



# Le Contrôleur général des lieux de privation de liberté

## Annual report 2016



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# Glossary

AAH	Allowance for disabled adults (Allocation pour adultes handicapés)
AAI (IGA)	Independent government agency
ACAT	Action by Christians for the Abolition of Torture (Action des chrétiens pour l'abolition de la torture)
ADESM	Association of institutions participating in public mental health service (Association des établissements participant au service public de santé mentale)
ALD	Chronic condition (Affection de longue durée)
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)
APT	Association for the Prevention of Torture (Association pour la prévention de la torture)
ARPEJ	External Prisoner Movement Regulation and Organisation Authority (Autorité de régulation et de programmation des extractions judiciaires)
ARS	Regional Health Agency (Agence régionale de santé)
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)
CARSAT	Occupational Health and Pension Insurance Fund (Caisse d'assurance retraite de la santé au travail) (replaces the CRAM state regional health insurance offices)
CAT	Committee against Torture (United Nations)
CCR	Orders, behaviour, regime (Consignes, comportement, regime) (note used in the GIDE software application)
CD	Long-term Detention Centre (Centre de détention)
ECHR	European Convention on/Court of Human Rights
CEF	Juvenile detention centre (Centre éducatif fermé)
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)
CGLPL	Chief Inspector of places of deprivation of liberty (Contrôleur général des lieux de privation de liberté)
CHG	General Hospital (Centre hospitalier général)
CHS	Psychiatric hospital (Centre hospitalier spécialisé)
CICI	Interministerial Committee on Immigration Control (Comité interministériel de contrôle de l'immigration)
CME	Public health institution medical committee (Commission médicale d'établissement)
CNAV	French National Old-Age Insurance Fund (Caisse nationale d'assurance vieillesse)
CNCDH	French National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'homme)
CNE	National Assessment Centre (Centre national d'évaluation)
CNIL	French Data Protection Authority (Commission nationale de l'informatique et des libertés)

COCIPN	French National Police Internal Inspection Policy Committee (Comité d'orientation du contrôle interne de la police nationale)
CP	Prison with sections incorporating different kinds of prison regime (Centre pénitentiaire)
CPA	Adjusted sentence training prison (Centre pour peines aménagées)
CPC	Community service order (Contrainte pénale communautaire)
CPIP	Prison rehabilitation and probation counsellor (Conseiller pénitentiaire d'insertion et de probation)
CPP	Criminal Procedure Code (Code de procédure pénale)
CProU	Emergency protection cell (Cellule de protection d'urgence)
CPT	European Committee for the Prevention of Torture (Council of Europe)
CPU	Single multidisciplinary committee (Commission pluridisciplinaire unique)
CRA	Detention centre for illegal immigrants (Centre de rétention administrative)
CRPA	Code governing relations between the public and the government departments (Code des relations entre le public et l'administration)
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)
CSL	Open Prison (Centre de semi-liberté)
CSP	Public Health Code (Code de la santé publique)
DAP	Prison administration department (Direction de l'administration pénitentiaire)
DCPAF	Border Police Central Directorate (Direction centrale de la police aux frontières)
DCSP	Public Security Central Directorate (Direction centrale de la sécurité publique)
DGGN	General Directorate of the French national gendarmerie (Direction générale de la gendarmerie nationale)
DGPN	General Directorate of the French national police force (Direction générale de la police nationale)
DGOS	General Directorate for Healthcare Services (Direction générale de l'offre de soins)
DGS	General Directorate for Health (Direction générale de la santé)
DISP	Interregional Directorate for Prison Services (Direction interrégionale des services pénitentiaires)
DOPC	Directorate for Public Order and Traffic (Direction de l'ordre public et de la circulation)
DPS	High-security prisoner (Détenue particulièrement signalé)
DSPIP	Directorate for prison rehabilitation and probation services (Direction des services pénitentiaires d'insertion et de probation)
ENAP	French National School for Prison Administration (Ecole nationale de l'administration pénitentiaire)
ENM	French National School for the Judiciary (Ecole nationale de la magistrature)
EPM	Prison for minors (Établissement pénitentiaire pour mineurs)
EPSM	Public mental health institution (Etablissement public de santé mentale)
ESAT	Medical-social facility aimed at helping disabled adults to better integrate socially through work (Etablissement et service d'aide par le travail)
FHF	French Federation of Hospitals (Fédération hospitalière de France)
FNAPSY	French National Federation of Psychiatric Patients' Associations (Fédération nationale des associations d'usagers en psychiatrie)
FNARS	National Federation of Associations for Reception and Social Rehabilitation (Fédération nationale des associations d'accueil et de réinsertion sociale)
GAV	Police custody (Garde à vue)
GENEPI	French National Student Group for Educating Prisoners (Groupement étudiant national d'enseignement aux personnes incarcérées)

GENESIS	French national management of prisoners for individual monitoring and safety (Gestion nationale des personnes écrouées pour le suivi individualisé et la sécurité, software)
GIDE	Computerised prisoner management (Gestion informatisée des détenus, software)
GIP	Public Interest Group (Groupement d'intérêt public)
HAS	French National Authority for Health (Haute autorité de santé)
HDT	Hospitalisation at the request of a third party (Hospitalisation à la demande d'un tiers, now ASPDRE)
HL	Free, i.e. voluntary hospitalisation (Hospitalisation libre)
HO	Hospitalisation by court order (Hospitalisation d'office, now ASPDT)
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 for Judicial Youth Protection (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)
ITF	Prohibition to enter French territory (Interdiction du territoire français)
JAP	Judge responsible for the enforcement 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 détention)
LC	Release on parole (Libération conditionnelle)
LRA	Detention facility for illegal immigrants (Local de rétention administrative)
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)
MET	"External Prisoner Movement" Mission
MIDELCA	Interministerial Addictive Behaviour and Narcotics Prevention Mission (Mission interministérielle de lutte contre les drogues et les conduites addictives)
MNP	National Prevention Mechanism (Mécanisme national de prévention)
OFII	French Office for Immigration and Integration (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	International prisons watchdog (French section) (Observatoire international des prisons, section française)
WHO	World Health Organization
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
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)
PCH	Disability compensation benefit (Prestation de compensation du handicap)
PJJ	Judicial youth protection service (Protection judiciaire de la jeunesse)
PLAT	Counter-Terrorism Plan (Plan de lutte contre le terrorisme)
PMR	Person with Reduced Mobility (Personne à mobilité réduite)
PREJ	Affiliation Unit for External Prisoner Movements

QA	New arrivals wing (Quartier “arrivants”)
QCP	Short sentences wing (Quartier “courtes peines”)
QD	Disciplinary wing (Quartier disciplinaire)
QNC	“New concept” wing (Quartier “nouveau concept”)
QI	Solitary Confinement Wing (Quartier d’isolement)
QPA	Wing for adjusted sentences (Quartier pour peines aménagées)
QPS	Preparation for Release Wing (Quartier de préparation à la sortie)
QSL	Open wing (Quartier de semi-liberté)
QVD	Violent Prisoners' Wing (Quartier pour détenus violents)
RIEP	Industrial management of penal institutions (Régie industrielle des établissements pénitentiaires)
EPR	European Prison Rules
RPS	Additional remission (Réduction de peine supplémentaire)
RSA	Minimum income support (Revenu de solidarité active)
SAAD	Home-based assistance service (Service d’aide et d’accompagnement à domicile)
SEP	Prisons employment service (Service de l’emploi pénitentiaire)
SIAE	Facility for integration through work (Structure d’insertion par l’activité économique)
SMPR	Regional Mental Health Department for Prisons (Service médico-psychologique régional)
SPH	Hospital Psychiatrists’ Trade Union (Syndicat des psychiatres hospitaliers)
SPF	Trade Union of Psychiatrists of France (Syndicat des psychiatres de France)
SPIP	Prison rehabilitation and probation service (Service pénitentiaire d’insertion et de probation)
SPT	United Nations Subcommittee on Prevention of Torture
SSIAD	Service for home-based nursing care (Service de soins infirmiers à domicile)
TA	Administrative court (Tribunal administratif)
TAP	Sentence execution court (Tribunal de l’application des peines)
TGI	Court of first instance in civil and criminal matters (Tribunal de grande instance)
UCSA	Prison medical consultation and outpatient treatment unit (Unité de consultations et de soins ambulatoires)
UD	Dedicated unit: Islamist radicalisation in prisons (Unité dédiée)
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)
UMCRA	Medical Unit in a detention centre for illegal immigrants (Unité médicale en centre de rétention administrative)
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 malades)
USIP	Psychiatric intensive treatment unit (Unité pour soins intensifs en psychiatrie)
UVF	Family living unit (Unité de vie familiale)
ZA	Waiting area (Zone d’attente)



# Foreword

In the foreword of last year's annual report, we raised the concern that the balance between fundamental rights and security was once again in doubt given the gravity of the events that shook 2015, and we recalled the reason for the very existence of the CGLPL: to ensure in all circumstances, even the most serious ones, that the fundamental rights of persons deprived of their liberty are respected.

To say that our concerns turned out to be well-founded would be an understatement: through 2016, the CGLPL could not help but observe an erosion of these rights, both in the legislative instruments rushed through in light of the situation, and during the 146 institutional visits carried out over the year.

Indeed, against the backdrop of the terror attacks, two acts containing provisions that severely restrict individual freedoms were passed. Although it is understandable that, in exceptional times, it is necessary to enforce certain restrictions of fundamental rights, these must always be "necessary and proportionate", according to the terms of Article 8 of the European Convention on Human Rights. And yet I do not believe that this key criterion concerning the proportionality of the restrictions enforced for the sake of security has been heeded. To understand, we need to look at the philosophy behind these two texts and the reasons why they came about.

Accordingly, the Act of 3 June 2016 was originally intended to simplify a legal procedure that, it was felt, had become too complex. Through the parliamentary debates, the text was considerably reworked, the end result being a compilation of provisions bearing both on organised crime and terrorism – with seemingly short shrift given to maintaining the already precarious balance between security and individual freedoms. The catalogue of provisions adopted is of concern, and it is important that they be listed here.

The conditions and duration of the unconditional imprisonment period have been extended, while those governing release on parole have been restricted; the "unconditional imprisonment period" now applies automatically in some cases; so-called "incompressible" life imprisonment has been introduced for people issued life sentences for acts of terrorism. All of these provisions, which make the prospect of release uncertain, are bringing about a profound change in philosophy within the sentence enforcement system.

Detention for four hours in a police precinct, without a lawyer, has been introduced for anyone whose identity has been checked and regarding whom there is "*serious reason to believe that his or her behaviour may be linked to activities of a terrorist nature*". This criterion is vague to say the least, and therefore dangerous, in a State which claims to be governed by the Rule of Law.

The protocol concerning searches in prisons has seen an erosion of fundamental rights since they can now be decided in the wake of general instructions set by the places and periods during which they are carried out, with no regard for the criteria associated with the person being detained.

The committal of a person to a dedicated unit reserved for detained persons implicated in cases of terrorism is now officially documented and may be appealed against. This provision of the Act of 3 June 2016 comes after the CGLPL's observations in 2015 and 2016, which criticised the absence of legal status of dedicated units, the creation of which amounted to establishing a detention system with no legal basis. And yet, the announcements of the Minister of Justice on 25 October 2016 – misconstrued as the removal of these dedicated units - in reality sanctions the development of such experiments, without surrounding them with sufficient guarantees in terms of respect of fundamental rights.

A few months later, following the 14 July attack in Nice, the Act of 21 July 2016 extended the state of emergency. Whilst the circumstances certainly justified this measure, the vote on this text was taken advantage of to adopt provisions that largely exceeded its initial purpose – not least measures that had been rejected during earlier debates: limiting sentence adjustments and excluding sentence remission

credits for people sentenced for terror offences; extending prison sentences from twenty to thirty years for some offences; legalising video surveillance in cells within prisons. The latter provision, a breach of dignity and invasion of privacy, has been adopted in fairly general terms for a specific prisoner and may, in the future, apply under a number of circumstances. In this regard, the CGLPL reiterates its systematic opposition to this arrangement which should not become more commonplace, instead applying under exceptional circumstances only, as a last resort, for the purposes of protecting the person in question rather than to meet the expectations of public opinion.

What this shows is that 2016 was the year in which, in the tragic context of unprecedented terror attacks on French soil, legislative reform was leveraged as a counter-attack: in reaction to the ever heavier blows that rained down, laws were passed that reined in fundamental rights to an increasing extent. Does the risk of sacrificing fundamental freedoms and values become inevitable if we are to prove we fully grasp the implications of the current tragic circumstances? I do not believe it does.

This reckless way of thinking is unfortunately not new: it only leads to things escalating out of control. It is no secret that we get used to measures decided in exceptional times gradually becoming established as standard protocol, without us noticing, and forming part of the repressive apparatus without ever coming under scrutiny again. Remember that, as early as 1986, after a spate of attacks, an exceptional regime was established, which has since been shored up by a dozen or so texts, from the Act of 22 July 1996 to the Act of 23 January 2006. More recently, the Act of 13 November 2014 has criminalised an individual terror undertaking, and bestowed additional powers on the Executive. The January 2015 attacks were followed, on 24 June 2015, by the passing of the Intelligence Act which authorises the use of new surveillance devices.

Ever since the controversy surrounding the adoption of the so-called "Security and Freedom" Act of 2 February 1981, the right balance between security requirements and the defence of individual freedoms has been at the top of the public debate agenda. And yet this issue took a new turn in the wake of the 11 September 2001 attacks. The right to security has gained the upper hand over individual freedoms in terms of priority, as if fundamental rights had become a luxury we can no longer afford in these difficult times.

As a sign of the times, it has become commonplace to criticise an international body that is nevertheless essential to democracy – the European Court of Human Rights, set up in 1959 within the context of the Council of Europe – by implying that it is meddling in the affairs of the national ruling parties. What have we not heard certain political leaders uttering these past few months? Some have been quick to maintain that if the European Convention on Human Rights did not allow the administrative detention of individuals flagged on the S-list, State-security register, an exoneration therefrom would have to be obtained...

It is necessary to restate the fact that, today, quite the reverse is true: first, that, in these troubled times, the European Court of Human Rights must exercise even more vigilance in a context where fundamental rights and freedoms find themselves under serious threat. And second, that consideration must be given to States better abiding by the decisions of this Court.

There should be no choosing between security and freedoms. This approach is toxic. As Mireille Delmas-Marty, Honorary Professor at the Collège de France and Chair of the Scientific Committee set up at the CGLPL, wrote in her most recent work<sup>1</sup>, "*Security without freedom leads to totalitarianism, while freedom without security drags the world into chaos*".

What strikes me as even more serious is another concept that is challenging the foundations of criminal law today: that of "dangerousness". The preventive detention measure, introduced by the Act of 25 February 2008, has, for the first time, erased the objective link between crime and punishment by henceforth making it possible to extend the imprisonment of someone at the end of their sentence, for

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<sup>1</sup> *Aux quatre vents du monde, Le Seuil, 2016.*

an indefinitely renewable period, because of their supposed dangerousness, i.e. a "*very high probability of recidivism*" – a subjective notion if ever there was one.

Far from having disappeared from our legislation, despite the commitments made in this respect in 2012, this notion is spawning numerous narratives aimed at assuaging (with minimal effort) the general public – who have due reason to be worried. We have heard talk of "*dangerousness*", of "*individuals to separate from society*", of the "*precautionary principle applied to justice*" to justify locking up individuals on the S-list. We will have been spared nothing all through 2016, during which time a number of established lines have shifted, when an entry flagged on the S-list should only be for internal use by the police services, the contents of which has not always or still not been checked and which, in all cases, has never been validated, either by an adversarial procedure or by a ruling. Is this not ultimately about locking up for as long as possible all individuals who are considered "*deviant*", the criminal, the "*madman*", quite ignoring the fact that this person will one day get out, and that it would be in society's best interest for this spell of deprivation of liberty to serve a constructive purpose?

2016 not only saw a significant erosion of fundamental rights in the legislation, but also in the day-to-day reality of the institutions that the CGLPL visited all through the year.

Prison overcrowding is only getting worse. The CGLPL has constantly denounced this issue as a breach of people's dignity and a form of inhuman and degrading treatment in the meaning of Article 3 of the ECHR. On 1 December 2016, the prison occupancy rate reached 118%, while the rate in remand prisons hit 141%.

In a report published on 20 September 2016, "*En finir avec la surpopulation carcérale*," the Ministry of Justice produced a spot-on analysis of the phenomenon and stressed the need for balance between the creation of new places and finding alternatives to imprisonment. But, paradoxically, it earmarked almost all budget appropriations to the former.

And yet, a satisfactory answer to the problem of prison overcrowding will never be found solely by creating new prison places. Indeed, despite some 30,000 new places having been created over the past 25 years, this very problem has never been so acute: the average rate of 141% in remand prisons hides peaks of 200% in Ile-de-France (the Parisian region) and in Overseas France. The number of remand prisoners (i.e. presumed innocent) meanwhile exceeded the symbolic threshold of 20,000 in 2016 – up by 14% from 2015 – now accounting for a third of all prisoners when they only made up a quarter back in 2015. This finding invalidates the statements made at regular intervals concerning a supposedly "*lax*" justice.

On the other hand, non-custodial alternatives to prison are still wholly inadequate, despite the 15 August 2014 Act which has not gone as far as was hoped: just 2,300 non-custodial sentences have been passed in two years instead of the 8,000 to 20,000 per year that the impact study for the Act predicted. During the visits it carried out in 2016, the CGLPL was able to observe just how nervous magistrates are, in the current context, about imposing sentence adjustments.

Prison sentences should only be imposed as a last resort, and yet time and again the CGLPL's teams came across situations in which such sentences smacked as illogical: very short sentences – which contribute in no small part to desocialisation and financial insecurity, and make no impact in terms of rehabilitation because prison rehabilitation and probation services are already stretched to breaking point; sentences served by people whose old age or physical or mental health do not appear to be compatible with being kept in prison, but who remain there anyway for lack of any alternative. What are we waiting for, then, before thought is given to the point of very short sentences and to the continuing imprisonment of people whose health is failing?

In some jurisdictions, there is evidence that constructive dialogue between the judicial authority and the prison managers is enabling individual situations to be handled on the margins, by putting forward a sentence adjustment or end of sentence, or postponing imprisonment, which effectively limits prison overcrowding. Such praiseworthy and discreet initiatives do not have any financial impact and their

benefits are considerable. What are we waiting for before institutionalising a prison regulation system that would roll out on a broader scale constructive practices that are too few and far between today?

Do we have to wait for France to be found guilty by the ECHR, along the same lines as the *Torreggiani* judgment of 8 January 2013, which obliged the Italian authorities to provide a recourse system able to bring an end to the hardship resulting from prison overcrowding?

These days, overcrowding in prisons means that such a remedy can no longer carry out the rehabilitation mission it is assigned by the law. For the past eight years, the CGLPL has observed that the punitive dimension of imprisonment still prevails, and that a number of fundamental rights – though essential for rehabilitation – are losing ground: rights to health, to work, to staying in touch with family and to collective expression are not respected, when they form the very cornerstone of a rehabilitation plan.

These trends are also apparent in psychiatry, where the number of committals without consent has risen and the past two decades have seen an increase in solitary confinement and physical restraint measures without any *ex ante* or *ex post* verification – right up until a recent Act dated 26 January 2016, the application circular for which had still not published at the time this report was being written.

At the same time, the CGLPL is observing a fresh surge in the placing in administrative detection of families accompanied by minor children, despite France's condemnation by the ECHR in 2012 and despite the commitment made in this respect in 2012 by the candidate who went on to be elected President of the Republic.

In such a context, where the reminder that society must respect fundamental rights is hardly ringing loud and clear, the CGLPL pressed ahead with its mission with determination in 2016.

After observing two examples of "the serious violation of fundamental rights" of people deprived of their liberty which, in my view, amounted to inhuman or degrading treatment, I submitted emergency recommendations on two occasions to the Government. The first set, concerning the psychotherapy centre in Bourg-en-Bresse, Ain, sought to put an end to a widespread, abusive practice of solitary confinement and contention the likes of which has never been seen before. The second set, concerning the men's remand prison of the Fresnes prison complex, denounced substandard detention conditions marred by the compounded effects of overcrowding, unacceptable hygiene, chronic understaffing and premises in dire state of disrepair. Over the year, the CGLPL will have conducted 146 visits, including one Overseas mission and the inspection of the operations to dismantle the Paris and Calais migrant camps, and processed some 4,000 letters.

I have been obliged to draw the public authorities' attention to several matters of the utmost relevance this year:

- the lawmakers, regarding the reform of the full-body search policy in prisons and the unfairness of extending the time limit for referring cases to the Liberty and custody judge for people placed in administrative detection in Mayotte;
- the Government, regarding the health issues in detention centres for illegal immigrants or access to IT in prisons;
- several reports or opinions have been published about the use of solitary confinement and restraint in mental health institutions, the management of radicalisation in prisons and the situation of women deprived of their liberty.

The CGLPL has continued its traditionally active efforts on the international scene, especially with an intervention before the UN Committee against Torture which, this year, conducted a periodic examination of France. It also took part in a range of training initiatives, not least at the first summer university for French-speaking national preventive mechanisms.

Lastly, the institution has pushed on with its internal modernisation work by enriching its information system, introducing oversight guides and improving training for its members. It also set up a scientific committee which it convened for its first meeting.

2017 will mark 10 years since the Act of 30 October 2007 which founded the *Contrôleur général des lieux de privation de liberté*.

Of course, we will celebrate this milestone. Not as a show of our own personal satisfaction, which would be inappropriate in such worrying times, but together with all those who share our belief that inequality, injustice and suffering are not irreversible and that an institution such as ours must contribute, through its unflagging efforts, to ensuring that the rights of people deprived of their liberty are respected.

But if these people are to be heard, then we, the CGLPL, must also be heard.

It is vital that the public authorities become more familiar with and show more respect for the steadfast mission that our team has been accomplishing from the outset in prisons, psychiatric hospitals, custodial premises, detention centres, institutions for minors and other places, so that direct lessons can be learned from them and action taken accordingly. Fortunately, there are some examples of this being the case. But more needs to be done. In troubled times, the temptation to brush aside respect, protection and improvement of fundamental rights is strong. And this is a slippery slope. It must not be succumbed to. I will not succumb.

Adeline Hazan



# Chapter 1

## Places of deprivation of liberty in 2016

In 2016, the CGLPL conducted 146 inspections, with an average duration of slightly more than three days. Taking into account the number of inspectors, this represents 456 days spent in places of deprivation of liberty, in direct contact with people deprived of their liberty and those who are responsible for them. In penal institutions, juvenile detention centres and detention centres for illegal immigrants, almost all of these inspections were second inspections, and even third inspections in some cases. They were therefore an opportunity to assess how practices had progressed as well as what action had been taken following the CGLPL's previous recommendations.

Over and above these visits, through the year the CGLPL was obliged to react to events that affected the day-to-day running of some places of deprivation of liberty: a reform of the applicable legislation on solitary confinement and restraint in mental health institutions, a change in the search policy in penal institutions or sweeping movements of undocumented foreigners in connection with the migrant crisis gripping Europe.

In light of these visits, the current circumstances and the CGLPL's in-depth knowledge acquired over previous years, it would like to highlight the major themes that currently characterise each category of institution as regards the respect of the fundamental rights of persons deprived of liberty who are held there.

### 1. The situation in penal institutions

Through 2016, the CGLPL teams visited twenty-six penal institutions of all categories (one long-stay prison, five detention centres, ten remand prisons, seven prisons, two open prisons and one penal institution for minors).

Overall, these visits confirmed the findings of previous years: widespread overcrowding across remand prisons, understaffing, the state of disrepair concerning a large number of buildings, a lack of activity and difficulties accessing care stemming from medical demographics, excessive security restrictions associated with delivery of care and failure to honour physician-patient confidentiality.

#### 1.1 It will not be possible to resolve the prison overcrowding crisis solely by creating new places.

There is no doubt that this problem – and its most visible consequence: failure to comply with the obligation for individual cells for prisoners – is the most pressing facing the prison administration. According to the Government,<sup>2</sup> as at 1 August 2016, only 26,829 out of 68,819 prisoners had been assigned individual cells. This rate therefore stands at 39%, but in remand prisons (the institutional category with the fewest individual cells available) it is only 19%. On the same date<sup>3</sup>, the overall prison occupancy rate had reached 118%, while the rate in remand prisons was a staggering 140%.

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<sup>2</sup> *En finir avec la surpopulation carcérale*, Jean-Jacques Urvoas, Keeper of the Seals, Minister of Justice, 20 September 2016.

<sup>3</sup> *Monthly Statistics of the Population of Persons Serving Sentences or on Remand and Prisoners in France, situation as at 1 August 2016*, Minister of Justice.

In some of the institutions the CGLPL visited over the year, particularly in the Parisian region, this rate exceeded 200%. In such conditions, the actual, tangible consequences of overcrowding coupled with the lack of warders which the CGLPL had already criticised in its 2015 annual report, are considerable.

### 1.1.1 *Assessing the limits of creating new places*

The Minister of Justice's aforementioned report, *En finir avec la surpopulation carcérale*, shows that the Government has taken on board the quantitative aspects of this phenomenon and acted accordingly in terms of scaling up the number of prison places. The CGLPL would like to underscore the fact that creating new places is not a satisfactory solution to the problem of prison overcrowding. The Minister of Justice also rightly highlights that the leading causes of this overcrowding are tougher criminal legislation, the harder line taken by courts and the growing disinclination to adjust sentences. All of the prison places created in France over the past thirty years have not been enough to resolve the problem thus far, and there is nothing to suggest they will manage to reverse this trend in the future without any reform to prison policy. As pointed out in the Minister of Justice's report, since 1998 the number of places in French prisons has risen by around 20%, and yet, over the same period, the prison occupancy rate has grown from 112 to 118% - with a dip to 100% in 2001 and a peak at 125% in 2008. Suffice to say that the efforts undertaken have not had the desired outcome.

Concerning the problem of overcrowding, and its consequences in terms of individual cell allocation, the CGLPL is of the opinion that developing real estate projects alone cannot represent an effective solution. Indeed, through its missions it has pinpointed two other options that the Government would be advised to pursue: alternatives to prison and sentence adjustments on the one hand, and calling the logic behind some sentences into question on the other.

### 1.1.2 *Developing sentence adjustments and alternatives to prison in a context of prison regulation*

Regarding sentence adjustments and alternatives to prison, we can hardly praise the mixed results of the measures adopted in the Act of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions, chief among which is the introduction of the non-custodial sentence. In two years, fewer than 2,300 of these sentences have been passed – the justice seemingly having trouble incorporating them in their repertoire; just twenty-four criminal courts imposed half of these sentences. Compare this figure to the 8,000 to 20,000 non-custodial sentences that the impact study for the Act had forecast. During its visits, the CGLPL also observed at multiple intervals an impression that the conditions for adjusting sentences were becoming tougher – felt by the prisoners and confirmed by the institution managements. The former saw this as reason to despair, the latter as a factor in worsening overcrowding and worsening relations between prisoners – at times even leading to violence.

The CGLPL reiterates its recommendation to establish a more dynamic policy bearing on sentence adjustments and alternatives to prison, so as to help reverse the trend of prison overcrowding and encourage rehabilitation – a key factor in preventing recidivism.

During its visits, the CGLPL sometimes observed informal local regulation mechanisms for controlling prison overcrowding effectively and flexibly. What is required is dialogue between the prison administration and the judiciary, so as to coordinate the flow of imprisonments and that of sentence enforcement. In this way it is possible to slightly push back the enforcement of a sentence or bring forward a release date, always in keeping with the law, but with account taken of prisons'



occupancy capacities. What such a mechanism, which might be termed "prison regulation", comes down to is factoring prisons' occupancy capacities into sentence enforcement decisions. When grounded in local initiatives, this works, and it therefore appears advisable to extend this mechanism by incorporating it in the legal system.

A prison regulation mechanism, enabling account to be taken of prisons' occupancy capacities in legal decisions, must be incorporated into the legal system.

### 1.1.3 *Questioning the logic behind very short sentences and keeping people whose health is failing in prison*

Two categories of prisoners come into the equation as far as questioning the logic behind sentences is concerned: those given very short prison sentences and those whose health or age is incompatible with being kept in prison.

Offenders serving very short prison sentences in a conventional penal institution do not stay long enough for the prison rehabilitation and probation service to become familiar with their file and set up effective rehabilitation measures. This situation is only made more difficult in an overcrowded institution. For these people, encountered in all remand prisons, placement in detention cannot serve any useful purpose as regards rehabilitation – and can even have negative consequences because of the upheavals it can lead to on several fronts (in terms of family ties, housing, employment, training, social ties and so on) – and because of the "link" that this can create with the world of crime.

What is more, one might also question what interest there is for the public finances in placing, for just a few weeks, people who sometimes present themselves to the security forces simply when summoned, in a system where security is particularly costly and designed for more serious crimes.

Over 2016, the CGLPL also encountered prisoners whose advanced age or failing health hardly seemed compatible with keeping them detained. These include very elderly prisoners who, as is increasingly the case, are serving their first prison sentence, or younger people in poor health. Some of them never leave their cell, nor even their bed at times. And yet care arrangements for their disability whilst in detention are woefully insufficient. Sometimes their detention is prolonged simply because there is no other alternative accommodation option. The detaining of such people is a burden on the problem of overcrowding, and the insufficient care they receive can only lead to their health deteriorating that much more quickly. This particular case must therefore be addressed, but sentence enforcement judges and the prison administration, however willing (and on this point they can usually be relied upon), are not managing to find any satisfactory solutions at local level because of the lack of any comprehensively defined policy.

The CGLPL recommends conducting a systematic policy aimed at looking for accommodation options tailored to people handed out very short prison sentences and prisoners whose advanced age or failing health is incompatible with being kept in detention.

## 1.2 **The real estate policy of the prison administration, focusing on the creation of new places, does not guarantee sufficient maintenance to ensure that prisoners continue to be accommodated under acceptable conditions.**

Quite apart from the increase in number of prison places, it is only indirectly, through a discussion on budgetary difficulties, that the Minister of Justice's report touches on a question that is

nevertheless of the utmost importance in terms of respecting rights in accommodation conditions: that of the state of the existing building stock.

Over 2016, the CGLPL visited several institutions which were in a visible state of disrepair – including fairly recent buildings: for example, in one remand prison in the Parisian region, which only opened in 1990, the cells were in poor condition and so dirty they were infested with cockroaches; they were due to be renovated but overcrowding (175%) meant this simply was not possible. The same situation was observed in several other institutions where overcrowding bordered on the national average of 140%. The most shocking situation was observed at the Fresnes prison – such that the CGLPL was obliged to issue recommendations with the utmost urgency (see Chapter 2 below).

Overcrowded institutions are not the only places where poorly maintained infrastructure is a problem though. On this point, the CGLPL would like to highlight the lack of cleaning and general care observed on more than one occasion in open wings and prisons where the accommodation conditions are worse than in some remand prisons. In such places, prisoners and staff alike often spoke of a sense of abandonment, clearly corroborated by hard evidence in the condition of the infrastructure: communal showers in a disgraceful state, windows that do not close, no equipment for cooking in cells or in a communal area, virtually no sign of any upkeep or cleaning anywhere and so on and so forth. It was not uncommon for the people encountered in these places to explain that because detention in open prisons or wings was supposed to be seen as a sort of "preferential treatment", where prisoners could satisfy their needs outdoors, this consequently released the administration from part of their obligations. This is not the case at all – far from it. Equipment and maintenance conditions in open prisons must therefore be paid the same attention as the other categories of institution should be given.

On a final note it should be pointed out that renovating real estate is not enough in itself to improve detention conditions: this must come hand-in-hand with equipment and organisation measures that make it possible to take advantage of the improvements made. For example, the CGLPL observed some instances where cells had been renovated without the accompanying furniture necessary for using them being in place, and even where recently built family living units were not being made use of because the necessary organisation measures in this regard had not been adopted.

The Minister of Justice's aforementioned report, *En finir avec la population carcérale*, clearly identifies the problem of under-investment in prisons where this is concerned, and plainly sets out the financial difficulties that are preventing the prison administration from addressing the upkeep needs in prisons – not least the burden that public-private partnerships places upon them. It is regrettable, for all that, that the necessary conclusions have not been explicitly drawn from this finding. Indeed, this document gives precedence to the creation of new places but, on the subject of detention conditions, the target is limited. After a particularly narrow interpretation of the case law of the European Court of Human Rights (pp 45 & 46), the Minister of Justice does not go any further than to lay down principles (praiseworthy though they are) for broadening activities and improving preparation for release, and does not explicitly consider the improvement of accommodation conditions in existing institutions which the CGLPL nevertheless deems a priority.

It must be guaranteed that existing institutions will be brought up to standard and have maintenance set up with identified means and a monitoring system.

### 1.3 The legal search policy has been overly extended and its application is not sufficiently regulated.

2016 also saw changes introduced to the legal policy bearing on full-body searches. Since the Prison Act of 24 November 2009, "*Searches must be justified by a suspicion of an offence or by the risks that the behaviour of the prisoners may cause to the safety of people and to maintaining order in the institution. Their nature and frequency are strictly adapted to these necessities and the personality of the prisoners.*"

The CGLPL has, on multiple occasions, stressed how very difficult it has been to apply this measure in practice. It has often denounced the fact that full-body searches continue to be conducted systematically, that the grounds put forward for search decisions are insufficient, that the conditions in which they are carried out can be degrading or amount to harassment and that there is insufficient supervision on the part of the Management over practices observed in institutions. That said, between 2009 and 2016 it has noted that the regulations have been steadily adopted and understood more clearly. This is not the case across the board however, since abusive practices are still being reported in several of the institutions visited in 2016. In one of them, although the Management acknowledged that there were abusive cell search practices going on, it did not seem to have initiated any disciplinary proceedings against the staff in the wrong – who were nevertheless identified and few in number. In another institution, two members of staff, also identified, still continue to practise body searches in an archaic, humiliating and degrading way and cell searches in a thoroughly brutal, destructive manner. Lastly, in a third institution, the motivation for full-body searches was so widespread and the population concerned so large that, in practice, these types of search had become the rule and application of the regulations the exception.

Mindful of security concerns and the high number of mobile phones found in places of detention in particular, the Government wanted to extend the legal policy provided for by the 2009 Act. It primarily argued that, as soon as the search of prisoners depends upon individual behaviour, the most disciplined people – and even the most fragile – will never be searched, which makes them vulnerable due to pressure from the most domineering prisoners. This explains why the Government wanted, through an amendment under debate<sup>4</sup>, to extend the grounds for searches beyond merely the behaviour of individuals to the collective risks posed to institutions. A search policy "when there is question of collective risk" would therefore seem to have been adopted on top of the search "for reasons related to the individual".

Concerned about this new direction, the Chief inspector of places of deprivation of liberty (Contrôleure générale des lieux de privation de liberté) wished to warn Parliament by requesting each of the members of the joint committee meeting to examine the bill that became Article 111 of the Act of 3 June 2016 stepping up the fight against organised crime, terrorism and their financing, and improving the effectiveness and guarantees of the criminal procedure. In particular, it reminded them that the European Court of Human Rights<sup>5</sup> had unanimously found France to be in breach, in terms of full-body searches repeatedly conducted on a prisoner, of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which provides that "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*". It was therefore strongly critical of the fact that, on the basis of the bill presented to Parliament, it would now be possible to conduct full-body searches without it being necessary to individualise this measure in terms of the behaviour or personality of the prisoner, but purely on the grounds of the place s/he is in at the time. It indicated that, since searches were already practised extensively, the measure put forward amounted to a disproportionate extension of the search policy and, consequently, a significant retrogression regarding the fundamental rights of the people detained. Lastly, the Court pointed out that neither the overcrowding for which the public authorities are responsible, nor the

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<sup>4</sup> *i.e. without preliminary examination by the Conseil d'Etat.*

<sup>5</sup> *Judgment El Shennawy v. France, dated 20 January 2011.*

illegal introduction of telephones to compensate the difficulties accessing legal equipment, should justify this restriction of fundamental rights.

Considering that this was not a question of going back over the outright ban on systematic full-body searches, that the searches authorised by the bill could technically be less invasive than full-body searches and that the requirement for special grounds and for proportionality provided a legal framework striking a balance between prisoners' rights and public security obligations, Parliament adopted the measure put forward. That said, since it does not exclude the possibility that abuses could arise, it is counting on its own and the CGLPL's supervisory missions to anticipate or prevent them.

Article 57 of the Prison Act of 24 November 2009 thus now includes the following provision: "*when there is serious reason to suspect the introduction within the prison of banned substances or objects constituting a threat to the security of people and property, the head of institution can also order searches in locations and for a set period of time, irrespective of the personality of the persons detained. These searches must be strictly necessary and proportionate. Special grounds must be cited in their regard and a detailed report submitted to the relevant competent Public Prosecutor and the prison administration department*".

As might have been expected, this provision was the subject of rumours circulating in prisons going far beyond what it authorises. It was explained to the CGLPL on several occasions that the reform had reinstated the systematic nature of searches and, at the very least, scrapped the need for providing justification. We can only regret, therefore, that the administration has allowed such rumours to spread by neglecting to adopt implementing measures to coincide with the passing of the legislation. Indeed, there was an interval of more than four months between the adoption of the 3 June 2016 Act, which has been wrongly (albeit widely) interpreted as doing away with all guarantees, and that of an implementing circular finally on 14 October<sup>6</sup> which sets out the conditions for implementing the new provisions.

Note, above all, that, the measure according to which "*full-body searches shall only be possible if frisking or the use of electronic detection means prove insufficient,*" stemming from the initial drafting of the 2009 Act, is applicable to the search policy "when there is question of collective risk" established in June 2016 and the initial search policy "for reasons related to the individual" alike. The circulation of mobile phones in places of detention – cited as key grounds for the new system – should logically be excluded then, insofar as it cannot seriously be claimed that these cannot be detected by frisking or electronic detection means.

It is therefore extremely timely that the aforementioned circular of 14 October 2016 recalls that "*the different search measures practised by prison staff on the person of prisoners must, pursuant to Article 57 of the Prison Act, meet the criteria of necessity, proportionality and subsidiarity, whether they are carried out on their own or in combination with technical detection means.*" The merit of this text is also that it restates the physical conditions under which searches are carried out and makes clear the prohibition of their systematic nature, as well as the principles of necessity, proportionality and subsidiarity that must guide the decision to conduct a search.

Concerning the interpretation of Paragraph 2 (new) of Article 57 of the Prison Act, the administration gives a very timely reminder of the fact that the legislation does not go back over the principle of the prohibition of systematic searches or the need to abide by the principles of necessity, subsidiarity and proportionality.

This circular also clarifies the requirements for formalism specific to non-individualised search measures:

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<sup>6</sup> Note on the legal framework governing certain check procedures carried out on prisoners dated 14 October 2016.

- the need for a serious presumption backed up by evidence that an offence has been or is being committed or of danger based on suspicions that can be expressed objectively (for example the sharp increase in the number of banned or dangerous substances or objects discovered);
- the limitation of the measure in space and time, made necessary by the principle of proportionality; it must be stressed in this regard that the examples provided never extend for more than a day;
- the requirement for a justified, detailed report to be submitted to the relevant competent Public Prosecutor and prison administration department.

Although it reproaches the delay in this circular's adoption, which allowed unfounded rumours to circulate in prisons, the CGLPL considers that the restrictions defined by this text do, in theory, enable the unfortunate consequences of these to be limited. It does, however, stress the need, on the one hand, to make sure that the 2009 provisions are fully adopted by the prison administration in terms of the grounds for individual search decisions and conditions in which these are carried out, since the evidence on the ground points to this process not yet being complete, and on the other, to ensure the new provisions are interpreted with the utmost stringency.

The exceptional nature of full-body searches must be guaranteed by providing effective training and supervision for all prison administration staff as regards complying with the grounds and conditions for carrying out searches. Moreover, it is necessary to ensure the strict interpretation of Article 57, Paragraph 2, of the Prison Law through tight scrutiny by the supervisory authorities, administrative inspectorates and judicial authorities.

#### **1.4 Violence seems to be on the rise in prisons, but screening is inadequate in this regard.**

The visits that the CGLPL conducted in prisons in 2016 also threw up an increase in violent phenomena which seem to stem from both the problem of prison overcrowding and insufficient supervision. In three of the prisons it visited, the CGLPL observed almost systematic behaviour on the part of prisoners intent on trying to protect themselves by inappropriate means: refusal to participate in walks or activities, requests to be placed in solitary confinement, and even deliberate misbehaviour so as to be placed in the disciplinary wing. Sometimes, some prisoners are so afraid that they even refuse to receive visits from their family to shield them from outside pressure. In one institution which still had dormitories, the Management reported violence being perpetrated there "behind the scenes".

Violence between prisoners is also mentioned in the letter which the CGLPL received. These accounts present an opportunity to question the prisons about the measures taken to maintain internal law and order, guarantee the physical safety of the people entrusted to the prison administration or protect the individual safety of a particular person – for example by taking disciplinary action against his or her attacker, moving victims to different cells or stepping up surveillance of movements.

There are also allegations of violence committed by warders in the letter that the CGLPL received. In most cases, this was a matter of criticising the excessive or abusive nature of such professional practices as searches or immediate placement in the disciplinary wing – referred to as a "preventive measure". In some cases, the health blocks issued medical certificates which, whilst not providing hard evidence of the abuse allegations, nevertheless attest to the marks left by the use of force: haematomas, skin lesions or more.

In other cases, the letter received spoke of violence stemming from malicious acts committed by prisoners against other prisoners – which persist or escalate because of an air of

passivity where the warders are concerned. These acts particularly involve harassment or cruel games against vulnerable people, primarily sexual offenders concerning whom the general consensus is that they "had it coming".

Over the course of their visits and from the letter they received, the CGLPL members have sensed an escalating "climate of violence" prevailing in prisons. The emergency recommendation that the Chief inspector of places of deprivation of liberty submitted to the Minister of Justice on 18 November 2016 regarding the Fresnes prison described a situation which is sadly not a unique case – even though it has reached extreme proportions in this institution where it is compounded by serious failings in terms of hygiene. The causes are often the same: prison overcrowding, a shortage of warders, insufficient supervision and boredom.

An investigation is opened for each of the cases of violence reported, whatever its alleged cause. The Management of the institution is usually the first to be informed, which quite often then refers the case to the judicial authority. When prisoners contact the CGLPL, they often also reach out to other authorities or associations: usually the French President, the Minister of Justice, the director of the interregional department of prison services, the Defender of Rights and the French Section of the International Prisons Watchdog. All of these organisations come up against the same hurdles when trying to determine what really happened: an event that often dates back, for which the eye-witness accounts are unreliable. Whilst the materiality of the allegations of violence is therefore seldom established, they are made with such frequency that there cannot be any doubt as to their credibility.

European prison rule number 42.3 gives prison physicians a particular role to play in screening violent situations: "*When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to: [...] c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently*".

In a guide to inspection of prison medical services written in 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) includes an examination of the role these services have to play with respect to violence. The checklist thus described sets out in detail the role expected of the physician:

*"In accordance with the CPT's specific mandate, the following aspects concerning the screening of violent situations must be examined:*

- *"Systematic drafting of a report of traumatic lesions in the event of alleged violence (upon admission to prison or during a stint in a penal institution);*
- *"Terms for drafting reports of traumatic lesions and examination of their contents (statement from the person alleging to be the victim of violence, detailed medical examination, conclusion of the medical consultation);*
- *"Existence of a register mentioning the reports of traumatic lesions (with inclusion of any statistics);*
- *"Transmission of reports of traumatic lesions to an independent authority responsible for investigating the allegations (existence of a specific procedure to that effect);*
- *"Possible request for medicolegal expert appraisals."*

The CGLPL highlights the important role played by health blocks in prisons in terms of properly screening for any violence which might be committed against prisoners, whatever form this may take. Indeed, these units are the only entity with the necessary proximity in terms of time and space and independence for making observations on the basis of which protection, investigation or remedy measures may then be drawn up. So that this role may be assumed in

practice, it must feature clearly among the written responsibilities of the health professionals working in prisons.

The CGLPL thus recommends confirming and organising the role of health professionals working in prisons in the screening of violence, pursuant to the provisions of European prison rules.

## **1.5 Roll-out of the GENESIS software (which stands for national management of prisoners for individual monitoring and safety) has not been spared the difficulties inherent in any large-scale IT project, and a solution to the consequences of this must be found when they violate the fundamental rights of prisoners.**

Lastly, several institutions would seem to be struggling with a problem regarding the GENESIS software used to manage sentence enforcement, which includes a module designed to manage prisoners' nominative accounts: a technical hitch has reportedly resulted in an interruption in voluntary payments to civil parties. The institutions visited reported a delay of more than one year.

This situation has major implications for decisions to grant additional remissions (RPS) or permission to leave closed units. It is the administration's responsibility to use their best endeavours to ensure that detained persons wishing to make voluntary payments to their civil party can benefit from the advantages associated with this action, without being penalised because of a malfunction that is not their fault.

Best endeavours must be used to ensure those prisoners wishing to make voluntary payments to civil parties avail of the associated benefits, even when they are prevented from making such payments because of an administrative hitch.

## **2. The situation in mental health institutions**

In 2016 the CGLPL teams visited twenty-eight health facilities which are authorised to accommodate hospitalised patients without their consent.

The prevailing concern in such institutions was the use of solitary confinement and restraint. Indeed, over the first six months of the year, the CGLPL acted on two occasions in this regard: firstly, by submitting emergency recommendations to the Government on 8 February 2016 concerning the psychotherapy centre in Ain and focusing especially on the use of solitary confinement and restraint, as demonstrated in the developments of chapter 2 below; secondly by publishing a thematic report on 25 May 2016 entitled: "*Isolement et contention dans les établissements de santé mentale*" (Solitary confinement and restraint in mental health institutions), the content of which is presented in Chapter 2 herein. At the same time, in the 26 January 2016 Act on modernising the French health service, Parliament adopted provisions which, for the first time, establish a legal framework for the use of solitary confinement and restraint that the CGLPL had hoped to see come about much earlier.

### **2.1 But with no implementing provisions, the supervision of solitary confinement and restraint measures – passed into law in January 2016 – is ineffectual.**

Amended by Article 72 of the 26 January 2016 Act, the Public Health Code now contains an Article L.3222-5-1 which provides as follows:

*"Solitary confinement and restraint are practices to be used as a last resort. They may only be used to prevent immediate or imminent damage to the patient or another person, on the decision of a psychiatrist, and for a limited period. Their use must be subject to strict surveillance, entrusted by the institution to health professionals designated for this purpose.*

*"A record must be kept in each authorised psychiatric health institution appointed by the Director General of the Regional Health Service (ARS) to ensure psychiatric treatment without consent pursuant to sub-section I, Article L.3222-1. For each solitary confinement or restraint measure, this record mentions the name of the psychiatrist who decided to take this measure, the date and time, its duration and the name of the health professionals who monitored the patient during this time. The record, which can be digital, must be presented, when requested, to the Département-level Commission for Psychiatric Care, the Contrôleur général des lieux de privation de liberté or its delegates and to members of Parliament.*

*"The institution draws up an annual report giving a full account of the practices for admitting patients to seclusion rooms and for using restraint, the defined policy for limiting recourse to these practices and evaluation of their use. This report is submitted for the opinion of the Users' Committee provided for in Article L. 1112-3 and of the Monitoring Committee provided for in Article L. 6143-1 "*

During the visits conducted in the months following the adoption of these provisions, the CGLPL could not help but notice the scant measures in place to make sure the nursing staff were taking this rule on board and, consequently, the low number of institutions that had drawn up an official policy for limiting use of these practices and a procedure for assessing their use in practice. Even the first step towards a formal procedure – opening a record, the contents of which would at the very least be worth clarifying – only appeared to be in place in a handful of cases. Even when such records do exist, they are often difficult to process. For example, one of the records examined did not allow a clear distinction between solitary confinement for a few hours in a room specifically designated for that purpose, and the patient's own room; in another institution, although a solitary confinement and restraint record had been kept in the past, this was no longer the case since management of patients' records had become electronic; in other cases, solitary confinement was mainly practised in the patient's room with no traceability. Over the whole year the CGLPL only visited two institutions which ensured sufficient traceability of solitary confinement and restraint measures to find out the reasons, monitoring arrangements, renewal measures and measures taken to bring these situations to an end.

In other institutions, the CGLPL found that, owing to the medical training of the staff or to local tradition, solitary confinement and restraint was not often practised – with no apparent adverse consequences. For all that, even in those institutions adopting these measured practices, traceability is not systematic – such that the inspectors have had to base their conclusions on the accounts of the medical staff and sometimes, even, of the patients.

The visits conducted also confirmed the criticism expressed in the May 2016 thematic report on the accommodation conditions of patients placed in solitary confinement. Rooms were observed that fell well short of the expected standards and posed grave safety concerns such as accessible lighting fixtures, protruding tap fittings or a defective call system. There is evidence of situations in which patients have been confined in their own room with no monitoring measures or suitable equipment, their rooms lacking any washing facilities and located a long way from the nursing staff's office – and even places laid out in such a way that they bring to mind the solitary confinement wing of certain prisons or custody cells. On a final note, in one institution the CGLPL saw that patients had been placed completely naked in seclusion rooms.



Inspectors also noted the following illegal procedures in at least two institutions: decisions to use these practices made by the nursing staff without confirmation from physicians, or on the basis of prescriptions that had been written in advance, with the indication "when necessary", and implemented with no prior medical checkup.

The visits also confirmed the findings of the thematic report in terms of treatment and care for patients detained in mental health institutions. So-called "therapeutic" solitary confinement, and sometimes restraint described in the same way, are used as safety measures, pure and simple, and detained patients are subjected to such practices systematically throughout their time in these institutions – regardless of their clinical condition. This situation is very common – found even in the most open institutions. And yet there are a few exceptions to this rule: in one of the institutions visited, as soon as their clinical condition allowed, the patients detained were allowed to benefit from a conventional hospitalisation regimen and activities in the same way as the other patients, without this ever having posed any problems.

When consulted over the summer by the Minister of Health and Social Affairs about a draft circular for implementing the new Article L.3222-5-1 of the Public Health Code, the CGLPL did not hesitate, on the basis of these justifications, to bring up<sup>7</sup> all of the provisions that it felt should be included in such a text to ensure the law is fully applied in keeping with its founding principles. The CGLPL found the draft that it received from the Ministry to be overly technical, and asked that the legal provisions not be interpreted as exclusively applying to patients placed in seclusion rooms, but, on the contrary, also to patients confined in their own rooms. It also asked that the circular adopt measures aimed at proving that solitary confinement and restraint were only carried out as a last resort and at guaranteeing that these measures do not go on for longer than is considered strictly necessary. The CGLPL also recommended that, on the basis of the circular, a national body for assessing policies aimed at limiting the use of solitary confinement and restraint be set up, and reminded the Minister of all of the recommendations set out in the conclusion of the May 2016 report on solitary confinement and restraint in mental health institutions.

