regulated by rules which are relaxed in terms of autonomy: the possibility of obtaining curtains to cover windows during the night, to have a key to a "comfort lock", to receive co-detainees in their cell, cultivate horticultural areas etc. All however do not adopt these measures without it being possible to identify why not. Some, pioneers, have recently given up these practices. The CGLPL recommends that the original purpose of these institutions continue to be complied with, that measures encouraging autonomy be preserved and widened to other prison institutions.	**3**

<table>
<tr><td rowspan="9">Penal institutions</td><td rowspan="2">Taking care of detainees</td><td></td><td>It is illusory to think that people can be completely deprived of their autonomy; such aspirations result, to the contrary, in an increase in secret practices which weaken the institutions security. This is why the CGLPL considers that regulations should be relaxed in favour of increasing autonomy to detainees which would not endanger an institution's security but on the contrary would make detention more peaceful whilst encouraging personal development and respect of the fundamental rights of persons incarcerated.</td><td>3</td></tr>
<tr><td>Activities</td><td>Everywhere that it exists, gardening appears to be a calming influence in detention encouraging collective ownership of the grounds as illustrated by the following extract from an inspection report in 2014: "The existence of these areas, the lack of deterioration and rubbish, the presence of trees and plants and free circulation of detainees counteract areas of restraint and the concrete architecture which is more modern and more secure and gives another perspective to detainees serving long sentences." The CGLPL therefore recommends that these initiatives should be widely applied.</td><td>3</td></tr>
<tr><td rowspan="2">Minors</td><td>Education</td><td>In so far as compliance with constraints which are strictly penitentiary is possible, it would be desirable that EPM should reflect as far as they can, in addition to instruction and setting up traditional activities, on intensifying their educative role</td><td>3</td></tr>
<tr><td>Access to information:</td><td>In EPM as in CEF, the right to information is implemented in a somewhat random way: access to Internet is generally prohibited (EPM) or limited (CEF); the investigators have however noted that some CEFs use software in a relevant way which conforms with educational work, for example in finding a course or preparing for a cultural visit. In both types of institution access to newspapers and magazines is limited both in the library and where EPMs are concerned in the prison shop. It should however be emphasised that in one EPM local papers are provided. This type of initiative (access to Internet and availability of papers) deserves extending to all institutions receiving minors; this should be accompanied by educative work such as to awaken a critical approach to the media and more generally to support access to rights and citizenship.</td><td>3</td></tr>
<tr><td rowspan="3">Healthcare</td><td>Persons of reduced mobility</td><td>The CGLPL reaffirms, following its recommendations made in the section on architecture in its 2013 activity report, its position in relation to creating areas for persons of reduced mobility</td><td>3</td></tr>
<tr><td rowspan="2">Access to healthcare</td><td>The CGLPL recommends access to the healthcare unit on the basis of the following two methods: free access for the half of the day and consultations by appointment on the other half of the day. This organisation, which has already been set up in some institutions, is good practice and encourages individuals' autonomy.</td><td>3</td></tr>
<tr><td>The CGLPL recommends that staff, where an urgent request for consultation is made orally at the healthcare unit, automatically allow it. It recommends that where a member of the medical staff on duty at an institution is absent and somebody asks for an urgent consultation that they always be referred to Centre 15 so that they can themselves explain their symptoms.</td><td>3</td></tr>
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Penal institutions		Medically assisted reproduction	When it comes to the intimate and private choice of conceiving a child which arises from rights to private and family life, the CGLPL believes that it is up to the prison administration to do all that is possible in order to make this accessible to those for which they are responsible in the same way as under common law. Under conditions that enable respect of the dignity of the persons in question and the good progress of the medical procedures (programming in advance or, to the contrary, immediate carrying out of necessary medical extractions, informing individuals, limited use of means of restraint and provision of reasons for doing so, the absence of prison staff at the time of medical examinations etc.).	**3**
		Preventive care	The CGLPL recommends free access to contraceptives within health units and also within UVFs and within family meeting centres as already practised in some institutions in order to alleviate the risk of transmitting sexually transmissible diseases and undesired pregnancies.	**3**
	Private and family life	UVF and family meeting centres	The CGLPL believes that constructing UVFs in existing structures or in new prison institutions should be a priority.	**3**
			In the interest of the child and unless the juvenile court judge decides otherwise, the frequency, places and duration of visits between the incarcerated parent and their child should be adapted, with the companion to enable an emotional link to be established or maintained.	**3**
		Parenthood	It is essential that detainees who are parents be informed at the time of their incarceration of their rights and duties to their children and that, subject to decisions that may be made by the juvenile court judge, they be supported in those procedures which are necessary to maintaining their rights and duties whilst respecting the interests of the child.	**3**
			Often, incarcerated parents encounter difficulties in finding out about important decisions relating to their child in terms of health, education or leisure and even more so in participating in making those decisions. These difficulties are clearly influenced by the conjugal situation encountered and by the wish of the parent "on the outside" to participate in these decisions (in terms of information and requesting to participate) with the incarcerated parent. The incarcerated parent is too often informed after the decisions have been made. In order to remedy this problem, it will be necessary to allow access to email via a secure internet connection and to set up a partnership with the educational institution so that the latter can send an education report on the child to the incarcerated parent and inform the latter of developments in their learning.	**3**
			The CGLPL recommends that the criteria of parenthood be included in granting work positions and that games and other product catalogues (books, subscriptions to reviews etc.) be easily accessed by incarcerated parents with the aim of being able to offer presents and participating in the development of their children whilst re-establishing or maintaining a strong parental link.	**3**

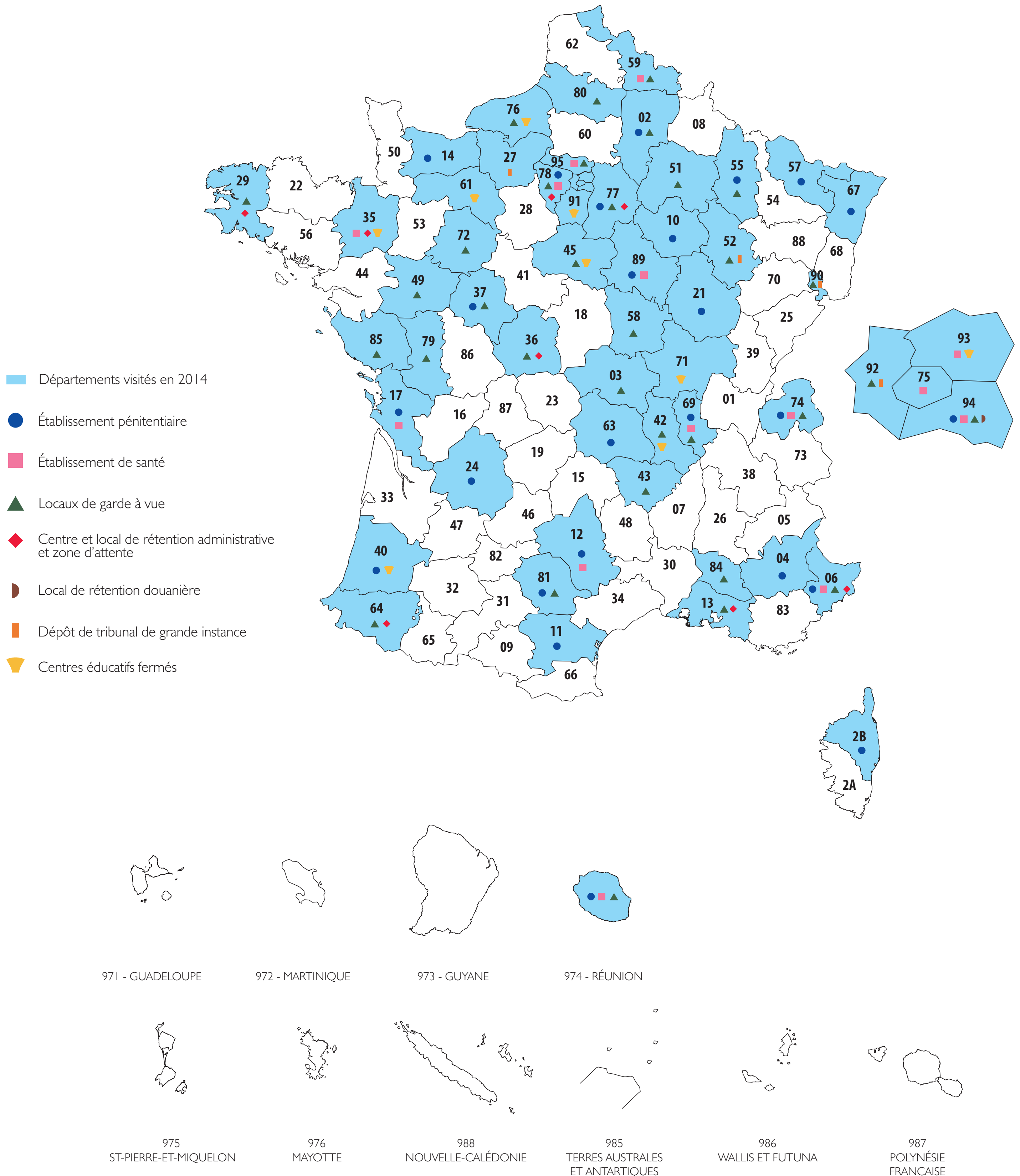
			The CGLPL recommends that discussions should be entered into with incarcerated parents in order for them, and in particular fathers, to have greater responsibility in the parental role and re-find autonomy in this respect.	**3**
	Daily life	Hygiene	It would be more respectful to personal dignity and autonomy to regularly provide free coupons enabling each person to take care of their hygiene and to order what they truly need.	**3**
			It is regrettable that all detainees cannot themselves clean their clothing: by providing a washing machine, a dryer and ironing equipment or system for placing dirty laundry in a bag and taking back clean clothing at a counter. Such provisions should be implemented everywhere.	**3**
Penal institutions		Clothing	The CGLPL considers that there should be greater tolerance in the wearing of clothing and should be based on criteria outside of prison subject to the clothing in question meeting mandatory prison administration security specifications (not having the appearance of uniforms, the prohibition of navy blue colour etc.).	**3**
		The distribution of prisons purchases	Rather than the traditional distribution of purchases in the cell by warders, some institutions have already instituted counters for withdrawing products purchased. This type of initiative should be developed and enlarged in the form of real purchasing premises of a convenience store type where everybody has the possibility of choosing and comparing products on sale and then ordering their purchases directly paying for them by a magnetic card system and their being immediately delivered	**3**
		Personal effects	The CGLPL recommends that detainees have the possibility of purchasing and having, in a private area represented by their cell, clothing accessories, hygiene and care products and items of their choice whatever their usual type of use without any other limit being imposed other than security.	**3**
			The CGLPL believes that incarcerated persons should be able to resell, give or lend all of their property including their computer equipment after a check has been made of the equipment in question and verification as to the reasons for doing so.	**3**
			In some prison institutions, where a detainee makes a purchase, invoices are drawn up in the name of the institution or the service provider in charge of purchasing. The detainee then finds later that it is impossible to make claims under the guarantees related to the purchases. The CGLPL recommends therefore that estimates in their name or invoices in proper form be provided to purchasers at the latest at the time of delivering products.	**3**
		Bank Accounts	The CGLPL recommends that people be able to choose the type of savings account which they wish to open and that they receive a copy of the bank statement which up until now has been sent by the postal bank only to the prison administration accounts controller. Setting up offices staffed by professionals in the banking sector could also be profitable in relation to autonomy in managing financial assets. For all of these reasons, the CGLPL recommends that a legislative change should be made in order to take these various findings into account to which should be added the fact that mandatory	**3**

Penal institutions			payments to a savings account should be carried out quickly to enable individuals to benefit from interest receivable from this investment.	
		Poverty in detention	The CGLPL has recommended the adoption of a new circular relating to the fight against poverty in detention in order that, in particular, the provisions relating to granting cash aid to persons without sufficient financial resources be re-evaluated (sums, timing, criteria, possibility of saving). It considers that this would encourage the autonomy of the most impoverished.	**3**
	Means of communication	IT	As in some US prisons, detainees should be able to send and receive emails using computers that are provided to them in the same way as telephone terminals and with a control system that is comparable with that of mail.	**3**
			The circular dated 13th October 2009 relating to access to computer systems provides that detainees may have access to computer equipment connected to external networks in special rooms after validation by the security chief of staff and by the Information Systems Security Manager (RSSI - responsable de la sécurité des systèmes d'information). This possibility of access to the Internet should be implemented as recommended by the CGLPL in its opinion dated 20th June 2011 relating to access to computer systems by detainees.	**3**
		Access to telephones	In the absence of authorisation to have a mobile phone or a fixed telephone installation in a cell, the CGLPL has on numerous occasions made recommendations for enlarging the hourly access to telephones to enable individuals to communicate with their families outside of hours of work and education.	**3**
			The CGLPL recommends that telephone systems in prison institutions include the possibility of accessing servers having a vocal menu.	**3**
	Collective Expression	Consulting detainees	Conversations between incarcerated individuals should be encouraged and developed insofar as bodies for collective expression by detainees enable institutional dialogue with the administration which contributes to improving daily life and relations with staff.	**3**
		Setting up "advisory councils"	"Advisory Councils" have been instituted in some institutions even if their number is still too low. The purpose of these councils is to create a dialogue between prison administration and detainees on limited subjects but including, in principle, basic conditions relating to detention: the state of cells, maintaining family links, food, prison shops etc. Whereas, on the one hand these advisory councils are given duties and have an impact which is smaller or larger according to the institution, they constitute a collective method of expression that should be encouraged. The great majority of prison institutions which have not yet appointed advisory councils should do so now. Such procedures, which help to calm the atmosphere within places of detention whilst favouring the words of persons deprived of their freedom and their being taken into account by the authorities, should be implemented and developed.	**4**

Penal institutions	Legal information and advice	Welfare rights	The CGLPL recalls its recommendations made in its 2011 activity report in the section relating to access to social rights by persons deprived of their liberty and believes that older persons and dependents should be cared for under conditions similar to those that would be found in a free environment.	**3**
	Access to Legal information and advice	Provision of information	The CGLPL recommends that information appropriate to detainees should be included in documents provided to arrivals and that it should be posted within the place of detention in a number of languages and that they should be provided orally at the time of interview with "arrivals" and during hearings in detention with those who are not French-speaking or are illiterate.	**3**
			It would be opportune if the names of principal actors in the institution (the director, the manager of the health unit etc.) and the contact numbers of various local and national actors (the Public Prosecutor, the Chairman of the Bar, the Regional Health Agency, the CGLPL etc.) were to be posted in detention areas as is already the case in some institutions.	**3**
		Reproducing documents	Applications are regularly made to the CGLPL in relation to those encountering difficulties in obtaining copies of documents (letters, medical certificates etc.). Some interesting initiatives have been noted in prison institutions, for example the possibility of purchasing a magnetic debit card enabling a pre-determined number of photocopies to be made from a freely accessible photocopy machine in the library. The CGLPL considers that this initiative constitutes good practice which should be extended.	**3**
		Correspondence	Requiring these men and women to write naturally forces the authorities to make available the physical means to do so: paper, envelopes and pens. Everywhere, writing necessities are part of the package provided on arrival to imprisoned persons; their renewal is then the responsibility of each of them via purchasing in the prison shop or provisions for aid for the poorest. It would be judicious if this renewal were systematic and free of charge.	**4**
		Confidentiality	Whatever the later fate of their mail, detainees often prefer to hand mail directly to staff in particular those for the health unit in order to avoid that they are unduly found out about by co-detainees. Particular attention should be taken of the solidity of letterboxes and to place them near to warders' offices to prevent their being broken.	**4**
		Computer terminals	Input terminals, which are currently installed in a limited number of institutions, enable detainees to make their requests, send them to the related department and keep evidence of them by a receipt which is immediately printed. Use of this system makes requests easier for some detainees used to handling machines like this. For others unfortunately they add to the difficulty of access to computer software and those of writing. Showing pictograms for selection limits inconveniences.	**4**
			Terminals should be made available to persons placed in specific areas (arrivals areas, isolation wings, disciplinary areas etc.). Access to terminals should be managed as a specific request in the same way as that enabling use of telephones. In particular this presupposes that in a remand prison or in closed doors areas a terminal is installed on	**4**

Penal institutions	Handling requests		each floor.	
			Some prisoners, already in difficulty may be discouraged and decide not to use these terminals. Additionally whereas this new system is an additional method for receiving and sending requests it should not, at any event, become the sole method.	**4**
			Undoubtedly training in the use of these terminals should be carried out during the arrival process and an explanatory leaflet provided. It is also recommended that the initiative developed in a long stay prison in the south of France be examined and extended: detainees used to play a role as reference subjects have had initial training in PowerPoint at the end of which their application has been accepted by the single multi-disciplinary commission: they are authorised to help other detainees in making their requests, explaining how the terminals work and helping them to use them.	**4**
		Registration procedures	Procedures implemented in one prison institution consisting of rewriting the request on the form used for acknowledgement of receipt are therefore in this respect to be recommended. In this way the applicant can be sure that the administration has actually understood their question. Another good practice allowing the illiterate or those not speaking French not to have to set out their requests in writing for an interview should also be extended to all departments.	**4**
		Absences of requests	In spite of information provided relating to how the institution works, setting up procedures for receiving requests, there are some who never make any requests. These are, in particular, detainees who are particularly vulnerable because of their state of health, age, inability to use the language and who have a tendency to withdraw into themselves and hardly make an appearance. It appears essential to ask what the actual reasons are that some people don't ask questions: surveillance staff should ensure that an absence of requests is actually the result of an absence of need and not difficulties in self-expression or ignorance of their rights. These persons should be systematically identified and all steps in this direction encouraged. Registering requests can enable those not making any to be identified so that they can be systematically seen to be assured of their well-being.	**4**
		Replies	It would be good practice for notifications to be created within the CEL - when a time limit for reply has been exceeded - and that a reminder system be set up, which is never the case: not knowing whether their time limit has been exceeded or not, detainees will think that their request has not been received by its recipient and will write another request.	**4**

carte des départements et des établissements visités en 2014



Annexe 3

The Inspection Reports made Public on the www.cglpl.fr Website

Everything begins with the inspection of institutions: four to five teams, each made up of between two and five inspectors, or more according to the size of the institution, go to the site for a period of two weeks per month.