Since the draft circular on which the CGLPL had been consulted was still being worked on when this annual report was being written, the CGLPL can do no more than stress the need to bring it properly to completion and the wish that this document not amount to a purely procedural text regulating the content of the record introduced by law, but represent a dynamic text underscoring the public authorities' commitment to reducing solitary confinement and restraint practices and promoting the application of the legislation that provides for such practices only as a last resort and for policies limiting them to be set up and assessed. Whenever necessary, the CGLPL is prepared to share its expertise with the Government in drafting this circular.

It is imperative that an implementing circular for the new provisions of Article L.3222-5-1 of the Public Health Code be adopted with the utmost urgency, in order to enable traceability of any solitary confinement and restraint measure taken, in whatever form it may take, and to expedite the definition and assessment of policies aimed at limiting these practices with account taken of the recommendations set out in the CGLPL's report on solitary confinement and restraint in mental health institutions.

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<sup>7</sup> Letter dated 23 August 2016 to the Minister of Social Affairs and Health.

## 2.2 The diversified restrictions imposed on the daily routines of hospitalised patients are sometimes lacking in any therapeutic basis and can constitute unjustified unequal treatment.

Over and above the freedom-restricting practices that solitary confinement and restraint constitute, during each of its missions the CGLPL also examines the measures taken to enable patients, during their hospitalisation, to benefit from a freedom to come and go that is as complete as their state of health will allow. Only the consideration of care to be administered to patients or security measures required by each patient's individual behaviour can justify any restriction of this freedom. As a result, the latter should not result from organisation measures, practical constraints or general, systematic and impersonal safety measures. In other words, although a given patient's clinical condition can justify that he or she be deprived of his or her liberty, this reason cannot be cited as grounds for all of the patients around him or her also to be deprived of their liberty.

This principle is not generally contested, and yet the CGLPL found during its visits that closed units were predominant. For example, in two large institutions, only one unit was open. In another, the choice was made to opt for open units "so as not to stigmatise" patients cared for in a closed unit: units are therefore adjustable in theory, and can be closed on a provisional basis when justified by a patient's clinical condition; that said, practices differ and most units are kept permanently closed, with nursing staff only opening the door at the request of patients with permission to leave. In other places, because of the history specific to a particular institution, there are no closed units, nor even enclosure walls, and patients are free to go out – into town if they wish – whatever their status; in this institution, patients make regular outings, including those who had been committed without their consent; the legal hospitalisation system does not weigh upon the care arrangements and the prefect has never formally objected to such practices.

Similar differences are apparent in the management of other liberties, including those bearing on correspondence, possession of a mobile phone, use of a computer and online access, smoking or enjoying sexual relations. In these areas, the inspectors observed a disparity that is not grounded in the differences in patient pathologies or even in the way premises are laid out, but simply in the "institutions' way of doing things" or in the, at times implicit, choices of the nursing staff.

The differences observed from one institution to another, and even from one department to another, are so stark that the CGLPL believes they cast doubt over equal access to healthcare for all.

When the least restrictive practices in terms of freedom are adopted, no unfortunate consequences are observed: this therefore makes a good many prohibitions observed elsewhere appear entirely unjustified. Through their ethics committee or ad hoc commissions, some institutions have initiated an original approach to considering the freedom to come and go. This involves examining any recommendation to restrict this freedom, questioning its grounds and, where applicable, looking for means of achieving the desired end result via less restrictive methods. On an occasional basis, a similar approach might also be developed for other freedoms, such as the use of mobile phones or right to smoke. It therefore appears quite possible, and advisable, for a process to be adopted within every institution for giving consideration to the grounds for each type of restriction to patients' freedom.

Such processes, at times lacking in any real formal framework, are a solution to an almost constant concern on the part of nursing staff, and yet they are difficult to organise. Left to local initiative, they sometimes struggle to come to fruition through lack of incentive or reference. It therefore seems entirely worthwhile taking an initiative at national level, within the context of the

many working groups set up to implement the provisions of the 26 January 2016 Act on modernising the French health service, to encourage and support these processes.

Discussions must be encouraged within each institution on how patients' freedom to come and go could be extended and on how the restrictions placed on their day-to-day comfort (use of mobile phones, contact with family members, outings, Internet access and so on) can be eased so that only those restrictions that are justified by care or security requirements associated with a patient's clinical condition are maintained.

For its part, the CGLPL, in its future visits, will take a systematic approach to examining initiatives taken locally to extend patients' freedom to come and go and ease the restrictions imposed upon them.

### 3. The situation of interregional secure hospital units (UHSI) and specially-equipped hospital units (UHSA)

In 2016, the CGLPL visited two interregional secure hospital units (UHSI) and two specially-equipped hospital units (UHSA). These institutions are hospital departments designed to accommodate patients detained for periods of longer than 48 hours. UHSIs deliver somatic care while UHSAs specialise in psychiatric care.

Through these visits it was possible to observe definite improvement in the way these units are run, particularly in terms of generally better relations between the medical services and prison administration, which now result in fairly flexible ways of doing things. In one of the institutions visited, the local agreement between the two authorities has still not been signed even though the unit has been up and running for almost three years, and day-to-day relations are consequently not as smooth as they should be.

The question of care confidentiality needs to be kept a careful eye on, something which is not the case across the board, since the inspectors visited one unit where warders attend almost all health checkups. Fortunately this situation is not the norm, as it can create difficulties for some nursing staff during their care of patients whose criminal record has received local media coverage.

In the four institutions visited, admission into a hospital unit brings about a curtailment in the rights associated with detention: no information on the length of hospital stay; detained patients are not allowed to manage their belongings as they would have wished; the liaison forms between the institutions and the unit are either incomplete or missing, such that escort levels are decided entirely arbitrarily; neither the prison rehabilitation and probation service nor social services are involved, such that the rehabilitation efforts in progress are interrupted and sentence adjustment projects are not followed properly; the detention and visit conditions are hardly propitious (no exercise yards or activities, visiting rooms with separation walls, delays in canteen service, delays in the authorised telephone numbers being handed out, etc.).

Moreover, many detained people refuse hospitalisation because some leisure activities are not allowed (walks or smoking for example).

These problems are often all considered in the light of a matter that appears to be very technical in nature: that of detained persons changing prison register number upon being committed to a hospital unit. The result is a continuity problem which gives rise to significant logistical headaches and, for the patient, concerns which are frankly not going to help him or her get better.

Best endeavours must be used to ensure that a detained person committed to a hospital unit does not see his or her detention rights being curtailed. This requires, on the hand, ensuring continuity regarding his or her administrative situation so as to avoid any interruption in care (external relations, nominative accounts, sentence adjustments, etc.) and, on the other, hospital units with the necessary logistics (exercise space, visiting rooms, activities, canteen, etc.).

## 4. The situation in detention facilities and centres for illegal immigrants

Over 2016, the CGLPL's visits in facilities accommodating undocumented foreigners were mainly carried out in two atypical situations: the detention facilities and centre and the holding area of Mayotte on the one hand, and the measures taken by the Government to deal with the influx of migrants in Paris and the Calais region on the other.

### 4.1 In Mayotte – a territory under strong migratory pressures – there is a temptation to restrict migrants' rights.

Mayotte is subject to strong migratory pressures, mainly from the Comoros and, to a much lesser extent, Madagascar. These flows are difficult to manage amid insufficient services and infrastructure, not least in terms of transport and health, as well as the recent development of a sense of insecurity that has gained media traction.

The activity of the detention centre for illegal immigrants is marked by the sheer scale of these flows, since more than 18,000 people have been removed each year – including some 25% of minors – with passengers of boats intercepted out at sea forming half this figure. Their average length of stay in the centre is 17 hours. The centre must therefore organise removals in an almost industrial fashion, carrying them out in spite of no few linguistic difficulties. The accommodation conditions are acceptable and the procedures generally conducted correctly under the supervision of management staff who mostly show an attentive and respectful attitude towards the people concerned.

In the event of a surge in migrants arriving, outstripping the detention centre's capacities, it is assisted by three newly opened administrative detention facilities. Two of these offer up particularly precarious accommodation conditions, with one being no more than a fenced holding area in portside installations. The wide range of different authorities managing and using such facilities undermines the consistency of the procedures implemented and respect of the rights of the persons detained within.

The main difficulties concern the situation of minors and their entrusting to an adult – even when there is no legally established connection. In a context where relationships do not have the same significance as in mainland France and administrative documents are not always reliable – or available even, the situation is extremely complicated to manage. In practice, even if the law provides for referral to the Social Care Services for Children scheme (ASE), the most commonly adopted measure entails dispatching the children placed in detention back to their presumed homeland on the grounds that the poverty over there is preferable to the risk of not being properly cared for by one of the few foster families in Mayotte.

Even more worryingly, serious doubts remain over the legitimacy of the claims made regarding the adult to whom children are entrusted for their removal. Whatever the efforts undertaken by the association in charge of assisting families, the swiftness with which returns are

organised does not allow, in practice, for the purported links between the child and the adult presented as his or her guardian to be verified. When the prefectural departments are called upon to conduct such checks, they do so correctly, but in practice, this only concerns a small proportion of cases.

After its on-site visit, the CGLPL noticed that the bill on substantive equality overseas containing other social and economic provisions, adopted by the National Assembly but which was still being examined by the Senate at the time this report was being written, also contained a provision that was likely to introduce discriminatory circumstances in Mayotte.

Indeed, since 1 November 2016, pursuant to the amendments brought by the 7 March 2016 Act on the rights of foreigners in France, the liberty and custody judge issues a decision within 48 hours instead of the previous five-day timescale. This change is at least in keeping with a longstanding, repeated request on the part of the CGLPL.

But as it has been passed by the National Assembly, the bill contains a provision that is at odds with the goal of substantive equality and which involves bringing back the five-day timescale for the liberty and custody judge to issue a decision, solely for Mayotte. The Chief inspector of places of deprivation of liberty has drawn the Senate's attention to the untimely nature of this provision, which introduces inequality of treatment and is not appropriate for the situation in Mayotte where the widespread existence of detention placements should, on the contrary, lead to closer scrutiny by the judicial authority rather than a limitation in its role.

It is necessary to maintain a 48-hour timescale throughout national territory – including in Mayotte – for the presentation of people placed in administrative detention to the liberty and custody judge.

#### **4.2 The operations geared towards "sheltering" migrants based in the Calais region and Paris have not brought about a sharp increase in deprivation of liberty measures.**

In the autumn of 2016, the CGLPL investigated all of the operations that were performed in the Calais region and Paris to deal with the influx of migrants.

In the former region, the investigation conducted by the CGLPL concerned the border police services, Coquelles detention centre for illegal immigrants and temporary police stations set up for dismantling the "Jungle" camp. Evidently well planned and meeting an expectation shared by both the associations and the migrants themselves, these operations were mostly able to take place under calm, orderly conditions.

Very few detention procedures were carried out against people in the camp. That said, the inspectors did note an increase in the number of foreigners in the Pale of Calais detained and taken in for questioning. The places of deprivation of liberty in the area received a much greater number of referrals than usual as a result of this situation, but in conditions that had been correctly anticipated. The inspectors' only observations had to do with the fact that, save for a few exceptions, the documents handed to the prisoners were not written in a language they could understand and that the police stations were overly crowded – even if this situation was not unusual. Moreover, lawyers had indicated to the CGLPL that when the "Jungle" camp was being dismantled, they had been prevented from entering the area where the operations were being carried out – a situation which is likely to violate the rights of the foreigners present.

On the other hand, the CGLPL had notified the Government of the handling of minors, selected in the queues on the grounds of their appearance, qualified as minors following an interview of dubious technicity and then accommodated in large numbers (1,500 or so) in an interim centre set up specifically for them.

In Paris, inspectors attended the operation to evacuate the camps set up in the 18th and 19th arrondissements. No interim deprivation of liberty premises had been set up on this occasion. No right of residence or identity checks had been carried out with the people concerned. No one was brought in for questioning on these grounds either.

### **4.3 The steep increase in number of children placed in a detention centre for illegal immigrants with their family is cause for concern.**

The CGLPL questioned the Minister of the Interior about a fresh uptick in the number of placements of families accompanied by minor children in detention centres for illegal immigrants – particularly the ones in Metz-Queleu and Le Mesnil-Amelot. It also noted that, between 2014 and 2015, the number of minors placed in administrative detention with their parents rose from 45 to 105: an increase of more than 133%.

Insisting that these measures comply with French law, which is itself in keeping with the European requirements which do not prohibit the accompaniment of a detained foreigner by his or her minor children, but sets out specific conditions in such cases, the Minister of the Interior indicated that the principle that his departments had adopted for organising the removal of families was house arrest. He maintained that a family's placement in detention cannot be justified solely by the lack of representation guarantees in the family's regard, and must meet four conditions: the requirement for special detention grounds, in consideration of a breach of the house arrest guidelines or proven neglect to execute the deportation measure; specific requirements for suitable accommodation; the shortest possible length of time in placement; consideration of the minor's best interests in all cases. Lastly, he pointed out that the State's departments are doing everything possible to avoid detaining minors in detention places, all the while staying firmly on track where the aim to deport undocumented foreigners is concerned – including when they make up a family.

The CGLPL duly notes this response, but asks that the Minister of Interior have the situation of families placed in detention with minor children monitored on a systematic basis by its inspection or supervisory departments, so as to ensure that this measure is not solely aimed at meeting administrative organisation needs – i.e. at making it easier to execute deportation. It reminded the Minister of the Interior that house arrest prior to execution of a deportation measure must be seen as an alternative to placement in detention rather than an option for carrying out more measures or facilitating their implementation.

The CGLPL is also concerned about the possibility – opened up by Decree No. 2016-1457 of 28 October 2016 – of placing families with minor children in specially equipped detention facilities for illegal immigrants (LRA).

It became apparent during the visits that the CGLPL conducted in such facilities that precarious conditions persist within them which do not sufficiently guarantee access to rights (no legal assistance is available in detention centres for illegal immigrants in particular) and which do not accommodate people in a dignified manner. On the basis of these observations, in its 2015 report the CGLPL recommended that the situation in each LRA be audited and that those that were not strictly necessary be shut down.

The CGLPL is thus greatly concerned that the manner in which families are accommodated in such facilities leads to serious violations of their rights and distinct ambiguity as regards their pathways and the procedures imposed upon them.

The CGLPL shall maintain a vigilant stance as regards all these issues, in liaison with the network of associations.

The CGLPL stresses that everything possible must be done to avoid all imprisonment of children in detention centres for illegal immigrants and, especially, detention facilities for illegal immigrants.

## 5. The situation in juvenile detention centres

The CGLPL visited seven juvenile detention centres in 2016. These were second (and even third) visits without exception.

### 5.1 Despite a general trend reflecting an improvement for the better, juvenile detention centres remain unequal and vulnerable.

The observations made in such facilities are mixed to say the least: the situations range from better to not so good – with no bearing on whether the institution has public or association status.

The criteria underpinning excellent management conditions within juvenile detention centres have been clearly identified today: a stable and professional staff, itself dependent upon the quality of the management team, personalised approaches taken to each young person detained, which enables tailored, stringent supervision of minors and gives rise to precise, detailed reports to the presiding judges, and an open attitude towards the outside, which enables families to be closely involved and a diversity of activities. Three of the centres visited met these criteria and only secondary recommendations were issued in their regard.

The situation concerning two of the centres visited (one public and the other an association) was so delicate, however that the CGLPL deemed it necessary in both cases to draw the attention of the Judicial Youth Protection Service Directorate to the need to suspend accommodation of minors in them. In one of them, the staff had a serious crisis on their hands: three of the four minors in the centre's care had run away and a fourth was awaiting placement in a care facility. In the other, after a troubled spell some of the minors had managed to get hold of the institution's keys and committed internal burglaries, while others had destroyed their accommodation premises. In both cases, the intention was for minors to yet again be received when the necessary measures had not been taken either as regards the staff or the facilities themselves.

With the exception of these two critical situations, the other visits carried out showed that the situation in the institutions had improved since the previous visits and that, to varying degrees, the latter were genuinely committed to acting upon the CGLPL's observations. That said, there are still a few recurring weaknesses that need addressing: searches are sometimes carried out in an abusive manner despite recent instructions from the Judicial Youth Protection Service Directorate – which are not widely known – particularly in association centres; physician-patient privilege and confidentiality concerning communication with friends and relatives are not kept as required. Last but not least, there is a general tendency towards boredom with not enough to do at the weekend and in the summer above all.

### 5.2 Major regulatory measures were taken in 2015 and 2016, and their application in practice now needs to be supported and monitored.

The CGLPL's 2015 report concluded its analysis of juvenile detention centres with the observation that the strengths and weaknesses of these organisations had been subject to a clear assessment on the part of a cross-government inspection mission overseen by the General Inspectorate of Social Affairs, General Inspectorate of Legal Services and Inspectorate of the Judicial Youth Protection

Service and that the administration had openly agreed with this assessment. It recommended that the measures put forward in the cross-government report be adopted out of necessity.

One year on, the CGLPL finds that considerable regulatory progress has been made<sup>8</sup>. The precise contents thereof can be observed, incidentally, in Chapter 3 of this annual report on supervision of the recommendations of the Contrôleur général des lieux de privation de liberté. As such, these days institutions have a detailed body of regulations at their disposal. And yet the visits conducted by the CGLPL in juvenile detention centres shut down subsequent to the adoption of these texts reveal that their application in practice is uncertain and that they are not widely known – including in institutions where strict management is in place. Training and audits are therefore required.

Training and audits must be carried out as soon as possible to ensure the recent body of regulations concerning juvenile detention centres is fully grasped and applied.

## 6. The situation in police custody facilities

### 6.1 Not enough or too much work can lead to breaches in the respect of the fundamental rights of people placed in custody.

#### 6.1.1 *Very small gendarmerie units are simply unable to bear the costs associated with providing acceptable, safe accommodation for people in custody.*

The situation of small brigades remains highly unsatisfactory in gendarmerie units: the number of people taken into custody over the year is seldom more than a few dozen, which means the gendarmes overseeing them lack experience, and the facilities are poorly equipped insofar as the investment that would be needed to bring them up to standard appears legitimately unjustified. The night-time surveillance conditions are inadequate, despite the plans intended to set up a hotline. Lawyers are reluctant to make the journey to the station and medical checkups are organised using local means, which are very disparate depending on area.

As such, in two merged brigade units (called communities), none of the ten cells in total met the criteria defined by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The inspectors even considered two of them to be frankly unfit for occupation. Elsewhere, one local brigade that is open for two afternoons a week, with no law enforcement officers on duty, still has cells, even though these are not heated and no more than seven people are taken into custody in them in any one year. In another brigade, where thirty people are taken into custody a year, the cell's toilets, of the squat type, are located opposite the peephole and there is no flush. In this unit, how the physical accommodation conditions concerning people in custody are managed overall is unclear, with no traceability. The register is

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<sup>8</sup> Ruling of 31 March 2015 on the rules bearing on the organisation, running and management of juvenile detention centres in the public Judicial Youth Protection sector;

Guidelines dated 4 May 2015 on drafting the operating regulations concerning collective court-ordered placement institutions in the public sector and authorised associations sector;

Notice dated 4 May 2015 on the operating regulations;

Notice dated 22 October 2015 on educative action during court-ordered placements;

Notice dated 30 November 2015 on the violation of fundamental rights via the use of search practices in institutions and services in the public sector and authorised associations sector;

Notice dated 24 December 2015 on the prevention and management of violent situations;

Implementing circular dated 10 March 2016 for the Ruling of 31 March 2015.



not kept with any regularity and it is difficult for lawyers to come when requested because of the unit's remoteness.

And yet, in other units, different practices are observed which are more respectful of fundamental rights. Accordingly, in one brigade community, only the brigade of the community's headquarters takes people into custody. The facilities are new, perfectly equipped for their purpose with a working shower, a proper office for a lawyer and an office that is perfectly fitted out for hearings. A system for medical checkups at the hospital, which can be reached in just a few minutes, is also planned. In another *département*, four cells are grouped together along the same corridor and can be used by several units – all based in the same station, and each with their own custody register. Lastly, in the Parisian region, the decision was made to place people being held in custody under the surveillance of the national police when the measure needs to be extended through the night, in the same way as the judicial customs department does, which allows for round-the-clock surveillance.

As indicated in Chapter 3 of this report, places of deprivation of liberty that are part of the gendarmerie are now organised at three levels: the first level corresponds to daytime use, the second to mostly night-time surveillance and the third applies to additional cells, created depending on the available means, in very busy units. The CGLPL can only recommend, therefore, that these improvements be carried out across the board and that people in custody no longer be left without surveillance in gendarmerie facilities.

People in custody must no longer be kept overnight in gendarmerie units that are not equipped to be able to provide the necessary conditions for acceptable accommodation and adequate surveillance. Instead, they must be accommodated in a police or gendarmerie service with round-the-clock surveillance.

### 6.1.2 *The pressure that the busiest police services are under can lead to violations in fundamental rights.*

In national police facilities, and above all in Paris and its wider region where the CGLPL carried out a large part of its activity in 2016, the respect of rights is above all being undermined by units being stretched to breaking point. There are often too many people to a cell, given the space available, dirty blankets are handed out to them (we even saw disposable blankets reused until they were completely worn out) and hearings are held in crowded facilities offering no confidentiality – including where minors are concerned. Surveillance of people placed in cells is sometimes inadequate because of the lack of CCTV cameras and the sheer amount of other work security officers need to be attending to. In one station where these very conditions have been observed, there is one renovated cell which is up to standard; it is significant to note that this cell is locally referred to as the "VIP cell".

In services struggling under such pressure, the facilities – even recent ones – go downhill rapidly without the necessary means for keeping them in good condition. When there are washing facilities for use by individuals in custody, in most cases they are unfit for use or even locked – either because they have not been cleaned properly or because there are no washing products in them.

The pressures on these services in terms of workload have an impact on the respect of rights. Accordingly, one service was inspected where the rights are notified in a corridor where a person is attached to a bench, another where, because the Vigipirate national security plan required a back door to be locked, people who are handcuffed now have to come through the main entrance, and a station where people placed in custody are persuaded not to call a lawyer to as "not to prolong the procedure".

On a final note, the busiest and most overwhelmed services paradoxically seem to be subject to the least amount of scrutiny – both on the part of supervisors and the judicial authority. Registers are generally poorly kept and supervisors and the judicial authority alike seldom sign off on procedures. It is not until an incident actually occurs that a series of inspections are carried out, which then lead to effective corrective measures. The CGLPL observed one such situation in a police service where an incident arising in 2014 had given rise to a series of effective measures and interventions.

The CGLPL therefore believes that special attention must be paid to the working conditions and equipment in the busiest police services – notably in the Parisian region. This calls for stringent supervisory and judicial oversight and subsequent action following any recommendations.

The CGLPL recommends stringent supervisory and judicial oversight in the most inundated police services and monitoring of action taken following recommendations made during these inspections.

## **6.2 With no clear instructions, practices are disparate which can violate the fundamental rights of people deprived of liberty.**

### ***6.2.1 There is not always a clear distinction between the situation of foreigners held for their right of residence to be checked and that of people placed in custody.***

In several gendarme or police stations, the inspectors found there to be a certain confusion between the people brought into custody and foreigners held for their right of residence to be checked. This is particularly conveyed through the use of restraint means, confiscation of personal belongings - mobile phones in particular – and the absence of any specific register.

In a few rare cases, it was indicated that foreigners held for such reasons were "in custody just like the others". Usually it was not that the officers did not know these foreigners were in a different situation to people placed in custody, but that they dealt with them in the same way because they had not been given any specific instructions. At the inspectors' requests, they made do with explaining that they are aware the foreigners held have specific rights – not least regarding access to a telephone – and that they would of course return the mobile phones "if requested", but it seems that this simply never happens in reality.

Best endeavours must be used to ensure that gendarmes and police officers responsible for foreigners held for their right of residence to be checked are aware of and apply the measures tailored to the situation of this category of people deprived of liberty.

### ***6.2.2 Security measures continue to be applied without proper judgement, despite repeated requests from the CGLPL.***

Once again, the CGLPL's visits found that practices related to handcuffing, confiscation of personal belongings, spectacles and bras and handing out of documents notifying the measure and rights are not only disparate but above all disrespectful of the rights of people placed in custody.

It is simply not acceptable that the recommendations that the CGLPL has made repeatedly since it was first set up are not always followed up. Let us recall here:

- handcuffing must not be systematic, but practised according to the risks arising out of the way the person concerned is behaving;
- a handcuffed person must be kept away from the public eye;

- a record of any personal belongings confiscated from people placed in custody must be made in two stages: when confiscated and when returned;
- this record must be kept and available for checking;
- confiscated items must be stored in conditions that prevent indiscretion, theft and destruction;
- spectacles and bras must not be confiscated systematically, but according to the risks arising out of the way the person concerned is behaving;
- when they are confiscated, such items must be returned at each hearing and when the person appears before the judicial authority.

In 2016 the CGLPL did not visit a single gendarme or police unit where all of these recommendations had been acted upon. In particular, it was observed that: measures that should only be applied under exceptional circumstances (handcuffing or confiscation of bras and spectacles) were systematic; no records were kept of confiscated items; these records were destroyed when the items were returned; spectacles and bras were not returned during hearings and sometimes even when the person appeared before the judicial authority; confiscated items were stored in open cupboards, etc.

Depending on the facility, the reasons given for carrying out such measures are variable: "that's the way it's always been done"; "it's the rules"; "The Senior law enforcement officer's in charge if there's an incident"; "there isn't any register to be filled in"; "we don't have the means"; etc. It is also significant to note that, even though there are exceptions to be found everywhere to the application of the principles recommended by the CGLPL, they are not always the same, such that what is dangerous in one place is not in another, and vice versa. These findings mean that there is no legal basis for measures that restrict rights and which are perceived as very harsh and unfair by the people they are taken against. It is therefore of particular importance that clear instructions be given to gendarme and police services to determine the doctrine in this respect and to guarantee this is enforced.

As the CGLPL has pointed out on several occasions, most recently in its 2015 annual report, easing the restrictions placed on people deprived of liberty is at odds with maintaining an accountability-based system as regards gendarmes and police officers, which binds them to an obligation for results where there should be "zero incidents". This system must be replaced by a simple requirement to take reasonable measures in light of the circumstances and a measured assessment of the risks. Otherwise, officers are understandably reluctant to stop taking excessive security measures, which they see as the only way of protecting their personal responsibility.

It is necessary to define, and educate gendarmes and police officers in, a clear and balanced doctrine on the use of security measures applied as regards people in custody and to place these officers under an accountability system that is compatible with enforcement of this doctrine on a measured and individualised basis.



## Chapter 2

# The reports, opinions and recommendations published in 2016

### 1. Opinion of 25 January 2016 on the situation of women deprived of liberty

The opinion of 25 January 2016 on the situation of women deprived of liberty was submitted to the Minister of Justice, the Minister of Social Affairs and Health and Minister of the Interior who all wished to give their feedback on it.

This opinion was drawn up as part of discussions following visits to various places of deprivation of liberty accommodating women and of the examination of a number of referrals received on the situation and treatment specific to women. For the general inspection carried out across all places of deprivation of liberty found that men and women were treated differently, usually because of the low number of women.

Under no circumstances must imprisonment constitute an obstacle to application of the gender equality principle proclaimed in the preamble of the 1946 Constitution. Women and men must be treated equally inside places of deprivation of liberty, a requirement which must not, for all that, prevent certain needs specific to women from being taken into account.

Female prisoners are accommodated in a small number of remand prisons and sentencing institutions – all of which are situated in the North of France. The low number of women deprived of liberty should not justify their unequal distribution across the territory, which violates the right to maintain family ties. In this respect, the CGLPL recommends opening a "detention centre" wing for women in the South of France.

In his reply to this opinion, the Minister of Justice confirms the shortage of places for women in sentencing institutions in the South of France, and announced the opening in 2017 of a detention centre wing for women that can house sixty prisoners in Marseille.

The CGLPL also recommends accommodating men and women within all detention centres for illegal immigrants (CRAs) across France.

In the Minister of the Interior's reply, dated 18 February 2016, he indicated that a large majority of CRAs accommodate women (15 out of 23), which guarantees maintenance of their family ties. He maintains that, pursuant to Article R.553-3 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), under no circumstances can male prisoners access the accommodation areas reserved for women, in any CRAs, except when there is a family link.

Women also find it difficult to access specialist structures equipped for their needs (access to psychiatric care in particular) and specific situations (restricted access to the day-parole regime). As such, to ensure that men and women have equal access to psychiatric care, regional mental health departments for prisons (SMPR) and units for difficult psychiatric patients (UMDs) must all be able to accommodate women. The same applies for wings/centres for adjusted sentences and open wings/prisons, the moment there is a strict framework governing the way in which prisoners are accommodated and treated.

In the Minister of Social Affairs and Health's reply dated 24 February 2016, she indicated that Interregional Secure Hospital Units (UHSIs) and Specially-Equipped Hospitalisation Unit (UHSAs), as hospital structures, make no distinction in their accommodation of men and women; mixing between the sexes within such institutions must be encouraged. The Ministry thus encourages the development of mixed therapeutic group activities in prisons, but the constraints associated with facilities significantly hamper the development of mixed activity projects in day hospital settings.

For his part, the Minister of Justice states that the number of day-parole places is proportional to the ratio of female prisoners and that this under-representation is not an issue regarding accompanied outing measures, since they are offered other, more appropriate sentence adjustment methods than day parole. The Minister does not consider it appropriate for all structures to accommodate men and women indiscriminately, but maintains that the prison administration is committed to enabling services and facilities in line with women's needs which are equally distributed across France. The Chief Inspector upholds all of her observations on this matter.

The particular situation regarding female minors must be carefully considered, and equal treatment to boys ensured. In this respect, the CGLPL underlines the fact that imprisoning young girls in wings for adult women is illegal. They must be able to benefit from care arrangements within structures specially designed for minors.

To the extent possible and according to the institution's layout, girls detained in prisons other than prisons for minors (EPM) must be imprisoned in "minor" wings in the same way as boys. On the other hand, their lodgings must abide by the single-sex principle, akin to what is intended in theory for juvenile detention centres (CEF) and EPMs.

The comments that the Minister of Justice submitted to the Chief Inspector highlighted two major obstacles to the recommended accommodation of young girls within wings for minors: the institutions are laid out in such a way that it is not possible to create two separate units; and there are simply not enough female warders, on day or night shifts. With more particular regard to the treatment of young girls in EPMs, the Minister points out that the decision was made to restrict the number of institutions likely to accommodate female minors because of the solitary confinement and unequal treatment to which they were subject. He nevertheless announced the setup of a working group between the prison administration department and Judicial Youth Protection Service Directorate tasked with assessing the needs in EPMs and looking afresh at the opportunity of reintroducing a unit reserved for young girls in all EPMs. He also mentioned the setup of a unit that can accommodate 24 female minors at the Fleury-Mérogis remand prison.

In prisons, the low number of women coupled with the single-sex principle is a hindrance to their individualised treatment (access to a proper "new arrivals" wing and a solitary confinement wing if necessary) and to respect of their fundamental rights. Accordingly, in institutions that accommodate both sexes, women find it difficult to access communal areas in the prison (health block, sociocultural zone, area set aside for sport, etc.) because the times at which they are allowed to access such areas and movements within the prison are too limited, in order to prevent any encounter with male prisoners.

The principle of separation between men and women is stipulated in Article 1 of the standard internal regulations of penal institutions, appended to Article R.57-6-18 of the Criminal Procedure Code, which requires measures to be taken to prevent any communication between the sexes.

In light of the observations made, it would appear that the rule whereby women must not come across male prisoners or male warders – with the exception of

supervisors – is likely to undermine the equality of treatment to which they are entitled in terms of access to work, activities and health.

With this in mind, the CGLPL recommends authorising men and women to cross paths during their movements within prisons – under careful surveillance – so as to foster equal access for prisoners to communal areas. It therefore recommends that surveillance of women by male staff members be possible.

Allowing mixed access for men and women within psychiatric institutions – except inside bedrooms – is a good practice as it allows for equal access to activities. The principle of strict separation within prisons does not allow for women to be treated in exactly the same way as men in terms of their access to activities, and yet the provisions of Article 28 of the Prison Act of 24 November 2009 "*subject to maintaining order and safety within institutions, and on an exceptional basis, activities may be organised for both sexes to participate in*" are likely to enable women to access more activities.

The CGLPL thus recommends phasing this in in prisons, in conjunction with the provision of clear, systematic information on the mixed nature of the activities on offer and with efforts to obtain participants' consent. It suggests deleting the words "*on an exceptional basis*" from Article 28 and rephrasing it as follows: "*subject to maintaining order and safety within institutions, activities may be organised for both sexes to participate in*".

In reply, the Minister indicated that the assignment of male warders in female wings would probably make the organisation of services more complicated, and that, in practice, no male staff member is allowed to enter a female prisoner's cell unaccompanied – a measure which was taken to avoid any complaints being lodged for harassment. He nevertheless stated that the French National School for Prison Administration (ENAP) would be asked to set up a specific training module for warders on the treatment of female prisoners. The Chief Inspector draws attention to this project since she had suggested that initial training and continuing professional development for prison staff take into account the specific treatment required of women and that professional practices be assessed to detect any difficulties that might be encountered in this context.

As part of its deliberations on allowing men and women to mix in prisons, the CGLPL took a particular interest in a trial of a workshop on a single male-female concession, the objective of which was to allow equal treatment between men and women. It found that the male-female workshop achieved its aims: providing permanent, sufficient work and a return to normalcy. The investment of the management and supervisors in the workshop's implementation was highlighted. Finally, the Chief Inspector recommended that the trial be continued and expanded, that the projects in the pipeline be put into practice and that substantive gender diversity be phased in within this single workshop for men and women.

The principle of equality must be respected; but this should not prevent the possibility of specific situations being handled differently. With this aim in mind, the adoption of specific measures must make it possible for certain fundamental rights of women deprived of liberty to be respected in practice – not least access to medical care and necessary bodily hygiene care. In this regard, the CGLPL underscores the fact that female prisoners must be able to access gynaecological care under the conditions set out in Article 46 of the Prison Act of 24 November 2009: "*the quality and continuity of healthcare are guaranteed to prisoners in conditions that are equivalent to those that the rest of the population benefits from*". In the Minister of Social Affairs and Health's reply, she indicated that the introduction of specific time slots for women is the chosen policy in most health blocks across France to enable them ongoing access to healthcare.

In custody facilities, "hygiene kits" must contain sufficient amounts of feminine hygiene products. In prisons, self esteem must be encouraged; it must be possible for women to take care

over their physical appearance. If there is not a broad choice in canteens, women must be allowed to receive hygiene products and makeup *via* the visiting rooms.

On the subject of "hygiene kits" for women in custody facilities, the Minister of the Interior spoke of a gradual development in the provision of hygiene kits for women despite budgetary pressures.

Since its 2008 annual report, the CGLPL has not let up in its criticism of the practice whereby women placed in custody have their bra confiscated systematically, for it deems this to be a slight on the dignity of women in custody and out of proportion with the risk.

Regarding the confiscation of women's bras when they are placed in custody, the Minister maintains that this should not be systematic, but subject to a detailed, case-by-case assessment, based on the vulnerability of the person in custody; this decision must be justified and carried out respecting the privacy of the person concerned. The Chief Inspector draws attention once again to the observations it made across all custody facilities – namely the systematic confiscation of bras with no individual assessment of the situation.

Lastly, since the security measures taken against people deprived of liberty can constitute a violation of their fundamental rights, careful attention must be paid to the way in which some of them are carried out as regards women deprived of liberty. Accordingly, the CGLPL stresses the need for strict compliance with the provisions set out in Article 52 of the Prison Act, which stipulate "*Any delivery or gynaecological examination must be performed without restraints and without the presence of the prison staff, in order to guarantee the right to respect of the dignity of detained women*".

Concerning custody, the CGLPL reiterates the recommendations it made in its 2011 annual report: "*on the subject of searches, the principle according to which they may only be conducted by officers of the same sex is not always possible in practice where women are concerned [...] particularly because there are not enough female staff on the night shifts. Since this situation is the exclusive responsibility of the administration, in such a case the decision must be made that no search of any kind (including security frisking) may be carried out*". It stresses, for all places of deprivation of liberty, that respect for human dignity prevents any possibility of conducting a search of women's sanitary towels.

The Chief Inspector upholds all of her recommendations to ensure that the principle of gender equality is respected.

## 2. Emergency recommendations dated 8 February 2016 on the Ain psychotherapy centre (CPA) in Bourg-en-Bresse

Following an inspection from 11 to 15 January 2016 of the Ain psychotherapy centre in Bourg-en-Bresse, the Chief Inspector submitted emergency recommendations to the Minister of Social Affairs and Health.

This huge centre offers satisfactory hotel-style accommodation conditions with well-appointed and well-kept individual bedrooms; a construction programme bearing on buildings intended to house units installed in older facilities is currently under way.

But that aside, the inspectors observed serious violations of the fundamental rights of the patients hospitalised there:

- a practice of control and monitoring of patients' actions and movements, including patients who are hospitalised with their consent, applied excessively strictly: all units are



locked and personalised restrictions apply to each patient regarding use of their personal belongings, communication with the outside world and outings;

- the restrictions in post-acute care units are even more confining: limited access to internal yards, personal belongings cannot be accessed directly, some patients are kept in locked rooms day and night on a permanent basis, frequent use of restraint and medical prescriptions bearing on confinement and restraint are renewed for several months at a time, sometimes without further examination of the patient;
- solitary confinement and restraint are practised in proportions never before encountered at stark odds with the rules that are commonly applied: for a hospital with 412 beds, an average of 35 seclusion rooms are occupied on a daily basis;
- several patients under "post-acute care" are confined to ordinary rooms for often more than 20 hours a day, several months on end, sometimes restrained to the bed or a chair for up to 23 hours a day, sometimes for months at a time – and even years in some cases;
- one unit for "agitated or disruptive patients" is particularly strict: pyjamas must be worn throughout a patient's time in the unit, no personal belongings may be kept, confinement in rooms for at least 19 hours a day, no music allowed, etc.;
- the patients detained are treated under such conditions systematically, irrespective of their clinical condition;
- no medical checkups of patients placed in solitary confinement are conducted at the weekend, seven-day solitary confinement prescriptions are renewed without systematic examination of the patient.

The inspectors also observed that the nursing staff and patients alike demonstrated an alarming degree of resignation as regards these practices.

For these reasons, the Chief Inspector recommended that the Government:

- enforce free movement of patients, with any restriction to the freedom to come and go expressly justified by the patient's clinical condition;
- immediately put an end to confinement in ordinary rooms;
- promptly rein in the excessive practice of confinement in seclusion rooms and restraint;
- immediately halt medical decisions and prescriptions made with no prior examination of the patient;
- ensure daily medical presence for a sufficient length of time in all units;
- with the help of outside professionals, assess the clinical condition and treatment of all patients admitted in "post-acute care" units and the unit for "agitated and disruptive patients" so as to develop a life plan and care pathway for these patients;
- swiftly improve the therapeutic activities on offer in units so as to make them available to the largest possible number of patients;
- train all staff in preventing and managing critical situations.

The Minister of Health and Social Affairs considered the points raised in the recommendations to be of a big enough concern to urge the management of the institution to take the corrective measures bearing on the general running and practices observed at the Ain psychotherapy centre as swiftly as possible. She also indicated that the relevant regional health agency, who was informed

of the CGLPL's observations by word of mouth, had taken the initiative of anticipating the first necessary actions.

Furthermore, she stated that the institution had undertaken to put an immediate stop to a certain number of practices:

- patients would no longer be confined to an ordinary room;
- patients hospitalised over the long term in the unit for "agitated and disruptive patients" would be assigned to a unit intended to care for patients for long periods;
- detained patients would no longer be systematically placed in restraints upon their arrival from the prison, but accommodated in an assessment unit for subsequent referral to the other units in the institution depending on their medical problem;
- the internal yards of hospital units would be freely accessible to patients hospitalised with their consent.

She went on to point out that reminders of the regulations and training had been given in the institution, which is looking into the conditions for implementing those recommendations of the CGLPL that could not be applied with immediate effect. She issued the institution with a six-month deadline for complying fully with all of the CGLPL's recommendations.

In a letter dated 17 November 2016, the new director of the institution maintained that the CPA had endeavoured to abide by all of the CGLPL's recommendations and committed to implementing its management plan, particularly involving the users and representatives of users' associations in this process. He requested a follow-up inspection by the CGLPL so that the latter "could see the extent to which the changes made were effective and the efforts that had been initiated."

The CGLPL duly notes with satisfaction the improvements announced by the Government and by the management of the Ain psychotherapy centre. It recommends that the Government do their utmost to ensure that the recommendations issued during this visit are brought to the attention of all mental health institutions and that, during inspections and audits conducted in these institutions, any similar deviations be sought.

### 3. Thematic report entitled "Solitary confinement and restraint in mental health institutions"

The rights of patients who are hospitalised without their consent and the psychiatric care arrangements in place for all people deprived of liberty raise crucial questions with regard to fundamental rights.

Since 2011, French lawmakers have regulated the measures for enforced hospitalisation by initiating systematic scrutiny by the Liberty and custody judge; that said, some people can be subjected to additional physical constraints, such as placement in a seclusion room or in restraints for example, without these measures being inspected by the judicial authorities.

The CGLPL's visits to mental health institutions have lifted the lid on such extensive use of solitary confinement and restraint that they seem to have become essential for professionals. The almost total absence of public debate on the development of these treatments is perplexing. This is why it appeared pertinent to shed light on these procedures.

The CGLPL first and foremost considers that these are practices which seriously infringe on fundamental rights, their therapeutic effectiveness is unproven and they appear to be the result of a shift in the way people suffering from mental disorders are dealt with. It finds that there is a contradictory approach among the hospital community as regards these practices which, although applied in diverse ways, are carried out in almost all institutions. The indications concerning use of solitary confinement are diverse, but often problematic; a framework drawn up in 1998 by the National Health Evaluation and Accreditation Agency (ANAES, now the National Authority for Health/HAS) does not stop abusive practices or, in particular, the application of protocols with no bearing on the patient's clinical condition. The conditions for implementing restraint and solitary confinement are disparate and it is impossible to put a figure on how often they are carried out. As far as restraint is concerned, this practice strikes as particularly worrisome because of its "insidious use" and because the careful medical surveillance it requires is not in evidence at all times.

In all cases, irrespective of the situations and conditions in which both practices are carried out, serious violations of rights are reported: medical treatment and somatic care are sometimes insufficient, safety is not always ensured, the right to privacy is flouted, the right to receive visitors is not always respected, the right to dignity is violated, the physiological needs for physical mobility are not always sufficiently taken on board and activities are virtually non-existent.

The lack of collective discussion between professionals has prevented standards from being developed, which has left broad scope for medical arbitrariness in a context where safety is at stake. There is no shared vision of what constitutes freedom for patients: because the psychiatric profession as a whole is not giving thought to their right to move around freely, there is no justified basis for any measure to inspect or prevent abusive practices. What is more, such disinterest is surprising given the impact these practices have on human resource management: they are not being institutionally studied in their environment and for their professional impact, when their cost in terms of human resources is not insignificant.

Although it is not the CGLPL's place to determine the therapeutic relevance of restraint in practice, it finds that these measures violate the fundamental rights of the people subjected to them. Whilst acknowledging that a physical restraint measure may be used under exceptional circumstances for a strictly limited period of time limit, the CGLPL therefore considers that efforts must immediately be made to reduce the use of solitary confinement and restraint measures. It welcomes the fact that the Act of 26 January 2016, referred to as "modernising the French health service", requires psychiatric institutions to undertake a policy aimed at limiting the use of solitary confinement and restraint.

This encouragement could remain as nothing more than a pious vow however, and to ensure it does not, the CGLPL recommends coming up with prevention measures that particularly entail developing the capacity to handle situations that are veering out of control and setting up "de-escalating" strategies. For that, consideration of and training in the other possible alternative practices are necessary, the nursing teams need to be supported and preventive measures looked into. Moreover, on the subject of the use of solitary confinement and restraint, there needs to be a qualitative and quantitative assessment and the dissemination of recommendations and good professional practices. Finally, an external inspection is necessary.

To conclude, the CGLPL, bearing in mind the principle that any deprivation of liberty is a breach of fundamental rights, makes the following detailed recommendations:

- solitary confinement and restraint in patient's own rooms must be prohibited;
- the requirement to wear pyjamas and have any personal belongings confiscated while in seclusion rooms should not be systematic;

- the systematic placement in solitary confinement of prisoners admitted to a mental health institution because of their criminal status must cease;
- solitary confinement and restraint measures must be documented and their traceability ensured at local, regional and national level;
- patients must be informed in advance of measures taken in their regard, of the possibility of naming someone to be notified and the means for appealing against said measures;
- the "medical decision" required by the law must include the opinion of the nursing staff, the grounds for the adapted nature of the measure and the fact that it is a last-resort measure, the measures to be taken to "bring the measure to a close as soon as possible" and the risk-benefit analysis;
- no decision regarding physical restraint can be taken in anticipation or with the indication "when necessary";
- the measure must last for the shortest time possible, once the crisis has passed it must end and under no circumstances must it be extended without a new decision, which must also be justified, for more than 24 hours for solitary confinement and for more than 12 hours for restraint;
- it must be subject to monitoring and surveillance with a mandatory somatic examination, appropriate nursing staff in attendance, a twice-daily medical checkup, releases and interviews;
- use of restraint and solitary confinement must be assessed at national and regional level as well as within institutions, where the institution's medical commission must be involved, and the measures taken must be reviewed systematically with the involvement of third parties and enabling the implications regarding patient-carer relations to be analysed;
- the judicial authority and *Département*-level Commission for Psychiatric Treatment must be informed monthly of the measures taken;
- the physical conditions of solitary confinement must be appropriate (access to fresh air, water and washing facilities, suitable bedding and furniture), alarms must be available, CCTV cameras are prohibited and visits must be possible;
- the fire safety services must be informed in real time of any placement in solitary confinement and any use of restraint, but must not assume the role of assistants for managing care delivery;
- medical research and training must be developed.

In order to guarantee the effectiveness of the policy aimed at limiting the use of solitary confinement and restraint introduced by Article 72 of the Act of 26 January 2016, under the conditions set out in the CGLPL's report on solitary confinement and restraint in mental health institutions carry out traceability measures bearing on solitary confinement and restraint, inform patients of their rights, formally document medical decisions for using solitary confinement and restraint, set up a protocol for the monitoring and surveillance of these measures, perform a local, regional and national assessment of their use and set up a procedure for informing the judicial authorities and *Département*-level Commission for Psychiatric Treatment. Develop medical research and training on these subjects. Inspect and upgrade all premises and equipment used for carrying out solitary confinement and restraint measures.

## 4. Report on managing Islamist radicalisation in prisons: dedicated units opened in 2016

On 7 June 2016, the CGLPL published a report on the opening of dedicated units associated with Islamist radicalisation in prisons, with respect to fundamental rights. The Minister of Justice submitted a reply on 6 July 2016. This report followed on from both a previous report on the management of Islamist radicalisation in prisons, published on 11 June 2015, to which the Minister of Justice had replied on 26 June 2015 on the Government's behalf, and an opinion published on 30 June of that year in the *Journal officiel* (Official Gazette).

On 25 October 2016, the Minister of Justice unveiled to the public a system on prison safety and action against radicalisation, the measures of which are due to be carried out between the end of 2016 and first half of 2017.

In 2015, the CGLPL had investigated the setup by the management of the Fresnes prison in the autumn of 2014 of a wing for prisoners facing charges or convicted for acts associated with a terror undertaking. In the opinion of the institution's management, this setup was justified by the need to prevent proselytism. An on-site inspection had been carried out.

The measures specific to the prison administration announced on 12 January 2015 in the counter-terrorism plan (PLAT) had been examined – particularly the setup of five dedicated units (UDs) in four prisons (Fresnes, Fleury-Mérogis, Osny and Lille-Annœullin), where a personality assessment of the prisoners and supervision programmes were due to be organised.

The CGLPL had spoken out against this system, particularly because of the risks incurred by grouping together prisoners and the creation of a specific detention system where no appeal would be possible because it was not governed by any legislation.

In his reply, the Minister of Justice agreed that "the grounds of detention should not remain the only criterion for assignment to a dedicated unit" and that people detained for other reasons could be transferred to them in the future. He objected to the idea that there was a specific detention regime in UD's.

Dedicated units were gradually opened across the selected prisons from late January to late March 2016.

A team of three inspectors was dispatched to these five units designed to accommodate 117 people at the same time. With the exception of three of them, the 64 people detained at the time of the visits were able to speak in complete confidentiality with the inspectors. It was possible to meet with all staff categories, some of the external professionals and the prison administration department during the visits, which were carried out between February and May 2016. Judges and lawyers were also interviewed.

The CGLPL noted that the radicalisation phenomenon had been acknowledged fairly late in the day, and that the decision to set up these UD's made in all urgency, following the events of January and November 2015. It found that the local teams had been granted a significant degree of independence, the result being stark disparities in the approach to and setup of assessment methods and supervision programmes and unequal treatment between prisoners.

Given the question of grouping together, the procedure, the selection of prisoners and the detection and supervision programmes as observed by the inspectors during their mission, the CGLPL had a lot of reservations about the plan and its implementation – as there seem to be more disadvantages to the very principle of grouping these people together than advantages. It appears paradoxical to intentionally group together people facing charges for conspiracy. The interviews

also threw up the fact that some prisoners expressed their satisfaction at being in the company of people sharing the same commitments, which set them apart from the rest of the prison population. Others, on the other hand, shared their sense of being treated like "plague victims" and were baffled as to why they had been lumped together with people closely involved in a violent process.

All of the people placed in these UD's were assigned because of the terrorist nature of the court order that had been issued against them rather than, as explained in the beginning, on the basis of their risk of Islamist radicalisation. The voluntary nature of this placement appeared to be completely idealistic. The detection grids (since amended) did not appear to be used in a uniform manner, and there were questions over the reliability of the data collected and its processing.

Once again, the CGLPL had doubts over the specific nature of the prison regime in use in UD's: a *sui generis* system, halfway between ordinary detention and solitary confinement, not grounded in any specific legal framework, which the prison administration continued to consider as perfectly normal. And yet, the Act of 3 June 2016 stepping up the fight against organised crime and terrorism has since brought this extraordinary situation to an end by grounding it in a legal framework and providing (Article 726-2 of the Criminal Procedure Code/CPP) for appeal before the administrative judge against assignment decisions.

The CGLPL has considered that placement in UD's – sometimes decided without consulting with judges or against their opinion – was a burden on the judicial pathway of the people concerned, which may constitute a pre-sentence and undermine rights of defence.

It became apparent that it was not admissible to cite the difficulties linked to prison overcrowding by way of justification for placing prisoners (accommodated in single cells) in specific wings, when this use – according to the interviews conducted – above all makes it easier to do whatever one likes with the people concerned.