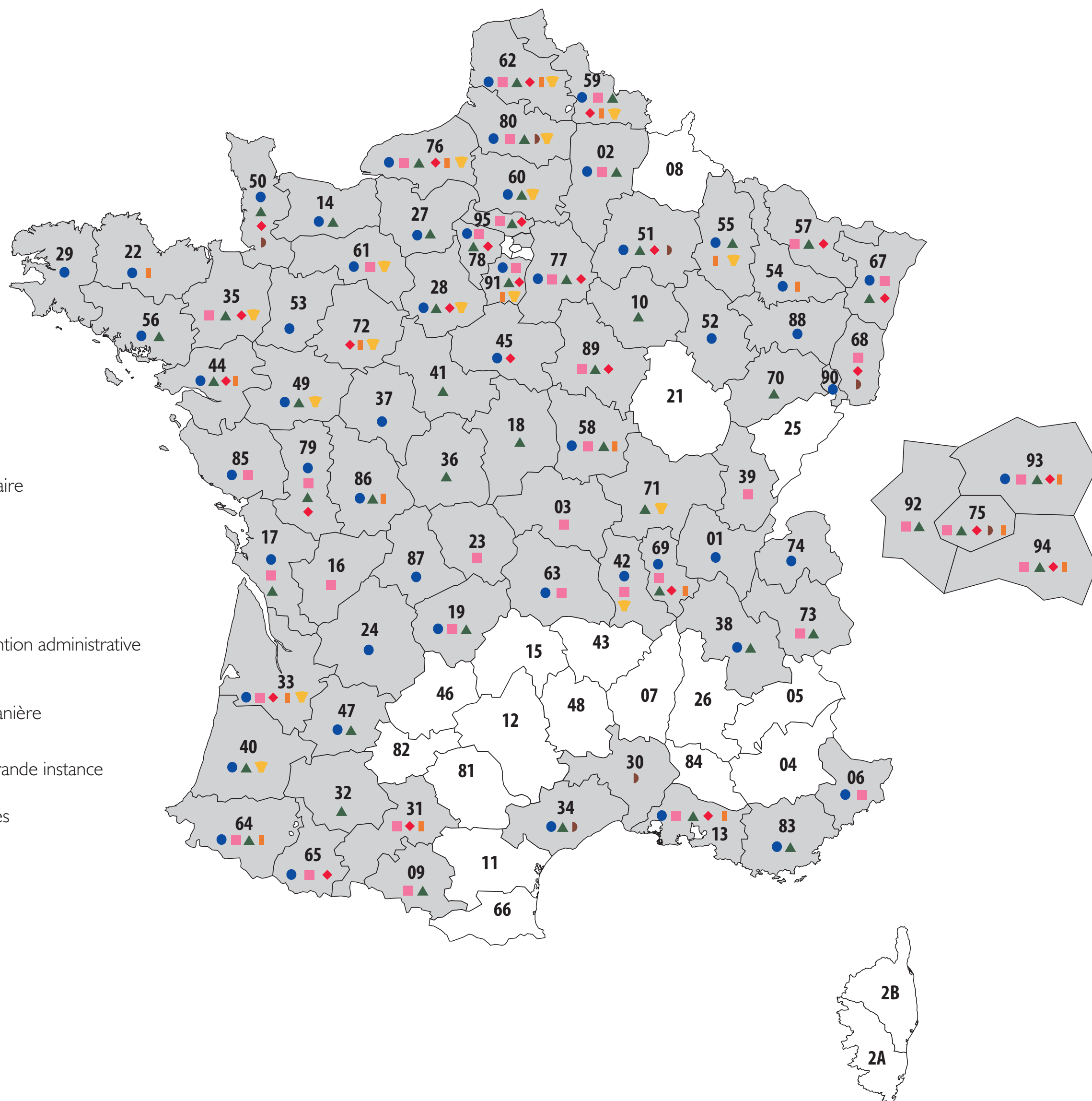
At the end of inspections, the teams of inspectors each write their draft report or initial report, which, according to the provisions of article 31 of the rules and regulations of the CGLPL[138] "is submitted to the *Contrôleur général* who then sends it to the head of the institution, in order to obtain the latter's comments on the facts ascertained during the inspection. Except in case of special circumstances and subject to the cases of urgency mentioned in the second paragraph of article 9 of the Act dated 30th October 2007, the head of the institution is given one month to reply. In the absence of a response within this deadline, the *Contrôle général* may commence drafting the final report. "This report, which is not definitive, is subject to rules of professional confidentiality which are binding upon all members of the CGLPL with regard to the facts, acts and information of which they have knowledge.

And article 32 of the same rules and regulations states that "after receipt of the comments of the head of the institution or in the absence of a reply from the latter, the head of the assignment once again calls together the inspectors having conducted the inspection, in order to modify the report if necessary and draft the conclusions or recommendations which accompany the final report, referred to as the "inspection report" [which] is sent by the *Contrôleur général* to the appropriate ministers having competence to deal with the facts ascertained and recommendations contained therein. In accordance with the above-mentioned article 9, they fix a deadline of between five weeks and two months, except in case of urgency, for responses from ministers.

Once all of the ministers concerned have made their observations, these inspection reports are then published on the CGLPL website, which was brought into production in April 2009.

138 Rules and regulations established in application of article 7 of decree no. 2008-246 of 12th March 2008.

Carte des départements dont les visites d'établissements ont donné lieu à des rapports publics sur le site internet du CGLPL



Légende :

- Établissement pénitentiaire
- Établissement de santé
- Locaux de garde à vue
- Centre et local de rétention administrative et zone d'attente
- Local de rétention douanière
- Dépôt de tribunal de grande instance
- Centres éducatifs fermés

971 - GUADELOUPE

972 - MARTINIQUE

973 - GUYANE

974 - RÉUNION

975
ST-PIERRE-ET-MIQUELON

976
MAYOTTE

988
NOUVELLE-CALÉDONIE

985
TERRES AUSTRALES
ET ANTARTIQUES

986
WALLIS ET FUTUNA

987
POLYNÉSIE
FRANCAISE

Annexe 4

Appointment to the Position of Contrôleur Général: Questionnaire presented to Adeline Hazan by the Law Commission of the National Assembly[139]

1) What are your reasons for agreeing to your name being put forward in order to exercise the duties of *Contrôleur général des lieux de privation de liberté*?

The defence of liberties and the protection of fundamental rights constitute the common theme of my engagements.

After my university studies (master's degree in law (*maitrise de droit*) and Institute of Criminology), I chose to become a judge because, under the terms of article 66 of the Constitution of 4th October 1958, the judiciary is assigned the constitutional task of acting as the guardian of individual liberty and ensuring respect for this principle under the conditions provided for by law.

I have exercised various different positions as a judge in the ordinary courts (judge responsible for the execution of sentences in Châlons-en-Champagne and juvenile court judge in Nanterre and Paris). These positions, on the confines of law and social questions, strengthened my conviction concerning the importance of respecting fundamental rights in individual situations.

I also took up the responsibilities of president of the *Syndicat de la Magistrature* union for members of the national legal service as part of my commitment to the defence of public liberties. I have held various different administrative positions, in particular that of task officer at the *Secrétariat Général à l'Intégration* (General-Secretariat for Integration under the authority of the Prime Minister), which enabled me to look closely into questions relating to foreigners' rights.

I then managed one of the four divisions of the *Délégation Interministérielle à la Ville* [Interministerial Delegation for Cities] (DIV), in charge of crime prevention and citizenship. I also worked on these questions for a period of two years in the Private Office of the Minister for Employment and Solidarity.

As a Member of the European Parliament from 1999 to 2008, I sat for two terms of office on the Committee on Civil Liberties, Justice and Home Affairs. I worked on the future area of freedom, security and justice within this Committee (rapporteur for the proposal for a

[139] *This questionnaire was presented to Mrs Adeline Hazan with a view to her hearing before the Law Commission of the National Assembly as part of the procedure for appointment to the position of* Contrôleur général des lieux de privation de liberté. *The document was published on the website of the French National Assembly on 30th June 2014.*

European Parliament recommendation to the Council on the evaluation of the European arrest warrant in March 2006; rapporteur for my political group on the directive on common standards and procedures in Member States for returning illegally staying third-country nationals, referred to as the "Return Directive", etc.).

In the course of my term of office as mayor of a large city, directing an administration of around 2,500 officials, I instigated numerous initiatives and programmes in favour of fundamental rights, such as the creation of an authority for the fight against discrimination and the development of the intercommunal council for crime prevention. A local group was put in place with the courts and the police for dealing with crime, which in particular enabled partnerships to be consolidated between the State Prosecutor's Office, the police and the City, and notably led to the establishment of crime watch cells following incidents in certain districts, as well as the installation of emergency telephones for women who are victims of domestic violence. I chaired all of the supervisory boards of the teaching hospital of Reims over a six-year period.

I have taken great interest in following the initiatives undertaken over the past six years by Mr Jean-Marie Delarue, as the first *Contrôleur général des lieux de privation de liberté*, a person whom I greatly respect, and with whom I have had the honour of working at various periods of my professional life (I worked under Mr Jean-Marie Delarue's authority at the interministerial delegation for cities; he was head of the department of public liberties and legal affairs in the Interior Ministry at the time when I was responsible for questions of integration in the Private Office of the Minister for Employment and Solidarity).

The whole of my career up to the present has led me to agree to my name being proposed for the exercise of the duties of *Contrôleur général des lieux de privation de liberté*. Exercising this position of responsibility at the head of an independent government agency with specific regulatory powers would thus appear to me to be a continuation of my engagements.

Deprivation of liberty and the conditions under which it is exercised, in strict compliance with individual's rights and paying special attention to staff working conditions, are essential issues for democracy.

2) The *Contrôleur Général* "is appointed for his/her skills and professional knowledge": how will the experience of your career be useful for inspecting places of deprivation of liberty, which also include certain health institutions?

My career path and political experience have given me an understanding of the issues of deprivation of liberty and, in these circumstances, of the need - which should be upheld by the whole of society -, to guarantee the fundamental rights of those who, at one time or other in their lives, are placed in this situation.

The circumstances of persons deprived of liberty and of the persons around them, as well as those who are responsible for them, demand openness to social questions and sensitivity to issues such as the continuity of care, with regard to treatment in particular. My experience as a

local elected representative and as a judge have brought me face to face with these situations and have prepared me to be able to understand them as a whole.

As chair of the supervisory board of the teaching hospital (CHU) of Reims, I was able to gain a very direct understanding of issues relating to patients' rights, in particular with regard to hospitalisation without consent. In the capacity of mayor, it was incumbent upon me to take emergency placement decisions for psychiatric treatment without consent. This twofold experience has given me a certain knowledge concerning the vigilance that needs to be maintained with regard to the rights of patients hospitalised without consent. I think that this experience is likely to be particularly useful in the task of inspecting the health institutions assigned to the *Contrôleur Général*.

Throughout the course of my professional life, I have gained in-depth knowledge of the workings and operation of the highest administrations at both the local and central levels.

Moreover, the *Contrôleur Général* has a team of inspectors, some of whom have held their positions under Mr Jean-Marie Delarue's authority since the latter's appointment. They have gained expert knowledge of the various different places of deprivation of liberty through some 900 inspection visits conducted over a six-year period. I intend to use these acknowledged capacities as the basis for the development of the *Contrôle Général*. All places of deprivation of liberty are governed by specific texts which are subject to change. Moreover, these texts have undergone changes recently (cf. the Act of 5th July 2011 on psychiatry amended by the Act of 27th September 2013, as well as the Act of 14th April 2011 on police custody, the rules of which were recently amended by the Act of 27th May 2014 etc.). My legal training is likely to be particularly useful in this respect.

As a judge, I am well aware of the importance of professional secrecy: this secrecy is essential with regard to the duties of inspector in order to ensure that persons deprived of liberty, as well as professionals, who approach the authority are able to do so in complete confidence.

In the professional field, my various different positions have given me a command of decision-making processes, in particular with regard to the drafting of legislative and statutory texts. I think that this corresponds to one of the *Contrôleur Général*'s essential duties to "make recommendations to the authorities and put forward any amendments of applicable legislative and statutory provisions to the Government" (article 10 Act of 30th October 2007).

The local terms of office I have held have made me pragmatic; they have provided me with an approach to the imperatives of management and taught me the need to establish human contacts at all levels on a daily basis.

3) How do you intend to guarantee the independence of the position? Will you give up the exercise of any partisan commitment?

The law and international treaties invest the *Contrôleur Général* with a mission of prevention of violations of fundamental rights: he/she is beyond the vagaries of current affairs and deals with the question of the state, organisation and operation of the places visited outside of any media pressure.

The *Contrôleur Général* possesses several different means of guaranteeing his/her independence, which needs to be a continuous practice on a daily basis. Moreover, it is an obligation imposed by law.

The *Contrôleur Général* receives no instructions from any authority: he/she freely defines his /her policy with regard to respect for fundamental rights in places of deprivation of liberty. He/she chooses the places to visit and the schedule, as well as the pace of visits. The *Contrôleur Général* is also free to choose his/her colleagues, who report exclusively to him/her in the course of carrying out their duties.

The *Contrôleur Général* is not vested with the power of injuction: his or her only means of action in relation to the competent authorities and administrations are findings, opinions and recommendations. The authorities in charge of public policies are then responsible for drawing the appropriate conclusions therefrom.

The sole criterion which should guide the *Contrôleur Général* is respect for fundamental rights and dignity.

Independence should go hand-in-hand with the establishment of a continuous dialogue with the other bodies in charge of protection of rights at the national level (ordinary and administrative courts, lawyers, associations and other independent government agencies with specific regulatory powers, etc.).

Special attention should be given to dialogue with Parliament, the guarantor of the *Contrôleur Général*'s independence.

At the international level, relations with the Committee for the Prevention of Torture of the Council of Europe, the European Court of Human Rights and the United Nations Subcommittee on Prevention of Torture, should contribute to reinforcing this required independence.

If my appointment is accepted by your Assembly, and confirmed by the President of the Republic, I will of course bring myself into line with the provisions of the Act of 2007 by resigning from my elected offices. Moreover, I will give up any position of responsibility within a political group.

4) How would your approach to the role of *Contrôleur Général* differ from that of Mr Jean-Marie Delarue?

I would like to be a part of the continuation of the work conducted by Mr Jean-Marie Delarue, which led to the establishment of this new institution within our democracy and gave it the standing which it has today.

Changes will necessarily emerge in the course of the inspections in which I intend to take part from the time of my appointment, should it be accepted, the field of fundamental rights being extremely wide-ranging and diverse.

In the first place, I want to be true to the spirit of the work conducted by Mr Jean-Marie Delarue and his team. Yet, of course, every individual has their own personality. And I am no

exception. My concern will therefore also be to enhance the content of the mission entrusted to the *Contrôleur Général* in my own way (judge, woman…).

5) How do you intend to organise the team of inspectors (number, specialisation and professional profiles)?

The multidisciplinary approach is a major asset for the institution and for the proper exercise of its mission. The variety of the inspectors' career paths, training, experience and culture, combined with their great independence in findings on the ground, need to be maintained.

The working method consisting of assigning each inspector to all places of deprivation of liberty without distinction, without any specialisation according to professional origin, allows for a comparison of views without any a priori assumptions.

However, the new fields of competence acquired by the CGLPL make it necessary to recruit inspectors from the medical profession, as well as reinforcing the team in place in order to fulfil the mission of control of the implementation of deportation measures: this will be one of the priorities of the new *Contrôleur Général*'s term of office.

6) What is your view of the necessary balance between respect for the fundamental liberties of prisoners and detainees and the specific constraints of places of deprivation of liberty?

National and European case law with regard to fundamental rights provides an invaluable line of conduct for the assessment of concrete situations: restrictions may only be placed upon rights insofar as they are necessary and proportionate to the risk involved.

Respect for dignity is also at the heart of the assessment of concrete situations: though they might be equally efficacious, some approaches show respect for dignity while others violate it (misplaced looks, remarks intended to humiliate, discrimination etc.).

Moreover, it must not be forgotten that psychiatric institutions are above all places of treatment, though they may involve security issues. Infringements of patients' liberty and rights need to be assessed by the yardstick of the objective of treatment, which should take priority, rather than being dependent upon security imperatives.