The CGLPL considered that the chosen model (experimental) should be subject to a clarification regarding the code of conduct, since the role of some professionals involved has not been sufficiently defined, giving rise to confusion that could be detrimental to the prisoners concerned. Add to that the fact that the information given to the prison population concerned population seems to have been woefully insufficient and unreliable (not least as regards the length of stays in the UD and criteria for subsequent assignment).

In light of the stakes involved and surge in judicial information for acts of terrorism associated with radical Islam, extension of this model did not strike the CGLPL as realistic.

The CGLPL pointed out that detained women and minors were not subject to any specific supervision – no more than people detained for so-called common law acts were.

The Minister of Justice replied to this report on 6 July 2016.

He noted that no decision had been made to extend dedicated units. The scheme remained "experimental until such time as its coherence, operationality and relevance had been assessed".

The Minister was anxious to highlight that grouping together did not imply a complete shutoff from the rest of the prisoners, but – as had been mentioned in the CGLPL's report – was "simply aimed at facilitating the management of the prisoners without isolating them from the rest of the prison population". Other groups of offenders identified as being "radical" could "possibly" be assigned to UD's "once stability had been achieved regarding the detection tools".

Moreover, outside UD's, radicalisation prevention programmes were planned across 27 prisons.

On 25 October 2016, the Minister of Justice announced a plan on tackling violent radicalisation, which significantly amends the previous scheme and

partly addresses the criticisms and concerns expressed in the CGLPL's report dated 7 June 2016.

Presented somewhat rashly as an alternative to the dedicated units set up a few months earlier – which would be scrapped – this plan actually strengthens such structures, but in a different context. The Minister of Justice acknowledges that the issue of grouping together "needs looking into" and that a major shift is called for as regards the previous measures.

"For the most sensitive profiles", some one hundred places in long-stay prisons or wings in long-stay prisons are due to be turned into remand prison places in six wings for violent prisoners (QDV).

190 solitary confinement places should be made available in remand prisons and sentencing institutions. As mentioned previously, a specific management scheme is set to open in 27 institutions for prisoners who do not require "maximum supervision".

Unlike what the Ministry of Justice had considered in its response to the CGLPL's report of June 2016, the situation for women and minors involved in an Islamist radicalisation process is this time taken on board and special management structures should be set up.

The CGLPL will conduct new inspections with regard to these new structures and revised management and assessment schemes.

## **5. Emergency recommendations dated 18 November 2016 on the men's remand prison of the Fresnes prison complex (Val-de-Marne)**

Following an inspection tour carried out from 3 to 14 October 2016 of the men's remand prison of the Fresnes prison complex, the Chief inspector of places of deprivation of liberty submitted emergency recommendations concerning this institution to the Minister of Justice.

For it had found that the overcrowding, together with the disgraceful state of the facilities and understaffing, did not enable the prisoners to be managed in a way that respected their fundamental rights, and resulted in substandard housing conditions. In unsuitable facilities, poor hygiene poses proven risks for the health of prisoners and warders alike: the institution is so infested by rats and bugs that more than 280 cases of lesions caused by insect bites have been reported to the health block and two serious cases of leptospirosis, a disease associated with the presence of rats, have been reported to the French Institute for Public Health Surveillance (InVS). Although the prison administration department, judicial authority, prefect and local authorities were all aware of this situation, no corrective measures at the appropriate level had been taken.

The staff are overstretched, inexperienced and not sufficiently supervised, such that respecting the fundamental rights of the prisoners is an impossible task because the staff simply do not have the means, during their working hours, to assume all of their professional responsibilities.

The permanently tense atmosphere that reigns means that force, violence and practices that violate the fundamental rights of the prisoners have become routine and acceptable, and continue in some cases to be used despite express legal provisions or previous recommendations of the CGLPL. Such is the case regarding an excessive and abusive practice of body searches at odds with the legal provisions; unregulated use of so-called "waiting rooms" which borders on a subdisciplinary measure; serious breaches of physician-patient confidentiality or aggressive, degrading or humiliating words which amount to verbal violence, and which are more or less systematic.

The institution is plagued with a general situation of insufficient management, which only compounds the very serious structural difficulties that are known but have not been resolved. This violates several of the prisoners' fundamental rights: their dignity, hygiene, access to healthcare and sometimes, even, their physical integrity.

This is why the Chief inspector of places of deprivation of liberty has recommended that the Minister of Justice take immediate measures to reduce the prison overcrowding and improve the hygiene conditions to acceptable standards in the institution. She has recommended increasing staff numbers and supervision levels in the prison as well as measures likely to resolve the prevailing climate of violence and halt the violations identified. She asked that an extensive inspection be conducted of the institution and that the CGLPL be informed of the conclusions of this inspection and the supervision of their implementation.

In his response dated 13 December 2016, the Minister of Justice does not call any of the CGLPL's findings into question. He reports immediate corrective measures, particularly as regards the practice of body searches, and announces, for the start of 2017, measures aimed at increasing the number of warders and bringing the hygiene conditions in the institution back up to acceptable levels. Lastly, he indicates that this institution is being placed under particular surveillance.



# Chapter 3

## Actions taken in 2016 in response to general inspection reports, recommendations and opinions

### 1. Supervision of the CGLPL's general recommendations

#### 1.1 Methodological clarifications

Ever since it was first set up back in 2008, the Contrôleur général des lieux de privation de liberté has published a whole raft of general recommendations that sum up the conclusions it has drawn from the 150 or so visits conducted every year in places where people are deprived of liberty on the grounds of an administrative or judicial decision.

What these recommendations all have in common is that, rather than being associated with an identified institution, they more often have to do with the category of this institution. They have been expressed through all of the documents that the Contrôleur général des lieux de privation de liberté has published pursuant to its founding Act of 30 October 2007. These documents come under the following categories:

- annual reports submitted to the President of the Republic and Parliament and published pursuant to Article 11 of the Act;
- opinions and recommendations that the Contrôleur général sends to the public authorities and amendments to the applicable legislation and regulations which it proposes and publishes pursuant to Article 10 of the Act;
- observations that the Contrôleur général communicates to the competent authorities when it finds evidence of a serious violation of the fundamental rights of a person deprived of liberty, which it publishes if it considers this necessary pursuant to Article 9 of the Act and which can, in some cases, contain general recommendations.

In addition, regarding small facilities where people deprived of liberty are placed for shorter periods of time, the analysis of the CGLPL's general recommendations was performed on the basis of the position papers, submitted in 2015 to the ministers concerned<sup>9</sup>, and replies received by the CGLPL to said submission<sup>10</sup>.

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<sup>9</sup> Letters dated 29 September 2015 to the Minister of the Interior and Minister of Justice with regard to the custody facilities of the national police and national gendarmerie; letters bearing the same date to the Minister of Finance and Public Accounts and the Minister of Justice as regards the custody and detention facilities of the Central Administration for Customs and Excise; letter dated 8 December 2015 to the Minister of Justice with regard to court cells and jails.

<sup>10</sup> Reply from the Minister of the Interior dated 8 December 2015 on the custody facilities of the national police; reply dated 8 February 2016; from the Minister of Finance and Public Accounts and Minister of State for the budget; reply from the Minister of Justice dated 29 July 2016 as regards places of deprivation of liberty under the national police, national gendarmerie and customs authorities; reply from the Minister of the Interior dated 27 October 2016 concerning custody facilities of the national gendarmerie.

This chapter concerns all of the recommendations published prior to 31 July 2015. They have therefore been taken from the following documents, which are available on the website of the Contrôleur général des lieux de privation de liberté:

- the 2008 to 2014 annual reports;
- the opinions and recommendations published in the volume entitled: "Collection of the opinions and recommendations published by the CGLPL from 2008 to 2014";
- the emergency recommendations dated 13 April 2015 concerning the Strasbourg remand prison;
- the opinion dated 11 June 2015 on the controlling of Islamist radicalisation in prisons;
- the opinion dated 16 June 2015 concerning the treatment of prisoners in healthcare institutions.

The developments in Appendix 4 to this report present, for the first time, exhaustive supervision of the CGLPL's general recommendations, hence why it appears pertinent to provide some methodological clarifications, firstly on how this initial work has been carried out and, secondly, on the conditions in which these efforts are intended to be continued in the years to come.

The set of recommendations analysed has been compiled over time and bears on almost the whole of the Contrôleur général's remit. This is therefore a sizeable volume in which it has been possible to examine a range of subjects on various occasions, from several different angles, and about which the doctrine of the institution has become ever more specific and clear as the years have gone by. This is why, with a view to developing a core doctrine basis which, over time, will bring to light both future changes in doctrine and the phasing in of measures intended to address the Contrôleur général's recommendations, it made sense to perform an exhaustive analysis of these recommendations, in liaison with the authorities concerned.

To that end, on 11 April 2016 the CGLPL sent to each of the ministers concerned<sup>11</sup> a table giving an exhaustive rundown of the CGLPL's recommendations, including when these contained repetitions or reported on a position that had evolved over time. As such, it was on the basis of a complete set that the Ministers were asked to inform the CGLPL of the action taken subsequent to these recommendations and, where applicable, the reasons why no action could be taken. The ministers were particularly asked to draw a distinction between the recommendations upon which the Government would not have the intention of acting and those for which action, although preferable, could not be taken. The ministers were given three months in which to submit their replies. The CGLPL also made it clear to the authorities concerned that it was willing to discuss with them if they felt this to be necessary.

The Government departments seem to have had difficulty putting their reply together, when the announcement that the recommendations would be monitored was made back at the start of 2015 in CGLPL's 2014 annual report and they had been given three months in which to do so. In practice, exhaustive replies were only forthcoming for the recommendations bearing on juvenile detention centres and detention centres for illegal immigrants, within more or less the allotted timeframe. As for mental health institutions and the medical treatment of prisoners, replies were not submitted overall by the Minister of Health and Social Affairs but only by the General Directorate for Healthcare Services, which only replied on points coming within its own remit –

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<sup>11</sup> The Minister of Justice as regards prisons and juvenile detention centres, the Minister of Health and Social Affairs concerning mental health institutions and the medical treatment of prisoners and the Minister of the Interior with respect to detention centres for illegal immigrants.

such that the recommendations for which another directorate was responsible were not addressed. Concerning the prison administration, after initial opposition to the very principle of the exercise, direct talks with the Minister of Justice's office enabled the CGLPL to finally obtain official (if late) responses to its recommendations; the contents of some of these nevertheless showed a lack of proper supervision of the measures advocated.

These difficulties are a clear sign that, although the authorities have made sure they are able to provide short-term responses to each of the documents they receive from the CGLPL, they do not have permanent means of monitoring the implementation of recommendations to which they respond. There is thus the risk that the CGLPL's requests and the responses it receives remain no more than rhetorical, with little impact on what happens in reality, especially as regards action plans.

Supervision of the recommendations has also revealed the lack of cross-government dialogue concerning the management of people deprived of liberty and, at the very least, the Government's relations with the CGLPL. Indeed, it is not uncommon (as you will be able to see in the detailed appendix) for two ministers to give different – even contradictory – responses to the same recommendation. These differences, perhaps trivial in institutional relations, can lead to impasses when attempts are made to get properly to grips with these subjects; the roots of some very pressing problems at present can be traced back to this very situation: the medical treatment of prisoners or the organisation of judicial transfers being the main ones.

This all means that, beyond simply the responses that each administration submits over time to the CGLPL in reaction to its opinions and recommendations, it seems preferable for an official supervisory procedure to be set up within each ministry. Especially for recommendations that the CGLPL makes in a document that does not call for a formal response from each minister: its annual report, although submitted to the President of the Republic and Parliament pursuant to a legal requirement, has, in practice, also been sent to each minister concerned since 2015. The CGLPL believes that the respect in practice of the fundamental rights of people deprived of liberty implies that the Government closely monitor the measures taken in response to the recommendations it receives and be able to report on this subject to the national representation, international bodies in which France is involved and, finally, the public.

The CGLPL recommends setting up, within each ministry concerned, official supervision of the action taken subsequent to its recommendations, including those expressed in the institution's annual reports, clearly identifying the recommendations upon which the Government does not intend to act.

The summary presented in the pages that follow therefore stems from exchanges that have taken place throughout 2016 between the Government and CGLPL. Based on the information to hand, it presents the necessary review for long-term supervision. All of the guidelines the ministries were consulted about were summarised so as to end up with just a limited number of recommendations for each theme, all in keeping with the CGLPL's most recent doctrine. A summary of the Government's reply when this was forthcoming follows each of these recommendations. Lastly, the CGLPL expresses its position as regards the reply. When there is no reply on the part of the Government, the CGLPL upholds the position it initially expressed.

In the future, a long-term procedure will be put in place to ensure annual supervision of the CGLPL's recommendations. Every year, an updated review of the recommendations will be carried out on the basis of the assessment in the previous year's annual report, rounded off by new recommendations on the part of the CGLPL. This document will be decreed on the previous 31 July. Each ministry concerned will be asked to express its views of this updated review, still within the three-month timeframe, and still with a distinction drawn between the recommendations it

rejects and those it accepts on the basis of their principle – even if it seems difficult to take immediate action on them.

From 2017, supervision of the CGLPL's general recommendations will be rounded off with supervision of the special recommendations it expresses following the visit of each prison, mental health institution, juvenile detention centre or detention centre for illegal immigrants. Occasionally, this supervision may also bear on some custody facilities when a particularly serious situation has been reported, i.e. when the minister has received a direct referral following the visit of the institution rather than through the annual summary. Every year, this supervision will be carried out for all of the visits performed three years previously. For example, in the summer of 2017, the ministries will be asked about the action taken subsequent to the CGLPL's visits conducted between 1 August 2014 and 31 July 2015.

## 1.2 The recommendations concerning prisons

The CGLPL's general recommendations on prisons form a sizable set going into every aspect of life in prison and the rights of prisoners. The details and supervision thereof can be found in Appendix 4.

The prison administration does not seem to have set up any official system for monitoring these recommendations, which explains why the CGLPL is struggling to get a detailed picture of the measures taken to ensure their implementation.

Many of these recommendations concern improving the conditions in which prisoners are taken in hand, either in human or physical terms. The CGLPL's findings are then shared by the Government and there are no objections in principle to its recommendations. The obstacles to their implementation are chiefly of a budgetary nature: the three main ones – which are elaborated on incidentally in Chapter 1 of this report – being prison overcrowding, understaffing in prisons and the dilapidated or cramped state of the facilities. To resolve them, the CGLPL cannot stress enough the need to agree on a genuine budgetary priority for prisons. Once the financial means have been unlocked, the issues regarding the right to an individual cell, personalised monitoring of rehabilitation, access to activities and prison services, hygiene and access to healthcare, for example, will, for the most part, be able to be addressed.

And yet other difficulties call for measures where the budget is not the only issue. They require a shift in the way the role of prisons, the point of sentences and the place of prisoners in society are perceived. On a certain number of these points, the Government objects to the CGLPL's recommendations in principle.

For example, the right to maintain family ties and preparation for rehabilitation call for better consideration of technological progress, i.e. increased access to telephones and Internet in particular, in compliance with the controls called for by institutional security and public order. On these points the CGLPL upholds its recommendations despite the objections that the Government has levelled in this regard.

The same applies, in general, to points concerning the proportionality of constraints imposed on the prison population in the name of security. For example, as regards the search doctrine, the security measures taken during prisoner movements for medical reasons or checking of written documents other than correspondence.

Several examples along these lines can be found in Chapter 1 of this report.

Lastly, some of the CGLPL's recommendations are not objected to in principle, and can even be approved of to a certain extent, without sufficient measures being taken to put them into

practice for all that. And yet, their implementation would not require new means – simply instructions, monitoring or training.

In this respect, the introduction of a right to collective expression for prisoners under the Prison Act dated 24 November 2009, for which an implementing regulation has been adopted, can only develop in step with a cultural change. The supervisory measures that have been taken are not enough to bring about a new means of expression – even though this is unquestionably worthwhile in terms of social regulation and rehabilitation.

Likewise, it is regrettable that the information documents (welcome booklets, internal regulations, information concerning hospitalisation, etc.) handed out to prisoners and their families are not sufficiently available or understandable, because they have not been updated, translated or distributed.

On these and other comparable points, the CGLPL can only ask that the administration take any measures where there are no objections in principle or financial obstacles.

### 1.3 The recommendations concerning mental health institutions

The CGLPL's general recommendations concerning mental health institutions bear on the general treatment conditions of patients hospitalised without consent – including prisoners, on the right to information for patients and the exercise of rights of defence, on the right to maintain family ties, on access to activities and, above all, on the use of solitary confinement or restraint measures. The details and supervision of these recommendations can be found in Appendix 4.

The organisation of the hospital system in public institutions, which operate independently and benefit from the distribution of powers within the central administration of the Ministry of Health, is such that the supervision of the CGLPL's recommendations by this administration is difficult. As previously explained, only those recommendations falling within the remit of the General Directorate for Healthcare Services were subject to supervision submitted to the CGLPL. It is therefore particularly regrettable that this authority does not have any information about the action taken following a significant proportion of its observations. The CGLPL therefore asks the Ministry of Health to change its practices in this regard.

Within the few responses it received, the CGLPL does not observe any disagreements in principle on the contents of the recommendations. It is particularly satisfied to note that the Ministry is intending, in 2017, to add the application of several of these recommendations to the agenda for the two working groups set up to implement the Act of 26 January 2016 on modernising the French health service: one on the use of solitary confinement and restraint, and the other on local mental health projects. The CGLPL will assist the Government any way it can in improving the treatment of people hospitalised without consent.

Of the general recommendations submitted for the Government's attention, the CGLPL would like to stress one in particular: the treatment of prisoners. For when the latter are hospitalised without consent in a mental health institution, they are often placed in a seclusion room, or in restraints in some cases, regardless of their clinical condition and sometimes for the entire duration of their stay. Such practice, which entails using solitary confinement not for medical reasons but for security reasons, is in violation of the Act of 26 January 2016. It violates the rights of patients, particularly the right to be able to access all treatments and activities on offer at the institution in which they are hospitalised. It stems from an excessive interpretation of the security obligations of health institutions and subjects prisoners to conditions that restrict their rights much more heavily than is the case in prison. Instructions must therefore be given so that the reception of prisoners

in mental health institutions is organised purely in view of the clinical condition of the patient concerned.

#### 1.4 The recommendations concerning facilities accommodating undocumented foreigners

The CGLPL's general recommendations to do with detention facilities and centres for illegal immigrants bore on all aspects of the treatment of people placed in such institutions. The details and supervision thereof can be found in Appendix 4.

These concern the application of security measures, order inside the centres, compliance with prisoners' rights to property, defence, privacy and relations with the outside world, the organisation of activities, medical treatment and the rights bearing on application of the deportation measure.

The CGLPL's general recommendations give rise to exhaustive supervision on the part of the Ministry of the Interior which, overall, does not express any disagreements in principle, with the following exceptions.

Concerning the maximum length of time in detention, for which the CGLPL recommends returning to thirty-two days, the Minister of the Interior simply recalls the fact that the Act of 7 March 2016 has retained a maximum length of time in detention of forty-five days. But the CGLPL believes that this length of time is excessive in view of the objective to deport people placed in administrative detention: indeed, in practice it is observed that if a person is not deported within their first two weeks in detention, this will turn out to be impossible in the vast majority of cases. There is therefore no justification for keeping someone in detention for forty-five days insofar as this timeframe is itself proof that the person will most likely not be deported.

Concerning prisoners' access to their personal belongings, the Minister of the Interior believes that the security measures are at odds with the provision of any furniture that can be locked and which may conceal banned items. He also considers that the fragility of this furniture is incompatible with use by a large number of people merely passing through on short stays. The CGLPL cannot accept this argument and asks for a technical solution to be sought to enable the provision of sturdy furniture that can be inspected.

Concerning mobile phones, the CGLPL asks that these not be banned, whereas the Minister of the Interior is of the opinion that mobile phones equipped with a camera should not be authorised. The CGLPL feels that prisoners should be able to keep their mobile phones, but be warned that taking photographs is prohibited. If this warning is not heeded, the device may, under these exceptional circumstances, be confiscated. In the CGLPL's view, current practice must be interpreted as a disproportionate precaution in light of the risk.

Lastly, while the CGLPL recommends facilitating access to psychiatric care for prisoners via agreements between detention centres and mental health institutions or the presence of psychiatrists in centres, the Minister of the Interior does not think that the number of external movements of prisoners for psychiatric disorders justifies such precautions. The CGLPL does not believe this statement matches up to the observations it has made during its visits and asks that it be backed up by an epidemiological study.

## 1.5 The recommendations concerning juvenile detention centres

The CGLPL's general recommendations concerning juvenile detention centres addressed every aspect of the treatment of minors in these institutions. The details and supervision thereof can be found in Appendix 4.

They concern discipline, supervision of security measures, particularly searches, the arrangements for involving the minor and his/her family in the treatment, the balance between respect for minors' privacy and the need to ensure their education and security, the precedence that must be given to their education, improving access to care and, above all, the need to employ sufficient and stable numbers of staff within juvenile detention centres who are adequately trained and supervised.

The Judicial Youth Protection Service Directorate conducts regular supervision of both the general recommendations it receives and the recommendations specific to each of the institutions visited. This Directorate agrees with the CGLPL's recommendations overall, and their supervision shows that the regulatory measures required for putting them into practice have been taken.

What now matters is the adoption of this new regulation if the CGLPL's recommendations are genuinely going to bring about an improvement in the treatment of minors deprived of liberty.

## 1.6 The recommendations concerning custody facilities

The CGLPL's general recommendations concerning custody facilities bear on the physical treatment conditions, the surveillance conditions of people in custody, particularly at night, the exercise of rights of defence and the possibility of benefiting from a medical appointment. The details and supervision thereof can be found in Appendix 4.

The main difficulties encountered have to do with the physical treatment conditions which are often hampered by the state of existing facilities, the means at the investigating police services' disposal or the possibility of consulting a physician or lawyer. These difficulties are not subject to disagreements in principle between the CGLPL and the Government. They will need resolving on a case-by-case basis by allocating the necessary means or via local agreements with the professional associations or hospital institutions.

The CGLPL would nevertheless like to draw the Government's attention to two specific points:

- the security measures applied to people in custody, especially the seemingly systematic confiscation of spectacles and bras which is not in keeping with the instructions given, either in the national police services or in those of the national gendarmerie, and nor does it respect the dignity of the people concerned. The CGLPL therefore insists that the application of existing instructions be subject to strong awareness-raising measures so that spectacles and bras are only confiscated in the event of proven risk;
- there must be no exceptions to the night-time surveillance of people in custody. In gendarmerie units that are too small for officers to be on duty round-the-clock, the need to keep someone in a cell overnight is necessarily exceptional. All efforts must therefore be taken to ensure that this person can spend the allotted night rest period in a gendarmerie or police service – even one further away – where round-the-clock presence is ensured.

## 2. A look back at a selection of opinions and recommendations from before 2016

### 2.1 The action taken following the recommendations bearing on CCTV surveillance made in the CGLPL's 2009 annual report

The CGLPL had the opportunity to give its opinion on the use of CCTV surveillance in its 2009 annual report. On this occasion it had pointed out that some places of deprivation of liberty called for careful attention to be paid to the issue of the respect of privacy of prisoners, prisoners, people in custody or hospitalised without consent. It had particularly stressed that "*accommodation facilities – which represent the places where people in detention live, as their home – must not be equipped with CCTV cameras. In prisons, the concealment of peepholes has been very commonly observed, and this shows that observation in cells – even just a warder's glance through this opening – is seen as an intrusion in a place that is considered to form part of the person's personal space. The need to escape the prying eyes of others is also apparent in the hanging of sheets from the top bunk to create one's own private space*".

The Chief Inspector recalls that a similar position has been expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), particularly in the report of a visit carried out in Ukraine in 2014, when it reiterated its serious misgivings about the routine installation of CCTV cameras in individual cells for prolonged periods, considering that the resources devoted to such schemes could more usefully be deployed by having staff interact more effectively with the prisoners concerned. In general, the CPT indicates that prolonged use of CCTV surveillance in cells is an invasion of the privacy and breach of the dignity of the person detained. It highlights that denying prisoners any privacy for prolonged periods is disproportionate, of no benefit from a security point of view and could amount to inhuman and degrading treatment.

It appears necessary to readdress the question of CCTV camera use in cells following the adoption of Act No. 2016-987 of 21 July 2016 extending the application of Act No. 55-385 of 3 April 1955 on the state of emergency and introducing stronger counter-terrorism measures.

Article 9 of said Act adds to the Act of 24 November 2009 an Article 58-1 on CCTV systems in holding cells within prisons.

Before this provision was passed into law, **only a ruling dated 23 December 2014 provided for video surveillance in emergency protection cells (known as CProU), in which prisoners are placed whose condition appears to be incompatible with such placement or holding in an ordinary cell because of an imminent suicide risk or during an acute outburst. The registration period was limited to 24 hours straight in this context.**

Under the new Article 58-1 of the Prison Act, it is now possible to install a continuous CCTV surveillance system in a cell, under exceptional circumstances, for prisoners being tried for criminal offences, subject to solitary confinement, whose "*escape or suicide could have major repercussions on public order given the specific circumstances of the grounds for their imprisonment and the impact of these on public opinion*". Placement under video surveillance is subject to a specifically justified decision taken by the Minister of Justice, for a five-day period in an emergency, which can be then be renewed by three-monthly periods through proceedings in which both parties are heard.

The Chief Inspector underscores the fact that video surveillance must be used in a way that ensures respect of individual liberties: the right to privacy, to dignity, of personal portrayal and to be forgotten. She maintains that the terms of the Act passed in July 2016 do not go far enough in



protecting these rights and provide too weak a legal framework with regard to the breach of rights that such a system represents.

Indeed, the application criteria set out in the Act are too vague. In particular, it takes account, not of the objective to protect the person, but of the risk of impact on public order resulting from a possible suicide; this criterion could allow for the installation of video surveillance for a very large number of prisoners, when such a system must remain exceptional. What is more, the Act does not stipulate a maximum length of time at the end of which such surveillance must cease. Given that criminal proceedings can sometimes drag on for a very long time, such a system could remain in place for several years at a time, which appears to constitute a disproportionate breach of the fundamental rights of the people concerned. Lastly, the Act only provides for the option of asking for a physician, and not an obligation. By way of comparison, the periodic attendance of a physician in the solitary confinement wing is compulsory so as to determine how compatible the person's state of health is with such a measure. A similar obligation also seems necessary in this instance.

For all these reasons, the Chief Inspector does not consider these measures concerning video surveillance in cells to be sufficient to guarantee that the fundamental rights of the people subject thereto are protected. Moreover, she believes that such a system – far from protecting the person – may actually increase the suicide risk given the significant intrusion into the person's privacy it entails – stripping the person as it does of any sense of privacy. She points out that more training and vigilance on the part of staff coupled with continuous presence and regular, attentive conversation with the person concerned by the surveillance system would achieve both the objectives bearing on the security and protection of the person – whilst respecting his or her fundamental rights.

The CGLPL reiterates its opposition to the principle of video surveillance in cells. That said, if the consensus is that this cannot be avoided, under exceptional circumstances, then at the very least its legal supervision must be bolstered. What matters is to keep this measure exceptional, by providing that it can only be taken with a view to protecting a prisoner rather than to meeting the expectations of public opinion, that it be subject to regular scrutiny and that it be limited to a strict timescale. Video surveillance must not replace human presence around the person being protected.

## **2.2 The consequences of the opinion dated 12 July 2011 relating to access to computers by prisoners**

In this opinion, the CGLPL asked the prison administration to more effectively guarantee the prisoners' freedom of communication, acknowledged by the Constitutional Council, without any limits other than those imposed by security, public order, the future of the prisoners and the rights of their victims. To help with prisoners' rehabilitation, it was recommended that the rules of accessing computers, concerning the acquisition of hardware, storage capacities, access to the Internet and an electronic messaging service, be made more flexible and harmonised, in compliance with security requirements.

In view of persisting reports that computer use in prisons continues to be problematic, the Contrôleur général des lieux de privation de liberté decided to conduct an on-site inspection pursuant to Article 6-1 of the Act of 30 October 2007. Through these measures, the CGLPL was able to observe that, despite the recommendations issued five years ago, access to online services in prisons had made precious little progress. This is why, when these investigations had come to an end, the CGLPL issued the prison administration with new recommendations<sup>12</sup>.

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<sup>12</sup> Letter dated 22 April 2016 to the Prison Administration Director.

It first of all recommends opening up the possibilities of acquiring computer hardware so as to authorise the greatest number of people to do this, both by easing the economic constraints (particularly by agreeing to the possibility of loans and donations) and by offering the purchaser equivalent guarantees to those that prevail on the outside. It also recommends easing the constraints associated with the acquisition procedure by not requiring authorisation in this regard to be subject to a rehabilitation or training plan. Along the same lines, the CGLPL recommends changing from an authorisation-based system to one centred on the prohibition of equipment on a case-by-case basis. The point here is to reverse the principle whereby only a limited list of equipment is authorised, by replacing it with a principle according to which all equipment is authorised except that which has been expressly prohibited. In this regard, the CGLPL advocates that, as already practised in some institutions, game consoles equipped with smart devices – which, going by the trends, are becoming the only ones available on the market – be permitted in shared facilities.

Secondly, the CGLPL recommends securing the possession of hardware and its contents by the prisoner. For that, it seems necessary to assert a right to continue using the equipment – particularly by guaranteeing swift transfers and reducing the length of inspections. It also asks that the fresh consideration be given to the balance between the right to property and the security of institutions, i.e. that the rights of people over their IT data be guaranteed by not deleting such data without the participation of the person being detained and by considering that it is for the prison administration to determine any instances of piracy rather than the prisoner to justify his or her right to ownership over a software program; lastly, it does not believe that control over the correspondence contained in a computer should derogate from the rules generally applicable to written correspondence and surveillance of telephone conversations.

Further, the CGLPL recommends that no measure to confiscate – even on a temporary basis – IT equipment be taken without legal basis or the possibility for the person concerned to present his or her defence.

In response to these recommendations, the Prison Administration Director<sup>13</sup> told the CGLPL that she was incorporating in her real estate programme and "television and multimedia for prisoners" master plan the implementation of dedicated infrastructure for accessing new multimedia services in cells: these services have been set up in all institutions opened after January 2013. She also said that work was under way to make digital services accessible to prisoners and their families, and discussions were being held on the possibility of implementing a national market for the sale or hire of products that are compatible with its own security standards.

In all, the CGLPL does not believe the measures taken are sufficient to meet the rehabilitation requirements concerning prisoners, or to guarantee that their freedom of communication is only limited by security, public order and victims' rights considerations. This is why it is repeating the recommendations expressed during talks with the Prison Administration Department in 2016.

Measures must be taken to overcome the economic and technical barriers to the acquisition of computer hardware and to guarantee that prisoners' right to own their equipment and data is respected, the sole limits to which are imposed by the security of goods and persons, respect of public order and victims' rights.

### **2.3 Opinion of 14 October 2011 concerning the use of video conferencing vis-à-vis persons deprived of liberty**

Through this opinion, the CGLPL draws attention to the fact that, although the use of video conferencing can sometimes constitute an inevitable stopgap measure, one that will most likely

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<sup>13</sup> Letter dated 7 July 2016.

increase, under no circumstances must it become an unconditional convenience: above all it must be clearly regulated. The CGLPL has thus set out the following recommendations:

- as a general rule, video conferencing cannot be used without any official legal basis that lays down its conditions for use, and it can never be compulsory;
- in the same way, no video conference may be held unless the informed consent of any plaintiff or defendant or responsible third party excluding the administration has been obtained;
- in subjects where questions of fact prevail over questions of pure law or when the personality of the person concerned or his or her explanations are determining factors in the decision to be made, use of video conferencing must be the exception. On the other hand, it must generally be possible for hearings of a purely formal or purely legal nature;
- even when the person concerned has given their consent, the police or judicial authority must be able to decide not to use video conferencing, including during proceedings, at the request of the person concerned or their legal counsel or in the event of a technical hitch;
- when the law provides for the hearing to be broadcast publicly, all of the rooms connected by the video conferencing system must be open to the public; on the other hand, when the law provides that the hearings are confidential, the video conferencing system must be able to guarantee this confidentiality;
- in all cases, the presence of legal counsel must be ensured as must the guarantee that exchanges between the person concerned and their legal counsel remain confidential;
- the consideration of the savings made on the cost of external movements is not sufficient grounds for using video conferencing;
- in all cases, the decision to use video conferencing must be made on a case-by-case basis and solely by the authority responsible for the proceedings and the final decision.

The Ministers of the Interior, Justice and Health were all consulted prior to the publication of this opinion, but only the Minister of State for Health responded, to the tune that she did not wish to make any comments.

The Prison Administration Director did, however, send a reply to the CGLPL concerning this opinion on 16 September 2016, so five years after its publication in the *Journal officiel* (Official Gazette). She particularly maintained that the use of video conferencing remained optional and that it could only be enforced in the event of a serious and characterised risk of public disorder or escape. She indicated that its use and development as a communication tool between lawyers and people placed in custody was in no way under consideration. Finally, she considered that the case law of the European Court of Human Rights and of the Court of Cassation struck a relevant balance between respect for rights of defence and use of video conferencing.

Act No. 2016-274 of 7 March 2016 on foreigners' rights in France has extended the possibility of using video conferencing to hearings before the administrative judge when the latter is referred an appeal to annul a decision to deport a detained foreigner. All of the CGLPL's recommendations on the use of video conferencing naturally apply to this new procedure.

In view of an extended use of video conferencing, the CGLPL draws attention to its previous recommendations, according to which the use of such means may only be voluntary, subject to a decision that is always reversible by the judge with the final say and subject to the consent of the person concerned. It particularly points out that the use of video conferencing may not alter the public or confidential nature of hearings or affect lawyer-client privilege.

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

Following this opinion, which was published in the *Journal officiel* (Official Gazette) dated 11 July 2013 and did not receive any comments on the part of the Ministry of Justice, the Prison Administration Director shared her comments with the CGLPL on 16 September 2016.

### 2.4.1 *Scrap the compulsory submission of documents mentioning grounds for committal filed at the institution's registry*

The CGLPL believes that this measure, pursuant to Article 42 of the Prison Act of 24 November 2009, which usefully protects the prisoner from the curiosity of his or her fellow prisoners as well as warders, also has unfortunate consequences in that it places a large number of physical obstacles – usually indirect – in the way of prisoners being able to consult documents relating to them and which are sometimes essential for the management of their legal proceedings.

In light of this twofold observation, the CGLPL has therefore recommended that each person detained may choose either to file with the registry the documents mentioning his or her grounds for committal or to keep them with them in their cell. As such, the CGLPL considers that it is the prison administration's responsibility – subject to the necessary checks - to ensure that the personal nature of documents is respected. To that end it recommends:

- that each detained person has access to the necessary stationery for guaranteeing confidentiality;
- that each cell contain, for each of the people accommodated within, a cupboard that can be locked, as already exists in some institutions;
- that the documents found in the cupboards during searches should be examined in the presence of the prisoner and only by officers or sergeants specially appointed by the head of the institution for the sole purpose of searching for banned goods or substances; this excludes examining the documents themselves for the purpose of reading them, insofar as the law does not authorise the prison administration to read any other document than the ones it is checking pursuant to Article 40 of the Prison Act, on the written correspondence of prisoners;
- that no document, whether or not placed in these cupboards, is destroyed during searches.

The prison administration does not agree with the CGLPL and considers that Article 42 of the Prison Act, as it is currently written: "establishes a balanced protocol that respects the rights of prisoners and meets the need for maintaining public order and security within prisons and for preventing offences."

It feels that the searches conducted in prisoners' cells can "uncover certain documents the contents of which raise suspicions of the existence of trafficking or plans to escape" and that "the compulsory submission of personal documents to the registry not only ensures their confidentiality but also enables the administration to conduct the necessary security checks in prisons". It stresses that cell searches are conducted without the prisoners being present, which would be at odds with the public security objectives. The requirement that an officer or sergeant be present during such searches is therefore not justified in its opinion given the low number of such ranks among the staff and furthermore because warders are authorised to conduct cell searches.

The CGLPL cannot accept such a stance. The visits conducted following its 2013 opinion have shown that prisoners continue to encounter considerable difficulties in accessing their personal documents. These difficulties need to be resolved. If the administration does not wish to resolve them by the recommended means, they must, at the very least, take every appropriate measure to ensure that the personal documents filed with the registry are freely accessible at the request of the person who filed them, promptly and following a transparent, traceable procedure. This accessibility must be regarded as an obligation for due diligence. What is more, this obligation is defined in *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the *Nelson Mandela Rules*), within which it forms Rule 53, which is written thus: "*Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings*".

Regarding the presence of prisoners during searches of their personal belongings, the CGLPL will limit itself to highlighting European Prison Rule number 54.8, which states as follows: "*Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.*"

The CGLPL recommends taking every appropriate measure to ensure that each prisoner has immediate, unhampered and traceable access to the documents they will have filed with the registry; failing that, any requirement to file such documents should be scrapped. The cell search procedure must, in addition, be brought into line with the European Prison Rules.

#### ***2.4.2 Repeal the provisions of the standard internal regulations of prisons approved by the Decree of 30 April 2013 which authorises the prison administration to retain, subject to the exercise of the rights of defence, any manuscript written whilst in prison and not to return it to its author until the latter is released.***

The Prison Administration Department maintains that this provision did not feature in the draft decree forwarded to the Conseil d'État, but results from the work of this institution, and concludes that it is necessarily in accordance with the law.

Without getting caught up in a legal controversy, the CGLPL recalls that the lawmakers considered it necessary to provide for express authorisation for checking the correspondence of prisoners and did not consider that the general provisions enabling the rights of prisoners to be restricted due to constraints inherent in detention and for reasons particularly bearing on security and public order in institutions<sup>14</sup> were sufficient grounds for such a check.

As a result, the CGLPL feels it should be solely up to the lawmakers to determine the conditions in which the written documents of prisoners can be checked. A general legislative provision is not sufficient grounds for broadly restricting liberty over the long term.

Any checking of documents in a prisoner's possession that is not justified by an explicit legislative provision must cease, and any regulatory provision to the contrary must be repealed.

#### ***2.4.3 Foster access to administrative documents by creating a regularly updated collection of legislation and regulations along with circulars that are applicable to prisoners***

The administration claims that it would be impossible to compile such a collection – let alone keep it regularly updated – because of the sheer volume of texts concerned. It indicates that prison libraries already have up-to-date copies of the French Criminal Procedure Code and the *Official Gazette of the French Republic*. It also maintains that instructions have been given so that copies of

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<sup>14</sup> Art. 22 of the Prison Act of 24 November 2009.

prisons' standard internal regulations are made available to prisoners within libraries and that institution directors furnish prisoners making such a request with any documents which, although published, are not directly accessible.

None of the measures mentioned by the Prison Administration Department post-dated the adoption of the CGLPL's opinion, and there is therefore no reason given in its response that this proposal would change.

As for the "impossibility" of compiling a collection of texts applicable to prisoners and keeping this up-to-date, this argument does not strike as genuinely well-founded: if the prison administration feels incapable of officially recording the right it is responsible for applying, then this only makes it more necessary to compile a collection thereof. This would satisfy not only a fundamental right of prisoners, but also, most effectively, a training need for prison staff and all professionals working in prisons (physicians, lawyers, associations, teachers, inspectors and so on), whose knowledge of the applicable rules is sometimes patchy. It would also satisfy a need to inform academics and the public alike.

The CGLPL gives a reminder that preventing people deprived of liberty from being able to know their applicable rights amounts to arbitrary treatment – as evidenced particularly by Rule 54 of *The United Nations Standard Minimum Rules for the Treatment of Prisoners*:

"Upon admission, every prisoner shall be promptly provided with written information about:

- a) The prison law and applicable prison regulations;
- b) His or her rights, including authorised methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- c) His or her obligations, including applicable disciplinary sanctions; and;
- d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison. "

The *European Prison Rules* express this principle differently, but with the same consequences:

"30.1 - At admission, and as often as necessary afterwards all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.

30.2 - Prisoners shall be allowed to keep in their possession a written version of the information they are given."

The CGLPL recommends compiling, in the very short term, a collection of legislation and regulations along with circulars that are applicable to prisoners, and keeping this up-to-date.

## **2.5 Opinion of 8 August 2013 concerning young children in prison and their imprisoned mothers**

Following this opinion, which was published in the *Journal Officiel* (Official Gazette) dated 3 September 2013 and did not receive any comments on the part of the Ministry of Justice, the Prison Administration Director shared her comments with the CGLPL on 16 September 2016.

This opinion addressed the paradoxical nature of the choice to separate children from their imprisoned parents or, to avoid the effects of separation, to involve them in the situation of deprivation of liberty up to the age of 18 months. The CGLPL had already mentioned this difficulty in its 2010 annual report and urged for discussions to ensure that mothers in prison with their children are necessarily granted access to the possibility of their sentence being adjusted with, for example, release on parole or the benefit of a suspended sentence for maternity reasons.

Finding that no progress had been made in this area in three years, the CGLPL had reiterated this proposal and decided to delve more deeply into the living conditions of mothers imprisoned with their young children.

### *2.5.1 Following the opinion of 8 August 2013, legislative changes have been introduced*

Article 25 of the Act of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions introduced several measures in favour of pregnant women and people with custody of a child, which entered into force on 1 October 2014:

- building on the principles governing sentence enforcement, the new Article 708-1 of the Criminal Procedure Code requires the Public Prosecutor and the Judge responsible for the enforcement of sentences, when a convicted female prisoner is more than twelve weeks pregnant, to take this into account when enforcing the prison sentence pronounced against her. The purpose of these provisions is to avoid the imprisonment of pregnant women;
- Article 720-1 of the Criminal Procedure Code provides for an extension from two to four years of the maximum remaining sentence allowing a suspended sentence for family reasons, when the convicted person has parental responsibility over a child under ten years of age who usually lives with said person, or is a woman who is more than twelve weeks pregnant;
- the aforementioned Act also provides that the release on parole stipulated in Article 729-3 of the Criminal Procedure Code, known as "parental release on parole", which used to concern convicted persons with parental responsibility over a child under ten years of age who usually lives with said parent, now also benefits women who are more than twelve weeks pregnant;
- lastly, this Act amends Articles 723-1 and 723-7 of the Criminal Procedure Code which expressly extends to encompass parental release on parole the day parole measures, placement in an external facility or electronic tagging prior to release on parole. Accordingly, a convicted person who has parental responsibility over a child under ten years of age or is more than twelve weeks pregnant and who has five years or less left to serve on their sentence, can benefit from one of these prison measures, prior to release on parole, for one year or less, whether or not in detention.

The prison administration nevertheless draws attention to the fact that a certain number of female prisoners who have their young children with them are fragile and isolated people, for whom the issue of mother-child accommodation and the need for educational support imply considerable planning which can prove to be an obstacle to the pronouncement of sentence adjustments. It particularly points out in this regard that some institutions have forged constructive partnerships with the health and social services. It must be said, though, that the examples given, the women's remand prison in Fleury-Mérogis and the women's prison in Rennes, are large institutions, highly specialised in practices concerning the imprisonment of women, and it is not certain that the means at their disposal are accessible to smaller institutions. The CGLPL has particularly found that when mother-child wings are too small, they are often not satisfactorily run. As a result, a relevance balance needs to be found between the territorial distribution of such wings and the critical size for having sufficient means.

The CGLPL duly notes the improvements indicated with satisfaction.

### *2.5.2 The detention conditions of women imprisoned with their children have not progressed all that much*

In its 2013 opinion, the CGLPL had also indicated that, when it has not been possible to avoid imprisonment, the obligations incumbent upon the public authorities with regard to the mode of organisation of the life of the mother and child in prison have the objective of:

- Helping the mother to effectively take care of the child;
- Refraining from any measure which could harm the normal development of the child;
- Facilitating relations between the child and its parents, including its father, at least on the assumption that the latter has legally recognised the child, as well as with the rest of the family;
- Not allowing any of the child's vital needs to remain unsatisfied;
- Ensuring that the ordinary public childcare services play their full role, in the health and social fields in particular.

It had further been pointed out that the risks posed in terms of security of persons by mothers who are imprisoned with their child – such as the risk of escape – were evidently less than those posed by another prisoner.

As such, the Chief Inspector had recommended a certain number of physical measures concerning the fitting out of accommodation facilities for mothers imprisoned with their children and their detention conditions. In this regard she had recommended:

- separate, specially laid out areas for going outside;
- the fitting out of cells with two separate spaces, with no bars and gratings and in an impeccable state of cleanliness;
- the possibility of washing laundry and cooking independently;
- the possibility of the mother holding phone conversations with the health and social services with responsibility for children;
- a childcare system enabling the mother to access activities;
- the consideration of the mother's obligation to bear the financial costs of her child's needs;
- the safeguarding of an external care arrangement for the child for all of his or her health and social needs;
- that the mother can have contact with the father of her child, especially during childbirth;
- a policy to search the child, when this proves strictly necessary, solely by his or her mother and excluding any contact on the part of the prison staff with the child.

On all of these points, the information provided by the prison administration in 2016 does not demonstrate that satisfactory progress has been made:

- the "nursery" spaces are not always systematically equipped with telephone booths;
- fitting out of cells and outdoor areas remains disparate, even if measures have been taken in new institutions to comply with the CGLPL's recommendations;
- the effectiveness of the partnership between the prison administration and the external health and social services remains disparate and, according to the prison administration itself, needs working on.



Lastly, the Prison Administration Department indicates that, aware of the improvements that are necessary concerning all of the subjects raised in the CGLPL's opinion, it has begun to recast the circular of 16 August 1999 on the conditions for accommodating children allowed to stay with their imprisoned mother, which will most likely call for a revision of the mapping of "nursery" places and perhaps even amendments to the regulatory provisions of the Criminal Procedure Code.

The CGLPL duly notes the intentions to amend the regulations on the conditions for accommodating children allowed to stay with their imprisoned mother. It also notes that the planned facilities in new institutions will comply with its recommendations. It will see that these intentions are effective and, despite the physical difficulties this poses, recommends that the "nursery" wings of existing institutions be brought into line with the recommendations expressed in the opinion of 8 August 2013.

## 2.6 Opinion of 16 June 2015 concerning the treatment of prisoners in healthcare institutions

In this opinion, the Contrôleur général des lieux de privation de liberté criticised:

- excessive numbers of external movements for medical reasons;
- insufficient development of telemedicine;
- inappropriate procedure for carrying out external movements for medical reasons because of the widespread and sometimes excessive use of restraint measures;
- situations where medical confidentiality was not respected, particularly because of the presence of medical staff during consultations and treatments – including those bearing on gynaecology;
- patients are not ensured a sufficient quality of reception in the organisation of health care;
- the location and fitting out of secure rooms are at odds with the care approach;
- the hospitalisation conditions in secure rooms restrict fundamental rights more than the detention conditions themselves do.

The Minister of Justice and Minister of Social Affairs, Health and Women's Rights submitted responses to this opinion.

The former had particularly pointed to the existence of 2011 prison administration instructions which indicated that the escort level and determination of security measures during an external movement should be tailored to the behaviour of the prisoners, and that a reminder of these instructions would be given. The Minister had recalled that the Act of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions had supplemented the sentence suspension policy for medical reasons and made it more flexible. He had announced plans for joint efforts with the Ministry of Health aimed at adapting the specifications governing secure rooms. Moreover, he mentioned a joint mission between the General Inspectorate of Social Affairs and General Inspectorate of Legal Services to perform a general assessment of the 2010-2014 strategic action plan for the health of prisoners.

The Minister of Social Affairs, Health and Women's Rights had highlighted the local cooperation between the regional health agencies and Interregional Directorates for Prison Services. She had clarified that increasing the presence of consultants within health blocks was complicated given the existing recruitment difficulties, but she was planning for services in the form of "missions" within prisons as well as the development of telemedicine. The Minister had hoped to see prison and medical teams being mutually informed about the security measures adopted, prior to external movements of prisoners. She had mentioned the telemedicine trials conducted in

the Midi-Pyrénées and Ile-de-France Regions. She had drawn attention to two points: firstly, that health professionals were doing their utmost to respect patient-physician and treatment confidentiality under all circumstances and, secondly, that the certification process bearing on health facilities, implemented at periodic intervals, took this subject on board. Lastly, the Minister had recalled the principle of appointing an identified practitioner for monitoring patients placed in secure rooms, the specific internal training measures given to nursing staff working in secure rooms and the need for close cooperation between the prison administration and the public hospital services as regards the living conditions in secure rooms.

A few months after the opinion was published, the Prison Administration Director issued her departments with an instruction<sup>15</sup> reiterating that there should not be any exception to the rule set out in Art.52 of the Prison Act of 24 November 2009 as follows: "*any delivery or gynaecological examination must be performed without restraints and without the presence of the prison staff, in order to guarantee the right to respect of the dignity of detained women*". This note presents the security measures in detail that it is possible to take based on the different situations likely to be encountered during the external movements of female prisoners who are more than six months pregnant.

The assessment report for the 2010-2014 strategic action plan bearing on the health policy for prisoners, drawn up by the General Inspectorate of Social Affairs and General Inspectorate of Legal Services, was submitted to the Government in November 2015 and published during the first half of 2016.

This document makes the overall observation that prisoners have significant health needs, and yet their state of health is poorly documented. It points out that while the 1994 reform had laid the foundations for the necessary cross-government cooperation, beyond the cooperation that exists on a day-to-day basis on the ground this remains complex. It has particularly undermined the management and coordination of the 2010-2014 plan.

The mission finds that the provision of health care is highly disparate and still inadequate overall. It pinpoints several policy areas that need to be taken further – particularly in terms of prevention, addictions and suicide prevention. It recommends new courses for action regarding the affiliation of prisoners to social protection, simplifying the financing of health care services in favour of prisoners and improving access to care outside detention; in the mission's view, this latter point is to be achieved by more effectively organising external movements of prisoners and by developing sentence adjustments for medical reasons. Finally, the mission recommends new guidelines: health care in relation with the offence for which the person has been convicted, treatment for the loss of independence associated with ageing and disability, and the question of prisoners nearing the end of their lives.

Regarding the questions addressed in the CGLPL's 2015 opinion, the mission also observed a high rate (around 20%) of external movements for medical reasons that are planned but not carried out, and a widespread, excessive use of restraint methods that is hardly respectful of personal dignity or medical confidentiality. It advocates amending standard protocol to be able to allow release authorisations for several days in order to receive care – when the criminal profile of the prisoner permits this – as well as the use of conventional sentence adjustments to enable care to be received.

During its visits to institutions and its investigations, the CGLPL has not observed any improvements in the situation it described in 2015, despite the similar observations made by the General Inspectorate of Social Affairs and General Inspectorate of Legal Services, the fact that the Government does not contest these findings and the reminder of the applicable rules. There have

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<sup>15</sup> Note dated 8 December 2015, on the restraint means and surveillance measures during the external movements of prisoners on the grounds of their pregnancy or for a gynaecological examination.

been many occasions where the CGLPL observed that the use of constraint methods was almost systematic during external movements of prisoners for medical reasons, either because the prisoners are, with few exceptions, systematically placed in the highest security class or even, sometimes, because their classification is revised upwards when an external movement plan is being carried out. The CGLPL has found that warders were very often present during consultations and care administration, without this raising any objections on the part of medical staff and, sometimes, at the latter's request even. On two occasions in different institutions, it even noted the use of restraint methods and the presence of warders while women were undergoing childbirth.