Finally, special attention always needs to be given to staff working conditions: they are decisive for implementation of the fundamental rights of persons. Such attention therefore needs to take the form of constantly listening to the concerns expressed by professionals.

7) Do you plan to set an objective for the number of places to be visited, as was done by Mr Jean-Marie Delarue? What can be done to shorten the time required for submission of post-visit observations to the Ministers concerned?

The heart of the CGLPL's mission is to conduct on-site visits in places of deprivation of liberty. This specific feature informs all of its activity.

The objective of 150 annual visits is included in the CGLPL's annual performance programme; it constitutes the institution's sole performance criterion. It corresponds to a clear will to ensure a steady presence on the ground. In my view, there is therefore no reason to call it into question. This objective should be maintained.

However, reflection should be undertaken in order to more effectively take into account the *Contrôleur Général*'s activity as a whole (production of opinions and recommendations, Annual Report, participation in an increasing number of international activities in the capacity of the French national preventive mechanism). This reflection needs to take the various different kinds of visits into account in a balanced manner, by distinguishing between those which are short in length (one to two days) and longer visits to large institutions (for example, the visit to Baumettes prison, which lasted two weeks, and mobilised almost the whole team of inspectors).

As far as the time required for passing on inspection reports is concerned, Mr Jean-Marie Delarue acknowledged that it had become too long. If my appointment to the position of *Contrôleur Général* is confirmed, reduction of the time required for passing on reports will be one of my first priorities, bearing in mind, however, that under the terms of article 9 of the Act of 30th October 2007, the *Contrôleur Général* alone is authorised to send observations to Ministers at the end of each visit.

One possible option would be to gather inspection reports together according to theme (certain categories of institutions, such as remand prisons of medium dimensions, for example) or geographical location (conditions of deprivation of liberty within a territory) before passing them on to Ministers. The visits already conducted constitute a major capital capable of providing a basis for these options. I will nevertheless be careful to ensure that the quality of the findings and observations made by the team is maintained, irrespective of this reduction in waiting times.

8) In your view, what priorities should be fixed for visits in the course of the next six years? From your point of view, would it be worthwhile to inspect certain places of deprivation of liberty more than others?

As a national preventive mechanism, the CGLPL should have the objective of being able to inspect any place of deprivation of liberty in metropolitan France and French overseas departments and territories at any time. The *Contrôleur Général* should, so to speak, keep all managers of places of deprivation of liberty "switched on", incorporating the potential for a future inspection into their management.

Mr Jean-Marie Delarue and the inspectors placed under his authority have visited more than 900 places, including the whole of prisons, CEFs and CRAs. Second visits will be organised to these places. Mental health institutions need to receive special attention. Finally, the situation

of deprivation of liberty in French overseas departments and territories deserves a certain level of vigilance.

9) What proportion of unexpected and scheduled visits should be planned in your opinion?

The law provides that visits may be announced or unannounced. If a proportion is fixed in an a priori manner it will be impossible to adapt to the various different situations of places of deprivation of liberty.

I think that the principles put forward by Jean-Marie Delarue should be maintained: visits are unannounced in small institutions and announced in "large" institutions in order to facilitate on-the-spot ascertainment of facts and make any modification (material in particular) of the reality of the premises more difficult.

Issuing prior notice of announced visits also makes it possible to inform persons deprived of liberty before the arrival of the *Contrôleur Général*'s teams.

10) In your opinion, what kind of relations should the *Contrôleur Général* have with the administrations in charge of the places of deprivation of liberty that he/she is responsible for inspecting, in particular with regard to the weakness of actions taken in response to the *Contrôleur Général*'s observations and proposals?

In accordance with the law, the *Contrôleur Général*'s role is to enter into relations with Ministers, to whom he/she sets out his/her observations and proposes legislative and statutory changes. The administrations are not therefore the *Contrôleur Général*'s natural point of contact, since they work under the authority of Ministers, whose role it is to institute change.

However, at the end of each inspection the inspectors give feedback to the local managers and administrations concerned.

If my appointment is confirmed, one of my areas of work will be the institution of an internal system for following up recommendations and opinions, and the establishment of dialogue with the central administrations in this respect, while respecting the *Contrôleur Général*'s independence. It will still be necessary for Ministers to submit their observations within the fixed deadlines, or even consider it useful to respond.

Stubborn insistence should be one of the *Contrôleur Général*'s virtues. Although the law does grant the latter the power of injunction over the administrations, he or she needs to constantly return to observations and recommendations which have been issued and have remained fruitless.

11) What do you think of the principal propositions recently made by the *Contrôleur Général* and, in particular, putting controlled authorisation of cell phones in place, making controlled Internet access available in prisons and extending the CGLPL's field of competence to retirement homes for infirm elderly people (EHPAD)?

With regard to controlled authorisation of cell phones and the provision of controlled Internet access, I follow four guidelines:

- security is a requirement in detention, even more so than elsewhere; there is obviously no question of sacrificing security on the altar of a certain improvisation;
- as far as security issues are concerned, it is obviously necessary to think of staff, in the first place concerned to protect themselves from bodily harm: we are aware of the reality of violence in prison;
- however, in places of deprivation of liberty, as elsewhere, security needs to be reconciled with fundamental rights of individuals. Among these fundamental rights, the right to respect of family life is important. ;
- finally, social rehabilitation is a major issue in detention. The opening of prisons to the outside represents one of the major steps forward of the past forty years. Giving each person the means for their own rehabilitation is a major element in ensuring their success.

I will examine the questions of Internet and cell phones, which of course I need to look into, in the light of these four principles.

With regard to the extension of the CGLPL's area of competence to EHPADs, the Annual Report for the year 2012 addressed this question (pp. 291 to 293) and is still relevant in my view. The proportion of elderly persons in institutions is increasing considerably in our society and it is important for the authorities to become more aware of the subject of the fundamental rights of infirm elderly persons and of the possibility of violations thereof.

The question of determining if this necessary inspection falls under the authority of a particular independent government agency or of some other agency is secondary. I think it is necessary to continue dialogue with Parliament and the Government about this issue, in compliance with professional areas of competence but also with a view to greater demands concerning the well-being of elderly persons, the need for their protection having tended to cause their rights to be overlooked.

12) In an opinion of 22nd May 2012 concerning prison overcrowding, the *Contrôleur Général* proposed that a special amnesty should be voted for unimplemented very short sentences pronounced before 2012 and, generally speaking, considered that amnesties "constitute neither a legal incongruity, nor a strange practice within a democratic context": what is your position on this issue?

At the time this opinion was made, Mr Jean-Marie Delarue's remarks gave rise to a certain number of reactions. I do not think that the position taken is legally unfounded, since article 34 of the Constitution provides that the law should fix the rules concerning […] amnesties […].

Although there is obviously no question of the *Contrôleur Général* taking the place of the political authorities, it is part of his/her role to bring out possible options in order to resolve serious violations of fundamental rights. Moreover, the debates surrounding proposed options should not cause the fundamental issue to be overlooked. Yet, one can only note that two years after this opinion, far from being reduced, prison overcrowding has at best stabilised and at worst increased.

Late implementation of short prison sentences, sometimes several years after they were pronounced, is a major factor in the overcrowding of remand prisons. To a large extent, this practice deprives the sentences of any meaning. In this respect, it should be recalled that in 2012, 100,000 prison sentences remained unimplemented. This constitutes a real problem and, although efforts have been made, today some 60,000 unimplemented sentences still remain. I therefore agree completely with this opinion.

13) By means of Act no. 2014-528 of 26th May 2014, the legislature extended the *Contrôleur Général*'s field of competence to include control of the implementation of measures for the deportation of foreigners: how do you intend to implement this new prerogative?

The *Contrôleur Général* has initial experience in this regard, since the CGLPL already controls measures for the deportation of foreigners from detention centres for illegal immigrants (all of which were visited in the course of Mr Jean-Marie Delarue's term of office, some of them twice) up until the moment of boarding the aeroplanes used for the return flights. You have extended this competence to include what happens on board aeroplanes, up until the moment when the deportees are handed over to the authorities in the country of origin.

The inspections will involve both commercial flights, grouped national flights and flights organised under the aegis of FRONTEX; they will focus on escorted deportations, that is to say about a quarter of deportation measures (in the order of 2,000 deportations per year).

If Parliament approves my appointment, upon taking up my position I will take the necessary measures in order to finalise the practical details of organisation (administrative formalities for accessing protected airport areas, passing on of flight information, etc.). This new competence has been assigned without any change in staff levels and it will therefore not be possible for the number of inspections to be very high – in the order of three or four per year.

A reinforcement of the *Contrôleur Général*'s human resources is required in order to completely fulfil this new duty. Indeed, in order for inspections of this kind to be effective, it is essential to have at least four inspectors, in order to observe the various different stages of implementation of the deportation measure (two conducting the inspection of the local deportation unit within airports and two who board the aeroplane).