This situation is absolutely unacceptable.

On the matter of secure rooms, the fifteen visits carried out in 2016 have not revealed any progress, in terms of information, living conditions or respect of medical confidentiality.

The CGLPL therefore feels it necessary to drive home the fact that its 2015 findings were confirmed by a cross-government mission performed by two general inspectorates and were not challenged in any way by the Government. It is therefore inexplicable given these conditions that the situation criticised is showing no signs of improvement.

In the very short term it is vital that the necessary organisation and training measures be adopted to guarantee external movements, accommodation, consultation and health care for prisoners that are respectful of medical confidentiality and the dignity of prisoners cared for in hospital settings. The CGLPL stresses that these are measures with no financial impact and no budgetary considerations should therefore be cited to explain the delay.



## Chapter 4

# Action taken in 2016 in response to the cases referred to the Chief Inspectorate

In accordance with the prevention mission delegated to the Contrôleur général des lieux de privation de liberté, processing case referrals helps to identify the existence of any violations of the fundamental rights of people deprived of liberty, and to prevent their re-occurrence. With this in mind, the inspectors in charge of the referrals conduct verifications of documents and ask for observations from the authorities responsible for the facility in question – pursuant to the adversarial principle. They also conducted on-site verifications where applicable. The reports written following these inspections also go through the due adversarial procedure with the authorities responsible.

The recommendations stemming from this procedure are aimed at safeguarding the right balance between respect for the fundamental rights of prisoners and the public order and security requirements that such places must naturally fulfil. The priority for the Chief Inspector in this instance, in the same way as during inspection missions, is to initiate a dialogue aimed at improving institutional practices and thinking on the way in which people deprived of liberty are treated – in strict respect of their fundamental rights.

Every year, multiple violations of the fundamental rights of people deprived of liberty are identified through accounts from people who reach out to the Chief Inspector. The local examples that have been presented in this chapter all lift the lid on a general problem concerning the way things are operated and run. They demonstrate the wide range of fundamental rights concerned: rights of defence, right to privacy, right to maintain family ties, right to dignity, etc. These violations are sometimes the result of negligence due to a lack of thought in the way something is done, or to a long-standing practice in the institutions concerned, or of practices that deliberately disrespect the rights of prisoners that these institutions are nevertheless supposed to protect.

## 1. Preventing violations of fundamental rights through case referrals and local examples

### 1.1 Guaranteeing rights during placement in administrative detainment

The Chief Inspector was referred a case by a lawyer on the conditions in which an identity check was carried out, boulevard de la Villette in Paris, in the 19<sup>th</sup> arrondissement: an identity check had been carried out on some twenty people, followed by administrative detainment for verification of their rights to residence, lasting several hours, in sweltering heat and the most basic of physical conditions, with no possibility of sitting down, in the inner courtyard of the building of the Public Order and Traffic Department (DOPC), before being issued notification of placement in detention and taken to the Detention centre for illegal immigrants (CRA) of Vincennes. The interviews between the lawyers and detainees had taken place on a bench in the courtyard, under conditions that in no way guaranteed the confidentiality of the interview.

In a response submitted to the Chief Inspector nine months after the request was made, the Paris Police Prefect confirmed that an identity check operation had indeed taken place at the place and time as described in the referral, at temperatures of around 35°C. The detainees had indeed been ushered into the courtyard of the DOPC where they remained "*no more than a few hours*" and where they were able to keep themselves hydrated. It was specified that the operations bearing on notification of rights, hearings and notification of deportation measures from national territory had taken place in a covered, enclosed area. The Prefect forwarded copies of the procedural documents concerning the 18 people in question, most of whom were detained for more than four hours under these conditions before they arrived at the Detention centre for illegal immigrants.

The Chief Inspector recommended that all steps be taken to ensure acceptable detainment conditions for the detainees and a procedure for notifying them of measures in a manner that respects their rights.

Questioned once again about the respect for confidentiality in terms of interviews with lawyers, the police prefect responded that instructions had been issued to the Paris Conurbation Neighbourhood Security Director to make sure that, under such circumstances, the rights of detainees would be respected – not least as regards the strict confidentiality of talks with their lawyers.

With such operations currently occurring on a regular basis in Paris, the Chief Inspector is remaining extremely vigilant as to the application of these recommendations.

## 1.2 Respecting the privacy of people hospitalised without their consent

The CGLPL was referred a case by a person hospitalised without consent, reporting that section 3 of the sick leave notification issued to him during his hospitalisation, for forwarding to his employer, mentioned not only the name of the physician, but also the institution in which he had been hospitalised.

This situation appeared to violate the right to respect of privacy, one of the criteria of which is medical confidentiality, when this institution specialised in psychiatry, geriatrics and addictions.

Referred the measures that could be taken to resolve the risk of intrusion on the privacy of people committed to psychiatric care institutions, the hospital management indicated that it had acknowledged the possible difficulties associated with mentioning the name of the institution – which was not obligatory, incidentally, for completing the form. It said that a discussion would shortly take place with Board members and/or the institution's medical commission (CME) with a view to changing this practice that violated patients' rights.

This example is evidence of the many instances where the CGLPL's recommendations are received positively by institutions who are anxious to review their practices so as to improve respect of the rights of detainees they accommodate.

## 1.3 Access to visiting rooms for people fitted with a pacemaker

The Chief Inspector was referred a case concerning difficulties accessing the visiting room for a prisoner's mother who was fitted with a pacemaker. It was explained that the management had denied her access to the institution despite the presentation of a medical certificate indicating that she was "fitted with an automatic pacemaker that contraindicated walking through metal detectors".

The Chief Inspector has contacted the institution director for comments on this situation. In her letter, she set out the terms of the circular of 20 February 2012 on prisoners maintaining bonds with the outside world: "*the conditions for physically accessing institutions must not exclude, in principle,*

*certain categories of visitors. The admission conditions regarding people visiting their imprisoned relative must, as far as possible, be tailored to specific situations".* The same circular further provides that "*when a visitor is fitted with an implantable pacemaker and that a certificate determines the possibility of electromagnetic interference, it is up to the institution director to subject the person in question, with their consent, to security frisking by an agent of the same sex*".

In reply, the institution director indicated that walking through the metal detector was not incompatible with the device with which the prisoner's mother had been fitted according to the detector's security leaflet, which certified that the equipment did not pose any danger for people fitted with pacemakers. He added that a note from the Prison Administration Department dated 31 May 2006 stressed the fact that no exception could be made to checks carried out on people accessing a prison and that "*walking through the detector does not pose a danger for people fitted with pacemakers*".

In light of this reply, the Chief Inspector contacted the Interregional Director for Prison Services for the region concerned.

The latter replied that there was, indeed, cause for a principle of precaution to be applied. Accordingly, the check procedure could be adapted according to the terms of the 2012 circular if the medical certificate determined the possibility of electromagnetic interference and not just because the person was fitted with a cardiac defibrillator or pacemaker. He indicated that, in that case, the person concerned had to show a valid, dated medical certificate clarifying the formal contraindication to walk through a metal detector.

Much like the on-site verification carried out at the Privas remand prison in 2016 on the conditions for disabled people to access the visiting rooms (see below), this case is characteristic of the difficulties encountered by prisoners or their families when the security measures need to be tailored to specific situations. The CGLPL is remaining on its guard as regards this issue, which is fundamental for clearly guaranteeing that prisoners can maintain family ties.

#### **1.4 Access to family lounges for people placed in disciplinary and solitary confinement wings**

Informed of the repeated refusal on the part of a long-stay prison's management to grant access to family visiting rooms to a prisoner being voluntarily accommodated in a disciplinary wing, contrary to his assignment, and then placed in solitary confinement at his request, the Chief Inspector wished to know what the reasons were for this restriction of the right to maintain ties with the outside world.

In reply, the director indicated that access to family visiting rooms should not be a given and was subject to the decision of the institution director after consulting the Single multidisciplinary committee (CPU). He also submitted the refusal decisions, which indicated the following reasons: "*must commit to his detention pathway*"; "*except on condition that he leave the solitary confinement wing to commit to his planned detention*"; "*you are responsible for committing to your detention by returning to ordinary detention. You benefit from conventional visiting rooms on a regular basis*". The director explained that the person in question had recently been granted access to a family visiting room while still being placed in the solitary confinement wing.

In reply, the Chief Inspector pointed out that the aforementioned grounds for refusal were contrary to the law and that the refusal to grant access to a family visiting room as a means of persuading the person to leave solitary confinement violated the right to maintain family ties.

She drew the institution director's attention to Article 36 of the Act of 24 November 2009, which provides that "*any prisoner may benefit, at their request, from at least one quarterly visit in a family living*".

*unit or family visiting room, the duration of which is determined according to the distance that the visitor has travelled*", as well as the note dated 4 December 2014 on the conditions for access to and operation of family living units and family visiting rooms. This note stipulates that, in addition to the shortage of places within family visiting rooms and constraints inherent in detention such as architectural limits, access to such visiting rooms may be refused on the grounds of upholding security, law and order in the institution or preventing offences.

The Chief Inspector also reminded the institution director that the circular of 14 April 2011 on the placement of prisoners in solitary confinement specifies that "*the duration and frequency of authorised visits are identical to those enjoyed by other prisoners*".

Lastly, she recommended that family visiting room requests made by people placed in the disciplinary wing not be systematically rejected, but rather be subject to consideration on a case-by-case basis.

## 1.5 The working conditions of prisoners at the Yvelines remand prison

In April 2016, the Chief Inspector's attention was drawn to the situation of prisoners selected for production workshops within the Yvelines remand prison. During their visit to this institution in June 2015, inspectors had found that notice had been served to certain contractors following the inspection of the workshop facilities by the Labour Inspectorate in 2010 and 2011. It had been brought to the CGLPL's attention that the working conditions of prisoners had deteriorated in these workshops, particularly for the people working for one of the companies present in the institution: their monthly wage had fallen due to errors in the calculation of the piece work pay and the irregularity with which workers were called to work; workers were not allowed to talk or take the two daily breaks; no protective overalls were provided to the production operators.

In order to gain a clear idea of the facts referred to it, the Chief Inspector asked the institution about them and to see a copy of a certain number of documents.

In reply, the institution management indicated that, in principle, the work rate was determined by the contractor and counter-checked by prison staff, but that the company in question had always refused to forward, in a transparent manner, the necessary price information for determining the rates. It added that the operators benefit from two fifteen-minute breaks every day. As for work overalls, it maintained that the workers were provided with protective gloves but that they did not come into direct contact with hazardous products. Lastly, it informed the Chief Inspector that it had asked for the Labour Inspectorate to conduct a visit for 2016.

The study of a number of documents forwarded by the institution threw up new questions concerning the means by which the people called to work were selected and the work rate and relief from production were defined for workers, so-called "therapeutic" selections and information contained in the workers' undertaking documents.

Following the Chief Inspector's intervention, the undertaking documents were amended. They are now in line with the regulatory provisions (addition of the type of agreement signed, date and signature of the document by the prison administration representative). Moreover, the institution's efforts to encourage the selection of so-called "vulnerable" people were highlighted.

The Chief Inspector is nevertheless keeping a particularly close eye on the action that will be taken following the notice letter sent by the institution to the company in question so that the latter clearly display the production prices in the workshop at the earliest possible opportunity.

Examination of this case has informed the Chief Inspectorate's thinking on prison work as well as the opinion published in early 2017 on this subject.



## 2. Look back at the fundamental rights violations already denounced by the CGLPL

Ever since it was first founded, there have been subjects on which the CGLPL has refused to back down on, in its role to prevent violations of the fundamental rights of persons deprived of liberty. For others, the authorities' or lawmakers' responses, slow-coming though they may be, are eventually forthcoming. Below are listed certain subjects that have already been raised in previous reports. A solution has been found to some of them in a legislative reform, others are still awaiting referral by the authorities.

### 2.1 Renewal of residence permits of foreign prisoners: the exclusion of people placed in temporary detention or subject to short sentences

In its 2015 annual report, the Chief Inspector indicated that it had called on the Prison Administration Department and General Directorate for Foreigners in France to give their observations on the exclusion of people placed in temporary detention or subject to short sentences (*"the term of which pronounced by the sentencing authority is equal to or less than three months"*) from the scheme whereby foreign nationals can obtain the delivery or renewal of their residence permit by post, pursuant to the interministerial circular of 25 March 2013 pertaining to the procedures for the first issue and renewal of residence permits to persons of foreign nationalities deprived of liberty.

In reply, the General Director for Foreigners in France confirmed that untried prisoners and prisoners convicted to prison sentences shorter than three months were excluded from the scope of the circular on the grounds that they can carry out their formalities with the prefecture as soon as they are released and that postal processing of applications passing through the prison could hold up the steps taken by the prisoners upon their release. Furthermore, it pointed out that the prefecture and prison departments were unable to anticipate the release of untried detainees.

The Chief Inspector considers this exclusion to constitute unequal treatment between prisoners as it prevents people whose residence permits expire at the start of their imprisonment to renew them by post. Instead, upon their release they must submit their application as if it were their first one, with a great deal more red tape involved.

Regarding prisoners who are imprisoned for more than three months, the General Director for Foreigners in France eventually urged the prefects to authorise the examination of their residence permit delivery and renewal applications, something which such prisoners did not benefit from before.

Although the Chief Inspector welcomes this decision, it cannot accept that the authorities can allow prisoners to remain without a residence permit: this is at odds with the provisions of Article L.311-1 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), according to which all foreigners must be in possession of a residence permit to remain on French soil. The Chief Inspector's position in this regard has been sent to the competent authorities.

### 2.2 Night rounds or disturbing the sleep of prisoners

Following regular referrals on the frequency and terms of execution of night rounds within prisoners, the Chief Inspector felt compelled to draw the Prison Administration Department's attention to this matter in September 2015, and to raise it in its 2015 annual report.

The night rounds policy can be applied to vulnerable prisoners, with suicidal ideas, in order to protect their physical integrity, and to prisoners who are considered dangerous, to guarantee security within the institution.

As regards the people subject to a specific surveillance to protect their physical integrity, the Chief Inspectorate had already indicated, in its 2010 annual report, that “the people subject to special surveillance at night (risk of suicide), i.e. rounds that include frequent checks through the peepholes, are forced, when the light is switched on, to show that they are still alive (e.g. lift a hand); this measure is so contrary to what is needed (the person remaining tranquil), that several warders spontaneously refrain from carrying out this duty, which naturally wakes up the sleeper frequently”. It was therefore recommended for the practices to be harmonised “in order to protect sleep, even at the cost of a less effective surveillance”.

Concerning prisoners who are deemed dangerous, waking them up several times at night, for long periods sometimes, is likely to violate their rights to physical integrity and dignity, and will constitute inhuman and degrading treatment, all the more so as other measures (checking of the bars, allocation of cells close to the guard posts, etc.) are already implemented simultaneously, to ensure the security of the institution and prevent jailbreaks.

In its response dated 2 February 2016, the Prison Administration Department said that it was considering drafting a new document setting the terms and frequencies governing night rounds. At the time this report was being written, the Chief Inspector is still waiting for the publication of this text. She therefore reiterates her recommendations regarding the adoption of measures that respect prisoners' right to rest, especially concerning people who are prone to a sense of ill-being that could give rise to suicidal ideas.

### 2.3 Deductions in favour of the Treasury

The referrals of several prisoners subject to deductions in favour of the Treasury from their personal account due to the deterioration of property belonging to the prison administration highlighted three major difficulties: determining accountability for the deteriorations, determining the compensation amount and the methods of seizure. Pursuant to the amended Act of 30 October 2007, in May 2015 the Chief inspector wished to know the observations of the Prison Administration Department and to recommend that a stricter legal framework be planned.

Despite the absence of any response on the part of the Prison Administration Department, the inspectors were able to note during their inspections of prisons that no further deductions in favour of the Treasury had been carried out since Decision No. 375426 issued by the Conseil d'Etat on 10 February 2016. In this decision, the Conseil d'Etat criticised the provisions of the Criminal Procedure Code on deductions, "*considering that the provisions of the first two paragraphs of Article D.332 of said Code enable the prison administration, in compensation for material damage caused by a prisoner, to automatically deduct amounts from the latter's disposable part and to pay the corresponding sums to the Treasury; that the regulatory authority is not competent to authorise a deprivation of the right to property in this way; that none of the provisions in Article 728-1 of the Criminal Procedure Code nor any other legislative provision authorise the regulatory authority to that end; that, subsequently, by refusing to repeal the contentious provisions, the Minister of Justice has erred in law*".

A new legal framework has been laid by Article 105 of Act No. 2016-731 of 3 June 2016 scaling up the fight against organised crime, terrorism and their financing, by improving the effectiveness and guarantees of criminal procedure, thereby amending Article 728-1 of the Criminal

Procedure Code as follows: "[...] *the prison administration has the option of automatically deducting amounts from the prisoners' disposable parts in compensation for material damage caused, without prejudice to the disciplinary and criminal procedures, if any. Sums that are found to be in irregular possession of prisoners – unless seized by order of the judicial authority – are also paid to the Treasury. The terms governing said deductions are stipulated by decree. [...]*".

An implementing decree no. 2016-1472 of 28 October 2016 has also taken up and amended the terms of Article D.332 of the Criminal Procedure Code: "*Deductions of financial values in compensation for material damage caused in detention, mentioned in Paragraph 2, I, Article 728-1, are pronounced by decision of the institution director. This decision mentions the deduction amount and sets out the settlement bases. The deduction amount is strictly necessary for compensating the damage observed. The decision is notified to the prisoner and the personal accounts' administrator. The latter deducts from the disposable part of the nominative account the sum mentioned in the institution director's decision. It pays the deducted amounts to the Treasury.*"

The Chief Inspector notes with interest that this procedure is now provided for by law and shored up by a regulatory framework, but it is still paying close attention to the way in which these new provisions are being applied within prisons; careful vigilance will be paid to this point during visits. At the same time, on 4 November 2016 she once again called on the Prison Administration Department regarding this matter, particularly concerning the provisions for determining accountability for damage and for setting the compensation amount. No response has yet been forthcoming.

That said, the Chief Inspector has read a note from the Prison Administration Department sent to the Interregional Directors for Prison Services dated 23 November 2016 on implementing the mechanism bearing on deductions and payments in favour of the Treasury. She particularly specifies that "regarding an unfavourable decision restricting exercise of the right to property," the provisions of Article L.121-1 of the Code governing relations between the public and the government departments are applicable to decisions concerning deductions of financial values. In this context, the note recalls that such decisions must only be taken once the prisoner has been able to present written observations and, where applicable, at the latter's request, spoken observations.

The Chief Inspector notes that the recommendations sent to the Prison Administration Department on the determination of accountability for deteriorations and of the compensation amount have not been taken on board.

## **2.4 Application of the pension scheme specific to prisoners in the general service category**

The attention of the Contrôleur général des lieux de privation de liberté has been drawn to the failure to apply the special pension scheme – stipulated in Article R.381-105 of the Social Security Code and by the Prison Administration Circular of 30 March 2011 – concerning prisoners in the general service category.

Pursuant to Article R381-105 of the Social Security Code, the requisite number of qualifying quarters is calculated according to specific rules regarding persons in the general service category.

When the Social Security Directorate had been referred this difficulty, it discovered that the applicable fixed-rate base had not been declared, which had resulted in an error when calculating the amount of pension paid out. Fearing that the situation was not limited to one institution, the CGLPL, as part of its prevention mission, called on the Prison Administration Department so that verifications could be carried out on the declarations made.

A national configuration error had been discovered on one of the items of the annual social data declaration produced every year by the prison administration, resulting in a reduction in the pension entitlements of prisoners having worked for the general service.

Efforts to correct this error were undertaken in liaison with the CNAV, and discussions were initiated to determine the means for restoring to the prisoners concerned all of their pension entitlements. That said, given the impossibility of carrying out a reliable manual correction for all of the files pertaining to the years up to 2012, it was decided that the individual career paths would be recompiled when the persons concerned wished to have their pension paid out. Given the loss suffered by the prisoners because of an erroneous calculation of the amount of their pension contributions and therefore the reduction in their pension entitlements, the Chief Inspector recommended that a memo intended for the whole of the prison population – or at the very least the people concerned who are still in prison – be circulated so as to inform of their rights and the procedure under way to recompile their career paths. This proposal was dismissed in favour of an inter-services memo (Interregional Directorates for Prison Services/DISPs, prisons and pension funds) calling for vigilance over the processing of individual requests to recompile career paths.

As the independent government agency tasked with ensuring that the fundamental rights of people deprived of liberty are respected, it is the Chief Inspector's responsibility to make sure that the measures to restore the prisoners in the general service category their pension entitlements are indeed taken and effective over the long term. In this regard, her concern continues to have to do with the right to information for the people concerned by this configuration error. And yet simply circulating an inter-service memo does not go far enough in ensuring that pension entitlements are restored, in view of the interval that has passed between the periods concerned and the date on which some requests for individual career path recompilation may be made – and therefore the risks of information loss. Moreover, the Chief Inspector wondered about the possibility of the DISPs providing the necessary certificates, in many years' time, for the procedure to recompile individual career paths.

The Chief Inspector also hoped to gather the observations of the Minister of Social Affairs and Health (as the supervisory authority of the Directorate for Social Security, and the latter replied that it had decided to authorise pension funds to adjust the entitlements of prisoners in the absence of evidence of old age contribution consideration, as soon as the supporting documents justifying the reality and duration of general service work were presented by the persons concerned. To that end, the Minister asked the Directorate for Social Security to contact the prison administration so that it could provide the list of supporting documents and set up suitable information and guidance for the persons concerned in their formalities.

Although this measure appears likely to facilitate and enable proper access by prisoners to the adjustment of their pension entitlements, its implementation depends upon the transmission of the requested documents as well as the necessary guidance and clear information for the prisoners concerned. As such, pursuant to the Act of 30 October 2007 amended, the Chief Inspector wished to obtain, via a letter dated 10 June 2016, the observations of the Minister of Justice and to find out what measures had been taken along these lines – or at the very least the initial efforts made by the Minister's departments. At the time this report was being written, no response was forthcoming on this matter, which is nevertheless one of particular delicacy.

## 2.5 Solid fuel tablets and hot plates

In its 2013 annual report, the Chief Inspectorate indicated that it had referred a matter in February 2012 to the Prison Administration Department concerning the use of solid fuel tablets which are dangerous health- and safety-wise.

The Versailles Administrative Court, in a ruling dated 12 April 2012, considered solid fuel tablets to come within the category of "*hazardous products*" and that they must be "*reserved for outdoor use*".

The Prison Administration Director replied by saying that the solid fuel tablets would no longer be available for sale in the canteen from 1 July 2013 across all prisons – including those under delegated management. Noting this decision with satisfaction, the Chief Inspectorate wanted to know what replacement was now available to prisoners for reheating the products they buy at the canteen – particularly in prisons where the electrical facilities do not allow the use of hot plates.

The prison administration replied that it had authorised the sale of induction hot plates whose low power rating (limited to 500W or 250W, versus more than 1500W for traditional electric plates) enables use in prisons with insufficient electricity grid coverage.

That said, at the start of this year, the Chief Inspector's attention was once again drawn to this subject. A certain number of reports spoke of only partial application of the measures taken by the prison administration following the decision to ban the sale of solid fuel tablets in prisons. Accordingly, it was found in some institutions that these tablets were still being used, while in others, the prisoners were unable to get hold of hot plates. The Chief Inspector therefore wished to hear what the Prison Administration Department had to say and to find out what measures had been taken to ensure that prisoners could benefit from hot plates in cells or, at the very least, in a communal kitchen.

In a response dated 24 November 2016, the Prison Administration Director confirmed that the sale of induction hot plates has been authorised since 2014. He specified that some prisons did not provide hot plates because the current electricity grid was unable to tolerate a large number of electrical appliances all working at the same time, without running a risk of a power outage on the prison grid. Lastly, he pointed out that a range of measures had been taken, depending on the institution: renovations on the electricity grid; limitation of the power rating of appliances to 250W or authorisation to install hot plates in designated areas, such as communal kitchens.

The CGLPL will certainly check how these plans are progressing during inspection missions as well as the measures taken to ensure that every prisoner is able to reheat his or her meal under healthy conditions.

## 3. The new difficulties addressed in 2016 by the CGLPL through referrals

A few examples of the violations of rights that the Chief Inspector referred to the authorities in 2016 are given below. The Chief Inspector is still awaiting an answer from the authorities for most of these questions. For others, the authorities have already responded and talks will continue through 2017.

### 3.1 Mandatory sentencing, an inhuman and degrading form of treatment

As part of her mission to prevent acts of torture, inhuman and degrading treatment or sentences, the Chief Inspector has been informed of specific individual circumstances to do with the law and the procedural impasse in which these persons find themselves.

Mr S., in prison since 1988, is serving a life sentence – the unconditional imprisonment period for which expired back in 2003. As a foreign national, Mr S. is not subject to a banishment from French territory; he has always lived in France. His residence permit expired while he was in prison; and yet, for a number of years the Prison rehabilitation and probation service (SPIP) did not consider it worthwhile applying for a renewal of his residence permit because the end of his unconditional imprisonment period was so far off. It was not until this period expired, in 2003, that the first steps were taken. Mr S. therefore finds himself in an administrative situation whereby all of his requests for sentence adjustment are systematically turned down on the grounds of an incomplete plan because he does not have a valid residence permit for allowing the positive processing of the application as regards accommodation, resources and training. But Mr S. is part of the category of foreigners who cannot be deported from French territory as he has lived in France since he was a young child.

Ms F., has been serving a life sentence since 1985 and is currently imprisoned in a prison and hospitalised for psychiatric care without her consent since 1997. She has asked for a presidential pardon, since it is not legally possible for her to request a sentence adjustment, and she has no other procedural avenue open to her. Indeed, she is unable to benefit from a suspended sentence for medical reasons because, pursuant to Article 720-1-1 of the Criminal Procedure Code, *"suspension cannot be ordered on said grounds for prisoners hospitalised for psychiatric care without consent"*. What is more, since her health requires full hospitalisation, she is unable to go to the national assessment centre (CNE) in person for the purposes of a multidisciplinary assessment, which is compulsory in her case for obtaining release on parole pursuant to Article 730-2 of the Criminal Procedure Code.

The Chief Inspector wanted to call on the cabinet of the President of the Republic regarding this situation, not to support the request for an individual pardon expressed by Ms F., but to share its observations concerning the consequences on fundamental rights of the poor coordination of our legal apparatus in this regard.

In November 2013, the Santé Justice (Health Justice) working group "Adjusted and suspended sentences for medical reasons" submitted a report to the Minister of Justice and the Minister of Social Affairs and Health. As part of the proposals expanding the scope for suspended sentences for medical reasons, the group members spoke out in favour of amending the former Article 720-1-1 of the Criminal Procedure Code so as to include people who are hospitalised without their consent in the suspended sentence for medical reasons scheme. And yet, following the Act of 15 August 2014, this phrase has now been added to Paragraph 1 of said Article: *"suspension cannot be ordered pursuant to this Article for prisoners hospitalised without their consent"*. This means that people suffering from mental disorders who are hospitalised without their consent cannot benefit from a suspended sentence for medical reasons, when the Act of 15 August 2014 has extended the benefit of the suspended sentence scheme to persons whose mental health shows little sign of ever being compatible with detention.

Article 3 of the European Convention on Human Rights provides that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. In several judgments (Nivette v. France of 3 July 2001, Léger v. France of 11 April 2006), the European Court of Human Rights has underscored the fact that undergoing mandatory sentencing *de jure* or *de facto* amounts to inhuman and degrading treatment in view of Article 3 of the European Convention of Human Rights.

And yet, in light of all the aforementioned facts, the Chief Inspector finds that an adjusted sentence is simply not an option for either Mr S. or Ms F. Neither of them therefore have any hope

of being able to leave detention – other than the presidential pardon as far as Ms F. is concerned. In this case their sentences resemble more a "whole-life order", which constitutes inhuman and degrading treatment: something that the Chief Inspector is strongly against.

Along these same lines, the Chief Inspector is concerned about the creation of a new category of life sentence through Act No. 2016-731 of 3 June 2016 stepping up the fight against organised crime, terrorism and their financing, and improving the effectiveness and guarantees of the criminal procedure.

The new Article 421-7 of the Criminal Code provides for the automatic application of the unconditional imprisonment period to all terrorism crimes and offences, punishable by ten years in prison. It also extends the arrangements under Article 221-3 of the Criminal Code enabling, by special decision of the Cour d'assises (French Superior Criminal Court), this unconditional imprisonment period to be extended to thirty years when a life sentence has been imposed, as well as the pronouncement of a so-called "mandatory" prison life sentence (together with an unlimited unconditional imprisonment period) if a prison life sentence is imposed. The procedure for lifting this unconditional imprisonment period is specific and extremely restrictive. It may only be lifted under exceptional circumstances and subject to five strict conditions – not least that the prisoner has served at least thirty years. This sentence therefore resembles *de facto* a whole-life order and opens France up to condemnation on the part of the European Court of Human Rights.

### 3.2 The difficulties relating to external movements and permissions to take escorted leave

The Chief Inspector has received referrals on regular occasions about the difficulties in organising external movements, transfers and permissions to take escorted leave of prisoners. And yet, it appears that beyond the legal requirements they represent, such movements are fundamental given the right to maintain family ties and the respect of rights of defence.

One of the reasons often cited to explain these difficulties is the gradual takeover of the organisation of such missions (which had previously been the responsibility of the gendarmerie and police forces) by the prison administration from 2011. From the many letters received in connection with these questions, it becomes clear that this takeover is not the only cause, however.

Following the redefinition of the Ministry of Justice's remit, specially designated services have been set up: an "external prisoner movement" judge within each jurisdiction, an "external prisoner movement" mission (MEJ) the External Prisoner Movement Regulation and Organisation Authority (ARPEJ) and Affiliation Units for External Prisoner Movements (PREJ). But for all that the Chief Inspector has observed persistent dithering over who the competent authority should be for enforcing the legal decisions concerning transfers and authorisations for escorted leave.

These difficulties are not new; they persist even though the Ministry of Justice's remit has been clarified by dispatches published on 7 May and 27 July 2015.

The Chief Inspector has particularly received referrals on a number of occasions concerning situations where the transfer ordered by an examining judge had not been carried out several months after the decision because of a lack of communication between the prison authorities and law enforcement – each party thought the other was competent on the matter.

Upon receiving a request from the Chief Inspector concerning the non-performance of a transfer order issued for the purposes of spending time with family, the prison administration replied that, insofar as the judge had omitted to clearly indicate the authority in charge of carrying out his decision, "*it was not for their services to question the judicial authority as to the opportunity or legitimacy it possesses to order a transfer*".

Such a reply strikes as inadmissible the moment it does not come hand-in-hand with an initiative to determine which administration is in charge of carrying out the decision in question. This is not an isolated situation, and constitutes an extended violation of the right to maintain family ties.

What is more, the Chief Inspector has often received referrals from people who have been unable to benefit from authorisations to take escorted leave – which were nevertheless granted by the judges. The difficulties raised concern understaffing or that there was not enough time to plan for the escort. And yet such authorisations are usually granted under exceptional circumstances, when there has been a birth or a death for example, which are by nature unplanned. Over and above the disappointment sparked by such a sudden reversal of the situation, in a context already often fraught with tension and emotion, refusing to go ahead with an authorisation to take escorted leave violates the right to maintain family ties.

The prison administration must devote sufficient staff numbers to these fundamental missions for respecting prisoners' rights. Moreover, it appears judicious for the gendarmerie and police forces to be able to reinforce prison administration staff numbers where there are shortages, by extending the reinforcement possibilities stipulated in Article D.57 of the Criminal Procedure Code.

The Chief Inspector also receives regular referrals of the situation of prisoners who, once transferred to another institution by the gendarmerie or police forces, are forced to temporarily leave behind their property in the initial institution because it has refused to transport it.

Lastly, a number of difficulties have been reported to the Chief Inspector on the matter of external movements for medical reasons. The Minister of Justice's attention has already been drawn to this subject on several occasions – not least in the opinion on the treatment of prisoners in health facilities, published in the *Journal officiel de la République française* (Official Gazette of the French Republic) on 16 July 2015. Indeed, a number of such movements are cancelled or postponed because of a shortage of escorts. These decisions violate prisoners' rights to access health care, sometimes with the risk of exposing them to dire consequences.

The Chief Inspector has reiterated the recommendations set out in the aforementioned opinion and called for discussions to be initiated swiftly between the Ministries of Health-Justice-the Interior with a view to improving the implementation of external movements for medical reasons.

The Chief Inspector has called upon the Ministers of Justice and the Interior to address these difficulties. It is still awaiting a response.

### 3.3 Basque prisoners' rights to maintain family ties

The Contrôleur général des lieux de privation de liberté has often had cause to speak out on issues relating to prisoners' rights to the respect of privacy and family life and maintaining family ties. As fundamental rights enshrined in the European Convention on Human Rights and in Article 35 of the Prison Act of 24 November 2009, they also come up time and again in referrals that the Chief Inspector receives because violations of the right to maintain family ties are such painful experiences for prisoners, who are deprived from seeing their loved ones on a daily basis.

In 2016, the Chief Inspector received scores of reports concerning the situation of untried and convicted Basque prisoners alike. It appears that they are very seldom able to be assigned to a prison close to home, since they are subject to an assignment policy aimed at systematically allocating them France-wide, in which they find themselves a long way away from their family and



friends. For women, this situation is made worse by the fact that there are no sentencing institutions in the South of France.

According to information that has reached the Chief Inspector, out of eighty-one Basque prisoners imprisoned in France at the end of 2016, only a dozen or so are detained in the Mont-de-Marsan prison and Lannemezan long-stay prison, which are relatively close to their home region. The rest have been dispatched to twenty-odd other institutions across France. In all, 86% of Basque prisoners are detained more than 400 kilometres from Hendaye.

The Chief Inspector has contacted the Prison Administration Department about this situation and, should transferring all of these prisoners closer to the Basque country not be possible, asked for details about any measures that could be taken to alleviate the disadvantages associated with this distance and to compensate the burden in terms of money and time on families who are obliged to make the necessary journeys for exercising their visiting rights with their imprisoned loved ones: increasing the length of time allowed in visiting rooms, easier access to family visiting rooms and Family living units (UVFs), possible financial assistance, etc.

In reply, the Prison Administration Director maintained that the assignment of Basque prisoners is, pursuant to Article D.74 of the Criminal Procedure Code, a decision made on a case-by-case basis in light of several criteria, including not only the right to maintain family ties but also the institution's adaptation to the criminal and prison profile and the risk level of the prisoner, and his or her behaviour in detention. He also indicated that the institution referral policy needed to be taken hand-in-hand with thinking in terms of a detention balance to be respected, avoiding assigning too many prisoners with a more particularly identified risk profile within the same institution.

He pointed out that, particularly as regards Basque prisoners, the administration makes sure that there are at least two in the institutions to which they are assigned, so as to limit their sense of isolation and enable families to car share when visiting. He added that the administration also ensures that both members of a couple are assigned to the same institution. The Director went on to explain that the assignment of untried prisoners had to be decided on in agreement with the examining judge. Regarding women, he said that the issue of the territorial network of institutions is not specific to Basque women – and that a sentencing institution was due to open in the first half of 2017 in Marseille.

On the subject of measures intended to alleviate the geographical distance, he pointed out that prisoners have access to telephones installed in the prison and can, just like any other prisoner, benefit from visits in family visiting rooms or UVFs when the institution has them. He maintained that, out of a concern for equity between all prisoners, it was not feasible to alter the length of time allowed in visiting rooms solely for Basque people.

He ended with the indication that prisoners from the Spanish part of the Basque country can, since the Act of 5 August 2013, request for their sentence to be served in Spain.

In light of this reply, the Chief Inspector can only observe that no special measure has been taken or, indeed, considered, by the prison administration to offset the assignment policy entailing the systematic referral of Basque prisoners all over France. Under such conditions, the Chief Inspector considers that such a policy, justified in particularly vague terms, violates these prisoners' right to maintain family ties.

### **3.4 The procedure for distributing meals**

The Chief Inspector has received referrals from several prisoners in a detention centre concerning the major impact on their daily life of a reorganisation in the way meals are distributed. Previously distributed in trays, meals are now served by the ladle. In their letters, the prisoners have mentioned

a wide range of repercussions that this change has had on their detention conditions: early locking of their cell doors, reduction in showering time, impossibility of eating meals together with other prisoners, smaller and often unequal portions, often dubious hygiene conditions in the serving of the food. Concomitantly, they reported that it is no longer possible to buy meat from the canteen.

The Chief Inspector contacted the institution management about this situation.

In response, the Director explained that the new method for distributing meals was introduced following the change in the delegated management contract which entered into force in January 2016. He clarified that meal times had to be reorganised for the sake of security; in order to distribute meals in a secure context, the cells are all locked by warders and then opened two by two to allow the prisoners to go to the counter where the food is served. He also explained that the portions served are exactly the same as those under the previous contract, but that the serving in a plate looks different from tray servings – which comes across as more copious. He admitted that a few one-off difficulties had arisen when the assistants were filling the containers, but that instructions are given out at regular intervals in this regard.

As for the removal of fresh meat from the canteen catalogue, the Director said that this was on the recommendation of the veterinary services, insofar as the requisite storage conditions could not be guaranteed when taken to prisoners' cells.

Upon receiving additional requests, the Director stressed that several pre-consultative committees for prisoners have met to discuss the new method for distributing meals, and that three assistants had taken part. No particular problems emerged out of these meetings in terms of the amount of food served or the subject of doors being locked. He did specify, however, that this issue has not been raised by his services or the private service provider, despite the Chief Inspector's referral. He went on to explain that the reticence initially sparked by a change in habits has disappeared, that this case is still be monitored on a daily basis so as to improve this service, and that the menus now served taste much better – something which all of the prisoners are in agreement about.

Having recently received yet another referral concerning this matter, the Chief Inspector is remaining particularly vigilant over changes in methods for distributing food across all prisons.

### **3.5 Communication to prisoners of information in their medical record**

A case was referred to the Chief Inspector concerning the difficulties that a prisoner in a Detention centre for illegal immigrants had encountered to obtain communication of information in his medical record – particularly the opinion of the physician from the Regional Health Agency (ARS), in the context of the implementation of the provisions of Article L.511-4, Point 10, of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA). In the terms of this Article, it is not possible for an obligation to leave French soil to be imposed on "*the foreign national whose usual residence is in France and whose health requires medical care – without which the consequences for the latter could be exceptionally serious – unless he or she has the real possibility of benefiting from appropriate treatment in the country of return*".

When questioned about this situation, the physician at the detention centre for illegal immigrants medical unit (UMCRA) mentioned a memo from the prefecture urging medical personnel not to forward certificates to their detained patients. He did point out, however, that this memo had not been acted upon. He attached to his reply a UMCRA internal memo particularly indicating that there was nothing in the medical ethics code to prevent a physician from transcribing his observations and sharing them with his patient.

The competent ARS said that a procedure made up of a standard letter had been established to process medical record communication requests. The ARS maintained that because the

certificates requested formed part of the prisoner's medical record, they could only be communicated once the prefect had issued his opinion, as they concerned preparatory documents for an administrative decision in the meaning of Article L.311-2 of the Code governing relations between the public and the government departments (CRPA).

In reply, the Chief Inspector drew the ARS' attention to the fact that this manner of proceeding, likely to violate prisoners' fundamental rights, was also legally questionable.

Indeed, the Public Health Code does not provide for any restriction in patients' rights to access personal medical information. Moreover, the data featuring therein is, by essence, so personal to the person concerned that it seems legitimate for the latter to be able to access the documents as soon as they are written up – where applicable even before the government agency who wishes to make use of them. Lastly, Article L.311-2 of the CRPA must apply to the opinion of the ARS physician, providing as it does that "*the opinions, provided for by legislative or regulatory texts, in light of which a decision is rendered on request tending to benefit from an individual decision to grant entitlement, are communicable to the person who made said request as soon as these opinions are sent to the competent authority for ruling on their request*". Accordingly, the exception that this Article makes to the right to the communication of administrative documents does not appear to apply to persons detained in this context.

The Chief Inspector has thus recommended that the ARS amend the procedures in place to enable communication of medical reports by any means ensuring the effectiveness of the transmission within a time limit useful to the procedures under way.

The Chief Inspector is also, more generally, aware of the difficulties raised by prisoners' medical care and access to care, and of the absence of regulations in this regard.

## 4. On-site verifications

Pursuant to the second paragraph of Article 6-1 of the amended Act dated 30 October 2007 instituting the Chief inspector of places of deprivation of liberty, "*Where the facts or the situation brought to his attention fall within his jurisdiction, the Chief inspector of places of deprivation of liberty may carry out inspections, where necessary, on-site*". The on-site verifications are conducted by the inspectors in charge of the referred cases. Inspectors in charge of missions can sometimes take part in an on-site verification when specific needs are involved (e.g.: verifications requiring the presence of a physician).

As part of on-site verifications, inspectors visit any location required by the investigation to meet with any person and to receive any document under the sole reservations mentioned in Articles 8 and 8-1 of the Act of 30 October 2007 amended. The verifications can be carried out without prior notice or at short notice, particularly in order to allow the management to compile the documents requested by the CGLPL. The person who referred the case to the CGLPL may also, where applicable, be apprised of this verification and, to the extent possible, interviewed on-site by the inspectors. The latter also take any steps which seem likely to increase their understanding of the case they have been referred, in order to gain as complete a picture of the situation as possible.

All on-site verifications lead to a written report setting out the inspectors' findings and recommendations. The report is sent to the authorities concerned, who feed back their observations.

At the end of this adversarial procedure, the reports of the on-site verifications and observations are published, unless special circumstances dictate otherwise, on the CGLPL's website. Any information by which the person(s) concerned may be identified is removed beforehand, to respect professional confidentiality and the confidentiality of the talks with the people who referred the case to the CGLPL.

#### 4.1 On-site verifications conducted in 2016

From January to the end of November 2016, the CGLPL performed **seven on-site verifications** - three of which were carried out without prior notice. One of these verifications required several trips. Four on-site verifications were announced two to three days prior to the inspectors' arrival.

Some on-site verifications concern individual situations, while others are conducted as part of thematic thought processes, which can take place prior to an opinion. Accordingly, three on-site verifications were conducted in 2016 as part of preparations for the opinion published at the start of 2017 on work and vocational training in detention. In all cases, on-site verifications – even when they concern an individual situation – are always an opportunity for the CGLPL to issue general recommendations with a view to preventing fundamental right violations.

Two on-site verifications concerned individual situations. One of them assumed that observations would be made swiftly on-site with no prior adversarial talks with the responsible authority because of the law in question (right to life, protection of physical integrity, respect of physician-patient confidentiality). In the second situation, the information gathered from an adversarial procedure conducted beforehand by post did not enable the CGLPL to gain an objective picture of the situation.

The other five on-site verifications conducted in 2016 had to do with thematic work. The on-site verifications performed in this regard can concern one or a series of institutions.

As part of the thought process initiated by the Chief Inspector on work and vocational training in prisons, with a view to publishing an opinion in early 2017, three on-site verifications were carried out concerning:

- the range and conditions concerning work and vocational training at the Poissy long-stay prison. The inspectors paid attention to the diversity of the range of work available to prisoners, particularly the Industrial management of penal institutions (RIEP) and concession workshops *via* the selection procedure. They were also able to observe the physical working conditions and method for calculating the workers' pay (piece work in the production workshops, by the hour at the RIEP). Lastly, they looked at questions concerning the financing of vocational training by the regional council and at the forthcoming training plan (for 2016-2017);
- a scheme enabling continuity of professional activity upon leaving prison: the Facility for integration through work (SIAE) at the Cermingen detention centre. The aim of this furniture renovation and transformation workshop, which opened on 23 May 2016, is to help rehabilitate people facing difficulties accessing professional life and enable them to do a job where they can put their skills to use. On their release, people selected in the "*Emmaüs Inside*" SIAE are offered a job by the association. This trial, which makes it possible to diversify the range of prison work available, provides personalised socioprofessional monitoring and opens up professional prospects upon leaving prison;
- a trial to set up a medical-social facility aimed at helping disabled adults to better integrate socially through work (ESAT) at the Val-de-Reuil detention centre. This ten-place ESAT, which has been open since January 2014, provides prisoners suffering from

mental problems with a professional activity to occupy their time. The prisoners selected in the ESAT find it difficult to access the conventional job market because of their disability, and feel very isolated for the most part; this initiative gives them the opportunity to return to work by undertaking simple tasks. Moreover, it meets a genuine therapeutic need within this institution, where reportedly almost a third of its prisoners present a mental disability and whose ability to work is less than a third of that of a non-disabled worker.

The Chief Inspector also delegated two inspectors to verify the physical detention conditions within the disciplinary and solitary confinement wings of the Villeneuve-la-Grande detention centre. They found multiple violations of prisoners' rights in these wings, stemming from the physical detention conditions and the treatment of the prisoners. In their report, the inspectors highlighted the insufficient lighting in the cells of both these wings, the shortcomings in terms of the equipment and fitting out of the wings' exercise yards, the lack of any dedicated team within these specific wings, the few activities on offer and the dilapidated state of the washing facilities of cells in the disciplinary wing. The creation of a wing for vulnerable people was commended as a positive initiative to limit the number of so-called "vulnerable" prisoners being placed in the solitary confinement wing.

Building on the work in progress on the theme of the treatment of elderly or disabled prisoners, the Chief Inspector also delegated three inspectors to visit an institution that had set up a service project particularly developing a range of activities designed for elderly people or people with mobility problems. Despite the interest in the project, major difficulties were found to persist, such as laborious inter-service dialogue, the specific needs brought about by daily management and release planning for this specific group of prisoners.

Lastly, the Chief Inspector conducted on-site investigations regarding two specific situations, under the following conditions:

- difficulties reported concerning a disabled person's access to the visiting rooms: on this occasion, the wife of a prisoner detained in the Privas remand prison: requirement to remove footwear at regular intervals and to pass through the millimetre wave scanner without a walking stick or assistance during visits to the visiting rooms. The conversations held with the management prior to the on-site verification had not brought any convincing arguments to light; the management simply asserted that the situation of the person in question did not pose any particular difficulty. What is more, after contacting the management of the remand prison, the Chief Inspector was informed that the prisoner in question had apparently been summoned by the institution director, who reprimanded him particularly for having got the CGLPL involved.

Following these on-site verifications, recommendations were made regarding disabled people's access to the institution (clear service memo on the use of the metal detector, presence of assistance for walking through the scanner, installation of a seat after the scanner if the person needs to be kept waiting). Recommendations also concerned the practice entailing receiving someone to talk about CGLPL case referrals. A reminder was given that anyone deprived of liberty may freely reach out to the Chief Inspector, without fear of punishment, reprimands or any deterioration in his or her detention conditions; the position of authority that an institution director or his or her colleagues exercise over a prisoner is likely to give rise to such fears.

- situation of a woman in temporary detention, under terrorist prison conditions, who gave birth in an extremely strained atmosphere, including between the medical and

prison teams, particularly because of the security conditions it was deemed necessary to apply around her. The on-site verifications found serious intrusion on the person's dignity, invasion of her privacy and breach of medical confidentiality. They also threw up failures in the treatment of the prisoner during her transfer and hospitalisation.

#### 4.2 Action taken following the on-site verifications concerning the physical conditions of the "women's" disciplinary wing in Metz prison

After receiving a case concerning the treatment of a female prisoner in the disciplinary wing of Metz prison, in 2015 the Chief Inspector had delegated two inspectors to conduct on-site and documentary-based verifications, following which recommendations were forwarded to the institution management and Minister of Justice.

The CGLPL recommended blocking the peephole located above the toilets, since its location did not respect the dignity of the persons placed in the disciplinary wing. The window, blocked with a pierced metal sheet, did not allow anyone to look outside: the CGLPL therefore recommended that this obstruction be removed and replaced with security devices allowing a view of the outside. Arrangements had to be made to ensure that the disciplinary cell benefit from sufficient artificial lighting. The CGLPL had issued recommendations in favour of undertaking works to ensure that women placed in the disciplinary wing could go for walks in an actual courtyard.

In keeping with its desire to be kept apprised of the action taken following its recommendations in this context, the Chief Inspector continued to liaise with the Metz prison management so as to obtain details about the works carried out in the disciplinary wing and the studies undertaken with a view to improving the exercise yard.

In reply, the prison management confirmed that all of the planned works had been carried out, except the obstruction of the peephole: the window grating in the disciplinary wing cell in the "women's" wing has thus been replaced with ordinary grating; a new neon light has been installed in the dressing room cell to increase lighting intensity; a mobile seat has been installed under the table; two bars have been removed from the entrance grid for easier access to the interphone button. These measures improve the physical detention conditions within the "women's" disciplinary wing.

As regards the question of the peephole located above the toilet of the disciplinary cell, the authorities do not believe that it can be used to observe a person using the toilets. And yet, the verifications conducted by the inspectors prove otherwise; the Chief inspector therefore upholds her recommendation concerning the blocking of this equipment.

In terms of the exercise yard, the Interregional Directorate for Prison Services has tasked an engineering firm with assessing the feasibility of work so that this can get under way for the end of 2016 or beginning of 2017.

The Chief Inspector will, of course, remain attentive as to their effective implementation.



# Chapter 5

## Assessment of the work of the Chief inspector of places of deprivation of liberty in 2016

### 1. Relations with public authorities and other legal entities

#### 1.1 The President of the Republic, the Government and the Parliament

As is the case every year, pursuant to the law, the Chief inspector of places of deprivation of liberty met the President of the Republic and the Chairpersons of the two assemblies to submit her annual report for 2015. At her request, she was also able to present this report to the Judiciary Committees of both assemblies as well as the three Ministers mainly concerned by the CGLPL's work: the Minister of the Interior, the Keeper of the Seals (the Minister of Justice) and the Minister of Social Affairs and Health.

On this occasion, the Chief Inspector shared her concerns over the worsening of prison overcrowding, the management of Islamist radicalisation in prisons, the extension of the state of emergency and the tougher line being taken in criminal policies – particularly apparent in a restrictive sentence adjustment policy. She also drew the Minister of Social Affairs and Health's attention to the lack of any noticeable improvement in the medical care of prisoners and the need to swiftly adopt ambitious provisions for the application of Article 72 of the Act of 26 January 2016 which requires each institution authorised to accommodate patients who are hospitalised without their consent to define a policy aimed at limiting the use of solitary confinement and restraint measures.

Together with the Chairwoman of the National Consultative Commission on Human Rights (CNCDH), the Chief Inspector also met with the Ministry of the Interior just before the operations took place to dismantle the migrant camps located in the Calais Jungle and North-East Paris. The Minister outlined his plans in detail and the two independent authorities shared their intention to keep a very close eye on all of the operations.