I intend to draw greatly upon the experience acquired in this field by the national preventive mechanisms of the United Kingdom and Switzerland and by the Committee for the Prevention of Torture (CPT) of the Council of Europe, in order to build an inspection method capable of doing justice to the mission entrusted to the CGLPL by Parliament.

14) The same Act gives the *Contrôleur Général* the right to set out opinions concerning plans for the building, reorganisation and renovation of all places of deprivation of liberty: how do you intend to exercise this right?

The Annual Report for the year 2013 contains a chapter devoted to the architecture of places of deprivation of liberty. It gives numerous working orientations, which should lead to the elaboration of opinions concerning plans for the construction and renovation of places of deprivation of liberty.

As it has already been shown in the inspection reports for a large number of places of deprivation of liberty, the *Contrôleur Général* has made the location of institutions, and of prisons in particular, a point of inspection as far as respect for fundamental rights is concerned; in particular, in order to verify the accessibility thereof with regard to the maintenance of family ties. Moreover, the issue of adaptation of buildings occupies an important place in numerous recommendations. The urgent recommendations concerning Baumettes prison in Marseille thus recommended the demolition and reconstruction of the men's accommodation building.

However, the *Contrôleur Général* needs to be particularly careful not to become transformed into a kind of body in charge of validating building norms, a mission which could only prejudice his/her independence.

15) On 12th February last year, Mr Jean-Marie Delarue expressed his regret at the inadequacy of the human and financial resources at his disposal, the former with regard to the handling of letters and the latter having led him to refrain from conducting inspections in French overseas departments and territories in 2013: do you think these resources are adequate given the number of places to be inspected? What financial margins do you think it would be possible to obtain without changing the budget?

As far as on-site inspections are concerned, which constitute the heart of the *Contrôleur Général*'s activity, Mr Jean-Marie Delarue's management of financial resources with regard to travel was very meticulous.

However, the requirements for salaried staff need to be increased, in the order of two to three units in order to take into account the new fields of competence resulting from the Act of

26th May 2014 (accompaniment of the implementation of deportation measures and recruitment of doctors in order to gain access to medical information in particular). One supplementary option might consist in increasing the number of hours of mobilisation of external inspectors (who currently represent half of the inspection staff). However, this would mean revising their current remuneration in order to take their greater involvement into account.

As far as the referral of cases is concerned, as pointed out in the Annual Report drawn up by Mr Jean-Marie Delarue, the increase in the number of letters received since the creation of the CGLPL, from around 1,200 in 2009 (first full year) to more than 4,000 today, has led to longer response times (62 days on average in 2013). This gives cause for serious concern since persons refer cases to the *Contrôleur Général* in the absence of any other solution; moreover, the absence of a rapid response may lead to possible disorders in prison. I am aware of these difficulties and, in the weeks following my appointment, I intend to examine the possible options with the general-secretariat of the Government and the Ministers concerned, in order to ensure that the mission is accomplished by inspectors with high-quality expertise, in accordance with the intentions of the law, and for the resources allocated to the *Contrôleur Général* to be considerably increased – in the order of five or six staff positions.

The *Contrôleur Général*'s independence, which is in accordance with the intentions of the legislature and results from France's international undertakings, unquestionably has a cost: it is absolutely essential to maintain the amount of inspection-related travels and to examine places of deprivation of liberty throughout the territory of the Republic as a whole in an in-depth manner.

It appears to me that it is also incumbent upon Parliament to take action in line with these considerations, in order to secure a considerable consolidation of the institution's resources.

16) What is your view of the Bill intended to reinforce the effectiveness of penal sanctions, which is currently undergoing debate?

It is not the *Contrôleur Général*'s role to express opinions on Bills in the course of their discussion before Parliament. Mr Jean-Marie Delarue strictly followed this line of conduct and I intend to adopt the same position.

However, it is incumbent upon the *Contrôleur Général* to set out opinions to the authorities. In this regard, it appears to me that respect for the dignity and rights of persons should be a requirement in any legislative amendment concerning the deprivation of liberty. Since conditions of detention have an impact upon recidivism, the *Contrôleur Général* may shed light upon these issues within the context of Parliamentary debates.

Annexe 5

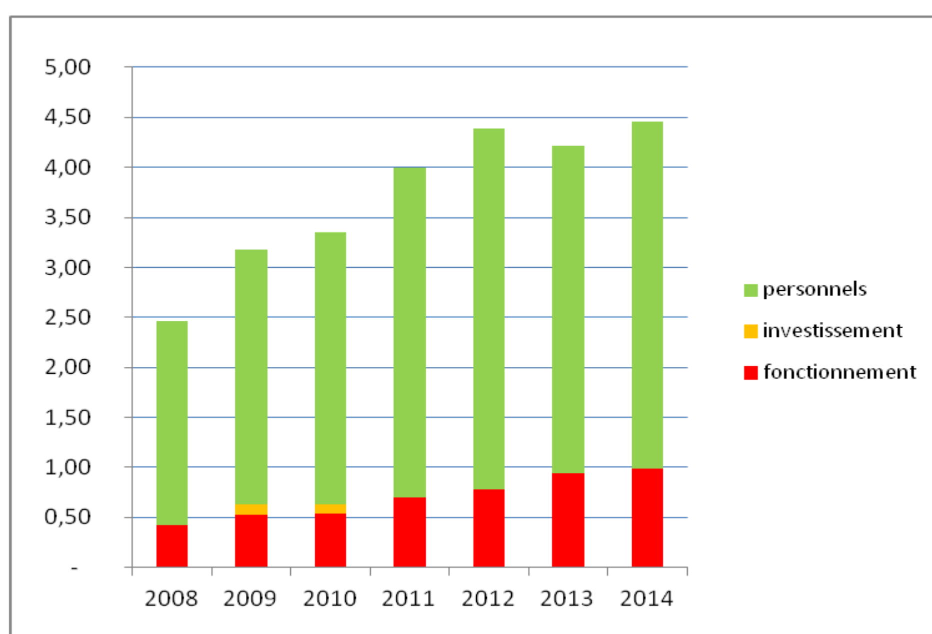
Budget Balance Sheet

1. Budget allocated to the CGLPL in 2014

Initial Finance Act (*Loi de finances initiale*) **LFI 2014***			
Staff costs		**€3,462,797**	**77.6%**
	of which permanent staff	€3,110,957€	
	of which occasional staff	€351,840	
Other expenditure			
Operation		**€999,983**	**22.4%**
Total		**€4,462,780**	

*in payments appropriations after deduction of frozen sums and reserves

2. Changes in budget since the CGLPL was created



Staff
Investment
Operation

Annexe 6

The Inspectors and staff employed in 2014

Contrôleur général

Jean-Marie Delarue, *conseiller d'Etat honoraire* (honorary Councillor of State)(until 13th June 2014)

Adeline Hazan, member of the national legal service (from 17th July 2014)

Secretary-General: Aude Muscatelli, civil administrator

Assistants: Nathalie Leroy, deputy assistant

Franky Benoist, administrative assistant

Inspectors

Ludovic Bacq, prison commandant

Chantal Baysse, director of prison services for rehabilitation and probation

Jean-François Berthier, *commissaire divisionnaire* (chief superintendent of the French national police force)

Catherine Bernard, *medecin général de santé publique* (general practitioner)

Betty Brahmy, hospital doctor, psychiatrist

Gilles Capello, *directeur des services penitentiaries* (director of prison services)

Cyrille Canetti, hospital practitioner, psychiatrist.

Michel Clémot, *general de gendarmerie*

Céline Delbauffe, former lawyer

Vincent Delbos, member of the National Legal Service

Anne Galinier, hospital doctor

Jacques Gombert, director of prison services

Thierry Landais, director of prison services

Philippe Lavergne, *attaché principal d'administration centrale* (head attaché of central government departments)

Muriel Lechat, chief Superintendent of the French National Police Force

Anne Lecourbe, *présidente du corps de tribunaux administratifs* (president of the judiciary of administrative courts)

Dominique Legrand, member of the national legal service

Jean Letanoux, director of prison services

Philippe Nadal, chief Superintendent of the French National Police Force

Yanne Pouliquen, former employee of an association for access to legal rights

Vianney Sevaistre, civil administrator

Cédric de Torcy, former director of a humanitarian association

Caroline Viguier, member of the national Legal Service

External Inspectors

Virginie Bianchi, lawyer

Bernard Bolze, former journalist, association worker

Anne-Sophie Bonnet, former representative on the International Red Cross Committee

Virginie Brulet, doctor

Jean Costil, former president of an association

Marie-Agnès Credoz, former member of the national legal service

Stéphanie Dekens, special advisor to the *Défenseur des Droits*

Grégoire Korganow, photographer

Hubert Isnard, former doctor and inspector

Michel Jouannot, former vice-president of an association

Isabelle Le Bourgeois, former prison chaplain, psychoanalyst

Louis Le Gouriérec, former *inspecteur général de l'administration* (chief inspector of a public service)

Bertrand Lory, former attaché to the City of Paris

Alain Marcault-Derouard, former executive of a company engaged in public procurement contracts with the prisons administration.