The Chief Inspector was also interviewed by the special rapporteur of the Senate's Finance Committee for the justice mission budget about the issue of the management of Islamist radicalisation in prisons.

Lastly, the Chief Inspector was also interviewed by the rapporteur for opinion of the Senate's Judiciary Committee about the prison administration budget for 2017. As she had already done so before the Judiciary Committee a few months earlier, she again drew the MPs' attention to the risks of worsening prison overcrowding and the liberal adoption of a restrictive sentence enforcement policy by the courts. She also shared her concern about the mediocre success of alternative measures to imprisonment established by the Act of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions.



## 1.2 The Court of Auditors

The Court of Auditors conducted a management review of the CGLPL over the 2008 to 2015 financial years. Its final observations were sent to the CGLPL in May 2016. On this occasion, the Chief Inspector, at her own request, was personally interviewed by the fourth chamber of the Court.

The Court finds that, over this period, the CGLPL has seen its powers and means increase considerably and has gained the recognition of both persons deprived of liberty and the authorities responsible for the latter. There are no major difficulties concerning the institution's financial management – even if there is room for improvement in terms of market surveillance and the rising travel expenses (because of the increase in number of inspection operations) must be kept a close eye on. It finds that the institution has encountered difficulties, for the most part resolved, linked to its lengthening processing times, as regards both the inspection reports following visits to places of deprivation of liberty and responses to case referrals. The Court considers that upgrading the information systems, particularly in terms of remote access, would help to keep these timescales in check.

The Court recommends that the CGLPL improve its internal market surveillance procedures, develop a training pathway for inspectors, complete the official documentation of its working procedures by drawing up a practice guide, make the periodic monitoring of its recommendations systematic and, lastly, improve its coordination with the Defender of Rights.

The CGLPL has committed to putting the Court's recommendations into practice.

## 1.3 The other independent government agencies

Interaction with the other government agencies has increased in 2016. The CGLPL has worked together particularly with the CNCDH, Defender of Rights and National Authority for Health (HAS) on a range of issues.

### 1.3.1 *The French National Consultative Commission on Human Rights (CNCDH)*

In April 2016 the CGLPL and CNCDH requested permission to be able to submit written observations under the provisions of Article 36, Paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 44 of the Rules of Court, in the context of the cases *F.R. v. France* (app. no. 12792/15) and three other appeals lodged on 10 March 2015 and *J.M.B. v. France* (app. no. 9671/15) and nine other appeals.

After obtaining the Court's permission, they submitted written observations particularly bearing on the endemic nature of prison overcrowding in France and the ineffectiveness of existing preventive means of remedy available to prisoners in institutions where there is a serious problem of prison overcrowding. They have also jointly reiterated their proposals for reducing prison overcrowding.

The Chief Inspector and CNCDH Chairwoman also met several times to discuss the issue of supervision of the execution of ECHR judgments.

### 1.3.2 *The Defender of Rights*

Following an assignment by the centre in charge of referred cases on talks between the CGLPL and Defender of Rights on the basis of the agreement signed between the two institutions, a meeting was organised with the services of the Defender of Rights with a view to improving the transmission of information and coordination concerning referrals. The observation was made on this occasion that the intensity of exchanges had increased in 2015, an upward trend which continued in 2016.

A meeting was organised between the Chief Inspector, CNCDH Chairwoman and the Defender of Rights to discuss the situation of migrants and the treatment of foreign nationals in France.

### 1.3.3 *The National Authority for Health (HAS)*

HAS has launched a 2013-2016 work programme to meet the needs of professionals and patients with a view to improving the quality of psychiatric treatments in practice. The CGLPL is involved in these efforts as regards improving the prevention and management of outbreaks of violence and managing measures that restrict liberty.

In addition, during the CGLPL's seminar of February 2016, HAS presented its procedure for certifying hospitals.

## 1.4 Non-public legal entities

As is the case every year, the Chief Inspector presented her annual report to the professional organisations representing staff employed in institutions under its oversight.

She also organised a meeting to present the annual report to all of the associations concerned by places of deprivation of liberty.

She acted on her intention to set up periodic meetings with these associations, to enable more specific discussions depending on the type of place of deprivation of liberty. The first meeting between the associations involved in detention centre for illegal immigrants took place in June 2016. A meeting which the associations involved in the prison environment have been invited to attend is scheduled for January 2017.

A number of meetings have also been held with associations, on an individual basis or in a smaller group depending on their areas of intervention. Regular contact is also maintained through case referrals – since these are rising steadily on the part of associations, especially detention centres for illegal immigrants.

Lastly, as every year the Chief Inspectorate has responded to a high number of requests for participation in symposia, vocational training programmes, public meetings and conferences.

As such, the Chief Inspector has provided insight several times during vocational training programmes and symposia, including:

- the initial training for the 2015 class of justice auditors at the French National School for Magistrates (ENM); several continuing professional development courses organised by the ENM ("Changing responsibilities of the Judge responsible for the enforcement of sentences", "Prisons in question") and the initial training of the 67th class of trainee superintendents at the French National College of Policing (ENSP);
- the prison-justice day organised by the French National Student Group for Educating Prisoners (GENEPI);
- the final European conference for the "Children's Rights Behind Bars" project, the leading partner for which is the NGO "Defence for Children International";
- the symposium "The right to health in prison - what protection and what challenges?", organised by the University of Pau and Pays de l'Adour;
- the symposium organised by the Sorbonne Institute of Philosophical and Legal Sciences to mark the fortieth anniversary of the publication of Michel Foucault's *Discipline and Punish*;

- an inter-UMD (unit for difficult psychiatric patients) day organised by the hospital centre of the Pays d'Eygurande on solitary confinement and restraint in mental health institutions;
- the symposium "Elderly prisoners" organised by the Prison Administration Department and Public Interest Group (GIP) Law and Justice research mission;
- the symposium "Children in detention" organised by the Institut François Gény in partnership with the Nancy Faculty of Law;
- the national days of the Association of institutions participating in public mental health service (ADSEM).

Over the course of 2016, the CGLPL will thus have taken part in some fifty symposia, congresses and conferences organised by associations, professional or university training institutes. Around ten of these took place in international, inter-governmental or non-governmental bodies.

## 1.5 International relations

Several landmark events with a bearing on the prevention of torture in France and worldwide occurred in 2016.

Entering into force on 22 June 2006, the **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** marked its tenth anniversary. This original treaty forges a triangular relationship between States, the National Preventive Mechanism (NPM) which exercises internal oversight over places of deprivation of liberty, and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) which exercises external oversight. Although this two-tier level of oversight sparked some hesitation during the treaty's adoption, it is now presented as being a particularly operational model: in 2016, 83 countries have ratified the OPCAT, 63 countries have designated a NPM and the SPT has conducted 51 visits worldwide.

The Association for the Prevention of Torture (APT), which had been actively appealing since 1976 for such an international treaty to be founded, wanted to celebrate this anniversary. The CGLPL contributed to its *OPCAT +10* campaign, aimed at promoting the progress achieved worldwide by NPMs through their preventive visits or mobilisation to obtain legislative headway to guarantee the respect of prisoners' rights.

The Chief Inspector played a key part in launching the study **"Torture prevention does work!"**, conducted over a three-year period by twenty researchers looking back over the past thirty years across sixteen countries and analysing the factors that have helped to reduce the use of torture. Such international stakeholders as the President and Secretary-General of the APT, a renowned researcher in the field of human rights and the Secretary-General of the United Nations Committee against Torture (CAT) also took part in this event.

At European level, an **annual meeting of NPMs from the OSCE region** was organised in partnership with the APT with a view to marking this special anniversary. This was an opportunity for former or newly formed NPMs to meet and take stock, for the first time, of their efforts, to share their experiences and to discuss what challenges still lie ahead.

Furthermore, the Chief Inspectorate took part in a symposium organised by the National Torture Prevention Body in Tunisia (INPT) on **best practices and challenges associated with implementing the OPCAT**, organised on the anniversary of the adoption of the OPCAT by the United Nations General Assembly. The aim of this symposium was to discuss best practices and establish a framework for collaboration between NPMs.

2016 was also the year when the **CAT conducted its seventh periodic review of France**. Every four years, the CAT reviews the effective implementation by the Member States of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, based on dialogue with the State, and talks with the national human rights institutions and civil society organisations. As the National Preventive Mechanism (NPM), the CGLPL is now the Committee's voice of authority on the matter. As a result, the Chief Inspectorate forwarded the CAT a report drawn up on the basis of existing dialogue between France and the CAT, so as to contribute its insight on the questions raised by the latter in its field of expertise, and to shed light on new concerns regarding the application of the Convention against Torture.

During the Committee's 57th session, in April 2016, the Chief Inspector was interviewed together with the CNCDH by the CAT during a private plenary session. She decided to put the following subjects on the agenda:

- the high level of prison overcrowding and its consequences on prisoners' fundamental rights;
- the uncertainties over the management of Islamist radicalisation in prisons;
- the use of solitary confinement and restraint in psychiatric hospitals.

At the end of this dialogue and these talks, the Committee commended, in its concluding observations, the strengthening of the CGLPL's powers by the Act of 26 May 2014. It also recommended that the State implement the CGLPL's recommendations along with all the means for enabling persons deprived of liberty to submit appeals to its services without the risk of retaliation.

Lastly, the Committee drew on a number of the CGLPL's findings to ask France to make improvements in its main areas of intervention.

Concerning the conditions of detention, prison overcrowding and its consequences, violence on the part of warders, difficulties encountered when filing complaints against such violence, factors contributing to the risk of suicide, prisoners' problems accessing mental health care and persisting recourse to full-body searches in an overly systematic manner are at the heart of the Committee's concerns.

The Committee agreed fully with the Chief Inspectorate's recommendations concerning psychiatric institutions – a subject which, until now, had not been part of its dialogue with France. Unsatisfactory physical conditions, excessively frequent use of solitary confinement and mechanical restraint methods, the variable criteria underpinning the use of such practices and their lack of traceability, as well as insufficient informing of patients about their rights and appeal options now lie at the heart of its concerns. The Committee particularly asked that the Chief Inspectorate's recommendations on the Ain Psychotherapy Centre be implemented with the utmost urgency.

Over the course of 2016, the Chief Inspectorate got involved in several **training initiatives**. First of all, several members of the APT team, which provides NPMs with strategic and methodological advice, were able to participate in visits to prisons and psychiatric hospitals with a view to observing the institution's working method. This participation was an opportunity for holding discussions with the teams.

The CGLPL also took part in the **first summer university held for French-speaking NPMs** organised by the APT and the Lyon Institute of Human Rights. Organised solely for French-speaking NPMs, it was called "Strategies and methodology for monitoring detention by the police" and intended for some twenty participants from NPMs or human rights defence organisations. French and international experts were among the participants, and CGLPL members also attended, while an inspector was also one of the training leaders. In 2017, the CGLPL undertook to host

representatives of the NPMs who took part in the summer university in its visits to places of deprivation of liberty.

On the issue of **minors deprived of liberty**, the CGLPL helped to launch the practical guide "Monitoring places where children are deprived of liberty" as part of the *Children's rights behind bars* project – the leading partner for which is the Belgian NGO "Defence for Children International" (DEI). At European level, the CGLPL was invited to share its experience during the conference organised in Brussels to present the guide. At national level, a meeting and panel discussion were organised on the guide by DEI France in the premises of the Chief Inspectorate, with representatives of the Ministry of Justice (Judicial youth protection service/PJJ, prison administration, cabinet), Defender of Rights, lawyers and representatives of associations and international organisations. One inspector also took part in the summer course on the rights of the child and criminal justice for minors organised at the Université de Moncton in Canada by the Child and Youth Advocate of New Brunswick.

Another event that the CGLPL attended was the **Symposium Jean-Jacques Gautier**, which is organised by the APT every year on a vulnerable group of people in detention. This year, visits to psychiatric institutions were the theme of the Symposium, which brought together fifteen representatives of NPMs and other bodies involved in the prevention of torture, such as experts from the SPT and CPT.

The CGLPL took part in a training initiative organised by the Council of Europe for its Kazakh counterpart, and welcomed several delegations.

At European level, the Chief Inspector wanted to meet with the President of the **European Court of Human Rights** (ECHR) to discuss common concerns. At the same time, the CGLPL initiated discussions on the supervision of the execution of the ECHR's judgments. These discussions particularly follow on from the Brussels High-Level Conference on the implementation of the European Convention on Human Rights and the execution of ECHR judgments, aimed at increasing the involvement of States and national institutions that are competent in human rights in the process of putting ECHR judgments into effect. As part of these discussions, the CGLPL organised a meeting with the Ministry of Foreign Affairs, met with the CNCDH and attended a working day at the National Assembly, organised by the French delegation to the Parliamentary Assembly of the Council of Europe.

Moreover, the CGLPL and CNCDH submitted written observations to the Court under the provisions of Article 36, Paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 44 of the Rules of Court, in the context of the cases *F.R. v. France* (app. no. 12792/15) and three other appeals lodged on 10 March 2015 and *J.M.B. v. France* (app. no. 9671/15) and nine other appeals. The particular aim of this intervention was to uphold that the physical detention conditions in the prisons concerned by the appeals are symptomatic of a recurring problem in France: prison overcrowding, the harmful effects of which incur a risk of violation of Article 3 of the Convention.

The CGLPL also contributed to research conducted by the Ludwig Boltzmann Institute on strengthening and implementing European law and cooperation between NPMs and the judicial institutions, and for which two conferences were held in Vienna.

**The impact of the management of Islamist radicalisation on prisoners' fundamental rights** is a subject on which the CGLPL has become a voice of authority, following its two reports on the topic. As such, several meetings have been organised on the matter, in particular a panel discussion in London hosted by the Human Rights Implementation Centre and Justice Initiative, in which representatives of NPMs, the SPT and academics all took part, with representatives of Think-Tanks from the Maghreb (North Africa) and Middle East as well as European institutional representatives with a close interest in the question also in attendance.

Lastly, the CGLPL has further developed its ties with international organisations. It particularly spoke on the subject of deaths while in detention, at the regional consultation of the World Health Organization (WHO) on health in prisons. This was attended by State representatives from some thirty countries, academics, representatives of such international organisations as the International Committee of the Red Cross (ICRC), Dignity, European Committee for the Prevention of Torture and Penal Reform International.

The Chief Inspectorate also took part in a work meeting organised by the ICRC in Paris on the issue of identifying and managing elderly people in detention, in the presence of international experts, academics, representatives of prison administrations and the Committee for the Prevention of Torture.

## 2. Creation of a scientific committee

In keeping with the commitments of the Chief Inspector of places of deprivation of liberty, a scientific committee has been set up at the CGLPL.

This body is tasked with drawing on the thoughts and experience of researchers working in similar areas to those coming within the institution's remit to inform the Chief Inspectorate's own discussion process. Independent experts have thus been brought together who have gained unanimous recognition for their work in law, psychiatry, migrations, history and sociology.

The scientific committee's meetings must mutually benefit both its members and the CGLPL team, by sharing approaches and knowledge, pooling experiences and practices and comparing perspectives, knowledge and questions.

The scientific committee will hold closed sessions three times a year for talks on work that the CGLPL has recently published and in which the whole team at the CGLPL has been involved. In addition, a public symposium, which could lead to a publication, will also be organised annually.

The experts who have been called on share the CGLPL members' commitment to the respect of fundamental rights. They accepted the invitation to take part in the scientific committee with enthusiasm.

**Ms Mireille Delmas-Marty**, Professor of Law and former Professor at the Collège de France, agreed to take up position as Chair of the scientific committee.

The other committee members are as follows:

- **Michel Agier**, ethnologist and anthropologist, coordinator of the collective work "*Un monde de camps* ", la Découverte, (2014);
- **Jean Danet**, former President of the Lawyers' Union of France, honorary lawyer, lecturer at Nantes Faculty of Law and member of the High Council for the Judiciary (CSM);
- **Didier Fassin**, anthropologist, sociologist and physician, Professor of Social Sciences at Princeton University's Institute for Advanced Study. Author of "*L'ombre du monde, une anthropologie de la condition carcérale* ", Le Seuil (2015) in particular;
- **Benjamin Stora**, historian, Chairman of the Policy Board of the cité internationale de l'histoire de l'immigration;
- **Mark Thomson**, Secretary-General of the Association for the Prevention of Torture (APT);

- **Michel Wieviorka**, sociologist, Research Director at the School for Advanced Studies in the Social Sciences (EHESS); Chairman of the Board of the Fondation de la maison des sciences de l'homme (FMSH);
- **Daniel Zagury**, psychiatrist, court expert, department head at the Bois-de-Bondy psychiatric centre.

The committee held its first meeting on the basis of the opinion that the CGLPL issued on 5 November 2015 on preventive detention. This was an opportunity for the committee members and CGLPL team to discuss the notion of dangerousness.

### 3. Cases referred

Article 6 of the Act of 30 October 2007 amended instituting the Chief Inspector of places of deprivation of liberty provides that "*any natural person, as well as any legal entity with the task of ensuring respect of fundamental rights, can bring to the attention of the Chief inspector of places of deprivation facts or situations that are likely to come within its remit.*"

Article 6-1 of said Act 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.

The inspectors in charge of the referrals, delegated by the Chief Inspector for conducting on-site verifications, benefit from the same prerogatives as at the time of inspections: confidential interviews, access to any useful document necessary for properly understanding the situation brought to the knowledge of the CGLPL and access to all of the facilities.

When these inspections have been completed and after having received the observations of the competent authorities with respect to the denounced situation, the Chief inspector may make recommendations pertaining to the facts or situations to the person responsible for the place of deprivation of liberty concerned. These observations and recommendations may be made public.

The resources of the centre in charge of referred cases were bolstered in 2015 with the arrival of two inspectors, with a twofold aim in mind: to reduce the response time of referrals addressed to the Chief inspector of places of deprivation of liberty and to execute more on-site verifications.

The time taken to respond to referrals fell significantly in 2016. Reducing these times was one of the Chief Inspector's objectives. Accordingly, the average response time in 2016 was 52 days (i.e. 1.7 months), whereas it was 68 days (i.e. 2.2 months) in 2015. Efforts under way to meet this objective will be maintained in 2017. In addition, seven verifications were conducted on-site during 2016.

The significant increase in 2016 in case referrals concerning health facilities should be highlighted; such referrals now account for some 10% of all letters sent to the Chief Inspector. This increase is particularly the result of numerous reports received following the publication of recommendations concerning the Ain psychotherapy centre in Bourg-en-Bresse in the *Journal officiel* of 16 March 2016, on urgent grounds, as well as the publication of the CGLPL's first thematic report entitled "Solitary confinement and restraint in mental health institutions".

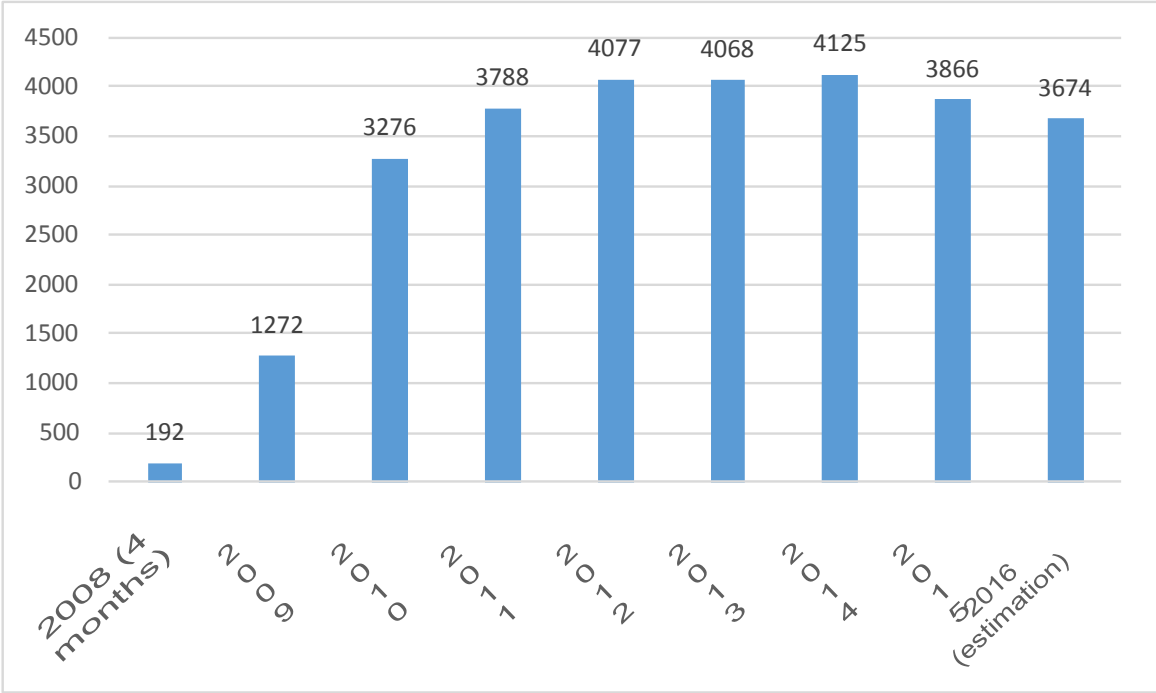
### 3.1 Analysis of the cases referred to the CGLPL in 2016

#### 3.1.1 The letters received

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

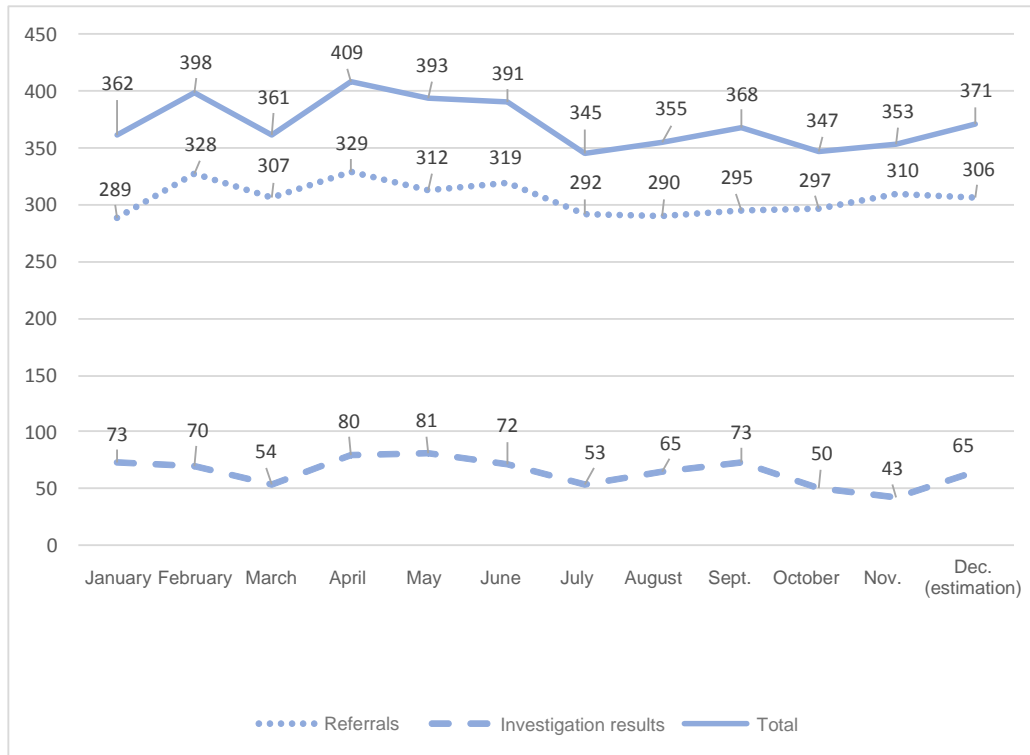
The number of case referrals remains relatively stable even if the slight downward trend begun in 2015 is continuing (around 5% in 2016, the same as in 2015).

Out of the letters of referral as a whole received between 1 January and 30 November 2016, an average of two letters (1.94) concerned the same person's situation.

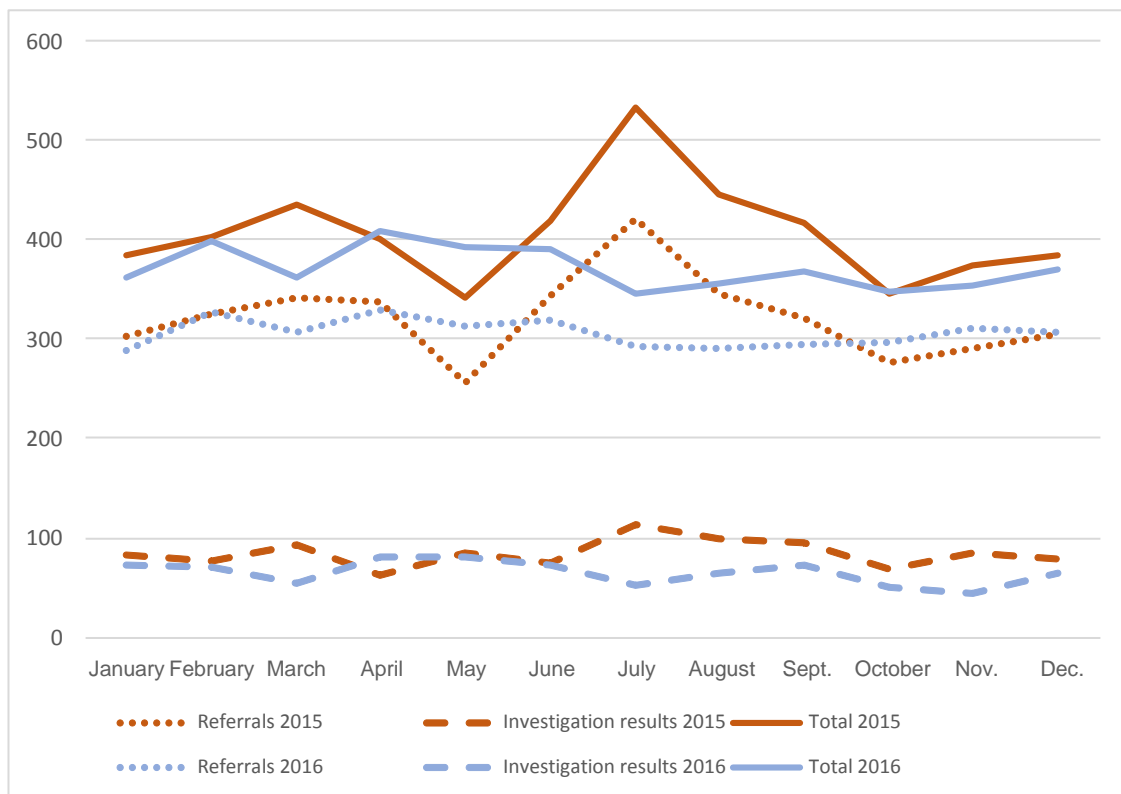




**Monthly trends of numbers of letters received <sup>16</sup>**



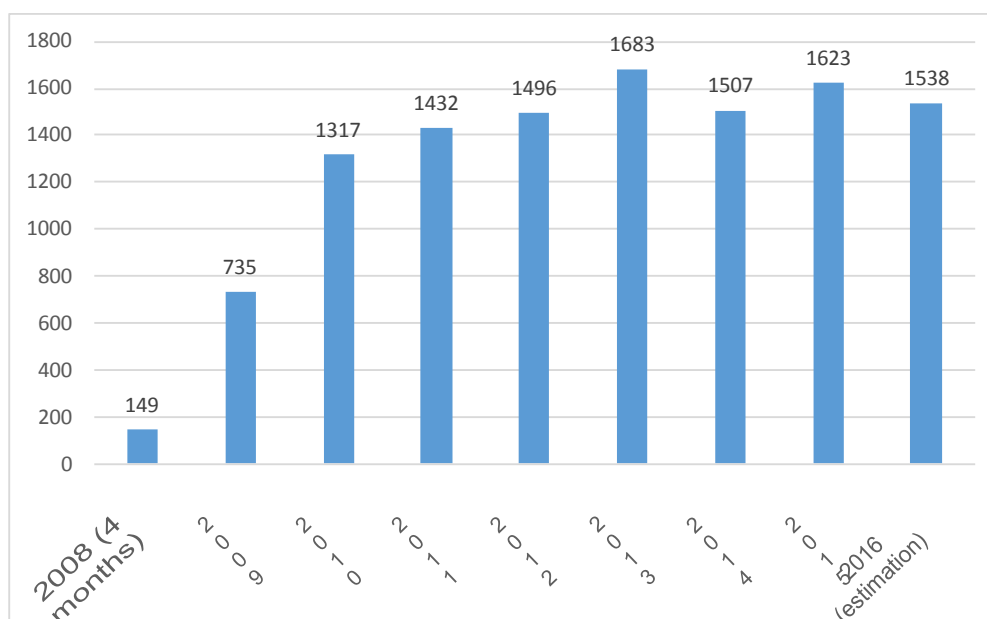
**Comparison of the number of letters received 2015/2016**



<sup>16</sup> The number of letters received corresponds to the cases referred to the CGLPL, as well as the responses made by the authorities with which the CGLPL took these cases up within the framework of verifications.

### 3.1.2 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 2016)

	Person concerned	Family / relatives	Association	Lawyer	Other <sup>17</sup>	IGA	Physicians / medical staff	TOTAL	Percentage
<b>PENAL INSTITUTIONS</b>	<b>2101</b>	<b>319</b>	<b>102</b>	<b>143</b>	<b>119</b>	<b>64</b>	<b>29</b>	<b>2877</b>	<b>85.42% of PDL</b>
CP - prison	998	165	35	63	45	21	14	1341	46.61% of PI
MA - Remand prison	492	75	27	57	25	23	4	703	24.44%
CD - detention centre	433	56	26	12	20	10	1	558	19.40%
MC - long-stay prison	137	18	10	7	3	7		182	6.33%
Hospitals (UHSA, UHSI, EPSNF) <sup>18</sup>	24	3	1				7	35	1.22%
ALL	1	1	3		25	2	3	35	1.22%
Unspecified PI	6	1		3	1			11	0.38%
CNE - national assessment centre	7							7	0.24%
EPM - Prison for minors	3			1				4	0.14%
CSL - Open Prison						1		1	0.02%

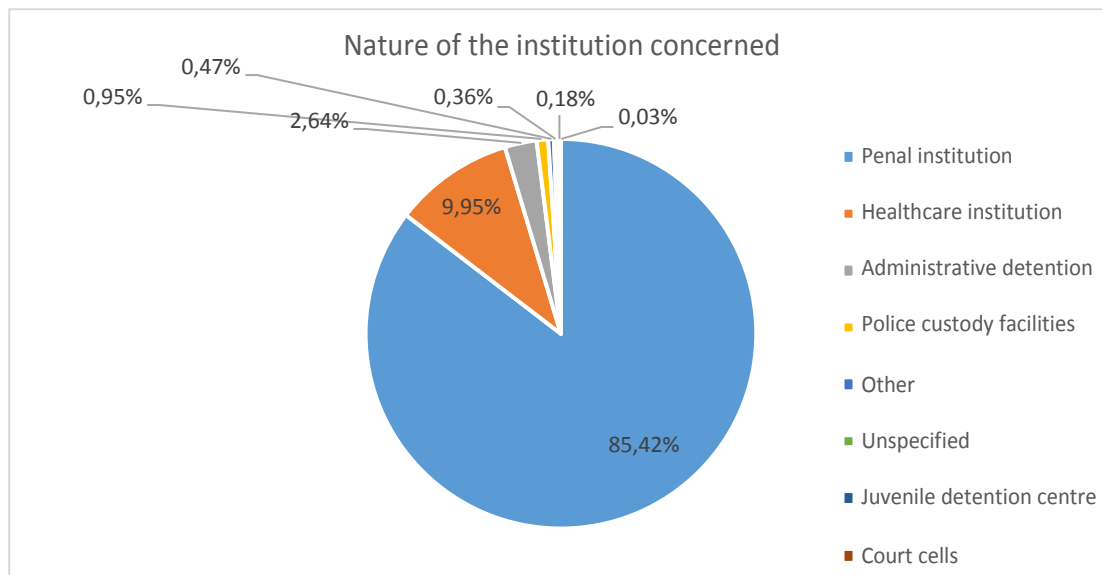
<sup>17</sup> The “other” category includes: 34 individuals, 29 “other”, 25 fellow persons deprived of liberty, 22 participants, 7 trade unions, 7 unknown persons, 6 professional organisations, 5 staff members, 3 members of parliament, 1 central administration, 1 CPIP, 1 institution director, 1 judge and 1 own-initiative referral.

<sup>18</sup> Out of which, 26 referrals pertained to a UHSA, 5 to the EPSNF and 4 to a UHSI.

	Person concerned	Family / relatives	Association	Lawyer	Other <sup>19</sup>	IGA	Physicians / medical staff	TOTAL	Percentage
<b>HEALTH INSTITUTIONS</b>	<b>207</b>	<b>87</b>	<b>4</b>	<b>3</b>	<b>15</b>	<b>4</b>	<b>15</b>	<b>335</b>	<b>9.95% of PDL</b>
EPS - public psychiatric institution	128	54	2	3	10	2	9	208	62.09% of HI
EPS - public health institution psychiatric department	30	17	1		3	2	5	58	17.31%
UMD - Unit for difficult psychiatric patients	30	10	1		2		1	44	13.13%
HI - Unspecified	18	4						22	6.57%
HI - all		2						2	0.60%
Private institution with psychiatric treatment	1							1	0.30%
<b>ADMINISTRATIVE DETENTION</b>	<b>11</b>	<b>1</b>	<b>66</b>	<b>5</b>	<b>1</b>	<b>5</b>		<b>89</b>	<b>2.64% of PDL</b>
CRA - Detention centre for illegal immigrants	9	1	53	4	1	4		72	80.90% of AD
ZA - waiting area			9	1				10	11.24%
Deportations	2		1			1		4	4.49%
AD - other			2					2	2.25%
LRA - Detention facility for illegal immigrants			1					1	1.12%
<b>CUSTODY FACILITIES</b>	<b>19</b>		<b>5</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>32</b>	<b>0.95% of PDL</b>
CIAT - police stations and headquarters	15		4	3	1	1	1	25	78.12% of custody facilities
BT - territorial gendarmerie	4		1					5	15.62%
Specialised brigades				1				1	3.13%
Specialised units				1				1	3.13%
<b>OTHER<sup>20</sup></b>	<b>8</b>	<b>6</b>			<b>2</b>			<b>16</b>	<b>0.47% of PDL</b>
<b>UNSPECIFIED</b>	<b>5</b>	<b>6</b>			<b>1</b>			<b>12</b>	<b>0.36% of PDL</b>
<b>JUVENILE DETENTION CENTRES</b>	<b>1</b>				<b>4</b>		<b>1</b>	<b>6</b>	<b>0.18% of PDL</b>
<b>COURT CELLS</b>				<b>1</b>				<b>1</b>	<b>0.03% of PDL</b>
<b>TOTAL</b>	<b>2352</b>	<b>419</b>	<b>177</b>	<b>157</b>	<b>143</b>	<b>74</b>	<b>46</b>	<b>3368</b>	<b>100%</b>
<b>PERCENTAGE</b>	<b>69.83%</b>	<b>12.44%</b>	<b>5.26%</b>	<b>4.66%</b>	<b>4.25%</b>	<b>2.20%</b>	<b>1.36%</b>	<b>100%</b>	

<sup>19</sup> The “other” category includes: 34 individuals, 29 “other”, 25 fellow persons deprived of liberty, 22 participants, 7 trade unions, 7 unknown persons, 6 professional organisations, 5 staff members, 3 members of parliament, 1 central administration, 1 CPIP, 1 institution director, 1 judge and 1 own-initiative referral.

<sup>20</sup> Including six letters related to EHPAD and retirement homes.



Category of place concerned	Statistics drawn up on the basis of the letters received as a whole <sup>21</sup>					
	2011	2012	2013	2014	2015	2016
Penal institution	94.15%	93.11%	90.59%	90.28%	88.91%	85.42%
Healthcare institution	3.48%	4.24%	5.88%	6.40%	6.75%	9.95%
Administrative detention	0.71%	1.10%	1.18%	1.21%	2.33%	2.64%
Custody facilities	0.29%	0.74%	0.61%	0.80%	0.83%	0.95%
Other	0.79%	0.12%	1.16%	0.70%	0.26%	0.47%
Unspecified	0.42%	0.47%	0.42%	0.39%	0.54%	0.36%
Juvenile detention centre	0.05%	0.15%	0.12%	0.19%	0.31%	0.18%
Cells	0.11%	0.07%	0.04%	0.03%	0.07%	0.03%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

In 2016, the increase<sup>22</sup> in referrals concerning health institutions was significant; such referrals now account for almost 10% of all cases referred. It is due to a surge in case referrals from the persons concerned (207 letters received versus 158 in 2015 over the same period, i.e. a 31.01% increase) as well as from medical staff (15 letters versus 5 in 2015, i.e. a 200% increase).

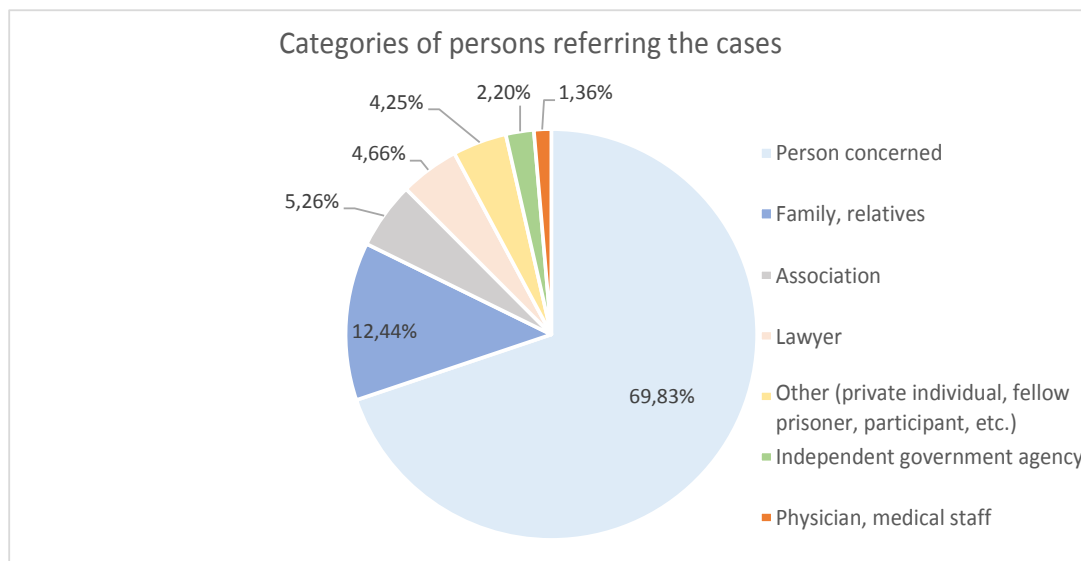
As indicated above, this rise is particularly the result of numerous reports received following the publication of recommendations concerning the Ain psychotherapy centre in Bourg-en-Bresse in the *Journal officiel* of 16 March 2016, on urgent grounds, as well as the publication of the CGLPL's first thematic report entitled "Solitary confinement and restraint in mental health institutions".

Referrals concerning detention centres for illegal immigrants have also continued to climb, albeit at a slower pace. A number of cases were referred by associations (66 letters received versus 46 in 2015, i.e. a 43.48% increase).

<sup>21</sup> This table does not present the statistics drawn up in 2009 and 2010, which were based on the 1<sup>st</sup> referral letter and not on all of the letters received.

<sup>22</sup> 335 letters received versus 247 in 2015 over the same period, i.e. a 35.63% increase

Concerning penal institutions, the drop in case referrals mainly concerns those sent in by prisoners (2,101 letters received versus 2,420 in 2015, i.e. a 13.18% decrease). However, cases referred by the other independent government agencies – not least the Defender of Rights – have increased sharply (64 letters received versus 42 in 2015, i.e. a 52.38% increase).



Category of persons referring cases to the inspectorate	Statistics drawn up on the basis of the letters received as a whole <sup>23</sup>					
	2011	2012	2013	2014	2015	2016
Person concerned	77.61%	77.90%	75.57%	71.10%	73.42%	69.83%
Family, relatives	9.37%	10.94%	12.81%	13.04%	10.75%	12.44%
Association	3.02%	2.97%	2.93%	4.39%	4.29%	5.26%
Lawyer	2.85%	3.68%	2.58%	3.49%	4.70%	4.66%
Independent government agency	0.79%	0.81%	0.96%	1.79%	1.40%	2.20%
Physicians, medical staff	1.24%	0.76%	1.20%	1.25%	0.70%	1.36%
Participants (teacher, coach, etc.)	0.58%	0.74%	0.64%	0.70%	0.96%	0.65%
Member of Parliament	0.32%	0.29%	0.10%	0.22%	0.08%	0.09%
Other (fellow prisoner, trade union, private individual, etc.)	4.22%	1.91%	3.21%	4.02%	3.70%	3.51%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The CGLPL had cause to work much more often with the associations and Defender of Rights, and meetings were organised on a regular basis; these resulted in more cases being referred.

All places taken together, the following observations can be made: a drop in the number of cases referred by the persons concerned (2,352 letters received versus 2,619 in 2015 over the period from 1 January to 30 November, i.e. a 10.19% decrease); a slight drop in the number of cases referred by lawyers (157 letters versus 168 in 2015, i.e. a 6.55% decrease); an increase in the number of cases referred by families (419 letters received versus 380 in 2015, i.e. a 10.26% increase), by medical staff (46 letters received versus 26 in 2015, i.e. a 76.92% increase), by associations (177 letters received versus 153 in 2015, i.e. a 15.69% increase) and by the other independent government agencies (74 submissions versus 49 in 2015, i.e. a 51.02% increase).

<sup>23</sup> This table does not present the statistics drawn up in 2009 and 2010, which were based on the 1<sup>st</sup> referral letter and not on all of the letters received.

### 3.1.3 The situations raised

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

For each letter received, primary 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 primary and secondary grounds). For example, although the main grounds for referrals concerning difficulties with psychiatric hospitals appear to be procedural issues (30%), these grounds only account for 16% of all the problems addressed to the CGLPL between 1 January and 30 November 2016 with a bearing on psychiatry.

In view of the small number of letters received concerning police custody facilities, detention of illegal immigrants and juvenile detention centres, the primary grounds for the referral of cases presented below only concern health and penal institutions.

#### Healthcare institutions receiving patients hospitalised without their consent: Primary grounds according to the category of person referring the case

Order of grounds 2016	Psychiatric hospital grounds	Person concerned	Family / relatives	Physicians / medical staff	Association	Other <sup>24</sup>	Total	% 2016	% 2015	% all grounds combined (primary and secondary) 2016
1	PROCEDURE	83	13	1	1		98	29.08%	40.16%	↘15.79%
	Dispute of hospitalisation	71	7	1			79			
	Medical treatment committee	7	2				9			
	Non-compliance with procedure	2	2		1		5			
	Supervisory procedure	2					2			
	Other information	1	1				2			
	Liberty and custody judge procedure		1				1			
2	ACCESS TO HEALTHCARE	24	16			2	42	12.46%	8.92%	↗14.15%
	Access to psychiatric healthcare	14	10			1	25			
	Healthcare programme	4	4			1	9			
	Access to medical records	4					4			
	Relations with general practitioner	2	1				3			
	Access to somatic healthcare		1				1			
3	SOLITARY CONFINEMENT	15	15	5	2	2	39	11.57%	6.32%	↘11.46%
	Duration	7	8				15			
	Conditions	4	3	1	2		10			
	Grounds provided	3	4	1		2	10			
	Other information			2			2			
	Protocol	1					1			
	Traceability			1			1			
4	RELATIONS WITH THE OUTSIDE WORLD	7	21			1	29	8.61%	8.18%	↗9.36%

<sup>24</sup> The "other" category includes 4 referrals from institution participants, 4 independent government agency submissions, 3 referrals from individuals, 3 from trade unions, 2 from lawyers, 2 from patients for other patients, 1 from an MP, 1 from an institution director and 1 "other" referral.

	Visit	2	8				10			
	Notification to family		9			1	10			
	Correspondence	1	2				3			
	Other information	1	2				3			
	Telephone	2					2			
	Trusted person	1					1			
5	ASSIGNMENT	9	8	3		1	21	6.23%	4.09%	↘4.56%
	Readmission after UMD	5	1	1			7			
	Assignment to inappropriate unit	1	3	1		1	6			
	Other information	3	2	1			6			
	Assignment outside sector		2				2			
6	LEGAL INFORMATION AND ADVICE	11	3	2	1	1	18	5.34%	2.97%	↗6.20%
	Exercising means of remedy	9	2	1			12			
	Access to a lawyer				1	1	2			
	Other information	1		1			2			
	Miscellaneous information	1					1			
	Internal regulations		1				1			
7	PHYSICAL CONDITIONS	14	1			1	16	4.75%	4.83%	↗8.77%
	Accommodation	7	1			1	9			
	Hygiene / Upkeep	2					2			
	Clothing	2					2			
	Food	2					2			
	Other information	1					1			
8	PATIENT/STAFF RELATIONS	10				5	15	4.45%	2.97%	↗6.08%
	Confrontational relations	7				1	8			
	Use of force	2				3	5			
	Respect	1					1			
	Other information					1	1			
9	RESTRAINTS	5	4	2	1	2	14	4.15%	-	↗7.37%
	Other information	4	2		1		7			
	Conditions	1	1			1	3			
	Duration		1			1	2			
	Protocol			1			1			
	Grounds provided			1			1			
10	PREPARATION FOR RELEASE	7	2	1			10	2.97%	5.58%	↘2.57%
	Preliminary discharge	4		1			5			
	Discharge from hospitalisation	2	1				3			
	Other information	1	1				2			
11	STAFF WORKING CONDITIONS		3	3		3	9	2.67%	3.72%	↘1.64%
	Physicians' working conditions		3	2			5			
	Other information			1		2	3			
	Nursing staff's working conditions					1	1			
-	UNSPECIFIED	3				1	4	1.19%	-	↘0.47%
-	OTHER GROUNDS <sup>25</sup>	16	3	1		2	22	6.53%	12.26%	↗11.58%
	Total	204	89	18	5	21	337	100%	100%	100%

<sup>25</sup> Letters concerning the other grounds are not enough in number to be significant. They pertain to requests for an interview, confiscated items, activities, physical violence between patients or their financial situation.

In 2016, the three primary grounds for referring a case regarding health institutions are procedures, access to health care and placement in solitary confinement.

Since 2010, the main primary grounds has been procedures – particularly dispute of hospitalisation. Since 2014, the main secondary grounds for referral has been access to health care.

In 2016, all grounds taken together, the three main ones are procedures, access to health care and placement in solitary confinement. In 2015, they were procedures, access to health care and relations with the outside world.

It can be highlighted that the persons concerned primarily refer cases to the CGLPL about procedures; families and relatives about relations with the outside; and physicians and medical staff about placement in solitary confinement.

### **Penal institutions: Primary grounds according to the category of person referring the case**

The last column of this table lists the percentage of different grounds when the reasons for a particular letter are considered as a whole (one letter may contain one or more reasons), rather than the primary grounds only, as before. Accordingly, regarding transfers, although this reason accounts for 11.22% of the primary grounds for letters received between 1 January and 30 November 2016, this percentage goes down if its positioning is considered in light of all the reasons, when it only represents 7.45% of all difficulties brought to the CGLPL's attention in 2016. The percentage of the second primary grounds for referral, physical conditions, further increases when all of the reasons are looked at together, accounting for 14.71% of all the difficulties brought to the CGLPL's attention in 2016.

Order of grounds 2016	Penal institution grounds	Data subject	Family / relatives	Lawyer	Other <sup>26</sup>	Association	IGA	Physicians / medical staff	Total	% 2016	% 2015	% all grounds combined (primary and secondary) 2016
1	<b>TRANSFER</b>	223	45	19	26	9	1	1	324	11.22%	11.37%	↘7.45%
	<i>Requested transfer</i>	155	25	12	24	3	1		220			
	<i>Conditions of the transfer</i>	36	7	1		5		1	50			
	<i>Administrative transfer</i>	23	11	3	2	1			40			
	<i>Other</i>	5	2	1					8			
	<i>International transfer</i>	4		2					6			
2	<b>PHYSICAL CONDITIONS</b>	222	25	8	10	17	10	2	294	10.18%	8.99%	↗14.71%
	<i>Accommodation</i>	53	8	2	5	8	4	2	82			
	<i>Hygiene/upkeep</i>	56	6	3	1	3	3		72			
	<i>Food</i>	35	1		1	3			40			
	<i>Canteens</i>	29	5	2		2	1		39			
	<i>Cloakroom/search</i>	24	3	1			1		29			
	<i>Television</i>	19	2		3				24			

<sup>26</sup> The "Other" category includes 29 individuals, 29 "other", 23 fellow prisoners, 18 institution participants, 7 unknown persons, 5 professional organisations, 3 trade unions, 2 staff members, 2 own-initiative referrals, 1 judge, 1 CPIP, 1 MP and 1 central administration.



	<i>Other</i>	6				1	1		8			
3	<b>PRISONER/STAFF RELATIONS</b>	206	31	8	14	13	14	3	289	10.01%	9.11%	↘7.07%
	<i>Confrontational relations</i>	127	17	5	8	4	5		166			
	<i>Violence</i>	49	11	2	2	8	8	3	83			
	<i>Disrespect</i>	28	2	1	3	1	1		36			
	<i>Other</i>	2	1		1				4			
4	<b>ACCESS TO TREATMENT</b>	161	46	10	16	9	7	7	256	8.87%	9.63%	↘7.70%
	<i>Access to somatic healthcare</i>	55	9	2	10	2	1		79			
	<i>Access to specialised healthcare</i>	37	17	4	2		2	1	63			
	<i>Access to hospitalisation</i>	23	7	1		3		2	36			
	<i>Access to psychiatric healthcare</i>	10	6	2	1	3	1	1	24			
	<i>Other</i>	11	3		1				15			
	<i>Distribution of medicines</i>	4	2		1		1		8			
	<i>Medical services/prisons administration/police relations</i>	5					1	2	8			
	<i>Paramedical devices</i>	5	1	1					7			
	<i>Drafting of medical certificates</i>	4			1				5			
	<i>Access to medical records</i>	3				1	1		5			
	<i>Consent to treatment</i>	2	1						3			
	<i>Management of internal movements</i>	2						1	3			
5	<b>RELATIONS WITH THE OUTSIDE WORLD</b>	173	55	15	5	4	2		254	8.80%	9.71%	↗9.05%
	<i>Correspondence</i>	69	3	3	1	1			77			
	<i>Access to visiting rights</i>	31	26	6	2	1	1		67			
	<i>Visiting room conditions</i>	26	17		2	1			46			
	<i>Telephone</i>	31	5	1		1	1		39			
	<i>UVF family visiting rooms</i>	6	2	3					11			
	<i>Maintenance of parent/child bonds</i>	8	1	1					10			
	<i>Notification to family</i>	2	1	1					4			
6	<b>INTERNAL ORDER</b>	162	9	20	6	5	14	2	218	7.55%	6.32%	↗9.23%
	<i>Discipline</i>	63	5	8	3	3	1		83			
	<i>Body searches</i>	51		8	2	2	9		72			
	<i>Security devices</i>	16		2	1		3		22			
	<i>Cell searches</i>	11	1	1					13			
	<i>Confiscation, retention of property</i>	8	2					2	12			
	<i>CCTV surveillance</i>	5							5			
	<i>Management of movements</i>	3	1				1		5			
	<i>Use of force/violence</i>	2		1					3			
	<i>Other information</i>	3							3			
7	<b>PREPARATION FOR RELEASE</b>	141	37	13	6	8	2	5	212	7.34%	7.16%	↘6.24%
	<i>Adjustment of sentences</i>	98	26	11	3	2	2	5	147			
	<i>Administrative formalities</i>	15	4	2	1	2			24			
	<i>SPIP / Preparation for release</i>	16	4			2			22			
	<i>Sentence enforcement programmes</i>	6							6			
	<i>Deportation procedure</i>	2	2			1			5			
	<i>Relations with outside bodies</i>	2			2				4			

	<i>Other</i>	2	1			1			4			
8	<b>ACTIVITIES</b>	142	7	8	6	4	5	1	173	5.99%	6.50%	↗8.46%
	<i>Work</i>	79	4	2	2	1	2	1	91			
	<i>Information technology (IT)</i>	17	1	4	1				23			
	<i>Education/training</i>	16	2		2				20			
	<i>Walks</i>	14			1	1	2		18			
	<i>Management of internal movements</i>	6		1					7			
	<i>Other</i>	2		1		1	1		5			
	<i>Library</i>	4							4			
	<i>Socio-cultural activities</i>	2				1			3			
	<i>Sports</i>	2							2			
9	<b>PROCEDURES</b>	114	12	4	6	1			137	4.75%	4.96%	↘3.24%
	<i>Dispute of procedure</i>	61	8		5	1			75			
	<i>Execution of sentences</i>	32	2	2					36			
	<i>Procedural questions</i>	10		2					12			
	<i>Disclosure of grounds for imprisonment</i>	8	2		1				11			
	<i>Other</i>	3							3			
10	<b>RELATIONSHIP BETWEEN PRISONERS</b>	83	17	7	7	6	2		122	4.23%	5.45%	↘3.43%
	<i>Threats/racketeering/theft</i>	49	12	3	4	2	2		72			
	<i>Physical violence</i>	27	5	4	3	4			43			
	<i>Measures taken after an offence</i>	3							3			
	<i>Gifts between prisoners</i>	2							2			
	<i>Other</i>	2							2			
11	<b>OVERSIGHT (CGLPL – request for inquiry)</b>	99	1			1			101	3.50%	-	↘1.67%
12	<b>INTERNAL ALLOCATION</b>	76	5	6	2	2	1		92	3.19%	-	↘2.68%
	<i>Allocation of cells</i>	39	3	2			1		45			
	<i>Differentiated regime</i>	21	2	1		1			25			
	<i>New arrivals wing</i>	10		2	1				13			
	<i>Other</i>	4		1	1	1			7			
	<i>Loss of property</i>	2							2			
13	<b>LEGAL INFORMATION AND ADVICE</b>	70		8	3	3			84	2.91%	3.22%	↗5.08%
	<i>Means of remedy</i>	24		1	1	2			28			
	<i>Information</i>	16			1	1			18			
	<i>Access to lawyers</i>	13		3	1				17			
	<i>Access to personal data – GENESIS, etc.</i>	9		3					12			
	<i>Welfare rights (CPAM State health insurance office, etc.)</i>	6		1					7			
	<i>Other</i>	2							2			
14	<b>SOLITARY CONFINEMENT</b>	44	9	6	3	11	3		76	2.63%	-	↘2.28%
	<i>For the safety of the person</i>	26	4	3	1	7	3		44			
	<i>For the security of the institution</i>	15	5	3	2	4			29			
	<i>Other</i>	3							3			
15	<b>SELF-HARMING BEHAVIOUR</b>	44	6	7	6	2	2		67	2.23%	-	↘2.23%
	<i>Hunger/thirst strike</i>	24	1	4	1				30			

	<i>Suicide/suicide attempt</i>	18	3	3	1	1	1		27			
	<i>Death/circumstances of death</i>		1		2	1	1		5			
	<i>Other</i>	1			2				3			
	<i>Self-mutilation</i>	1	1						2			
16	<b>FINANCIAL SITUATION</b>	50	5			1			56	1.94%	-	↗3.00%
	<i>Personal account</i>	13	2						15			
	<i>Money orders</i>	10	1						11			
	<i>Payment to civil parties</i>	9	1						10			
	<i>Guarantee fund</i>	5				1			6			
	<i>Other</i>	6							6			
	<i>Taking poverty into account</i>	3							3			
	<i>Welfare benefits and allowances</i>	2	1						3			
	<i>Deductions in favour of the Treasury</i>	2							2			
17	<b>OTHER<sup>27</sup></b>	34	4	2	5	2	1	4	52	1.80%	17.58%	↘0.90%
18	<b>PROCESSING OF APPEALS</b>	42	5	1		1			49	1.70%	-	↗4.85%
	<i>Absence of response</i>	26	4	1		1			32			
	<i>Hearings</i>	6	1						7			
	<i>Response waiting time</i>	4							4			
	<i>Calls/intercom</i>	3							3			
	<i>Other</i>	3							3			
19	<b>EXTERNAL MOVEMENTS</b>	18	3	2	1	5	1	1	31	1.07%	-	↘0.73%
	<i>External movement for medical reasons</i>	14	3	1	1	4		1	24			
	<i>External movement by order of the court</i>	4		1		1	1		7			
	<b>TOTAL</b>	2104	322	144	122	104	65	26	2887	100%	100%	100%

In 2016, the three primary grounds for referring a case regarding penal institutions are transfers, physical conditions and staff/prisoner relations.

Since 2012, the primary grounds have been transfers. The secondary is access to health care (from 2010 to 2012), staff/prisoner relations (in 2013 and 2014) and relations with the outside world (in 2015).

In 2016, all grounds taken together<sup>28</sup>, the primary grounds are the physical conditions, internal order and relations with the outside world. In 2015, these had to do with the physical conditions, access to health care and relations with the outside world.

Furthermore, note that the number one reason for cases being referred to the CGLPL by the persons concerned is associated with transfers; families and relatives are mainly concerned about relations with the outside, lawyers about internal order and associations about the physical detention conditions. Submissions from independent government agencies primarily bear on staff/prisoner relations and internal order, and physicians refer cases to the CGLPL mainly about access to health care.

<sup>27</sup> The "Other" category includes 27 "other" letters, 9 concerning religion, 8 for an undetermined reason, 4 concerning the right to vote and 4 staff working conditions.

<sup>28</sup> i.e. the primary and secondary grounds included.

## 3.2 The consequences

### 3.2.1 Overall data

#### *Type of letters sent*

	Type of action taken	Total 2016 (Jan.-Nov.)	Percentage 2016	Percentage 2015
Verifications (Article 6-1 of the Act of 30 October 2007)	Referral of case to the authority by letter	691	26.43%	30.75%
	Number of on-site verification reports sent	5	0.20%	0.16%
Sub-total		696	26.63%	30.91%
Responses given to letters not having given rise to the immediate opening of an inquiry	Request for details	837	32.02%	29.39%
	Information	778	29.76%	28.19%
	Other (consideration for visit, passed on for reasons of competence <sup>29</sup> , etc.)	176	6.73%	6.52%
	Lack of competence	127	4.86%	5%
Sub-total		1918	73.37%	69.09%
TOTAL		2614	100%	100%

As part of the verifications undertaken, the CGLPL sent the following letters between 1 January and 30 November 2016:

- 696 letters to the authorities concerned (as compared to 980 in 2015);
- 588 letters to persons having referred cases, informing them of the verifications conducted (843 in 2015);
- 521 letters to authorities to which the cases were referred, informing them of actions taken in order to follow-up on the verifications (892 in 2015);
- 406 letters to persons having referred cases, informing them of actions taken in order to follow-up on the verifications (683 in 2015);
- 421 reminder letters (499 in 2015);
- 253 letters to persons having referred cases, informing them of reminders issued (291 in 2015).

The CGLPL thus sent 4,803 letters between January and November 2016 (as compared to 6,372 in 2015), i.e. an average of 437 letters per month (as compared to 531 in 2015).

#### ***Time required for responses (to letters received between 1 January and 30 November 2016)***

As at 30 November 2016, the CGLPL had replied to 398 letters of referral addressed to it during 2015 (i.e. 12.91% of its replies) and to 2,685 letters that arrived in 2016 (i.e. 87.09% of its replies).

As at 30 November 2015, the CGLPL had replied to 665 letters of referral addressed to it during 2014 (i.e. 18.54% of its replies) and to 2,922 letters that arrived in 2015 (i.e. 81.46% of its replies).

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<sup>29</sup> Including 66 to the Defender of Rights and 2 to other authorities.

Length of response time	Number in 2016 (Jan. – Nov.)	% 2016	Number in 2015 (Jan. – Nov.)	% 2015
0-30 days	1066	28.30%	1135	27.23%
30-60 days	830	22.03%	691	16.57%
More than 60 days	1188	31.54%	1761	42.24%
Response pending	563	14.95%	448	10.75%
Cases not taken up	120	3.18%	134	3.21%
Total	3767	100%	4169	100%

50.33% of letters in 2016 were replied to in less than 60 days. In 2015, this rate was 43.80%. The average response time in 2016 was 52 days (i.e. 1.7 months). In 2015, this response time was 68 days (i.e. 2.2 months).

Even if they have fallen significantly in 2016, reducing these response times further is still a priority and efforts to this effect will be maintained in 2017.

### 3.2.2 Verifications with the authorities

In view of the institutions concerned and the issues raised in the cases referred<sup>30</sup>, requests for observations and documents are, in most cases, sent to prison directors and physicians working in health blocks and regional mental health departments for prisons (SMPR).

#### Category of authorities called upon as part of the verifications

Type of authority referred to	Number of referrals	Percentage 2016	Percentage 2015
Head of institution	466	66.95%	65.55%
Prison director	411	(59.05%)	
Director of a hospital facility	28		
Director of a CRA	17		
Police station	8		
Director of a LRA/ZA	1		
Other director	1		
Medical staff	102	14.66%	17.68%
Physician in charge of health block, SMPR	95	(13.65%)	
Hospital doctor	5		
CRA Doctor	2		
Decentralised management	35	5.03%	6.86%
DISP	21	(3.02%)	
Prefecture	6		
ARS	4		
Other	4		
SPIP	33	4.74%	3.13%
Satellite office	23		
DSPIP	10		

<sup>30</sup> See above, analysis of the cases referred to the CGLPL

Central administration	22	3.16%	2.53%
DAP	15		
Other central management	7		
Minister <sup>31</sup>	16	2.30%	0.71%
Minister of the Interior	6		
Minister of Justice	5		
Minister of Health	3		
Other Minister	2		
Magistrate	11	1.58%	2.93%
Other	11	1.58%	0.61%
<b>TOTAL</b>	<b>696</b>	<b>100%</b>	<b>100%</b>

Although fewer verifications were carried out with authorities in 2016 overall, the Ministers of the Interior, Justice and Health were referred general matters for their attention on a much more regular basis.

### *Inquiry case-files*

When the situation brought to the CGLPL's attention calls for verifications with an authority, an inquiry case file is opened. This can lead to one or more inquiry letters being sent out to one or more authorities; as such, the number of files newly opened is less than the number of inquiry letters generated in the year. The start of the inquiry corresponds to the date on which the letter giving rise to these verifications is received, and the end of the inquiry to the dispatch dates of the letters informing the persons referring the cases of the action taken and the analysis to the authorities referred the information which they have brought to the attention of the CGLPL.

Over the course of the first eleven months of the year, 417 new inquiry case-files were opened (versus 522 over the same period in 2015), of which 131 were closed as at 30 November 2016 (versus 196 over the same period in 2015). Among the inquiry case-files that were opened earlier:

- 154 were still in progress as at 30 November 2016 (versus 178 in 2015 over the same period);
- 255 were closed in the course of the first eleven months of the year (versus 400 in 2015 over the same period).

The following statistics pertain only to the inquiry case-files that were newly opened (unless specified otherwise).

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<sup>31</sup>Recorded in "central administration" in 2013.

### *Type of persons referring cases leading to the opening of case-files*

Category of persons	Total 2016	% 2016	% 2015
Person concerned	253	60.67%	65.52%
Family / relatives	46	11.03%	11.69%
Association	45	10.79%	6.32%
Lawyer	37	8.87%	8.43%
Other	12	2.88%	4.60%
Own-initiative referrals (CGLPL)	10	2.40%	1.34%
Physicians / medical staff	8	1.92%	0.95%
Fellow person deprived of liberty	6	1.44%	1.15%
<b>Total</b>	<b>417</b>	<b>100%</b>	<b>100%</b>

### *Type of institutions concerned*

Place of deprivation of liberty	Total	% 2016	% 2015
Penal institution	366	87.77%	89.66%
CP - prison	176		
MA - remand prison	90		
CD - detention centre	66		
MC - long-stay prison	24		
Hospitals (UHSA, EPSNF) <sup>32</sup>	4		
All	2		
CSL - Open Prison	1		
EPM - Prison for minors	2		
CNE - National Assessment Centre	1		
Administrative detention	25	5.99%	4.02%
CRA - Detention centre for illegal immigrants	24		
ZA - Waiting area	1		
Healthcare institution	18	4.32%	3.83%
EPS - public psychiatric institution	12		
EPS - public health institution psychiatric department	3		
UMD - Unit for difficult psychiatric patients	3		
Custody facilities	7	1.68%	0.77%
CIAT - police stations and headquarters	6		
BT - territorial gendarmerie	1		
Juvenile detention centre	-	-	0.57%
Deportations	-	-	0.57%
Court cells	-	-	0.38%
Other	1	0.24%	0.20%
<b>Total</b>	<b>417</b>	<b>100%</b>	<b>100%</b>

<sup>32</sup> Respectively 3 and 1.

### *Average length of inquiries*

An inquiry case-file stays open from the time the letter which leads to it being opened is received until information concerning the action taken in its regard is sent to the people who referred the case to the CGLPL and to the authorities, who are asked to give their observations. This interval therefore includes the time it takes to respond to the initial letter of referral, the response time of the authority called on and then the time it takes for the CGLPL to inform the persons concerned of the action taken in relation to their case.

The average response time for authorities called on by the CGLPL, between 1 January and 30 November 2016, was 81 days, so around three months. 34.11% of feedback was received in under a month, 25.43% after one to two months and 40.46% after more than two months.

386 inquiry case-files were closed between January and November 2016 (versus 596 in 2015). The average length of time taken by inquiries was 9 months (versus 10 months in 2015). Almost 60% of them took less than 8 months.

<b>Duration</b>	<b>Number of case-files 2016</b>	<b>Percentage 2016</b>	<b>Cumulative percentage 2016</b>	<b>Cumulative percentage 2015</b>
Less than 6 months	153	39.64%	39.64%	32.21%
From 6 to 12 months	150	38.86%	78.50%	70.30%
More than 12 months	83	21.50%	100%	100%
<b>Total</b>	<b>386</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

### *Primary 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 primary grounds for verification.

### *Primary grounds with regard to health institutions catering for persons hospitalised without their consent*

<b>Psychiatric hospital grounds</b>	<b>Total</b>
Solitary confinement (grounds provided, conditions, traceability)	6
Access to health care (psychiatric, somatic)	3
Preparation for release (preliminary discharge)	2
Relations with the outside world (visits, correspondence)	2
Assignment (readmission after UMD)	2
Processing appeals (time)	1
Internal order (management of incidents)	1
Procedure (non-compliance with procedure)	1
<b>Total</b>	<b>18</b>

### *Primary grounds concerning penal institutions*

<b>Penal institution grounds</b>	<b>Total</b>
Access to healthcare (somatic, specialist, psychiatric, etc.)	56
Relations with the outside world (access to visiting rights, telephone, etc.)	51
Transfer (requested, administrative, conditions of the transfer, etc.)	35
Physical conditions (accommodation, hygiene/upkeep, canteens, etc.)	32
Activities (work, IT, education/training, sports, etc.)	31



Internal order (discipline, body searches, confiscation/retention of property, etc.)	29
Relations between prisoners (threats/racketeering/theft, physical violence, etc.)	24
Preparation for release (administrative formalities, adjustment of sentences, etc.)	22
Solitary confinement (for the security of the institution, for the safety of the person, etc.)	21
Legal information and advice (means of remedy, personal data access, etc.)	17
Internal assignment (assignment to a cell, differentiated regime, etc.)	15
Financial situation (payment to civil parties, money orders, etc.)	7
External movements (for medical or judicial reasons)	7
Processing of appeals (absence of response, collective expression, etc.)	6
Self-harming behaviour (suicide/suicide attempt, hunger/thirst strike, etc.)	5
Prisoner/staff relations (violence, confrontational relations, etc.)	4
Procedures (dispute of procedure)	2
Religion (cultural items)	1
Oversight (CGLPL)	1
Voting rights (terms)	1
Other	1
<b>Total</b>	<b>368</b>

### *Fundamental rights concerned in inquiry case-files by type of place of deprivation of liberty*

Fundamental rights	Penal institution	Administrative detention	Healthcare institution	Custody facilities	Total 2016	% 2016	% 2015
Access to healthcare and prevention	63	2	3		68	16.31%	16.49%
Maintenance of family bonds, relations with the outside world	61	1	3		65	15.59%	14.43%
Dignity	45	6	4	1	56	13.43%	10.82%
Physical integrity	49	4	1	1	55	13.19%	17.70%
Legal information and advice	21	6		2	29	6.95%	4.30%
Access to work, activity, etc.	28				28	6.71%	6.36%
Rehabilitation / preparation for release	21		1		22	5.28%	4.12%
Property rights	19	1		2	22	5.28%	3.79%
Protection from mental injury	14	3	1		18	4.32%	3.79%
Freedom of movement	8	1	4		13	3.12%	3.26%
Equal treatment	7	1	1		9	2.16%	3.26%
Right of defence	9				9	2.16%	1.89%
Confidentiality	6			1	7	1.68%	2.58%
Right to information	3				3	0.72%	0.17%
Unjustified detention	2				2	0.48%	2.06%
Freedom of conscience	2				2	0.48%	1.72%
Welfare rights	2				2	0.48%	1.03%
Right to individual expression	2				2	0.48%	1.03%

Right to collective expression	2				2	0.48%	-
Voting rights	1				1	0.24%	0.17%
Privacy	1				1	0.24%	0.17%
Right of personal portrayal	1				1	0.24%	-
Other	-				-	-	0.69%
Staff working conditions	-				-	-	0.17%
<b>Total</b>	<b>367</b>	<b>25</b>	<b>18</b>	<b>7</b>	<b>417</b>	<b>100%</b>	<b>100%</b>

The case-files newly opened in 2016 primarily concerned access to health care, as far as penal institutions are concerned; for administrative detention, they concerned dignity and legal information and advice; for health institutions, they concerned dignity and freedom of movement; and for custody facilities they concerned legal information and advice and property rights.

The six main fundamental rights on which the newly opened inquiries focused this year are the same as in 2015: access to health care, maintaining family ties, dignity, physical integrity, legal information and advice and access to activities and work.

### 3.2.3 *Verification findings to the closing of the case-file*

For the second year in a row, the CGLPL is able to give indications on the findings of the verifications carried out with the authorities with which cases are taken up. In order to report these findings, a distinction has been drawn between any violations of fundamental rights, the results obtained for the person concerned and action taken as regards the authorities.

The data below shows that a violation has been proven (even partially) in 57.07% of case-files closed between 1 January and 30 November 2016 (versus 52.68% in 2015).

In 48.70% of case files, the problem has been resolved: either for the person, or for the future, or in a partial manner (versus 52.68% in 2015).

Finally, as regards the actions taken, the Chief inspector sent recommendations to the authorities called upon in 13.35% of cases (versus 12.75% in 2015). Corrective measures resulting from the inquiry addressed by the CGLPL to the authorities concerned were taken in 15.71% of cases (versus 9.91% in 2015). No special follow-up was given by the chief inspectorate in 42.14% of inquiry case-files (versus 54.19% in 2015), either because no violation of a fundamental right was proven, or because the person deprived of liberty was transferred or released and the fundamental right in question could not be dissociated from his or her individual situation, or due to a lack of information justifying the issue of recommendations or a call for vigilance.

Out of the 386 case-files closed during the first eleven months of 2016, the following results were obtained:

Results of the inquiry		Number of case-files	% 2016 (Jan. – Nov.)	% 2015 (Jan. – Nov.)
Violation of a fundamental right	Violation not proven	164	42.93%	45.81%
	Violation proven	131	34.29%	28.02%
	Violation proven partially	87	22.78%	24.66%
	Not applicable	-	-	1.51%
<b>Total</b>		<b>382</b>	<b>100%</b>	<b>100%</b>
	Not applicable	84	21.98%	11.24%

Result for the person deprived of liberty	Problem solved	77	20.16%	27.68%
	Problem partially solved	61	15.97%	14.26%
	Problem not solved	57	14.92%	23.83%
	Unknown result	55	14.40%	12.25%
	Problem solved for the future	48	12.57%	10.74%
Total		382	100%	100%
Actions taken up by the CG with the authorities concerned	No particular follow-up	161	42.14%	54.19%
	Call for vigilance	110	28.80%	23.15%
	Corrective measure taken by the authority or implementation of a best practice	60	15.71%	9.91%
	Recommendations:	51	13.35%	12.75%
	<i>heeded</i>	9		
	<i>not heeded</i>	2		
	<i>unknown results</i>	40		
Total		382	100%	100%
Not taken up <sup>33</sup>		4	-	-
TOTAL		386	-	-

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<sup>33</sup> Case-files not taken up concern verifications that have not given rise to any information about the action taken, or for which the authority's response was too late coming and became irrelevant, or for which a request for further details from the person concerned was sent out before a reminder was issued to the authority, and the CGLPL did not receive any response.

## 4. Visits conducted in 2016

### 4.1 Quantitative data

#### Visits per year and per category of institution

Categories of institutions	Total no. of institutions <sup>34</sup>	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL	including institutions visited once <sup>35</sup>	% visits over no. of institutions
<b>Custody facilities</b>	<b>4,007</b>	<b>14</b>	<b>60</b>	<b>47</b>	<b>43</b>	<b>73</b>	<b>59</b>	<b>55</b>	<b>58</b>	<b>52</b>	<b>461</b>	<b>434</b>	<b>10.83%</b>
- including police <sup>36</sup>	675	11	38	33	28	42	41	27	32	22	274	252	
- gendarmerie <sup>37</sup>	3,332	2	14	13	13	29	14	24	22	26	157	156	
- other <sup>38</sup>	ND	1	8	1	2	2	4	4	4	4	30	26	
<b>Customs detention<sup>39</sup></b>	<b>179</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>11</b>	<b>5</b>	<b>2</b>	<b>43</b>	<b>41</b>	<b>22.90%</b>
- including courts	11	0	1	0	1	0	0	1	0	1	4	3	
- common law	168	4	1	4	4	3	7	10	5	1	39	38	
<b>Court jails/cells<sup>40</sup></b>	<b>197</b>	<b>2</b>	<b>7</b>	<b>11</b>	<b>10</b>	<b>19</b>	<b>15</b>	<b>4</b>	<b>9</b>	<b>10</b>	<b>87</b>	<b>82</b>	<b>41.62%</b>
<b>Other<sup>41</sup></b>	<b>-</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>-</b>
<b>Penal institutions</b>	<b>187</b>	<b>16</b>	<b>40</b>	<b>37</b>	<b>32</b>	<b>25</b>	<b>29</b>	<b>31</b>	<b>27</b>	<b>26</b>	<b>263</b>	<b>194</b>	<b>103.74%</b>
- including remand prisons	86	11	21	13	16	15	16	14	12	10	128	95	
- prisons	50	1	7	9	7	7	4	8	9	7	59	45	
- detention centres	27	2	5	8	6	1	3	4	3	5	37	27	
- long-stay prisons	6	0	3	3	0	0	1	1	0	1	9	6	
- institutions for minors	6	1	3	1	2	0	0	2	2	1	12	6	
- open prisons	11	1	1	2	1	2	5	1	1	2	16	14	

<sup>34</sup> The number of institutions changed between 2015 and 2016. The figures shown below were updated for the CEF (in September 2016) and the penal institutions (on 1 January 2016).

<sup>35</sup> The number of follow-up visits is respectively one in 2009, five in 2010, six in 2011, ten in 2012, seven in 2013, thirty-six in 2014, sixty-one in 2015 and **fifty-two in 2016**. Due to certain structures closing down during these eight years, the number of places visited at least once can be greater than the number of institutions to be inspected.

<sup>36</sup> Data provided by the IGPN and the DCPAF, comprising custody facilities of the DCSP (492), the DCPAF (56) and the police headquarters (131), updated in December 2015.

<sup>37</sup> Data provided by the DGGN, December 2015.

<sup>38</sup> These are facilities of the central directorates of the national police (PJ, PAF, etc.).

<sup>39</sup> Data provided by customs, updated in February 2015. Four customs detention facilities are common to them and have not been recorded among the customs detention facilities of common law.

<sup>40</sup> The cases in which the cells or jails of the TGI and those of the courts of appeals are located at the same site are not taken into account.

<sup>41</sup> Military detention facilities, etc.

- EPSNF	1			1			0	1	0	0	2	1	
<b>Administrative detention</b>	<b>102</b>	<b>11</b>	<b>24</b>	<b>15</b>	<b>11</b>	<b>9</b>	<b>1</b>	<b>9</b>	<b>14</b>	<b>6</b>	<b>100</b>	<b>69</b>	
- Including CRA	27	5	12	9	7	5	0	6	7	1	52	31	<b>67.65 %</b>
- LRA <sup>42</sup>	24	4	6	4	2	3	0	2	4	2	27	21	
- ZA <sup>43</sup>	51	2	6	2	2	1	1	1	3	2	20	16	
- Other information <sup>44</sup>										1	1	1	
<b>Deportation measure</b>	-	-	-	-	-	-	-	<b>3</b>	<b>4</b>	<b>0</b>	<b>7</b>	<b>7</b>	-
<b>Healthcare institutions<sup>45</sup></b>	<b>431</b>	<b>5</b>	<b>22</b>	<b>18</b>	<b>39</b>	<b>22</b>	<b>17</b>	<b>15</b>	<b>34</b>	<b>43</b>	<b>215</b>	<b>193</b>	
- including CHS		5	7	7	6	7	5	6	6	14	63	58	<b>44.78 %</b>
- CH (psychiatric sector)	270	0	5	4	8	3	2	2	15	11	50	47	
- CH (secure rooms)	87	0	2	4	17	6	4	3	6	15	57	54	
- UHSI	8	0	3	3	1	0	0	1	4	0	12	7	
- UMD	10	0	2	0	1	5	2	0	3	0	13	10	
- UMJ	47	0	2	0	6	0	1	0	0	0	9	9	
- IPPP	1	0	1	0	0	0	0	0	0	0	1	1	
- UHSA	8	0	0	0	0	1	3	3	0	3	10	7	
<b>Juvenile detention centres</b>	<b>51</b>	<b>0</b>	<b>8</b>	<b>8</b>	<b>11</b>	<b>7</b>	<b>12</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>71</b>	<b>49</b>	<b>96.08 %</b>
<b>GRAND TOTAL</b>	<b>5154</b>	<b>52</b>	<b>163</b>	<b>140</b>	<b>151</b>	<b>159</b>	<b>140</b>	<b>137</b>	<b>160</b>	<b>146</b>	<b>1248</b>	<b>1070</b>	<b>65.50 %<sup>46</sup></b>

The breakdown of visits conducted in 2016 by the CGLPL shows that it is pushing on with its efforts to review mental health institutions and the conditions in which detained patients are looked after in hospitals, secure rooms or specially-equipped hospitalisation units (UHSA). This reflects the priority expressed back in 2014 by the Chief Inspector.

Regarding penal institutions, all of the visits made were second or third visits, with the exception of the visit conducted at the Orléans-Saran prison.

<sup>42</sup>The data shown here includes the facilities of the DCPAF (9 permanent and one temporary), the DCSP (12) and the police headquarters (2), updated in December 2015.

<sup>43</sup>The number of 51 waiting areas is a rough estimate and must not be deceptive: almost all of the detained foreign nationals are held in the waiting areas of the airports of Roissy-Charles-de-Gaulle and Orly.

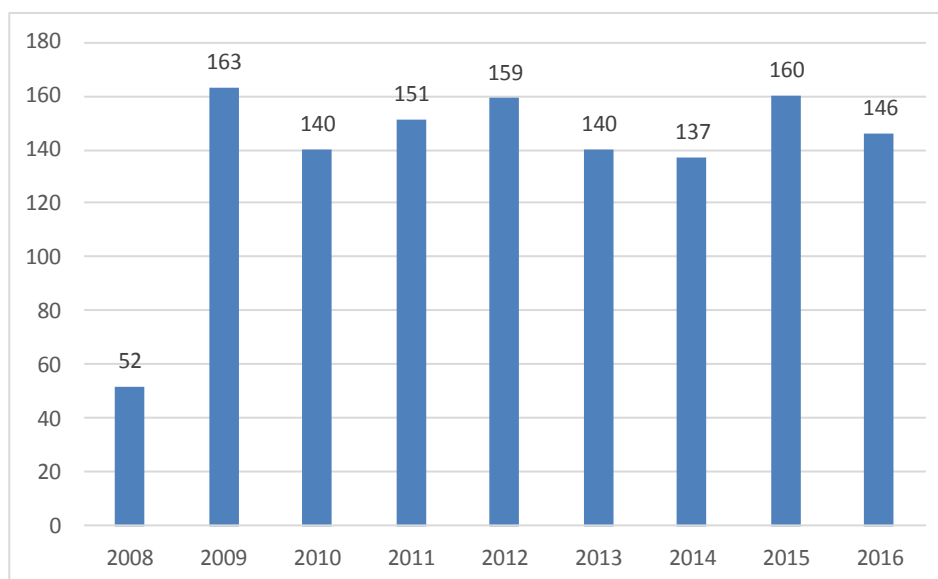
<sup>44</sup>In October 2016, the CGLPL monitored the operations to dismantle the Calais Jungle Camp.

<sup>45</sup>Data provided by the DGOS for psychiatric institutions having the ability to receive patients hospitalised without consent at any time of the day or night, for hospitals having secure rooms and for UMJ (December 2014).

<sup>46</sup>The ratio is not calculated with the total of institutions visited at least once between 2008 and 2016, indicated in the previous column, but on the visits from which visits to custody facilities, customs detention facilities, court jails and cells and military detention centres, as well as the monitoring of deportation procedures were subtracted; i.e. 505 visits for a total of 771 places of deprivation of liberty;

#### 4.1.1 Number of visits

	2008	2009	2010	2011	2012	2013	2014	2015	2016
<b>Number of visits</b>	52	163	140	151	159	140	137	160	146



The number of visits conducted in 2016 is close to the target of 150 visits a year.

The schedule drawn up in September 2015 has been used throughout this year. It provides for a theoretical number of 154 visits, i.e. 14 visits every month over 11 months. These 14 visits are organised into five missions that are carried out within the same *département* and each cover one large institution (in principle two penal institutions and three mental health institutions) and two small institutions (detention or custody facilities or secure rooms) or one medium-sized institution (CEF or CRA).

There needs to be some flexibility in the way this schedule is applied, but it makes it possible to meet the target of 150 visits a year as set in the institution's annual performance plan.

#### 4.1.2 Average length of visits (in days)

	2009	2010	2011	2012	2013	2014	2015	2016
<b>Juvenile detention centre</b>	2	3	4	4	3.25	3.56	3.56	3.29
<b>Court jails and cells</b>	1	2	2	1.5	2	1.75	1.56	1.1
<b>Penal institution</b>	4	4	5	5	5	5.2	5.67	6.19
<b>Custody facilities</b>	1	2	2	2	2	2.33	1.93	1.49
<b>Administrative detention</b>	2	2	2	3	5 <sup>47</sup>	3.11	2.57	3.5
<b>Customs detention</b>	1	2	1	1.5	2	1.95	2.2	1
<b>Healthcare institution</b>	2	3	3	4	4	4.52	4.2	3.45
<b>Deportation procedure</b>	-	-	-	-	-	2	1	-
<b>Average</b>	2	3	3	3	3	3.33	3.04	3.12

These average lengths of visit are very similar to those observed over previous years.

<sup>47</sup> Only the waiting area of Roissy was visited in 2013, over a five-day period.

In 2016, the inspectors spent:

- 161 days in detention facilities;
- 153 days in hospitals;
- 85 days in custody facilities;
- 21 days in administrative detention centres;
- 23 days in a juvenile detention centre;
- 11 days in jails and cells of courts;
- 2 days in customs detention centres;
- 0 days on deportation procedures.

I.e. a total of 456 days in places of deprivation of liberty.

## 4.2 Nature of the visits (since 2008)

	Custody facilities, TGI cells, customs, etc.	Juvenile detention centres	Healthcare institutions	Penal institutions	Detention centres and facilities, waiting areas, etc.	TOTAL
Unannounced	589	64	111	118	100	982
Scheduled	3	7	105	144	7	266

In all, 78.69% of institutions were visited unannounced and 21.31% 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:

- 99.49% with regard to police custody facilities, court cells and customs;
- 93.46% with regard to detention centres for illegal immigrants, waiting areas and deportation procedures;
- 90.14% with regard to juvenile detention centres;
- 51.39% with regard to healthcare institutions;
- 45.04% with regard to penal institutions;

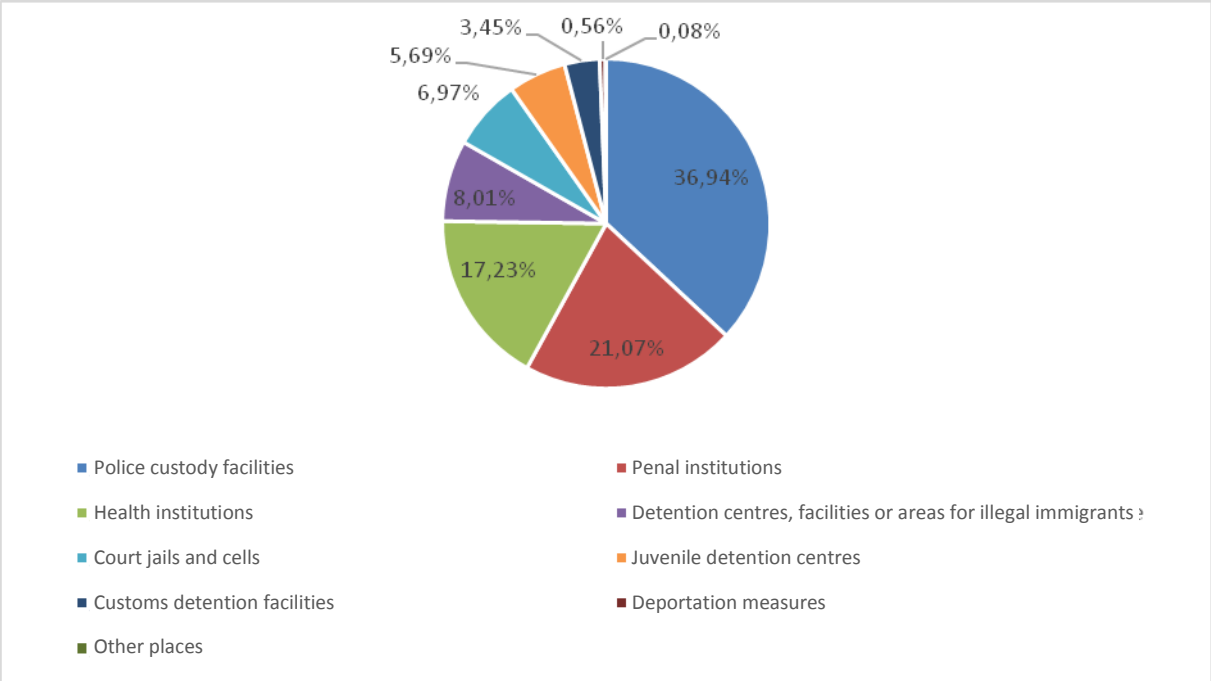
This distribution is fairly stable from one year to the next. It obeys the following principles:

- visits to complex institutions in which persons deprived of liberty can stay over a long period of time are generally announced, unless there are grounds to conduct an unannounced visit, since this way, the CGLPL can benefit, as soon as it arrives, from a documentary case-file on the institution and a meeting with the principal managers of the institution;
- on the other hand, visits to small institutions in which persons deprived of liberty stay for only brief periods are, in principle, unannounced.

### 4.3 Categories of institutions visited

A total of 1,248 visits have been conducted since 2008. They are distributed as follows:

- 36.94% concerned police custody facilities;
- 21.07% concerned penal institutions;
- 17.23% concerned health institutions;
- 8.01% concerned detention centres and facilities for illegal immigrants and waiting zones;
- 6.97% concerned court jails and cells;
- 5.69% concerned juvenile detention centres;
- 3.45% concerned customs detention facilities;
- 0.56% concerned deportation measures;
- 0.08% concerned other places.



## 5. Resources allocated to the chief inspectorate in 2016

### 5.1 The staff

The Finance Act for 2016 made it possible to cement two jobs, the creation of which had been planned in the 2015 management strategy. The cap on number of FTE positions has been increased from 31 to 33.

In 2016, amid more or less full employment, the Chief Inspectorate's room for manoeuvre has diminished compared with 2015.



**5.1.1 Permanent positions and external staff**

In July 2016, a new assistant joined the ranks of the institution's reception and executive secretariat department and enabled the work of one administrative assistant – who had previously had several different duties to fulfil – to be focused on the operational organisation of missions and supervision of reports.

Two inspectors resigned from their posts in 2016: in November, a woman, a public health general practitioner, who left to take on other roles, and, at the end of the year, a prison commandant who exercised his pension entitlements. The job left vacant in November was filled as of December by a medical public health inspector, who had previously been on secondment to the corps of sub-prefects. The other job, which became vacant on 31 December 2016, will be filled in 2017.

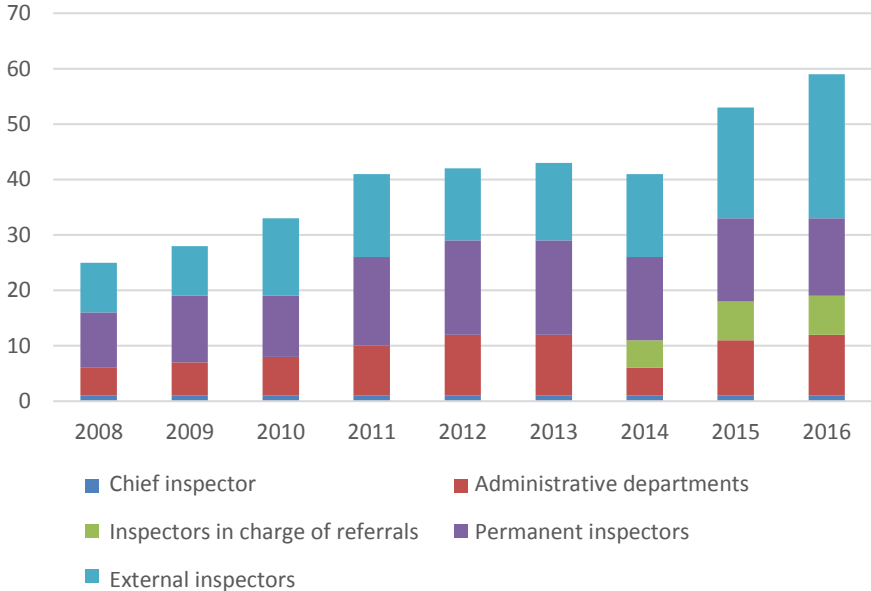
One psychiatric hospital practitioner under a reimbursed hiring-out agreement chose to call time on this full-time collaboration arrangement with the Chief inspector of places of deprivation of liberty to become an external inspector.

The team of external inspectors was particularly expanded in 2016: eleven recruitments were made to replace three departures for personal reasons. Precedence was given to recruiting professionals from the medical sphere: two former psychiatric hospital practitioners, one public health general practitioner and one former hospital director thus joined the institution.

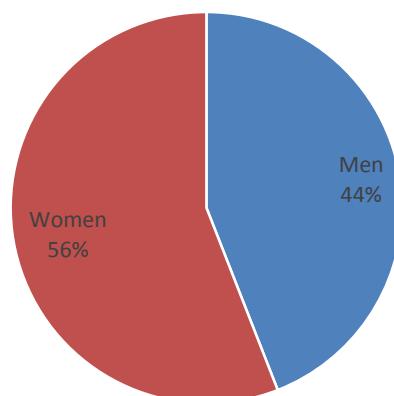
That being so, the institution's different core missions are also apparent in the other recruitments made: one former Judicial Youth Protection Service Director, one former chief auditor at the Court of Auditors, one Inspector-General of the Armies, one photographer and one lawyer, a former President of the Rouen Bar association of lawyers.

Furthermore, two inspectors having given up their full-time duties wished to continue working with the institution as external inspectors (one psychiatrist and one former gendarmerie major).

**Changes in the staff in each function as on 31 December of each year**



## Male/female composition of staff as on 31 December 2016



## Trainees and casual employees

The Chief inspector of places of deprivation of liberty received twelve trainees during the year, who came from civil service schools, professional training institutions or French universities.

	Professional training institutions	Civil service schools (ENM, ENAP, IRA)	Universities
Number of trainees received	4	3	5

Two casual contract employees helped to develop the Chief Inspectorate's tools (intranet) and classify the institution's archives before they were transferred to the national collection.

## 5.2 Financial resources

The CGLPL's financial resources progressed in terms of staff appropriations compared with the previous year: €4.089m were opened in 2016 versus €3.750m in 2015, which amounts to 9% more appropriations to cover the two new jobs anticipated in the 2015 management strategy. That said, amid more or less full employment, the institution's room for manoeuvre has diminished, without this posing any difficulty in terms of staff expense management.

The operating funds dipped slightly (€1.020m of payment appropriations opened in 2016 versus €1.044m in 2015, which amounts to 2.3% of appropriations) mainly due to a budgetary regulation measure carried out during the year.

In 2016, the institution's fiscal abundance therefore reduced for the following reasons:

- a context of almost full employment in terms of staff expenses;
- the extension of the premises in 2015, required because of the expanding staff members, but which was not offset by a new payment appropriation measure;
- the stability of a full staff which leads, on the one hand, to an increase in overhead expenses and, on the other, to more inspections of places of deprivation of liberty;
- the additional regulation measure which affects the fiscal sustainability on operating funds.

5.2.1 Payroll

The staff appropriations are made up of the remuneration of permanent staff, the contributions to the special “pensions” appropriation account (CAS) and the funds to pay the salaries of external staff.

Up to 95% of the available staff appropriations were consumed (for 87% consumed in 2015), because the phenomenon of frictional vacancy was not as marked in 2016. Moreover, consumption of external collaboration appropriations – which had already risen sharply in 2015 – climbed by another 27% (€285,000 was consumed in 2016 versus €223,000 in 2015); this is tied in with the increase in the number of external inspectors and more generous compensation for their participation in the institution's work (contribution to drafting the thematic reports newly published by the institution in 2016).

5.2.2 The operating credits

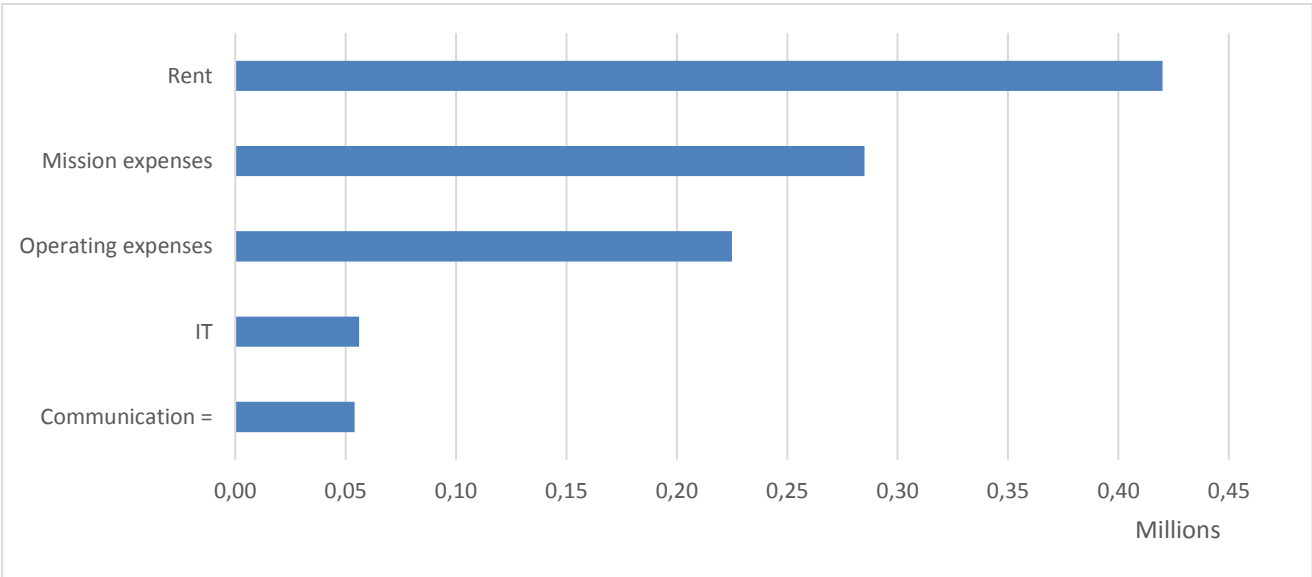
The operating credits are mainly meant to cover the rent of the premises located in the 19<sup>th</sup> arrondissement of Paris, travel expenses and the day-to-day running of the institution.

The 2016 allowance opened in operating credits was €0.946m in commitment authorisations and €1.020m in payment appropriations.

Given that the institution's lease (its primary expense item) was taken out in 2015 for a six-year period, the level of budget commitment in 2016 is low. It only concerns the other expense items: mission expenses and general running of the institution, for an amount consumed in 2016 of €630,000 of commitment authorisation.

On the other hand, in terms of payment appropriations, management in 2016 proved extremely delicate particularly owing to the budgetary regulation measure which cut the institution's resources – at a time when it was obliged to assume major adjustments in rental expenses for the previous year, for a higher amount (€40,000). However, tight management of the overhead and travel expenses helped to "tie up" the fiscal year with all of the appropriations opened having been consumed, and additional financing of the programme which offset the amount of the budgetary regulation measure for €36,000.

Distribution of items of operating expenditure as on 1 December 2016 in payment appropriations



# Chapter 6

## “To the Chief inspector...”

### Letters received

#### *Prison overcrowding*

"Dear Madam,

Since 11 November 2016 the cell ... in unit ... in X remand prison, by order of the director, has been occupied by 3 prisoners, which is not the norm and illegal.

I wrote to the Director who, without informing us, allocated a 3rd prisoner to join us on 22 November 2016, placing us in difficult detention conditions – not least because we do not have much room to be able to move around and eat at the table because of the way the furniture is arranged in the cell. One cupboard for 3 prisoners and the rest of our things in a bag.

I hope that you will consider and reply to my letter, yours sincerely."

#### *Deteriorated detention conditions*

"Madam, the Chief Inspector of places of deprivation of liberty,

I am writing to ask you to examine my appeal.

I had been detained at X remand prison for three months until ... 2016, when I was transferred to Y detention centre where I currently remain in detention.

I would like to share certain grievances with you about the detention conditions I was subjected to during the abovementioned period.

I was assigned to a cell with 3 occupants. The cell must have measured about 10m<sup>2</sup> for the 3 of us. The cell was equipped with a toilet, was not ventilated or equipped with a door that covered the full surface; in fact, it resembled more a curtain than a door.

The detention and hygiene conditions were disgraceful. I was imprisoned in the same cell as an untried person (awaiting sentencing), who was there on the grounds of homicide, when I had already been convicted ... you can imagine the atmosphere when I, a convicted prisoner, find myself with a stranger who risks a thirty-year prison sentence. This person, not wishing to condemn him because it was not his fault, was entirely dependent on and stupefied by medication and psychoactive substances which he was made to take daily to keep him calm and under control. Because of this, he fell asleep twice with a lit cigarette in his mouth which, if it had not been for our vigilance, would have caused a fire in the cell which could have had disastrous consequences.

The communal showers were in a dangerous state for our health, because there were visible fungi, mould as well as a non-existent ventilation system, there was absolutely no privacy because the showers did not have doors, and there was no window to let air in. On top of these failings, if an incident were to happen there, there was absolutely no means of warning anyone because this place was located in a dead-end corner. Some folk even went there to smoke cannabis: add that to the humidity and mould and you've got an explosive cocktail!

For someone like me who is active and keen to learn more, it must be said that the sports and cultural activities were virtually non-existent, which is not to say off-putting and repetitive. Access to them was very limited and primarily for the same group of people. Access to the library was only allowed on one half day every week – on Friday mornings alternating with the other building, so 1 hour a week; and if, for one reason or another, it was not possible for warders to be on duty, this slot would disappear in favour of another "cause". Because of this, 2 or 3 weeks could go by without any library activity.

I have no problem moving straight on to telling you about the laxness, familiarity, complete lack of respect and professionalism (on the part of some and not all) prison warders, who smoked with prisoners (even

cannabis), constantly addressed us informally and did not hold back from making comments about other people's business – often the most aggressive to the detriment of the most vulnerable ...

We are asked to keep our distance, show respect and courtesy, when the people who are supposed to set a good example completely ignore these principles in the way they treat us. We, myself included, have all committed reprehensible acts for which are paying "the price", but is that a reason to be subjected to harassment, humiliation and mocking on the part of the prison staff??

Most of the cells looked out on to the exercise yard, which was not really one at all, and here from 7.45 in the morning until very late at night could be heard the most indescribable din, firstly from the morning's sports activities and then from the rounds outside and cries coming from each cell when they were closed. We had to fend off insults, threats and trouble on the part of those who never finished having their say – no matter what time of day they decided to make themselves heard.

This remand prison was very old and dilapidated and simply not up to standard in terms of security, hygiene or dignity. We are the first to point the finger at other States for their detention conditions; is there not cause here to consider our own conditions?

The period that I spent at this remand prison was a very difficult time for me, as I knew that my rights were not being respected and that the conditions were difficult, to say the least.

I would be grateful if you could explain to me the different options I have for lodging an appeal with a competent court so that my "warning bell" can be heard and my message can have a concrete impact.

Today I am no longer doing this solely for my sake, for I am no longer there, but for all those who, like me, are concerned for human dignity and the respect of Republican values.