Annick Morel, general inspector for social affairs

Félix Masini, former headteacher of a secondary school

Guillaume Monod, child psychiatrist

Bénédicte Piana, former member of the national legal service

Stéphane Pianetti, special needs educator

Bernard Raynal, former director of a hospital

Dominique Secouet, former manager of the Baumettes prison multimedia resource centre

Akram Tahboub, former prison training manager

Dorothée Thoumyre, lawyer

Bonnie Tickridge, nurse

Yves Tigoulet, former director of prison services

Departments and Centre in charge of Referred Cases

André Ferragne, *Contrôleur general des armées* (Chief inspector of French armed forces)

Inspector – responsible for communications

Yanne Pouliquen, former employee of an association for access to legal rights

Financial and Administrative Director:

Christian Huchon, *attaché principal d'administration centrale* (head attaché of central government departments)

Legal Affairs Director:

Maddgi Vaccaro, Chief court registrar

Inspectors responsible for case referrals:

Benoîte Beaury, archivist

Sara-Dorothée Guérin-Brunet, legal expert

Maud Hoestlandt, lawyer

Lucie Montoy, legal expert.

Estelle Royer, legal expert

In addition, in 2014 the CGLPL welcomed, for professional training or for temporary employment contracts:

Joachim Bendavid (Ecole Normale Supérieure)

Margaux Dedina (EFB)

Alexandre Delavay (fixed term contract)

Audrey Diallo (HEDAC)

Judith Dahoui (ENAP – continuous professional training)

Rémi Deboth (IRA)

Rachel Lécuyer (member of the national legal service – initial training)

Aurore Ledoux (member of the national legal service – initial training)

Claire Mairand (ENAP – continuous professional training)

Philippe Marcovici (ENM – continuous professional training)

Carole Milbach (member of the national legal service – initial training)

Samir Minne-Guerroudj (EFB)

Laure Maufrais (fixed term contract)

Camille Nivol (Masters)

Mohamed Sbai (University of Rabat – Morocco)

Annexe 7

Reference texts

Resolution adopted by the General Assembly of the United Nations on 18th December 2002

The General Assembly […]

1. Adopts the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annexe to the present resolution, and requests the Secretary-General to open it for signature, ratification and accession at United Nations Headquarters in New York from 1st January 2003;

2. Calls upon all States that have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to sign and ratify or accede to the Optional Protocol.

Optional Protocol to the Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Part IV

National Preventive Mechanisms

Article 17

Each State Party shall maintain, designate or establish at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralised units may be designated as national preventive mechanisms for the purposes of the present Protocol, where they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening where necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

c) Access to all places of detention and their installations and facilities;

d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator where deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

e) The liberty to choose the places they want to visit and the persons they want to interview;

f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

Act no 2007-1545 of 30th October 2007[1]

NOR: JUSX0758488L - in its Consolidated version on 24th December 2014

Article 1

As amended by Act no.2014-528 of 26th May 2014 - Art. 1

The *Contrôleur général des lieux de privation de liberté* is an independent authority in charge of inspecting the conditions in which persons deprived of liberty are dealt with and transferred, in order to make sure that their fundamental rights are respected, without prejudice to the prerogatives that the law assigns to the judicial authorities and quasi-judicial authorities. For the same purpose, he controls the exercise by the administration of deportation measures against foreign nationals up until hand-over to the recipient State authorities.

Within the limit of his areas of competence, they does not receive directives from any authority.

Article 2

Amended by Act no.2010-838 of 23rd July 2010 - art.2

The *Contrôleur général des lieux de privation de liberté* is appointed because of his professional skills and knowledge by decree of the President of the Republic of France for a period of six years. His term of office is not renewable.

Legal proceedings cannot be instituted against him and he cannot be acted against, arrested, held prisoner or tried because of the opinions that he issues and the acts that he accomplishes in the performance of his duties.

His duties cannot be brought to an end before the completion of his term of office except in case of resignation or unforeseen hindrance.

The duties of the *Contrôleur général des lieux de privation de liberté* are incompatible with any other public employment, professional activity or electoral mandate.

Article 3

Amended the following provisions:

Amends the Electoral Code - Art. L.194-1 (V)

Amends the Electoral Code - Art. L.230-1 (V)

Amends the Electoral Code - Art. L.340-1 (V)

Article 4

The *Contrôleur général des lieux de privation de liberté* is assisted by inspectors recruited because of their ability in the fields related to his role.

The duties of inspectors are incompatible with the exercise of activities connected to the places inspected.

In the exercise of their duties, the inspectors are placed under the sole authority of the *Contrôleur général des lieux de privation de liberté*.

Article 5

The *Contrôleur général des lieux de privation de liberté*, his colleagues and the inspectors who assist him are bound by the rules of professional confidentiality with regard to the facts, acts and information of which they have knowledge because of their duties, subject to the elements necessary for drawing up the reports, recommendations and assessments provided for under articles 10 and 11.

They make sure that no information enabling the identification of the persons concerned by the inspection is given in the documents published under the authority of the *Contrôleur général des lieux de privation de liberté* and in his speeches.

Article 6

As amended by Act no.2014-528 of 26th May 2014 - Art. 1

All natural persons, as well as any corporation set up for the purpose of ensuring respect for fundamental rights, may bring facts or situations to the attention of the *Contrôleur général des lieux de privation de liberté* that are likely to come within his area of competence.

Cases may be referred to the *Contrôleur général des lieux de privation de liberté* by the Prime Minister, members of the Government, members of Parliament, French elected representatives in the European Parliament and the *Défenseur des droits* ombudsman (1). He may also take up cases on his own initiative.

Article 6-1

Created by Act no.2014-528 of 26th May 2014 - Art. 3

Where a natural person or legal entity brings facts or situations to the attention of the *Contrôleur général des lieux de privation de liberté*, they shall state, having set out names and addresses, the grounds, as they see it for an infringement or risk of infringement of fundamental rights of persons deprived of their liberty.

Where the facts or the situation brought to his attention fall within his jurisdiction, the *Contrôleur général des lieux de privation de liberté* may carry out inspections, where necessary, on-site.

When these inspections have been completed and having received the observations of all interested parties, the *Contrôleur général des lieux de privation de liberté* may make recommendations in relation to the facts or situations in question to the person responsible for the place of deprivation of liberty. These observations and recommendations may be made public without prejudice to the provisions of Article 5.

Article 7

Amended the following provisions:

Amends Act no.73-6 of 3rd January 1973 - Art 6 (Ab).

Amends act no.2000-494 of 6th June 2000 - Art. 4 (VT)

Article 8

As amended by Act no.2014-528 of 26th May 2014 - Art. 3

The *Contrôleur général des lieux de privation de liberté* may inspect any place where persons are deprived of their liberty by decision of a public authority in the territory of the Republic of France at any time, as well as any health institution authorised to accommodate patients hospitalised without their consent mentioned under article L.3222-1 of the public health code (*code de la santé publique*).

Article 8-1

Created by Act no.2014-528 of 26th May 2014 - Art. 3

The authorities in charge of places of deprivation of liberty may only oppose an inspection by the *Contrôleur général des lieux de privation de liberté* under Article 8 as provided under Article 6-1 on serious and urgent grounds linked to national defence, public order, natural disasters or serious disturbances in the place inspected, subject to providing the *Contrôleur général des lieux de privation de liberté* with the reasons for their opposition. They shall then propose that these on-site inspections or checks be deferred. As soon as the exceptional circumstances having justified the postponement have come to an end, they are to inform the Chief Inspector of places of deprivation of liberty thereof.

The *Contrôleur général des lieux de privation de liberté* is to obtain any information or document in the performance of his duties from the authorities in charge of the place of deprivation of liberty within the time limit which the Inspector sets. During inspections, he can hold discussions with any persons whose assistance appears necessary to him, under conditions ensuring the confidentiality of their exchanges and collect all information that appears useful to him.

Disclosure of information and documents requested by the *Contrôleur général des lieux de privation de liberté* cannot be refused on the grounds of the confidential nature thereof, except if such disclosure is liable to harm the secrecy of national defence, State security, the confidentiality of investigation and preparation of cases for trial, medical secrecy or professional secrecy applicable to relations between lawyers and their clients.