I would be happy to provide you with any further information,

Yours

sincerely."

### ***Use of restraint measures and respect of physician-patient confidentiality during external movements for medical reasons***

"Madam, the Chief inspector of places of deprivation of liberty,

I am being detained at X remand prison. Since my imprisonment I have never posed any problems - quite the reverse, I am on good terms with both my fellow inmates and staff.

At the beginning of May, after I had been complaining of toothache, the remand prison dentist told me that it was because my wisdom tooth was growing with not enough space, so it would need to be taken out.

An appointment was made at the hospital for this extraction.

On ... May I was summoned early in the morning to go the hospital. Handcuffs were placed on my wrists and ankles, and I was taken like this to a car driven by a warder, accompanied by two other warders. When I arrived at the hospital, with my handcuffs still on, I was taken to the dental surgery and put in the chair. They did not take my handcuffs off at any point – not even during the procedure.

One warder stayed by my side and the other two stayed in the corridor close to the door.

I do not understand why I was treated in this way. When I asked the female warder by my side if they could take the handcuffs off, she just shrugged and said this was the way things were done. I stayed in handcuffs all the way back to the remand prison.

This was a violation of my dignity and I do not understand what justifies such an attitude on the part of the prison administration representatives.

I am writing to you today, not just for my sake but also for other people in the future who risk finding themselves in a similar situation, which strikes me as at odds with respect for the human person.

Yours sincerely.

Copy to the Director of X remand prison"

### ***Detention conditions concerning a girl in a prison for minors***

"(...) I have been in prison since ... 2016. From .../01/16 to .../06/16 I was at V. and since .../06/16 I have been detained at the D prison for minors.

At V. (at the women's remand prison) I already wanted to write to you to protest certain points with regard to our detention conditions ... well now that I am no longer there it is too late.

At the prison for minors it is already better than at V. (in terms of hygiene, etc) but there are a few troubling issues. When we arrive, they hand out (to us girls) new arrivals' clothing as they do everywhere, but which have been designed for boys, so we start out wearing boys' clothes, which, to boot, will also be too big for us, so it would be better if we had clothes for girls. Then they hand out mediocre sanitary towels (sodexo) and at the canteen you can only buy tampons, so for girls who do not use tampons and for whom the sodexo towels are not the right ones for our periods, it would be good if we could buy better sanitary towels (for me personally, the sodexo sanitary towels are uncomfortable and too thick). We are unable to buy fans (whereas at V we could) and in the cells the heat is unbearable. For asthmatics like me, the heat is stifling and often sets off an asthma attack – including quite a bad one yesterday evening; so it would be good to be able to buy them too.

Well, I think that is everything.

Have a good week.

Yours sincerely.

(... ]

Oh yes, my things (1 box + 1 suitcase) are still at V., during my transfer I was able to bring 1 box as we were travelling by plane. I still have not received the rest of my things, when they contain toiletries, clothes, shoes, handbag + purse, etc. and the captain at D told me that maybe I will not get it back when I would like to have it back and I was not the one who opted for this transfer, but it was the judge who ordered it. Are you able to do something? "

### ***Maintaining family ties in detention***

"Dear Sir or Madam,

Please

I am writing this letter to you as I feel completely desperate. So that you understand my letter clearly, I will explain my problem to you. For several months I have been asking to be transferred to a prison in Paris as my family does not have the means to pay for a return trip by high-speed train. My family is very poor. I miss them very much and my family is unable to come to visit me in the visiting rooms. My transfer file is complete but I do not know why I have not been transferred. I am not asking you for freedom, just for the possibility of being transferred to a prison in Paris, so that my family can come and visit me. I very much hope that you will be able to answer my letter. I do not know how else to thank you.

Thank you so much in advance. (...)".

### ***The rehabilitation tools in detention***

"Dear Sir or Madam,

I am writing to you because I have a wish that I would like to share with you. I would like to be able to have Internet in the cells to keep in touch with my family via Skype or another site, we could also use it for job-hunting and for learning about religion for those who want to, in order to practise our religion as best we can. I would also like a telephone in the cell, this would help to reduce violence in prison in the knowledge that if we are punished, the telephone would be taken away during the punishment. My final wish would be for teachers to be able to teach us Arabic so that I can better understand the Koran and not misinterpret it.

Yours sincerely. "

### ***Limitation of rights in a detention centre for illegal immigrants***

"Madam inspectors,

The rules at the M detention centre concerning bringing in food via the visiting rooms and within buildings have changed following the fires that broke out last 5 March, and we are writing to inform you of these changes.

Before the fires on 5 March, prisoners were allowed to consume perishable foodstuffs in the visiting rooms and could bring back to the living areas non-perishable food items that their visitors had brought them (cakes, bottles of fizzy drink, tea, dried fruit, etc.).

For several weeks after the fire, the centre's administration had decided to ban the consumption of all food in the visiting rooms and the possibility of bringing non-perishable food items back into the living areas.

At the beginning of April, the administration revised part of this ban by once again allowing detainees to consume food in the visiting rooms, but it did not wish to overturn the rule whereby no food or drinks could now be brought into the "living areas".

Madam the Chief Inspector has spoken clearly several times of her intention to crack down particularly on limitations to the freedoms and rights of prisoners on the basis of "security" arguments that are too often thrown about lightly. It would seem that this type of justification has been given in this instance.

Several prisoners are complaining about this change which is undermining their detention conditions. This is why we are writing to draw your attention to it.

We would be happy to provide you with any further information.

Regards, (...)"

### ***Unjustified detention in a unit for difficult psychiatric patients***

"Madam, the Chief Inspector of places of deprivation of liberty,

I am writing to draw your attention to my situation.

After appearing before the "Medical Surveillance Committee" in August 2016, and receiving a positive decision to be released from the unit for difficult psychiatric patients, with the planned return to territory 44, I am still awaiting a release date and the name of an institution in which I am to return.

To the extent possible, I would like you to intervene on my behalf so that this situation can be brought to an end and I can spend Christmas in my region.

Thanking you in advance,

(...)

NB: letter written with the help of the department's social services + copy to tutor."

## Chapter 7

# Places of deprivation of liberty in France: statistics

By Nicolas Fischer<sup>48</sup>

CNRS - Centre for sociological research on law and penal institutions

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 Chief inspector of places of deprivation of liberty'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 in one single document data relating to the deprivation of liberty in the penal area (custody and incarceration), 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 draw a parallel of these sizes for the various places of deprivation of liberty in a single table.

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<sup>48</sup> This year once again, the author would like to extend sincere thanks to Bruno Aubusson de Cavarlay (CNRS-Cesdip), author of the statistics shown in the reports from 2009 to 2014, for his advice and precious help. This chapter is an update of the statistical series that he initially created, and also includes comments that he suggested. For prison statistics, the author has also referred to the figures given in the most recent report of the Temporary Detention Surveillance Committee (CSDP), to which he also made a contribution. Lastly, the figures taken from the Ministry of the Interior's tool for recording implicated persons and imprisoned persons as well as custody measures, Etat 4001, were made available to us by Renée Zauberman (CNRS-Cesdip), whom the author would like to thank for her invaluable help.



## 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: Crimes and offences reported to the State Prosecutor's Office by the police and gendarmerie (apart from traffic offences), Mainland France.

Five-yearly averages from 1975 to 1999, followed by annual results.

PERIOD	IMPLICATED PERSONS	CUSTODY MEASURES	which lasted 24 hours or less	which lasted more than 24 hours	IMPRISONED PERSONS
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	1,152,159	380,374	298,228	82,146	63,090
2013	1,106,022	365,368	284,865	80,503	55,629
2014	1,111,882	364,911	284,926	79,985	52,484
2015	1,089,782	352,897	272,065	80,832	34,814

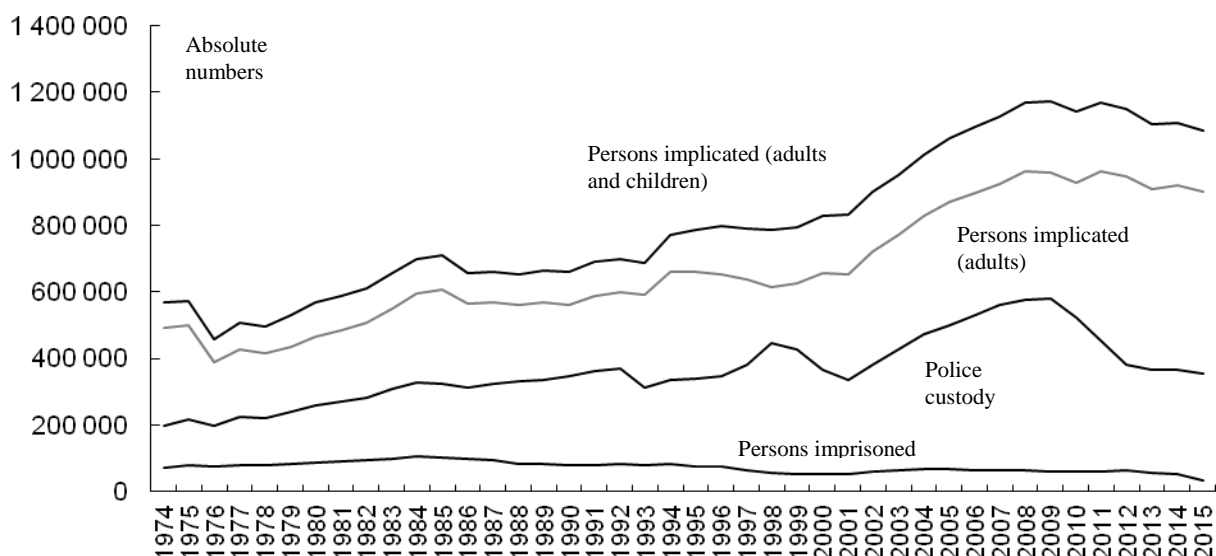
**Note:** The sharp drop in number of people imprisoned in 2015 appears above all to be due to the change in the way data is collected, following the digitisation of procedural management. This figure used to include people referred to the State Prosecutor's Office but who were only subject to detainment in cells pending presentation before a judge. The new definition now only includes imprisoned persons.

**Reference:** Temporary Detention Surveillance Committee, *2015-2016 Report*, Paris, CSDP, 2016.

## 1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned

Source: Etat 4001, Ministry of the Interior, ONDRP after 2009 / CSDP 2015-2016 Report, series B. Aubusson.

Field: 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. Mainland 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 are counted (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 not all of the referred accused are 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 since the investigating police department does not know the results of the appearance before a judge or public prosecutor and possibly the court appearance where individuals are held by another department (when a case is filed before the courts). It is however surprising to see existing, at the 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, ONDRP after 2009 / CSDP 2015-2016 Report, series B. Aubusson.

Field: Crimes and offences reported to the State Prosecutor's Office by the police and gendarmerie (apart from traffic offences), Mainland France.

Type of offence	1994			2008			2015		
	Persons implicated in offences	Custody measures	%	Persons implicated in offences	Custody measures	%	Persons implicated in offences	Custody measures	%
Homicide	2,075	2,401	115.7%	1,819	2,134	117.3%	2,115	2,100	99.3%
Robberies	18,618	14,044	75.4%	20,058	18,290	91.2%	16,381	12,647	77.2%
Drug trafficking	13,314	11,543	86.7%	23,160	15,570	67.2%	14,253	10,476	73.5%
Insulting and violence against government officials	21,535	10,670	49.5%	42,348	29,574	69.8%	31,639	21,531	68.1%
Procuring (prostitution)	901	976	108.3%	759	768	101.2%	717	475	66.2%
Burglaries	55,272	34,611	62.6%	36,692	27,485	74.9%	42,549	26,610	62.5%
Auto larceny	35,033	22,879	65.3%	20,714	16,188	78.2%	15,618	9,674	61.9%
Fire, explosives	2,906	1,699	58.5%	7,881	6,249	79.3%	5,310	3112	58.6%
Vehicle theft	40,076	24,721	61.7%	20,764	15,654	75.4%	12,924	7,395	57.2%
Sexual assaults	10,943	8,132	74.3%	14,969	12,242	81.8%	20,281	10,610	52.3%
Other behaviours	5,186	2,637	50.8%	12,095	8,660	71.6%	8,341	3,833	46.0%
Foreigners	48,514	37,389	77.1%	119,761	82,084	68.5%	17,008	7,262	42.7%
False documents	9,368	4,249	45.4%	8,260	4,777	57.8%	10,589	4,459	42.1%
Other thefts	89,278	40,032	44.8%	113,808	61,689	54.2%	118,047	43,909	37.2%
Assault and battery	50,209	14,766	29.4%	150,264	73,141	48.7%	152,710	56,124	36.8%
Shoplifting	55,654	11,082	19.9%	58,674	20,661	35.2%	55,016	17,527	31.9%
Weapons	12,117	5,928	48.9%	23,455	10,103	43.1%	24,282	6871	28.3%
Drug use	55,505	32,824	59.1%	149,753	68,711	45.9%	176,507	43,770	24.8%
Destruction, damage	45,591	12,453	27.3%	74,115	29,319	39.6%	44,690	10,778	24.1%
Other trespass to persons	28,094	5,920	21.1%	65,066	20,511	31.5%	84,483	18,686	22.1%
Fraud, breach of trust	54,866	17,115	31.2%	63,123	21,916	34.7%	63,566	9,237	14.5%
Frauds, economic crime	40,353	6,636	16.4%	33,334	9,700	29.1%	36,338	5,504	15.1%
Other general policies	15,524	3,028	19.5%	6,190	926	15.0%	7,350	1,343	18.3%
Family, child	27,893	1,707	6.1%	43,121	4,176	9.7%	66,157	4,256	6.4%
Unpaid cheques	4,803	431	9.0%	3,135	457	14.6%	2518	60	2.4%
<b>Total</b>	<b>775,701</b>	<b>334,785</b>	<b>43.2%</b>	<b>1,172,393</b>	<b>577,816</b>	<b>49.3%</b>	<b>1,088,849</b>	<b>352,897</b>	<b>32.4%</b>
<b>Total without unpaid cheques</b>	<b>770,898</b>	<b>334,354</b>	<b>43.4%</b>	<b>1,169,258</b>	<b>577,359</b>	<b>49.4%</b>	<b>1,086,331</b>	<b>352,837</b>	<b>32.5%</b>

**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. The heading "unpaid cheques" includes 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 figure has been drawn up excluding them.

**Comment:** The table by category of offence confirms, for 2015 as for the previous years, the general effect of the Act of 14 April 2011 which had been preceded by the decision of the Constitutional Council (30 July 2010) referred a priority preliminary ruling on the issue of the unconstitutionality (QPC) of the articles of the criminal procedure 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 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 33% and 12% in the total drop between 2008 and 2015. 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 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). Series B. Aubusson.

Field: Prison institutions just in Mainland France (1970-2000) and then for France and its overseas territories.

Period	Remand prisoners: immediate hearing	Remand prisoners: preparation of case for trial	Convicted prisoners	Of which imprisoned convicted prisoners placed in detention	Imprisonment for debt(*)	Together
<b>Mainland France</b>						
<b>1970-1974</b>	12,551	44,826	14,181		2,778	74,335
<b>1975-1979</b>	11,963	49,360	16,755		2,601	80,679
<b>1980-1984</b>	10,406	58,441	14,747		1,994	85,587
<b>1985-1989</b>	10,067	55,547	17,828		753	84,195
<b>1990-1994</b>	19,153	45,868	18,859		319	84,199
<b>1995-1999</b>	19,783	37,102	20,018		83	76,986
<b>2000</b>	19,419	28,583	17,192		57	65,251
<b>All of France</b>						
<b>2000</b>	20,539	30,424	17,742	n.d.	60	68,765
<b>2001</b>	21,477	24,994	20,802	n.d.	35	67,308
<b>2002</b>	27,078	31,332	23,080	n.d.	43	81,533
<b>2003</b>	28,616	30,732	22,538	n.d.	19	81,905
<b>2004</b>	27,755	30,836	26,108	n.d.	11	84,710
<b>2005</b>	29,951	30,997	24,588	n.d.	4	85,540
<b>2006</b>	27,596	29,156	29,828	24,650	14	86,594
<b>2007</b>	26,927	28,636	34,691	27,436	16	90,270
<b>2008</b>	24,231	27,884	36,909	27,535	30	89,054
<b>2009</b>	22,085	25,976	36,274	24,673	19	84,354
<b>2010</b>	21,310	26,095	35,237	21,718	83	82,725
<b>2011</b>	21,432	25,883	40,627	24,704	116	88,058
<b>2012</b>	21,133	25,543	44,259	26,038	47	90,982
<b>2013</b>	21,250	25,748	42,218	22,747	74	89,290
<b>2014</b>	46,707		43,898	24,847	60	90,665

(\*) Imprisonment of solvent persons for non-payment of certain fines (contrainte judiciaire) as from 2005

**Note:** This statistical presentation was not updated for 2015 because of the myriad changes that took place over the year regarding the collection of prison data. First of all, the adoption of the computer management program GENESIS in prisons led to certain prison sources disappearing – not least the quarterly statistics which enabled description in terms of "flows". This calculation of newly placed prisoners also assumed the consolidation by the prison administration of figures taken from different sources, according to a calculation method which was also amended during the year. As a result, updated data is presented below solely for "stocks", particularly from monthly statistics which are still, for their part, available (see 1.5 below).

**Reference:** Temporary Detention Surveillance Committee, *2015-2016 Report*, Paris, CSDP, 2016.

For the 2014 figures presented, here, the numbers counted are by imprisonment judgement, for this legal placement under the responsibility of a penal institution no longer always involves accommodation. According to an estimate by the Prison Authorities Department (PMJ5) relating to the whole of France, placements in detention (imprisonment without adjustment of sentence *ab initio* or within seven days) represented 78% of imprisonments in 2013. This percentage was still 94% in 2006. Before the introduction, at the start of the 2000s, of electronic surveillance for prisoners (Act of 19 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 an adjustment of sentence *ab initio* or within the seven days following imprisonment (external placement or placement under electronic surveillance).

**Comment:** This new series enables us to see that the new level of placements in detention of those sentenced has not fundamentally changed since the development of sentence adjustment. Even though we only have the overall statistics for all remand prisoners for 2014, 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 Bruno Aubusson de Cavarlay (Cesdip/CNRS) for the oldest period, from printed sources. For more recent years – with the exception, as indicated, of figures from 2015 – 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")<sup>49</sup>.

In relation to temporary detention, other series are presented in the 2015 report by the Temporary Detention Surveillance Committee (December 2016)<sup>50</sup>.

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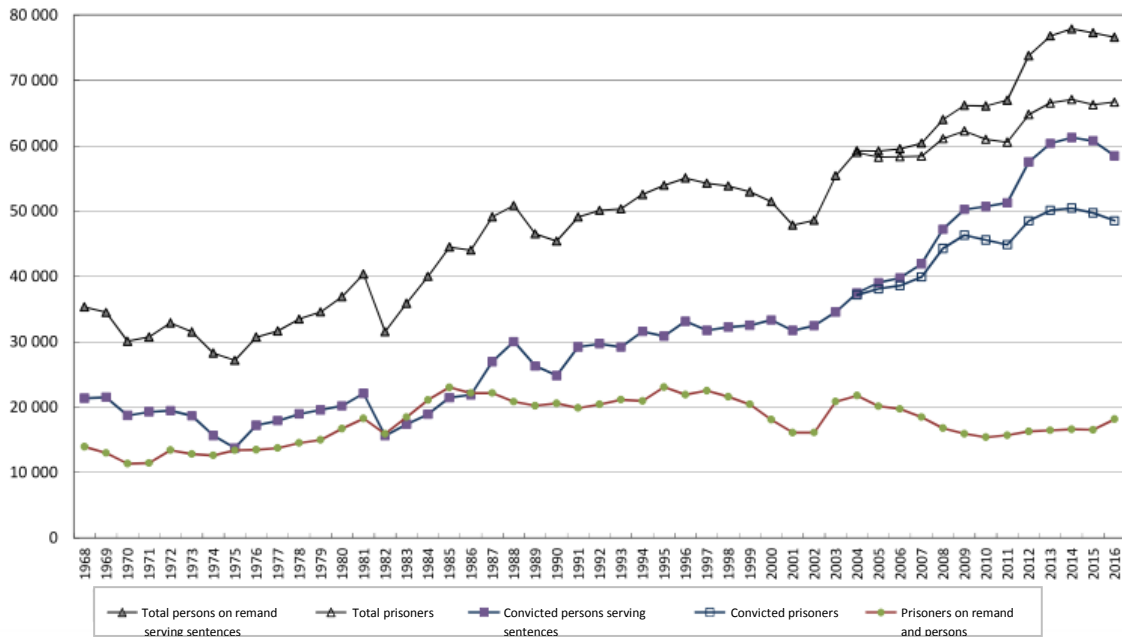
<sup>49</sup> Statistical series available for 2014 on the Ministry of Justice website at: <http://www.justice.gouv.fr/prison-et-reinsertion-10036/les-chiffres-clefs-10041/series-statistiques-des-personnes-placees-sous-main-de-justice-26147.html>

<sup>50</sup> This report is available online: <http://www.justice.gouv.fr/le-garde-des-sceaux-10016/rapport-sur-la-detention-provisoire-29547.html>

## 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, France and its overseas territories (progressive inclusion of French overseas territories as from 1990, completed in 2003).



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.

Comment: Over the past 40 years, the number of prisoners sentenced has grown steadily. The growth profile of the number of "remand" (untried) prisoners (detained before final judgement) is different: stable between 1985 and 1997, it declined until 2010 (before sharply picking up again between 2002 and 2004). Then it climbed steadily before shooting up again through 2016 while the number of convicted prisoners is tending to stagnate. Although no immediate explanation is forthcoming for this increase, the 2015-2016 report of the Temporary Detention Surveillance Committee interestingly ties it in with the November 2015 terror attacks and the impact on judicial practice of the state of emergency that was subsequently introduced. The increase observed does not therefore describe an increase in placements in detention for acts of terrorism (these do not exceed more than a few hundred since the state of emergency was established) but the increased reluctance on the part of judges to release the persons concerned who present similar profiles to persons implicated in this type of case. On this point, see the Temporary Detention Surveillance Committee, *2015-2016 Report*, Paris, CSDP, 2016, pp. 27 and after.

Distribution of Convicted Persons according to the Duration of the Sentence being served (including adjusted sentencing without accommodation)

Source: Quarterly Statistics of the Population dealt with in Penal Institutions, French Ministry of Justice, Prisons Administration Department, PMJ5.

Field: all persons imprisoned; 1970-1980, penal institutions in Mainland France, France and its overseas territories 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	1 to less than 3 years	3 to less than 5 years	5 years and more	All convicted prisoners	Less than 1 year	1 to less than 3 years	3 to less than 5 years	5 years and more
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%
2015	22,078	17,583	7,122	13,959	60,742	36.3%	28.9%	11.7%	23%

**Note:** For the reason indicated previously, the series presented here could not be updated for 2016.

For the previous years, this analysis of those sentenced includes those whose sentence has been adjusted, without accommodation. On 1 January 2015, out of the 60,742 sentenced to imprisonment, 12,689 were not detained under adjusted sentences and 2,659 were in day parole or placed in external accommodation. Therefore 45,394 of those sentenced were detained without adjustment of sentence: the analysis of this group by the quantum of sentence being carried out is not shown by this statistical source.

**Comment:** 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 adjustment of short sentences (firstly less than one year and then less than two years) follows 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:** "L'aménagement des peines : compter autrement ? Perspectives de long terme", (Adjustment of sentences: another way of counting? Long-term outlook) *Criminocorpus*, 2013, (<http://criminocorpus.revues.org/2477>).



## 1.6 Incarceration densities and over-occupation of penal institutions

Statistical data used by prison authorities, total number of prisoners at any given time and operational capacity of institutions, enable 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 – 118 on 1 December 2016 – has no great significance as the indicator varies a great deal according to the type of institution: 91 for detention centres and detention centre wings, 72 for long-stay prisons and long-stay prison wings, 66 for institutions for minors, whilst for remand prisons and remand prison wings the average density was 141.

Additionally this average by type of institution includes variations within each category:

- of the 94 sentencing institutions, only 15 had a density higher than 100, including 5 detention centre wings in overseas territories and 6 open prisons (4) and centres for adjusted sentences (2) in Ile-de-France. In Mainland France this over-occupation concerned 928 detainees.
- of the 131 remand prisons and remand prison wings, 18 had a density lower than or equal to 100 and 112 had a density greater than 100, of which 41 had a density higher than 150. Four remand prisons and remand prison wings exceeded 200, i.e. a population of prisoners more than double the number of operational places (two in mainland 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 (+ 2,008 places between 1 January 2005 and 1 January 2015) was less than that of the number of prisoners (+3,742) and density is therefore higher in 2015 than in 2005.

Over-occupation of an institution has consequences for all prisoners in it, even if some cells have normal occupation (new arrivals wing, solitary confinement wing, etc.). It is therefore relevant to note the proportion of prisoners based on the percentage of occupation of the remand prison where they are. On 1 January 2015, the majority were affected by this situation of over-occupation (65%); a half of detainees in remand prisons or remand prison wings were in institutions where the density was greater than or equal to 150.

**Reference:** "Statistiques pénitentiaires et parc carcéral, entre désencombrement et sur-occupation (1996-2012)" ("Prison statistics and total incarceration, between clearance and over occupation (1996-2012)"), *Criminocorpus*, 2014 (<http://criminocorpus.revues.org/2734>).

## 1.7 Distribution of prisoners in remand prisons by institution density

Source: Numbers, monthly statistics of persons imprisoned (DAP-PMJ5), DAP-EMS1, operational places.

Field: France and its overseas territories, remand prisons and remand prison wings, prisoners.

Remand on 01/01	Total		Density > 100		Density > 120		Density > 150		Density > 200		Number of operational places
	Number of prisoners	%	Number of prisoners	Share of total %	Number of prisoners	Share of total %	Number of prisoners	Share of total %	Number of prisoners	Share of total %	
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
2015	44,805	100	41,675	93%	33,915	76%	17,850	40%	1,092	2%	33,776
2016	47,152	100	30,609	65%	26,896	57%	23,667	50%	1469	3%	33,369

## 2. Compulsory committal to psychiatric hospitalisation

### 2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2006 to 2014

Source: DREES. SAE, (“Annual Statistics on Health Institutions”), table Q9.2.

Field: All institutions, Mainland France and French overseas departments.

#### *Days of hospitalisation according to the type of measure:*

	Hospitalisation at the request of a third party (HDT) since the Act dated 5/07/2011, Committal for psychiatric treatment at the request of a third party (ASPDT)	Hospitalisation by court order (HO) (Art. L.3213-1 and L.3213-2) since the Act dated 5/07/2011, Committal for psychiatric treatment at the request of a representative of the State (ASPDRE)	Psychiatric care for imminent danger	Hospitalisation by court order / ASPDRE according to Art. 122-1 of the CPP and Article L3213-7 of the CSP	Hospitalisation by judicial court order according to Article 706-135 of the CPP	Provisional Committal Order	Hospitalisation according to Art. D.398 of the CPP (prisoners)
2006	1,638,929	756,120		56,477		22,929	19,145
2007	2,167,195	910,127		59,844		31,629	26,689
2008	2,298,410	1,000,859		75,409	6,705	13,214	39,483
2009	2,490,930	1,083,025		104,400	18,256	14,837	48,439
2010	2,684,736	1,177,286		125,114	9,572	13,342	47,492
2011	2,520,930	1,062,486		124,181	21,950	14,772	46,709
2012	2,108,552	964,889	261,119	145,635		20,982	58,655
2013	2,067,990	977,127	480,950	198,222		16,439	85,029
2014	2,003,193	996,282	562,117	138,441		16,322	58,832
2015	2,031,820	1,013,861	617,592	140,831		17,438	69,019

*Number of patients according to the type of measure:*

	Hospitalisation at the request of a third party (HDT) since the Act dated 5/07/2011, Committal for psychiatric treatment at the request of a third party (ASPDT)	Hospitalisation by court order (HO) (art. L.3213-1 and L.3213-2) since the Act dated 5/07/2011, Committal for psychiatric treatment at the request of a representative of the State (ASPDRE)	Psychiatric care for imminent danger	Hospitalisation by court order / ASPDRE according to Art. 122-1 of the CPP and Article L3213-7 of the CSP	Hospitalisation by judicial court order according to Article 706-135 of the CPP	Provisional Committal Order	Hospitalisation according to Art. D.398 of the CPP (prisoners)
2006	43,957	10,578		221		518	830
2007	53,788	13,783		353		654	1,035
2008	55,230	13,430		453	103	396	1,489
2009	62,155	15,570		589	38	371	1,883
2010	63,752	15,451		707	68	370	2,028
2011	63,345	14,967		764	194	289	2,070
2012	58,619	14,594	10,913	1,076		571	4,033
2013	58,778	15,190	17,362	1,015		506	4,368
2014	57,244	15,405	22,489	1,033		496	4,191
2015	59,662	16,781	30,182	1,056		627	5,546

**Note:** This year, as last year, we have used the data published by the SAE (Annual Statistics of Health Facilities), an annual administrative survey carried out by the DREES with all health institutions, but which has included a specific section dedicated to psychiatry since 2006. Unlike other psychiatry-related sources (of which there are many but they are not all equally accessible: RIM-P, Rapsy, Hopsy or figures of the Regional Commissions of psychiatric hospitals)<sup>51</sup>, this source has the advantage of showing recent data (available every year on the previous year), and being relatively comprehensive. Nevertheless, it has several drawbacks that must be kept in mind: the recording of the number of days of hospitalisation by the SAE takes into account only full days of hospitalisation, and excludes preliminary discharges that the RIM-P would have allowed distinguishing. Similarly, the SAE does not allow monitoring patients individually, also unlike the RIM-P, which tracks individuals using their national identifier. The same patient, treated in multiple institutions during the year, will therefore be recorded several times. Finally, the recording of entries and the adopted measures has been subject to several changes in definition and calculation method since 2010, which is why we have only shown the number of days and patients here.

The second limit relates to the redefinition of hospitalisation measures by the Law dated 5 July 2011, the institution of which especially created the category of hospitalisation for imminent danger, which added to hospitalisation on the request of a third party and hospitalisation on court order (which

<sup>51</sup> For a more detailed presentation of these sources, reference will be made to the 2015 report and references given at the end of this section.

is today known as admission to psychiatric treatment on the request of a State representative, see below). This new category-based classification has therefore made year-to-year comparison difficult.

**Comment:** Similar to the previous years, the new category for hospitalisation for imminent danger seems to "bite into" (statistically speaking) hospitalisation on request of third parties (HDT) and hospitalisation on a court order (by decision of a State representative next - HSPDRE). The three variables rose in tandem in 2015, with HDTs remaining below the figures prior to the 2011 reform, while the HSPDRE are rising. The hospitalisation of persons deemed to be not criminally responsible or of detainees is continuing the upward trend already noted for the previous years. To conclude, the figures of the SAE are continuing along a downward trend in the total number of days over the long term (4,057,542 in 2010 versus 3,890,561 in 2015) with, nevertheless, an adjustment in 2015 compared with previous years (in 2013 and 2014, the total number of days rose to 3,825,757 and 3,775,187 respectively).

The total number of patients still seems to be rising, from 82,376 in 2010 to 100,858 in 2014 and 113,854 in 2015, but these figures should be considered with caution, as there is a possibility of the same patient being counted multiple times, as explained earlier.

Translated into the average number of those present for a given day for treatment without consent, data for 2015 (total number of days divided by 365) indicates a little more than 10,000 patients.

#### **References:**

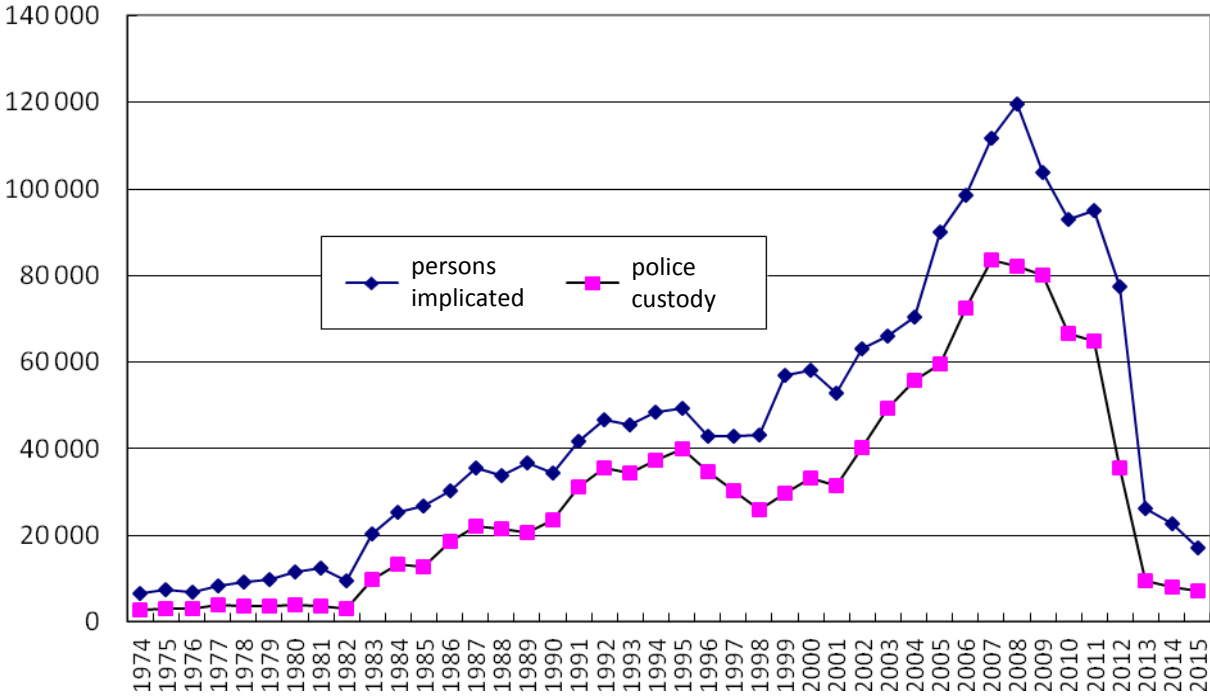
Delphine Moreau, 2015, *Contraire pour soigner ? Les tensions normatives et institutionnelles de l'intervention psychiatrique après l'asile (Forced into treatment? The prescriptive and institutional tensions of psychiatric intervention after granting asylum)*. Paris: Thesis by the EHESS.

Magali Coldefy, Clément Nestrigue and Zeynep Or, 2012, *Etude de faisabilité sur la diversité des pratiques en psychiatrie (Feasibility study on the diversity of practices in psychiatry)*, Paris, Irdes.

### 3. Administrative detention

#### 3.1 Number of persons implicated in offences by the immigration department and number of custody measures

Source: Etat 4001, Ministry of the Interior.



**Note:** The implementation of Act no. 2012-1560 dated 31 December 2012 relating to the detention for verification of the rights of residence was anticipated in 2012 with a sharp decrease in the number of persons accused and custody measures. In 2013 and 2014, these can no longer simply concern illegal immigration.

**Comment:** The CGLPL report for 2009 (pp 263-267) described how the treatment of illegal immigrants was derived by stages from the criminal process. At first, the criminal process remained limited to the policing level with a massive use of placing people in custody. This way of handling the problem was the basis, in 2007- 2008, for one placement in police custody out of seven. After the general decrease in police custody and then the application of the Act dated 31 December 2012, following the Order by the Court of Cassation dated 5 June, deeming that simple illegal immigration could not justify placing a person in custody, the restriction of liberty took the form of detention for administrative verifications (approximately 30,000 in 2013 according to a communiqué from the Minister of the Interior dated 31/01/2014). In 2015, the police custody measures represented on this graph and indicated in Table 1.3 (7,262 out of 17,008 accused) are related to other violations 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 the deportation of foreign nationals (2002-2013)

Source: Annual Reports of the French Inter-ministerial Committee for the Management of Immigration (CICI), Central department of the French border police (DCPAF).

Field: Mainland France

Year	Measures	ITF	APRF	OQTF	APRF + OQTF	Deportation order	Readmission	Forced deportations (sub-total)	Voluntary returns (aided)	Total deportations
2002	pronounced	6,198	42,485	-	42,485	441		49,124		49,124
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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
	executed	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%		
2013	pronounced						6283	97,204		97,204
	executed			n.d.			6,038	22,753	4,328	27,081
	% enforcement							23.4%		
2014	pronounced						6178	96,229		96,229
	executed			n.d.			5314	21,489	2930	24,419
	% enforcement							22.3%		

**ITF:** banishment from French territory (interdiction du territoire français, principal or additional measure pronounced by criminal courts)

**APRF:** prefectural order to take back to the border (arrêté préfectoral de reconduite à la frontière)

**OQTF:** order to leave French territory (ordre de quitter le territoire français, administrative measure).

**Note:** The measures implemented during one year may have been pronounced during an earlier year. This explains the enforcement rate of 205.5% for APRF in 2012.

This table has been drawn up from CICI reports for 2003 to 2014. Their official presentation emphasises the rates of enforcement of deportation measures and any changes in them. From the 4th 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 indicated in the annual report for 2006 (23,831) therefore includes, in addition to 22,412 measures of various types pronounced and executed, 1,419 voluntary returns. Then these "voluntary returns" were counted as being "aided returns", and the annual report was not very clear on the contents of this section. This method of counting, for 2008 and the following years, showed a "result" meeting the objective of 30,000 deportations. The table shown here contains an additional column ("forced deportations", which is in bold), which excludes voluntary or aided returns.

At a press conference (31 January 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. The three latest reports drafted under the provisions of Article L.111-10 of the Code for Entry and Residence of Foreigners and Right of Asylum (10th report for 2012 and published in April 2014, 11th report for 2013 and published in April 2015, and lastly the 12th report on 2014, published in April 2016) have included 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 (above table) and therefore growth for 2011 is lower (19,328). For 2014, the records also included "forced returns" and "aided returns" under forced deportations, which allowed obtaining the figure of 21,489.

Finally, and just like the year before, the 12th report showing the figures for 2014 no longer differentiates the deportation measures according to the type of measure (OQTF, APRF, ITF or deportation order), and instead shows a general presentation that only differentiates between "unaided" and "aided" deportations. Only readmission measures and aided voluntary returns are still shown separately.

Comment: According to a document from the National Assembly (Impact study in support of bill 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 to the greater or lesser number of measures pronounced.



### 3.3 Detention centres for illegal immigrants (mainland France). Theoretical capacity, number of committals, average duration of detention, outcome of detention

Source: CICI annual reports, Senate (in italics, please see note).

Field: Mainland France

Year	Theoretical capacity	Number of committals	Accompanying minors placed in CRA	Average occupancy rate	Average duration of detention (in days)	Prisoners 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	<i>16,909</i>	<i>52%</i>
2007	1,691	35,246		76%	10.5	<i>15,170</i>	<i>43%</i>
2008	1,515	34,592		68%	10.3	<i>14,411</i>	<i>42%</i>
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	1571	24,176	41	48.3%	11.9		41%
2014	1571	25,018	42	52.7%	12.1		-

**Note:** the annual reports of the CICI from 2003 to 2014 allow the first five columns of the table to be presented. The column for accompanying minors was not present before 2011. The last two columns relating to the result of placing and holding in administrative detention centres do not come from the same source. A report of the Senate Finance Committee dated 3 July 2009, following up on the task carried out by the Cour des Comptes, described, for 2006-2008, the number of people in detention who were finally sent back, excluding voluntary returns. The proportion with respect to the number of committals can therefore be calculated (last column). The 7th CICI report dated March 2011 then provided this proportion for 2009 (page 77). The following report gave a rate of 42% for CRAs

possessing inter-service deportation centres (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. These figures nevertheless remain linked to sporadic assessments of detention, and have unfortunately not been updated for 2014.

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 France and its overseas territories (CICI reports for 2009, 2010 and 2011) became in later editions (2011 and 2012) that for Mainland France, whilst the previous edition (27,699 placements) became that for French overseas *départements*.

**Comment:** 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 2014, calculating the occupancy rate gives an average total number of 817 prisoners, and a calculation by average stay in detention gives a total number of 828 prisoners. These two methods of calculation show an increase in these prisoner numbers from 2003 (496 or 432 dependent upon the method of estimating) to 2007 (1,285/1,014) and then a drop to 2011 (811/585). The same calculation showed an uncertain result for 2013 (754/795), the first indicating a fall and the second a rise, but the 2014 data showed an increase whatever the calculation method chosen.

Relatively little use continues to be made of house arrest, an alternative to detention introduced in 2011: 668 measures in 2012 and 1,258 in 2013 (source: AN impact study of the bill dated 23 July 2014).



## Appendix 1

### Map of the institutions and *départements* inspected in 2016

Insert here the map entitled "CARTE\_dptmts visités en 2016\_SIG".

## Appendix 2

### List of institutions visited in 2016

#### Penal institutions

- Ecrouves detention centre
- Eysses detention centre
- Melun detention centre
- Saint-Mihiel detention centre
- Toul detention centre
- Aix-Luynes prison
- Les Baumettes prison in Marseille (women's remand prison)
- Fresnes prison (men's remand prison)
- Lannemezan prison
- Majicavo prison (Mayotte)
- Orléans-Saran prison
- Briey open prison
- Haubourdin open prison
- Orvault prison for minors
- Brest remand prison
- Cherbourg remand prison
- Coutances remand prison
- Gap remand prison
- Grenoble-Varces remand prison
- Nanterre remand prison
- Nîmes remand prison
- Nevers remand prison
- La Roche-sur-Yon remand prison
- Rouen remand prison

#### Healthcare institutions

- La Haute-Marne hospital centre in Saint-Dizier
- Théophile Roussel hospital centre in Montesson
- Maison blanche hospital centre (Avron site) in Paris
- Edouard Toulouse hospital centre in Marseille
- Mamoudzou hospital centre (psychiatry sectors and secure rooms)
- Novillars specialist hospital centre
- Plouguernevel hospital centre
- Sainte-Marie Puy hospital centre
- Saint-Alban-sur-Limagnole specialist hospital centre
- Paul Guiraud hospital centre in Villejuif
- Toulon hospital centre
- Ain psychotherapy centre in Bourg-en-Bresse
- Orne psychotherapy centre in Alençon
- Saint-Avé public mental health institution
- Val de Saint-Venant public mental health institution
- Psychiatry department of Roanne hospital centre
- Psychiatry department of Coulommiers hospital centre
- Psychiatry department of Strasbourg teaching hospital
- Child psychiatry department of Guillaume Régnier hospital centre in Rennes
- Psychiatric unit of Brive hospital centre
- Psychiatric units of Caen teaching hospital
- Psychiatric units of Nanterre hospital care and reception centre (CASH);
- Psychiatric units of Corentin Celton teaching hospital in Issy-les-Moulineaux
- Lyon specially-equipped hospitalisation unit (UHSA)
- Seclin UHSA
- Villejuif UHSA

- Moisselles public mental health institution
- Badinter hospitalisation unit for detained persons at Rouvray hospital centre in Sotteville-lès-Rouen

**Secure rooms** of the hospital centres of Bar-le-Duc, Brest, Châteauroux, Cherbourg, Grenoble, Lannemezan, Melun, Mont-de-Marsan, Nanterre, Nantes, Nevers, la Roche-sur-Yon, Rouen, Toul and Villeneuve-sur-Lot.

### Juvenile detention centres

- Saint-Venant juvenile detention centre
- Valence juvenile detention centre
- Saint-Jean-la-Bussière juvenile detention centre
- Beauvais juvenile detention centre
- Saverne juvenile detention centre
- Soudaine juvenile detention centre
- Nîmes juvenile detention centre

### Detention centres and facilities for illegal immigrants, waiting areas

- Pamandzi detention centre for illegal immigrants
- Dzaoudzi detention facility for illegal immigrants
- Sada detention facility for illegal immigrants
- Petite Terre waiting area
- Beauvais waiting area
- Operation to dismantle the Calais Jungle camp: Detention centre for illegal immigrants and police station in Coquelles

### Custody and customs detention facilities

**Police stations:** Beauvais, Brest, Chatenay-Malabry, Clamart, Hérouville-Saint Clair, Hyères, l'Hay-les-Roses, Mamoudzou, Maison-Laffitte, Marly-le-Roi, Mende, Moissy-Cramayel, Montélimar, Orvault, 10<sup>th</sup> arr. in Paris, 11<sup>th</sup> arr. in Paris, 20<sup>th</sup> arr. in Paris, Paris 13 (BRIF), Saint-Dizier, Toul, Valence, Villeneuve-sur-Lot, Roissy-Charles-de-Gaulle Airport (PAF).

**Gendarmerie brigades:** Aix, Auray, Beauvais, Cely-en-Bière, Châteaudun, Corlay, Créteil, Domont, Fourchambault, Illiers-Combray, Lannemezan, Ligny-en-Barrois, Melun, Monistrol, Ouistreham, Pamandzi, 16<sup>th</sup> arr. in Paris, Rostrenen, Roulans, Sada, Saint-Tropez, Sassenage, Thizy-les-Bourgs, Toul, Wassy, Yssingeaux.

**Customs:** Gennevilliers interior surveillance brigade and Marseille national judicial customs department.

### Court cells and jails

**Courts of first instance** of Aix-en-Provence, Beauvais, Châteauroux, La Roche-sur-Yon, Mende, Mont-de-Marsan, Vannes and Valence.

**Courts of appeal** of Besançon and Aix-en-Provence.



## Appendix 3

### Summary table of the principal recommendations of the CGLPL for the year 2016<sup>52</sup>

(see table on following pages)

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<sup>52</sup>The recommendations resulting from this report are in no way exclusive of those set out by the CGLPL in its opinions and recommendations during 2016, the contents of which are accessible on the institution's website [www.cglpl.fr](http://www.cglpl.fr).