Statements relating to conditions under which a person is or has been detained, on any grounds whatsoever, in police stations, gendarmeries or customs are to be provided to the *Contrôleur général des lieux de privation de liberté*, except where they relate to personal hearings.

The Chief Inspector of places of deprivation of liberty may delegate the powers mentioned in the first four paragraphs of this Article to the inspectors.

Information covered by medical confidentiality may be disclosed, with the agreement of the person concerned, to inspectors having the professional capacity of doctors. However, information covered by medical confidentiality may be disclosed to them without the consent of the person concerned where it relates to deprivation, abuse and physical violence, whether sexual or physical committed against a minor or a person not able to protect themselves because of their age or physical or psychiatric incapacity.

Article 8-2

Created by Act no.2014-528 of 26th May 2014 - Art. 4

No penalty may be ordered and no prejudice may result solely because of links established with the *Contrôleur général des lieux de privation de liberté* or from information or documents provided to him in carrying out his work. This provision will not be a hindrance to possible application of Article 226-10 of the Penal Code.

Article 9

As amended by Act no.2014-528 of 26th May 2014 - Art. 5

At the end of each inspection, the *Contrôleur général des lieux de privation de liberté* is to make his observations known to the ministers concerned, in particular with regard to the state organisation and operation of the place inspected, as well as the condition of persons deprived of liberty, taking into account developments in the situation since his inspection. Except for cases where the *Contrôleur général des lieux de privation de liberté* gives dispensation, ministers are to make observations in response within the time limit provided, which may not be less than one month. The observations made in response are then to be appended to the inspection report drawn up by the *Contrôleur général*.

If the *Contrôleur général des lieux de privation de liberté* ascertains a serious violation of the fundamental rights of a person deprived of liberty, he immediately passes his observations on to the competent authorities, giving them a deadline for their response and, at the end of this deadline, he ascertains whether the reported breach has been brought to an end. If he considers necessary, he then immediately makes public the content of his observations and of the replies received.

If the *Contrôleur général* learns of facts justifying the presumption of the existence of a criminal offence, he immediately brings them to the attention of the public prosecutor at a court of first instance, in accordance with article 40 of the code of criminal procedure (*code de procédure pénale*).

The *Contrôleur général* immediately brings facts liable to lead to disciplinary proceedings to the attention of authorities and persons invested with disciplinary authority.

The Public Prosecutor and the authorities or persons invested with disciplinary powers shall inform the *Contrôleur général des lieux de privation de liberté* of the action taken in relation to his procedures.

Article 9-1

Created by Act no.2014-528 of 26th May 2014 - Art. 8

Where requests for information, documents or comments made on the basis of Articles 6-1, 8-1 and 9 are not acted upon, the *Contrôleur général des lieux de privation de liberté* may serve notice on the parties concerned to respond within a time limit which he shall set.

Article 10

As amended by Act no.2014-528 of 26th May 2014 - Art. 6

Within his field of competence, the *Contrôleur général des lieux de privation de liberté* issues assessments, and makes recommendations to the authorities and put forward proposals to the Government for any amendments to the applicable statutory and regulatory provisions.

They are to make these assessments, recommendations and proposals public, after having informed the authorities in charge, as well as the observations made by these authorities.

Article 10-1

Created by Act no.2014-528 of 26th May 2014 - Art. 7

The *Contrôleur général des lieux de privation de liberté* may send to authorities having responsibility, advisory notices on construction, restructuring or rehabilitation proposals relating to any place of deprivation of liberty.

Article 11

Every year the *Contrôleur général des lieux de privation de liberté* issues an annual report to the President of the Republic and to Parliament. This report is to be made public.

Article 12

The *Contrôleur général des lieux de privation de liberté* cooperates with international bodies having jurisdiction.

Article 13

Amended by Act no.2008-1425 of 27th December 2008 - art.152

The *Contrôleur général des lieux de privation de liberté* manages the funds necessary to the fulfilment of his duties. These funds are part of the programme of the "Management of Government Action" ("*Direction de l'action du Gouvernement*") mission concerning the protection of fundamental rights and liberties. The provisions of the act of 10th August 1922 concerning organisation of the control of expenditure laid out are not applicable to the management thereof.

The *Contrôleur général des lieux de privation de liberté* presents accounts for auditing by the French Court of Accounts (*Cour des comptes*).

Article 13-1

Created by Act no.2014-528 of 26th May 2014 - Art. 9

Hindering the *Contrôleur général des lieux de privation de liberté* in the course of his duties is punishable by a fine of €15,000.

1 By hindering the progress of checks on-site provided for by Article 6-1 and inspections provided for by Article 8;

2 Or refusing to provide information or documents necessary to the checks provided for under Article 6-1 or inspections provided for under Article 8, by hiding or making the said information or documents disappear or altering their content;

3. Or taking measures to hinder, by threat or illegal action relations that any person might have with the *Contrôleur général des lieux de privation de liberté* in application of this act;

4 Or ordering a penalty against a person solely because of links established with the *Contrôleur général des lieux de privation de liberté* or from information or documents provided to him in carrying out his work that this person may have provided.

Article 14

The conditions of application of this act, in particular with regard to the terms according to which the inspectors mentioned under article 4 are called to take part in the duties of the *Contrôleur général des lieux de privation de liberté*, are specified by decree of the Council of State (*Conseil d'Etat*).

Article 15

Amended the following provisions:

Amends the Code for Entry and Residence of Foreigners and Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) - art. L111-10 (M)

Article 16

This act is applicable in Mayotte, the Wallis and Futuna Islands, the French Southern and Antarctic Lands, French Polynesia and New Caledonia.

***

(1) Preliminary documents: act no. 2007-1545.

French Senate: Bill no. 471 (2006-2007);

Report by Mr Jean-Jacques Hyest, on behalf of the Law Commission, no. 414 (2006-2007);

Discussion and adoption on 31st July 2007 (TA no. 116, 2006-2007).

French National Assembly: Bill, adopted by the Senate, no. 114;

Report by Mr Philippe Goujon, on behalf of the Law Commission, no. 162;

Discussion and adoption on 25th September 2007 (TA no. 27).

French Senate: Bill no. 471 (2006-2007);

Report by Mr Jean-Jacques Hyest, on behalf of the Law Commission, no. 26 (2007-2008);

Discussion and adoption on 18th October 2007 (TA no. 10, 2007-2008).

Annexe 8

The Rules of Operation of CGLPL

The CGLPL drew up internal rules in accordance with article 7 of decree no. 2008-246 of 12th March 2008 concerning its operation.

In addition the inspectors are subject to compliance with the principles of professional ethics in the performance of their duties with regard to their conduct and attitude during inspections and the drawing up of reports and recommendations.

> The whole of these texts, as well as all of the other reference texts, may be consulted on the institution's website: www.cglpl.fr

The purpose of the CGLPL is to make sure that persons deprived of liberty are dealt with under conditions which respect their fundamental rights and to prevent any infringement of these rights: right to dignity, freedom of thought and conscience, to the maintenance of family relations, to healthcare and to employment and training etc.

> Cases may be referred to the *Contrôleur général* by any natural person (and corporations whose purpose is the promotion of human rights). For this purpose, they should write to:
>
> Madame la Contrôleure générale des lieux de privation de liberté
> BP 10301
> 75921 Paris cedex 19

The inquirers and the centre in charge of referred cases deal with the substance of letters sent directly to the CGLPL by persons deprived of liberty and their close relations, while verifying the situations recounted and conducting investigations, where necessary on-site, in order to try to provide a response to the problem(s) raised as well as identifying possible problems of a more general order and where need be, putting forward recommendations to prevent any new breach of a fundamental right.

> Above all, apart from cases referred and on-site inquiries, the CGLPL conducts inspections in any place of deprivation of liberty; either in an unexpected manner or scheduled a few days before arrival within the institution.

Inspections of institutions are decided upon, in particular, according to information passed on by any person having knowledge of the place and by staff or persons deprived of liberty themselves.

Thus for a period of between two and three weeks, four to five teams each composed of two to five inspectors or more according to the size of the institution, go to the site in order to verify the living conditions of persons deprived of liberty, carry out an investigation into the state, organisation and operation of the institution and, to this end, hold discussions in a confidential manner with them as well as with staff and with any person involved in these places.

In the course of these inspections, the inspectors have free access to all parts of the institutions without restriction, both during the day and at night and without being accompanied by any member of staff. They also have access to any documents except, in particular, those

subject to medical secrecy and professional secrecy applicable to relations between lawyers and their clients.

At the end of each inspection the inspectors draft a report.

The procedure concerning inspection reports is set out in annexe 3 of this report.

In addition the *Contrôleur général* may decide to publish specific recommendations concerning one or several institutions as well as overall assessments on transverse issues in the *Journal Officiel de la République Française* when he considers that the facts ascertained infringe or are liable to infringe one or several fundamental rights.

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