Place concerned	Topic	Specific issue	Recommendation	Chapter
<b>All places of deprivation of liberty</b>	Supervision of the CGLPL's general recommendations		The CGLPL recommends setting up, within each ministry concerned, official supervision of the action taken subsequent to its recommendations, including those expressed in the institution's annual reports, clearly identifying the recommendations upon which the Government does not intend to act.	<b>3</b>
	Use of video conferencing		Given the observed extended use of video conferencing, the CGLPL draws attention to its previous recommendations, according to which the use of such means may only be voluntary, subject to a decision that is always reversible by the judge with the final say and subject to the consent of the person concerned. It particularly points out that the use of video conferencing may not alter the public or confidential nature of hearings or affect lawyer-client privilege.	<b>3</b>
	Treatment of women	Equal treatment	Under no circumstances must imprisonment constitute an obstacle to application of the gender equality principle proclaimed in the preamble of the 1946 Constitution. Women and men must be treated equally inside places of deprivation of liberty, a requirement which must not, for all that, prevent certain needs specific to women from being taken into account.	<b>2</b>
		Searches	The CGLPL stresses, for all places of deprivation of liberty, that respect for human dignity prevents any possibility of conducting a search of women's sanitary towels.	<b>2</b>
		Access to psychiatric healthcare	Women also find it difficult to access specialist structures equipped for their needs (access to psychiatric care in particular) and specific situations (restricted access to the day-parole regime). As such, to ensure that men and women have equal access to psychiatric care, regional mental health departments for prisons (SMPR) and units for difficult psychiatric patients (UMDs) must all be able to accommodate women. The same applies for wings/centres for adjusted sentences and open wings/prisons, the moment there is a strict framework governing the way in which prisoners are accommodated and treated.	<b>2</b>
	<b>Penal institutions</b>	Prison overcrowding	Building of new institutions	Concerning the problem of overcrowding, and its consequences in terms of individual cell allocation, the CGLPL is of the opinion that developing real estate projects alone cannot represent an effective solution.
Alternatives to incarceration			Establish a more dynamic policy bearing on sentence adjustments and alternatives to prison, so as to help reverse the trend of prison overcrowding and encourage rehabilitation – a key factor in preventing recidivism.	<b>1</b>
			Conduct a systematic policy aimed at looking for accommodation options tailored to people handed out very short prison sentences and prisoners whose advanced age or failing health is incompatible with being kept in detention.	<b>1</b>
<b>Penal</b>	Prison overcrowding	Prison regulation	Incorporate into the legal system a prison regulation mechanism, enabling account to be taken of prisons' occupancy capacities in legal decisions.	<b>1</b>

<b>institutions</b>	Accommodation conditions	Maintenance and renovation	Guarantee that existing institutions will be brought up to standard and have maintenance set up with identified means and a monitoring system.	<b>1</b>
	Security	Searches	Guarantee the exceptional nature of full-body searches by providing effective training and supervision for all prison administration staff as regards complying with the grounds and conditions for carrying out searches; ensure the strict interpretation of Article 57, Paragraph 2, of the Prison Act through tight scrutiny by the supervisory authorities, administrative inspectorates and judicial authorities.	<b>1</b>
		Violence	confirm and organise the role of health professionals working in prisons in the screening of violence, pursuant to the provisions of the European prison rules.	<b>1</b>
		CCTV surveillance	The CGLPL reiterates its opposition to the principle of video surveillance in cells. That said, if the consensus is that this cannot be avoided, under exceptional circumstances, then at the very least its legal supervision must be bolstered. What matters is to keep this measure exceptional, by providing that it can only be taken with a view to protecting a prisoner rather than to meeting the expectations of public opinion, that it be subject to regular scrutiny and that it be limited to a strict timescale. Video surveillance must not replace human presence around the person being protected.	<b>3</b>
	Daily life	Information technology (IT)	Take measures to ease the economic and technical obstacles to the acquisition of computer hardware and to guarantee that prisoners' right to own their equipment and data is respected solely within the limits imposed by the security of goods and persons, respect of public order and victims' rights.	<b>3</b>
		Night rounds	The Chief Inspector believes that waking prisoners up several times at night, for long periods sometimes, is likely to violate their rights to physical integrity and dignity, and will constitute inhuman and degrading treatment, all the more so as other measures (checking of the bars, allocation of cells close to the guard posts, etc.) are already implemented simultaneously, to ensure the security of the institution and prevent jailbreaks.	<b>4</b>
		Access to personal documents	Take every appropriate measure to ensure that each prisoner has immediate, unhampered and traceable access to the documents they will have filed with the registry; failing that, any requirement to file such documents should be scrapped. Bring the cell search policy into line with the European prison rules.	<b>3</b>
<b>Penal institutions</b>	Daily life	Access to personal documents	Cease any checking of documents in a prisoner's possession that is not justified by an explicit legislative provision, and repeal any regulatory provision to the contrary.	<b>3</b>
		Legal information and advice	Compile, in the very short term, a collection of legislation and regulations along with circulars that are applicable to prisoners, and keep this up-to-date.	<b>3</b>
	Maintaining family ties	Visiting rooms	People committed to a solitary confinement wing must be able to benefit from family visiting rooms and/or family living units. Refusing to grant access to a family visiting room so as to persuade a detained person to leave a solitary confinement wing is in	<b>4</b>

			breach of the right to maintain family ties. The CGLPL also recommends that family visiting room requests made by people placed in the disciplinary wing not be systematically rejected, but rather be subject to consideration on a case-by-case basis.	
	Foreign prisoners	Delivery and renewal of residence permits	Untried prisoners and convicted prisoners serving sentences of under three months are not able to benefit from the scheme whereby foreign nationals can renew their residence permit by post, pursuant to an interministerial circular dated 25 March 2013. The Chief Inspector considers this exclusion to constitute unequal treatment between prisoners as it prevents people whose residence permits expire at the start of their imprisonment to undertake the necessary formalities. They must thus make their application upon release, as if it were their first application, with a great deal more red tape involved.	4
	Life sentences		The Chief Inspector is concerned by the creation of a new category of life sentence by the Act of 3 June 2016. The procedure set up for lifting the unconditional imprisonment period applied to such sentences is specific and extremely restrictive. It may only be lifted under exceptional circumstances and subject to five strict conditions – not least that the prisoner has served at least thirty years. This sentence therefore resembles de facto a whole-life order and opens France up to condemnation on the part of the European Court of Human Rights, since undergoing mandatory sentencing de jure or de facto amounts to inhuman and degrading treatment.	4
	External movements on legal and medical grounds, transfers		The Chief Inspector has observed persistent dithering over the enforcement of legal decisions concerning transfers, authorisations for escorted leave and external movements for medical reasons. The prison administration must devote sufficient staff numbers to these fundamental missions for respecting prisoners' rights. Moreover, it appears judicious for the gendarmerie and police forces to be able to reinforce prison administration staff numbers where there are shortages.	4
<b>Penal institutions</b>	Mothers imprisoned with their young children		The CGLPL duly notes the intentions to amend the regulations on the conditions for accommodating children allowed to stay with their imprisoned mother. It also notes that the planned facilities in new institutions will comply with its recommendations. It will see that these intentions are effective and, despite the physical difficulties this poses, recommends that the "nursery" wings of existing institutions be brought into line with the recommendations expressed in the opinion of 8 August 2013.	3
	Treatment of women	Geographic location of institutions	The low number of women deprived of liberty should not justify their unequal distribution across the territory, which violates the right to maintain family ties. In this respect, the CGLPL recommends opening a "detention centre" wing for women in the South of France.	2

		Imprisoned minors	<p>The particular situation regarding female minors must be carefully considered, and equal treatment to boys ensured. In this respect, the CGLPL underlines the fact that imprisoning young girls in wings for adult women is illegal. They must be able to benefit from care arrangements within structures specially designed for minors.</p> <p>To the extent possible and according to the institution's layout, girls detained in prisons other than prisons for minors (EPM) must be imprisoned in "minor" wings in the same way as boys. On the other hand, their lodgings must abide by the single-sex principle, akin to what is intended in theory for juvenile detention centres and prisons for minors.</p>	2
		Access to healthcare	<p>The CGLPL underscores the fact that female prisoners must be able to access gynaecological care under the conditions set out in Article 46 of the Prison Act of 24 November 2009: "the quality and continuity of healthcare are guaranteed to prisoners in conditions that are equivalent to those that the rest of the population benefits from".</p>	2
			<p>Accordingly, the CGLPL stresses the need for strict compliance with the provisions set out in Article 52 of the Prison Act, which stipulate "Any delivery or gynaecological examination must be performed without restraints and without the presence of the prison staff, in order to guarantee the right to respect of the dignity of detained women".</p>	2
		Allowing men and women to mix in prisons and do joint activities	<p>In light of the observations made, it would appear that the rule whereby women must not come across male prisoners or male warders – with the exception of supervisors - is likely to undermine the equality of treatment to which they are entitled in terms of access to work, activities and health.</p> <p>The CGLPL recommends authorising men and women to cross paths during their movements within prisons – under careful surveillance – so as to foster equal access for prisoners to communal areas. It therefore recommends that surveillance of women by male staff members be possible.</p>	2
<b>Penal institutions</b>	Treatment of women	Allowing men and women to mix in prisons and do joint activities	<p>The CGLPL recommends phasing in joint activities for men and women within prisons, in conjunction with the provision of clear, systematic information on the mixed nature of the activities on offer and with efforts to obtain participants' consent. It suggests deleting the words "on an exceptional basis" from Article 28 of the Prison Act and rephrasing it as follows "subject to maintaining order and safety within institutions, activities may be organised for both sexes to participate in".</p>	2
			<p>As part of its deliberations on allowing men and women to mix in prisons, the CGLPL took a particular interest in a trial of a workshop on a single male-female concession, the objective of which was to allow equal treatment between men and women. It found that the male-female workshop achieved its aims: providing permanent, sufficient work and a return to normalcy. The investment of the management and supervisors in the workshop's implementation was highlighted. Finally, the Chief Inspector recommended that the trial be continued and expanded, that the projects in the pipeline</p>	2

			be put into practice and that substantive gender diversity be phased in within this single workshop for men and women.	
		Daily life	In prisons, self esteem must be encouraged; it must be possible for women to take care over their physical appearance. If there is not a broad choice in canteens, women must be allowed to receive hygiene products and makeup via the visiting rooms.	2
<b>Healthcare institutions</b>	Freedom to come and go		Enforce free movement of patients, with any restriction to the freedom to come and go expressly justified by the patient's clinical condition.	2
	Freedom to come and go		Encourage discussions within each institution on how patients' freedom to come and go could be extended and on how the restrictions placed on their day-to-day comfort (use of mobile phones, contact with family members, outings, Internet access and so on) can be eased so that only those restrictions that are justified by care or security requirements associated with a patient's clinical condition are maintained.	1
	Emergency recommendations concerning the Ain psychotherapy centre		The CGLPL notes with satisfaction the improvements announced by the Government and by the management of the Ain psychotherapy centre. It recommends that the Government do its utmost to ensure that the recommendations issued during this visit are brought to the attention of all mental health institutions and that, during inspections and audits conducted in these institutions, any similar deviations are sought.	2
	Solitary confinement and restraint	General rules	Adopt an implementing circular for the new provisions of Article L.3222-5-1 of the Public Health Code with the utmost urgency, in order to enable traceability of any solitary confinement and restraint measure taken, in whatever form it may take, and to expedite the definition and assessment of policies aimed at limiting these practices with account taken of the recommendations set out in the CGLPL's report on solitary confinement and restraint in mental health institutions.	1
	Principles		Everything must be tried in order to calm the person in crisis down with alternative approaches to a physical restraint measure. If, as a last resort, the decision to use a seclusion room or restraint must be taken, the methods for implementing this must guarantee the greatest respect of the patients' rights.	2
			Solitary confinement and restraint within the patient's room must be prohibited in particular with regard to the risk of this becoming common-place and there being a lack of traceability in terms of this measure.	2
			The requirement to wear pyjamas and not have any personal effects in the seclusion room should not be systematic but must be clinically justified.	2
			Solitary confinement practices must no longer be systematic, whether for detained people, for patients arriving at a care unit or in any other situation.	2
	Traceability		The record provided for by Article L.3222-5-1 of the Public Health Code must be filled in every time a solitary confinement or restraint measure is implemented, no matter where the person concerned is being treated.	2

<b>Healthcare institutions</b>	Solitary confinement and restraint <sup>53</sup>		Any decision to use solitary confinement or restraint must be documented in the patient's file: the institution must be able to provide proof of the fact the measure was taken as a last resort.	2
			The information collected by the institutions must be consolidated regionally and nationally, which requires the creation of a coherent and integrated information system.	2
		Patients' rights	The person concerned must be informed the moment a decision to use solitary confinement or restraint has been made and given written material specifying their rights and the treatment and support methods brought about by this measure. This information must also be displayed in the seclusion room.	2
			The means for appealing against the solitary confinement or restraint measure must be stipulated within each institution and displayed in all seclusion rooms as well as on the written material notifying rights which is handed out to the patient. They must be communicated to the trusted person, the parents of a minor or to any relative informed at the patient's request.	2
		Medical decision	The medical decision to use a solitary confinement or restraint measure can only be taken after an actual psychiatric medical examination of the person, taking into account, as far as possible, the opinion of the members of the nursing staff team.	2
		Medical decision	The decision must be justified on the basis of the "suitable, necessary and proportionate" nature of the measure; information on the patient's clinical condition at the time of the decision must be clearly presented.	2
			The decision must specify what had previously been tried in vain in order to justify that it is taken as a last resort.	2
			As soon as the measure has been taken, the health professionals involved in the treatment of the patient concerned must search, as part of a multidisciplinary framework, for ways of bringing it to an end as soon as possible.	2
			No decision regarding physical restraint can be taken in anticipation or with the indication "if needed".	2
		Monitoring and surveillance	The duration of the physical restraint measure must be as short as possible and should not exceed the crisis situation; in any case, prolonging the solitary confinement measure over 24 hours and the restraint measure over 12 hours should not be possible, without a new, equally justified, decision being made, with the reasons set out as before.	2

<sup>53</sup> These recommendations come from the thematic report entitled "Isolement et contention dans les établissements de santé mentale" (Solitary confinement and restraint in mental health institutions), Dalloz, 2016.

<b>Healthcare institutions</b>	Solitary confinement and restraint		A medical examination twice per day must be guaranteed for any person subjected to physical restraint.	2
			Stays in a seclusion room or the use of restraint must be regularly interrupted by short release periods in the open air; only exceptional circumstances can justify it being impossible to be released and thus must be explained.	2
		Physical conditions	The architecture of the seclusion rooms must guarantee suitable accommodation conditions in terms of, for example, surface area, light and access to water and washing facilities. The layout of these rooms must be conducive to calming patients down and enable high quality bedding to be provided with the possibility of lying down with head raised; it must enable the patient to sit and eat in dignified conditions and allow the patient to see a clock. Television and music equipment must be able to be used in these rooms in complete safety.	2
			Video-surveillance devices in seclusion rooms must be prohibited as they violate dignity and invade on privacy. In addition, these devices are not necessary if the nursing presence is adapted to the patient's condition.	2
			Anyone placed in a seclusion room or restrained must always have access to a call button which must be responded to immediately.	2
		Patients placed in seclusion rooms must be able to receive their visitors in respectful conditions.	2	
	Staff training	The development of medical and nursing research on preventive professional practices must be encouraged with the aim of reducing recourse to solitary confinement and restraint measures.	2	
	Staff training	Physician, nurses and team training, in particular on violence and the patients' fundamental rights, must be strengthened.	2	
		A postgraduate (third cycle) programme in treatment must be set up in order to enable nurses to develop recognised clinical expertise.	2	
	Solitary confinement and restraint	Prevention	Therapeutic and occupational activities must be developed within psychiatric departments in order to reduce boredom and tensions.	2
Patients must be informed of units' internal rules and code of conduct to avoid arbitrary situations which are likely to bring about at-risk situations.			2	
<b>Healthcare institutions</b>	Prevention	A nursing staff presence, adapted to the specificities of the treatment units and the patients hospitalised in these units, must be guaranteed.	2	
		Hospitalised prisoners	Best endeavours must be used to ensure that a detained person committed to a hospital unit does not see his or her detention rights being curtailed. This requires, on the one hand, ensuring continuity regarding his or her administrative situation so as to avoid any interruption in care (external relations, nominative accounts, sentence adjustments, etc.) and, on the other, hospital units with the necessary logistics (exercise space, visiting rooms, activities, canteen, etc.).	1

			In the very short term, adopt the necessary organisation and training measures to guarantee external movements, accommodation, consultation and health care for prisoners that are respectful of medical confidentiality and the dignity of prisoners cared for in hospital settings. The CGLPL stresses that these are measures with no financial impact and no budgetary considerations should therefore be cited to explain the delay.	3
<b>Detention centres for illegal immigrants</b>	Liberty and custody judge		Maintain a 48-hour timescale throughout national territory - including in Mayotte – for the presentation of people placed in administrative detention to the liberty and custody judge.	1
	Minors		The CGLPL stresses that everything possible must be done to avoid all imprisonment of children in detention centres for illegal immigrants and, especially, administrative detention facilities.	1
	Treatment of women		The CGLPL also recommends accommodating men and women within all detention centres for illegal immigrants (CRAs) across France.	2
	Access to medical records		After receiving a case concerning the difficulties that a prisoner had encountered to obtain communication of information in his medical record – particularly the opinion of the physician from the Regional Health Agency (ARS) – the Chief Inspector recommends amending the procedures in place so as to allow the actual communication to prisoners of medical reports concerning them.	4
<b>Juvenile detention centres</b>	Staff training		Implement training and audits as soon as possible to ensure the recent body of regulations concerning juvenile detention centres is fully grasped and applied.	1
<b>Custody facilities</b>	Security measures	Night monitoring of cells	No longer keep people in custody overnight in gendarmerie units that are not equipped to be able to provide the necessary conditions for acceptable accommodation and adequate surveillance. Accommodate them instead in a police or gendarmerie service with round-the-clock surveillance.	1
		Training of officers	Define and educate gendarmes and police officers in a clear and balanced doctrine on the use of security measures applied as regards people in custody and place these officers under an accountability system that is compatible with enforcement of this doctrine on a measured and individualised basis.	1
	Supervisory and judicial oversight		Ensure stringent supervisory and judicial oversight in the most inundated police services and monitoring of action taken following recommendations made during these inspections.	1
	Administrative detainment for verification of rights to residence		Use best endeavours to ensure that gendarmes and police officers responsible for foreigners, held for their right of residence to be checked, are aware of and apply the measures tailored to the situation of this category of people deprived of liberty.	1



	Women	Toiletries	In custody facilities, "hygiene kits" must contain sufficient amounts of feminine hygiene products.	2
		Confiscation of bras	Since its 2008 annual report, the CGLPL has not let up in its criticism of the practice whereby women placed in custody have their bra confiscated systematically, for it deems this to be a slight on the dignity of women in custody and out of proportion with the risk.	2
		Searches	Concerning custody, the CGLPL reiterates the recommendations it made in its 2011 annual report: "on the subject of searches, the principle according to which they may only be conducted by officers of the same sex is not always possible in practice where women are concerned [...] particularly because there are not enough female staff on the night shifts. Since this situation is the exclusive responsibility of the authorities, in such a case the decision must be made that no search of any kind (including security frisking) may be carried out".	2

# Appendix 4

## Supervision of the CGLPL's general recommendations

### 1. Recommendations concerning prisons

#### 1.1 Autonomy, dignity and integrity

- 1- Build small prisons that encourage autonomy on the part of prisoners, which have communal living areas (points of sale, common rooms, kitchens and areas for doing laundry) as well as exercise yards that are laid out better so as to allow for a range of activities to be practised and greater freedom of movement. Improve the effectiveness of cleaning and waste collection procedures.

The Minister of Justice stresses that, for a prison, architecture is much more than just a setting – it represents its whole reason for being. This should therefore lead to institutions being designed that are innovative in their architecture, size and operating methods. These subjects will be addressed during work on the prisons construction white paper. The Minister has given precedence to determining a prison doctrine so as to steer design work, aimed at defining both the purpose and instructions for use of a prison. Regarding architecture, institutions need to become more humane, reconnecting with the symbolic dimension of the republican prison; precedence must be given to design on a case-by-case basis, laid out to ensure good ventilation, with a specific institutional plan right from the outside; communal areas for socialising must be included; prison architecture needs to be designed for the day in detention and also play a part in improving the working conditions and, consequently, the quality of life of prison staff.

As for the operating methods, the constructive debates held on detention regimes during the "occupations seminar" which took place on 26 & 27 July 2016, organised within the prison administration with the trade union organisations, could thus be applied in the form of new architectural designs. Although these debates mainly focused on the organisational conditions in prisons (access to activities, role of staff in managing prisoners, etc.), they may also result in a new distribution of facilities (size of buildings, internal movements, number of activity rooms, etc.) depending on the extent to which prisoners in institutions will be expected to take responsibility. Thought is also to be given to the size of institutions.

The CGLPL duly notes these guidelines and upholds its recommendation.

- 2- Assign prisoners on the basis of their ability to access autonomy and extend the "prisoner-facilitators" initiative for welcoming new arrivals.

The Minister of Justice states that prisoners are assigned according to several criteria, including accessibility and maintaining family ties for example. A prisoner's autonomy and the layout of the institution are given as much consideration as possible to ensure normal detention for the person. Access to the Personal care allowance (APA) and Disability compensation benefit (PCH) helps to fund the work of a Home-based assistance service (SAAD) and thus lend a dependent prisoner assistance with day-to-day tasks (getting dressed, washing, going to bed, etc.). In order to enable prisoners to access such schemes, a partnership must be forged with *Département*-level councils, *Département*-level centres for disabled people (MDPHs) and SAADs.

According to a census drawn up on 7 September 2015, thirty-eight penal institutions were covered by an agreement with a SAAD. However, agreements with *Département*-level councils and MDPHs – which have to define prisoners' eligibility for and access to the APA and PCH – are not as common. Concerning care for dependent prisoners, it is also possible to access a Service for home-based nursing care (SSIAD). On 7 September 2015, fifteen penal institutions were covered by an agreement.

The CGLPL duly notes this information and recommends that all institutions likely to accommodate dependent prisoners draw up agreements with the local services who are competent for looking after them.

3- Foster access for people with reduced mobility by laying out facilities and developing suitable activities and by preferably assigning them within "open-door" regimes.

The Minister of Justice maintains that the accessibility of prisons is one of the key considerations in the management of prisoners who are dependent either on account of their advanced age or a disability. According to a census drawn up on 1 January 2013, few prisoners are considered to be dependent: there are 115 dependent elderly prisoners and 329 disabled prisoners.

And yet how they are managed is important, because prisons and living conditions in detention are hardly appropriate in their regard.

Penal institutions can be made more accessible by building cells specifically for people with reduced mobility (PRM) and laying out communal areas (approach ramps, benches in exercise yards, etc.). These measures are stipulated in the Ruling of 4 October 2010 on the accessibility of disabled persons in prisons during their construction, and they particularly provide for a minimum ratio of PRM cells. In addition to accessibility, better management of dependent prisoners can be achieved through access to appropriate care – the organisation of which is the responsibility of the Ministry of Social Affairs and Health (physiotherapy in particular) – and to dedicated social benefits for financing human assistance and the necessary technical aids (walking sticks, walkers, etc.).

To assist prison staff in carrying out these procedures, a kit on managing dependent prisoners, which contains a range of tools such as information sheets on improving the accessibility of institutions, social benefits, appeal or agreement templates, is currently being put together and will be complete by the end of the year for dissemination in early 2017.

The CGLPL duly notes these plans and stresses the need to adapt the detention regime for people with reduced mobility to their disability.

4- Allow foreign prisoners to keep up practices in line with the customs of their home country if these are compatible with maintaining order and security within institutions.

The Minister of Justice indicates that the overall management by Prison rehabilitation and probation services (SPIP) of foreign nationals is no different from that of other prisoners. And yet, several, more specific measures have been taken to assist them with their formalities and help them to understand any documents handed out.

1/ support from associations - Associations that assist foreigners work in most penal institutions: at a national level (La Cimade, la Ligue des droits de l'homme, etc.) as well as local level (a number of associations);

2/ the 157 legal access points - These provide assistance and guidance in foreign nationals' legal formalities;

3/ the provision of documents in prisoners' mother tongue - The guide "I am in detention" is handed out to all newly arrived prisoners, and is currently available in six foreign languages (English, Arabic, Spanish, Portuguese, Romanian and Russian). Likewise, the "Cimade" has also disseminated a guide in nine

languages (French, English, Arabic, Spanish, Italian, Mandarin, Portuguese, Romanian and Russian) to foreign prisoners. A practical guide for prison staff is currently being finalised;

4/ broadcasting information on the internal video channel - An induction film for non-French-speaking prisoners has been produced in partnership with the Fondation M6.;

5/ the question of renewing or obtaining the first residence permit (circular of 25 March 2013) is addressed by the signature of protocols between institutions, SPIP and prefectures for facilitating formalities.

The CGLPL duly notes these measures which concern information for foreign prisoners; it nevertheless upholds its recommendation on the need to enable these persons to keep up practices in line with those of their home country insofar as these are compatible with maintaining order and security within institutions.

5- Encourage individual management of hygiene needs by properly equipping cells (shower, wash basin and toilets), handing out necessary toiletries and detergent for clothes free of charge and respecting the privacy of wash areas.

The Minister of Justice highlights the measures taken in ageing institutions to partition off washing areas within cells, which poses technical spatial difficulties on some sites. Any new build is now equipped with an in-cell shower and incorporates a wash basin area outside the washing-shower area. Concerning the free supply of toiletries, note that every new prisoner arriving in a prison is handed a hygiene kit which contains the toiletry staples; further products are handed out free of charge to prisoners who are acknowledged as having no means of their own.

The CGLPL recognises that new institutions now comply with this guideline, but firmly stresses the need for bringing older buildings swiftly up to standard and carrying out appropriate maintenance.

6- Respect the dignity of prisoners during searches, particularly by transposing into French law the *European Prison Rule* which provides that prisoners shall be present when their personal property is being searched, by abstaining from searching prisoners on external movements for medical reasons when their condition does not allow it, by keeping a record indicating the number and the result of searches carried out, by tailoring searches of people with reduced mobility to their particular disability and by only searching the children of imprisoned mothers when a serious offence is presumed and only by allowing the child to be undressed by his or her mother, excluding any contact on the part of the prison staff with the child.

The Minister of Justice specifies that, during the examination of the Act of 3 June 2016 stepping up the fight against organised crime, terrorism and their financing, and improving the effectiveness and guarantees of the criminal procedure, an amendment to Article 57 of the 2009 Prison Act has been adopted to enable search measures to be implemented when there is a suspicion of banned or hazardous substances having been brought into the prison but the identity of the prisoners responsible is unknown. The point was to adapt the legal framework to the reality of security conditions within institutions to address trafficking and the risks for staff safety, by aligning with the case law of the European Court of Human Rights and by laying down a stringent framework governing this new practice, which may only be carried out in accordance with the criteria of necessity, proportionality and subsidiarity as well as the requirements for search decisions to be justified and recorded. Respecting the dignity of prisoners is a requirement when security measures are being carried out.

The CGLPL considers that this measure curtails the fundamental rights of prisoners. It recalls that the recent extensions to the legislative search policy must be interpreted in a restrictive manner, insofar as they intrude on people's privacy and dignity. In all cases, these extensions do not in any way remove the need for vigilance over the conditions in which searches are performed. The

CGLPL upholds its recommendation aimed at transposing the European Prison Rules on searches into French law.

7- Ensure the presence of warders in all areas of penal institutions.

The Minister of Justice states that there is not and cannot be any areas off limits to warders; this a security requirement and principle. Surveillance of all areas is carried out according to the facility and the time of day by the physical presence of staff or by means of offset surveillance arrangements (technical device or human, such as surveillance of the exercise yard). The Minister clarifies that this subject will be addressed during the discussions and the drafting of the prisons construction white paper he has called for.

From its visits, the CGLPL has found that the principles set out by the Minister of Justice are not applied. It therefore recommends that there be warders in all areas, including the exercise yards of prisons.

8- Remove the use of waiting cells on prisoners' arrival, and instead provide for waiting rooms that are sufficient in size for internal movements.

The Minister of Justice points out that the organisation of movements in detention is complex, requiring a balance to be struck between the strong requirements for effectiveness, security and protection of prisoners. This implies the existence of waiting facilities which are maintained and used for consultations, interviews or access to visiting rooms for example. The architectural constraints of ageing institutions sometimes turn out to guarantee well-dimensioned facilities. Moreover, this is why this subject is being paid close attention to in new prisons in the application of ratios that architects usually use to determine the number of people expected per square metre.

The CGLPL duly notes these guidelines as regards waiting rooms for internal movements, but upholds its recommendation aimed at removing the use of waiting cells on prisoners' arrival.

9- Improve the management of people in preventive detention and initiate a serious discussion on the justification of this deprivation of liberty.

This was the focus of a new CGLPL opinion at the end of 2015. It now recommends repealing the provisions on preventive detention.

10- Respond immediately to requests from any person reporting risks for their safety.

The Minister of Justice insists that protection of prisoners is a requirement of the public prison service mission. Responses bear not only on the implementation of measures coming under the responsibility of the prison administration (specifically speaking vigilance instructions, interviews, cell changes with care taken not to penalise the victim or the vulnerable person for example); but also on immediately bringing the identified risks or facts to the attention of the Public Prosecutor.

The CGLPL duly notes this response, but recommends that strict instructions be given to institution directors and that requests on the part of prisoners reporting risks for their own safety be subject to special traceability.

11- Ensure rights are guaranteed as regards CCTV camera systems, by informing prisoners of their existence, limiting the retention period for images to what is strictly necessary and access to the recordings to a select number of officials, by recording such access, by protecting the privacy of persons in all public facilities and by avoiding, at all costs, the temptation to compensate for staff shortages by using CCTV cameras. Avoid all use of CCTV camera surveillance in accommodation, treatment and search premises. Make it a requirement to refer to the CNIL for opinion prior to setting up any video surveillance system.

The Minister of Justice recalls that Article 58 of the Prison Act of 24 November 2009 provides that "CCTV cameras may be installed in communal areas where there is a risk that the physical integrity of persons within prisons could be violated. This option becomes an obligation for all penal institutions that opened after this Act entered into force". It is also recalled that the aim of video protection is to ensure the security of facilities and institutions, as well as the safety of persons within, and to prevent, report and investigate criminal offences. There must be no video protection devices in treatment and search premises. In terms of cells, the Ruling of 23 December 2014 institutes personal data processing concerning video protection in emergency protection cells (known as CProU) in which prisoners are placed "whose condition appears to be incompatible with such placement or holding in an ordinary cell because of an imminent suicide risk or during an acute outburst". Devices must be set up in accordance with the CNIL's provisions.

The CGLPL duly notes these measures and will ensure that they are effective.

12- Ensure strict regulation of the clearances to access the various sections of the detention management software.

The Minister of Justice clarifies that clearances to access information and sections of the detention management software are issued according to the role and level of responsibility of the persons concerned. There are no unregulated blanket clearances. The GENESIS software, now in use within prisons, has been designed with this in mind.

The CGLPL believes that the GENESIS software has been designed in a satisfactory manner in light of this recommendation, which it has thus removed.

13- Apply the legislation concerning individual cells, if necessary in stages.

The Minister of Justice has submitted a report to Parliament on individual cells, presented on 20 September 2016, in which he drew up a clear and corroborated assessment. Enshrined in the Criminal Code since 1875, the principle of individual cell allocation has never been fully implemented. The continual rise in the prison population has resulted in prison overcrowding because of inadequate capacity: from more than 38,000 in 1980, the number of prisoners has risen to 68,253, as at 1 September 2016, for 58,507 prison places (1,439 mattresses on the ground as of this date). The report dated 20 September has but one aim: "put an end to prison overcrowding" by guaranteeing individual cell allocation, so as to clamp down on violence; improve the detention conditions and treatment of prisoners; improve the working conditions and safety of prison staff who must daily cope with a difficult and demanding work environment; and stamp out radicalisation. The prison real estate programme announced by the Prime Minister on 6 October follows on from the report on individual cells submitted to the Parliament on 20 September 2016. Its target is to achieve an 80% rate of individual cell allocation and has been put together in the twofold aim of taking a territorial approach and of integrating prisons in the city. Further, the action cannot amount merely to a real estate programme focused solely on a quantitative target. Enforcement of the prison sentence is neither an end unto itself nor a form of banishment from society; it must be geared towards preparing the prisoner for release and rehabilitation.

This implies developing structures tailored to helping prisoners prepare for their release within wings given over to sentence adjustments (which are not made sufficient use of at present) and boosting probation and sentence adjustment measures, pursuant to the Act of 15 August 2014. The solution proposed thus includes a programme for fitting and laying out preparation for release wings (QPS) and the roll-out of a prison policy combining the development of alternative sentences to imprisonment with an active sentence adjustment policy.

The CGLPL duly notes this plan, the implementation of which it will keep a close eye on. It recalls, however, that creating new places is not enough in itself to meet the individual cell allocation target. This must come hand-in-hand with corresponding efforts in terms of workforce and should not be a substitute for more ambitious measures such as reorienting prison policies, increasing the use of sentence adjustments and giving thought to the logic behind short sentences and the management of prisoners whose health is incompatible with detention.

14- Display the Code of Practice of the public prison service in all detention facilities.

The Minister of Justice states that there are plans to display the code of practice in areas visible to the prison population.

The CGLPL acknowledges that this principle is well set forth, but finds that there is still not sufficient familiarity with this document. It recommends that measures be taken to ensure better dissemination.

15- Improve the detention conditions of transsexual persons by adapting the washing conditions, providing psychological support, assigning them within an institution close to the multidisciplinary team which provides assistance on the outside, providing an individual cell on request, carrying out appropriate searches and assigning them as soon as possible to an institution or wing corresponding to the new sexual identity of the person in question.

The Minister of Justice maintains that the Prison Administration Department keeps an eye on the detention conditions and safety of transgender persons (twelve prisoners identified in November 2016), whether in terms of their assignment, clothing or the implementation of searches. What is more, the Prison Administration Department is involved in drawing up the interministerial action plan to combat anti LGBT discrimination and hatred. Lastly, several associations are involved in prisons when it comes to transgender prisoners: Action minorités en prison (ACMINOP), which works with Spanish-speaking prisoners at Villepinte remand prison, Fleury-Mérogis women's remand prison and wing D3 of this institution; Association Le Nid (transsexualism and prostitution); Prévention action santé pour les transgenres (PASS'T), Association Acceptess-T.

The CGLPL duly notes these measures and recommends that, given the small number and extreme sensitivity of their situation, transgender persons be offered personalised supervision and paced in suitable detention conditions for each phase of their pathway - without considering the change in civil status as an absolute criterion. It particularly encourages the Administration to remain attentive to the role of associations in supporting these people.

16- Set up the necessary means for receiving young offenders so as to ensure systematic separation with adults – particularly when it comes to young girls.

The Minister of Justice points out that separation of minors from adults is systematic, for places and areas for minors in detention concern specific wings that are separate from adult wings, or specific institutions altogether: prisons for minors (EPM). The situation of young female minors can sometimes prove more difficult to manage given the lack of specific sectors; but measures and guidelines are being taken to improve things in this regard. Accordingly, the future women's wing Les Baumettes 2, which will open in April 2017, includes a wing of ten places specifically for young female minors.

The CGLPL duly notes these guidelines, but asks that the separation of female minors and adult women in institutions for women be possible in all institutions so that young female offenders do not need to be taken too far away from their families to be able to benefit from such facilities.

17- Respect the free management by prisoners of their belongings by authorising shows of generosity and loans, including for computer equipment, as well as the use of any item which is not expressly prohibited, carrying out authenticated inventories with both parties present for each deposit or removal and ensuring that hardy crates or bags are used in the cloakrooms.

The Minister of Justice indicates that the management by prisoners of their own belongings must be ascertained with account taken of the requirements concerning personal safety, security within institutions and of space constraints (risk of cluttering or obstructing areas at times). The instructions give

a reminder about complying with the inventory procedures concerning property deposited in the prisoners' cloakroom as well as the use of equipment (cardboard boxes, shelving) designed to safely store this property.

The CGLPL duly notes these guidelines but recommends that the conditions for safely storing personal items in the cloakroom be secured on a systematic basis and that only a closed list of items be prohibited in detention.

18- Improve the management of prisoners' property during transfers by harmonising the baggage allowance per person, transporting key items along with the prisoner, supplying the necessary packaging and issuing simple, swift compensation, at fair value, for any items that are damaged or lost by the authorities.

The Minister of Justice explains that instructions are given out and recalled on the procedures for transporting the property of prisoners during transfers. When a transfer needs to be carried out within a tight timeframe (for disciplinary reasons or to evacuate an institution, for example), the instructions concern transporting essential items or products, followed by the rest of the belongings as soon as possible. All prisoners have the possibility of contesting or lodging an appeal to report a damaged or lost item; in this case, the claim is examined and the administration is able to offer compensation.

The CGLPL duly notes these measures but makes the observation that it receives multiple reports of difficulties. It recommends that procedures for transporting personal belongings during transfers be audited.

19- Fight against poverty by revising the rules for receiving social assistance benefits and substantially revising the conditions of payment and the amount of benefits paid out to prisoners who do not have sufficient means.

The Minister of Justice clarifies that the circular "Fighting against poverty in prisons" dated 17 May 2013, pursuant to Article 31 of the Prison Act, aims at harmonising the practices of penal institutions and at bringing them into line with the budgets allocated – all the while factoring in the specific features of those penal institutions under delegated management. This text focuses on three stages in a prisoner's pathway: arrival in a penal institution, time in detention and preparation for release. To fight against poverty in prisons, it must be possible to access remuneration by work or by training – which is a part and parcel of an overall rehabilitation process. When access to paid activities is not possible, satisfactory material detention conditions must be ensured by offering people, acknowledged as not having sufficient means of their own, monthly assistance. If the prison administration, in its double role as institution head and SPIP director, is fully committed to the fight against poverty, efforts on the part of partner associations and other public services must strengthen the means being harnessed.

The CGLPL duly notes these guidelines and shares the opinion of the Minister of Justice that the primary means for fighting against poverty must be training- and work-based remuneration. It therefore encourages the administration to develop the range of professional opportunities available and upholds the recommendation to revise social assistance benefits and to ensure that prisoners can benefit therefrom.

20- Authorise prisoners to put their savings in the account type of their choice, issue them a copy of their savings account statements and organise their access to banking professionals.

The Minister of Justice points out that prisoners are authorised to open a savings account or to keep the one they have already opened and to pay into it the sums of the disposable part of their personal account via the institution's administrator. Every prisoner may also authorise a member of his or her family to carry out banking operations on the outside, or continue to manage his or her bank account on the outside personally (unless a judicial decision is issued removing said right).

The CGLPL duly notes these provisions.



## 1.2 Private and family life and relations with the outside world

- 1- Roll out family living units and visiting rooms on a broad scale and extend the scope for accessing such facilities – particularly for the benefit of detained couples.

The Minister of Justice draws attention to the fact that a trial of family living units (UVF) begun back in September 2003. Since 2006, the provision of UVFs in each new institution has been included in real estate programmes. The UVF is designed like a furnished one- or two-bed apartment, on the prison premises but outside the detention area, so that occupants can live independently while staying there. Visits in such units can last from 6 to 72 hours. Pursuant to the Prison Act of 24 November 2009 (Article 36), an ambitious broad-scale roll-out programme was launched in 2012 and is still continuing. As at 15 July 2016, 99 UVFs were up and running, across 31 institutions.

The CGLPL duly notes these measures but finds that the number of UVFs in operation to date is far short of what is necessary. It recommends a broad-scale roll-out of UVFs as swiftly as possible. It particularly stresses that the necessary measures for such facilities to function right from the outset must be taken in terms of organisation.

- 2- Align dress tolerance with the usual criteria on the outside.

The Minister of Justice points out that the question of personal belongings or clothing must also be considered in light of the security criteria, which may call for restrictions as regards certain types of clothing.

The CGLPL duly notes this point.

- 3- Allow more flexible management of visiting rooms by issuing national instructions on the granting of extended visiting times, more broadly applying the carryover of visits to the next slots in the event of a justified delay on the part of families, authorising internal visiting rooms for couples in prison and authorising, with careful oversight, the handing over of certain items.

The Minister of Justice specifies that the organisation of visiting rooms must allow for them to be made available to prisoners on a regular basis. This calls for a highly organised and methodical arrangement, implying compliance with allotted times and timeframes. On the ground, tolerance to accept carrying over a visit to the following slots in the event of justified delay on the part of families is observed, provided that this does not penalise other families and that it remains exceptional – otherwise the organisation of visiting rooms would become unpredictable and a source of major disruption. Handing over of items is authorised under certain circumstances (children's drawings for example).

The CGLPL duly notes these guidelines and will ensure that they are effective.

- 4- Encourage the exercising of parental responsibility by informing imprisoned parents of their rights and duties, assisting them in what they need to do to maintain them, authorising their access to the documents – including digital documents – they need to exercise their rights, fitting out suitable meeting areas, facilitating get-togethers on special occasions and managing assignments so as to safeguard the exercising of parental responsibility (proximity, information about transfers, etc.).

The Minister of Justice underlines the fact that the principle of maintaining family ties is a decisive factor of prisoner referral procedures. Efforts are being made in the construction of all new prisons to guarantee and respectfully manage meeting areas for prisoners and their relatives – particularly when it comes to parent-child visiting rooms. Lastly, the prison rehabilitation and probation services provide training and guidance for prisoners supervised in their parenting-related procedures.

The CGLPL duly notes these guidelines and will ensure that they are effective.

- 5- Improve the information given to families on detention conditions and on incidents occurring in detention, beginning with the imprisonment of their relatives, and communicate to prisoners about events arising in their family as soon as they come to the administration's knowledge.

The Minister of Justice indicates that the prison administration ensures that families are kept informed, via the prison rehabilitation and probation service, in liaison with them and through knowledge of the social and family environment of the prisoner, as well as when special circumstances arise by involving the prison administration departments. The information that is shared with families takes account of the opinion and prior consent of the prisoner.

The CGLPL recommends that instructions be drawn up for institutions and procedures defined on these measures.

- 6- Improve the reception of families in institutions with parking areas, child-friendly areas, the broad-scale roll-out of visiting room booking terminals and online booking systems, fitting out family reception centres and covered shelters near the entrances of institutions, the organisation of childcare and the setup of warders who are specially trained in welcoming families, and not hidden behind two-way mirrors.

The Minister of Justice makes the point that the reception of families and visitors must be organised so as not to make them feel under any sort of punishment. Ensure that the respectful, high-quality layout of such areas is a requirement – shown in their systematic inclusion in all newly built prisons (with play areas for children too). The space constraints in older institutions sometimes makes this requirement more difficult to put into practice; but partnerships are also in place to ensure families are not alone while they are waiting. Two-way mirrors are no longer installed in new prisons, so as to encourage interaction between visitors and prison staff. Visiting room booking terminals have also been installed in institutions.

The CGLPL duly notes these principles and will ensure that they are effective.

- 7- Help young offenders to maintain family ties by creating specific information material for holders of parental responsibility, extending families' visits inside institutions and creating suitable facilities for holding sociable, confidential encounters.

The Minister of Justice draws attention to the suitable layouts in all new prisons in particular. A close working partnership between the prison administration and judicial youth protection service is part of the objective to provide clear information and make contact with holders of parental responsibility.

The CGLPL duly notes these intentions, but asks that they be put into practice through instructions, communication tools and defined procedures.

- 8- For foreign prisoners, authorise the delivery of visiting permits to undocumented foreigners, adapt the telephone account and stamp allowances as well as the telephone access times to the location of the prisoner's relatives and facilitate access to visiting rooms for families living abroad (online booking, flexibility as regards delays, attribution of longer visiting times, etc.).

The Minister of Justice maintains that the rules for delivering visiting permits apply in a similar way and in line with the provision of the Criminal Procedure Code. He highlights that the distance of families or visitors justifies adjustments to the organisation of visiting slots to take account of this situation (early consent to two consecutive visiting slots for example).

The CGLPL duly notes these principles and will ensure that they are effective.

- 9- Enable the French Red Cross to meet with prisoners who are unable to contact their families or find themselves completely alone.

The Minister of Justice recalls that a partnership is already in place with the Red Cross for installing confidential telephone lines, for providing assistance to and for listening to any prisoners who would like to benefit therefrom.

The CGLPL recommends more widely applying this measure and extending it to the possibility of meetings in person.

10- Adapt the detention conditions of women by extending, at their request, the allocation of convicted women in remand prisons if an allocation in a sentencing institution is likely to seriously compromise maintaining their family ties, and provide "sentencing institution" wings in the South of France as well as the Parisian region.

The Minister of Justice stresses that the referral of female prisoners takes into account the overcrowding problems observed in women's remand prisons; maintaining family ties is also a factor when assessing case files. Increasing and diversifying the current prison capacity for accommodating female prisoners is a concern; measures are being taken in this respect, such as the creation of new places in Marseille, with the opening of a new wing in April 2017 – including an extra sixty places for convicted female prisoners.

The CGLPL duly notes these intentions and will ensure that they are effective.

11- Improve the situation of mothers detained with their child, by facilitating sentence adjustments, endeavouring to assign them such that family ties can be maintained and the child can enjoy periods outside the prison with his or her family, fitting out specific outdoor and detention facilities (with no grating on the windows, enabling activities with children, cooking and laundry) and encouraging constant contact with the social services as well as continued ties with the mother's partner (access to family living units, allowing the father to attend the birth of his child, assigning detainees in a couple to the same institution, etc.).

The Minister of Justice explains that the detention conditions of mothers in prison and living conditions of their children are considered with a commitment to favouring high-quality treatment. All new institutions with a women's wing are equipped with separate mother-child cells from conventional detention, designed specifically for this purpose, by distinguishing a living space in a cell with an equipped changing table, an area for sleeping, washing facilities, and, in a communal area reserved for detained mothers, an area for a washing machine, a relaxation corner and access to a designated outdoor area.

The CGLPL acknowledges that new prisons are designed in line with its recommendations, but stresses the need to adapt older institutions. Furthermore, it requests that "mother-child" wings be equipped with the necessary medical and social services for taking care of the child in comparable conditions to those put in place for children whose mother is not in prison.

12- Prohibit any restriction to family ties for prisoners committed to the disciplinary wing.

The Minister of Justice highlights that the Prison Act of 24 November 2009 introduced the possibility of someone placed in the disciplinary wing or in solitary confinement exercising his or her right to a weekly visit. The Criminal Procedure Code provides that: "Adults retain the possibility of meeting with visiting permit holders or the prison visitor in charge of supervising them, once a week. For minors, punishment of committal to the disciplinary cell does not give rise to any restriction of their possibility to receive visits from their family or any other person involved in their upbringing and social rehabilitation." (Article R57-7-45)

The CGLPL duly notes this provision and will ensure that it is effective.

13- Bear in mind the need to maintain family ties when designing new institutions (location, public transport services, signposting, accessibility, etc.).

The Minister of Justice is adamant that prisons must not be placed outside of conurbations, as could have been the case during previous construction programmes. This is one of the priorities of the new prison real estate programme announced on 6 October 2016, drawn up in the twofold aim of taking a territorial approach and of integrating prisons in the city. Prefects tasked with hunting for available plots of land for the 33 new institutions and 16 new preparation for release wings are listing the possibilities on the basis of specifications which are very strict in this regard.

The CGLPL duly notes this guideline and will ensure that it is effective.

14- Encourage socialising and activities among prisoners by developing points of sale, activities to upkeep green spaces, making existing social spaces official and increasing the practical possibilities for prisoners to speak their own language.

The Minister of Justice points out that prisoners' social lives and access to activities bear on a wide range of measures and initiatives. He recalls that the target the prison administration has set itself is to provide for at least five hours of activities per day per prisoner. For that purpose, the Ministry is unlocking the means both to create the necessary spaces but also to get associations, cultural and sports stakeholders involved.

The CGLPL duly notes this guideline and will ensure that it is effective.

15- Allow easier access to the telephone by extending the calling time slots, giving access to vocal servers, protecting the privacy of telephone conversations, authorising conversations for couples in prison and making it easier to change authorised telephone numbers. Install telephones away from exercise yards.

The Minister of Justice clarifies that institutions are giving thought to calling time slots so as to foster telephone accessibility to as many prisoners as possible as often as possible. This is why it had been planned to install the first telephone booths in exercise yards, though not exclusively. Henceforth, the new programmes provide for telephone booths to be installed in each accommodation unit as well as possibilities of installing them in exercise yards.

See the recommendation below.

16- Consider the possibility of using mobile phones with a suitable security and surveillance device.

The Ministry of Defence indicates that initiatives are in progress to test the installation of landlines in cells. As such, one plan, in the pipeline since 2015 with the Strasbourg Interregional Directorate for Prison Services and Montmédy detention centre, has led to a long-term trial of landlines being installed in the institution's individual cells. Roll-out of the very first telephones in cells began on 20 June 2016, with 290 cells being connected. In practical terms, having telephones in cells extends the access time slots and improves the confidentiality of conversations, in comparison with current phone points: what needs measuring is the impact on the volume of conversations held, which helps to maintain social and family ties. In security terms, supply of a legal, more accessible service should also have a measurable impact on the introduction into prisons of illegal communication methods.

The CGLPL duly notes these guidelines. It encourages the administration to continue its technical research to that every prisoner can have round-the-clock, direct, confidential access to a landline or mobile phone, monitored in accordance with the law.

17- Authorise the use of email with only the limits currently laid down by the law concerning correspondence (checking of messages prior to sending and checking of messages received).

The Minister of Justice explains that this recommendation is not in consideration as it stands.

The CGLPL upholds this recommendation and advocates that technical research to ensure secure implementation be undertaken promptly.

18- Secure the prisoners' mail circuit such that only a sufficient number of duly appointed postal clerks are able to handle letters, by installing distinct letterboxes for internal mail, mail to be sent outside and mail addressed to the health block, and by setting up statistical monitoring of checked and retained letters.

The Minister of Justice highlights the principle of setting up dedicated letterboxes and collection of mail by postal clerks. For reasons pertaining to service and improving the delivery of letters to postal clerks, it is possible that a specific arrangement provides for a fitting collection method.

The CGLPL recommends widespread application of measures aimed at guaranteeing that prisoners' mail is kept confidential.

19- Notify the judge of any infringement on the freedom to correspondence and justify this with precise reasons.

The Minister of Justice underscores compliance with the framework with regard to infringements on the freedom to correspondence (Articles R 57-8-17 and R57-8-19 of the Criminal Procedure Code, created by the Decree of 23 December 2010).

The CGLPL duly notes this provision and will ensure that it is effective.

20- Pick up and distribute mail every day, even on Saturdays.

The Minister of Justice specifies that, based on the available human resources and material possibilities, mail is collected and distributed as regularly as possible.

The CGLPL asks that the necessary measures be taken to ensure systematic application of this recommendation.

21- For foreigners, deliver the letter to the recipient even if the administration does not understand the language in which it is written, and improve assistance with writing their administrative letters.

The Minister of Justice draws attention to the initiatives and principles for supporting foreigners provided by the prison rehabilitation and probation services (see answer to Recommendation 4 on the autonomy, dignity and integrity of prisoners).

The CGLPL duly notes the measures taken, but requests that its recommendation be the subject of a clear instruction.

### 1.3 Freedom of expression and religion

1- Encourage collective expression among prisoners, including for minors, by extending the practice of consultations and setting up advisory committees.

The Minister of Justice makes the point that Article 27 of the Prison Act of 24 November 2009 requires prisoners to take at least one of the activities put on by the prison administration. Article 29 provides for consultation of prisoners about these activities. Decree No. 2014-442 of 29 April 2014 implementing Article 29 of the Prison Act No. 2009-1436 of 24 November 2009 sets out the conditions for this consultation and redefines its scope.

The CGLPL duly notes these provisions, but finds that they are not proving easy to put into practice. It recommends that incentives and training be provided to help institutions in implementing them.

- 2- Relax the rules for accessing computers by extending the possibility of possessing and using IT hardware in communal facilities and in cells, authorising the acquisition of equipment from clearly identified external service providers, enabling data to be retained when prisoners are released, authorising Internet access in the presence of a third party and organising sufficient but smooth checks. Enable "next generation" game consoles to be used.

The Minister of Justice explains that the circular on prisoners' access to IT must be brought to their attention, in its communicable version. Moreover, it is advisable to ask the prisoner to sign a document stating that he or she has read this circular. At local level, a procedure may be put in place according to which this circular is given to the prisoner along with his or her new welcome booklet, or made available in a communal area (the library for example).

The CGLPL duly notes these measures, but finds that there are still a number of obstacles preventing prisoners from accessing computers - which often simply proves impossible. It recommends a proactive policy in this respect.

- 3- Advance the exercising of religious freedom by adopting a regulation providing for the development of the means necessary for practising religion, greater respect for the necessary items and texts for spiritual life, recognition of the cultural nature of any legal person whose religious activity is qualified as such by the judge and open recognition of a range of spiritual events (focus groups, discussion or festive meetings, choirs, etc.) in keeping with law and order and based on the capacity of the premises. Do not deny a person's participation in one religion on the grounds that he or she participates in another. Object to any claim of premises for exclusive use by one denomination.

The Minister of Justice points out that the Prison Act of 24 November 2009 has enshrined the prisoners' freedom of conscience, opinion and religion in its Article 26. The conditions for organising spiritual practice in prisons have been laid down by the implementing decrees for this Act and the procedure for approving prison chaplains, organised by the circular of 20 September 2012. Religious places are ecumenical.

The CGLPL duly notes these measures.

- 4- Respect dietary customs in line with religious requirements by organising places of deprivation of liberty to be able to provide appropriate menus and allow for fasts, by distributing food that has been prepared according to the rites approved by the competent religious authorities and by authorising, subject to oversight, chaplains to bring in food products. Do not impose religion-related dietary requirements on prisoners who do not wish to follow them.

The Minister of Justice indicates that chaplains are authorised to deliver specific packages during religious festivals, as are families. Menus are drawn up specially during religious festivals; accordingly, the prison administration set up special catering during Ramadan.

The CGLPL duly notes these measures.

- 5- Authorise chaplains to move around in living areas and to communicate in confidence with prisoners, including by correspondence.

The Minister of Justice states that chaplains are granted access to prisoners and can communicate with them in confidence.

The CGLPL duly notes these measures.

6- Guarantee the confidentiality of prisoners' religious choices.

The Minister of Justice maintains that the principle of secularism and confidentiality of religious choices is a republican requirement.

The CGLPL asks that institutions be reminded of this requirement, particularly so as to protect the confidential nature of lists of participants in religions.

## 1.4 Access to information and legal advice

1- Take every necessary measure for helping prisoners to access information about the internal running of institutions: welcome booklet, display of the institution's rules and the names of its key staff, display of the contact details of local and national stakeholders that prisoners are allowed to contact, internal video channel, translations in foreign languages, collection of the prison rules accessible in the library, illustrated information pack featuring pictograms, interpreters, "prisoner-facilitators", etc.

The Minister of Justice stresses the importance of informing prisoners upon their arrival in a penal institution. A proactive, ambitious policy has been taken to achieve certification of all new arrivals' wings in prisons, in line with the European prison rules. Reminder memos are also put up on display in prisons. Lastly, the institution's internal regulations are available for consultation by prisoners.

The CGLPL duly notes these measures and recommends that they be taken further, particularly through translations into foreign languages, the development of information broadcast over a video channel and information about the names and roles of key staff members.

2- In institutions' internal regulations, clarify that the Chief inspector of places of deprivation of liberty is not subject to the rule of systematically listening to telephone conversations and of checking correspondence.

The Ministry of Justice states that this recommendation will be recalled.

The CGLPL duly notes this point.

3- Set up a procedure facilitating exercise of the right to vote (information in advance, delivery of documents, permission to leave, proxy, etc.).

The Minister of Justice specifies that prisoners can exercise their right to vote in two ways: voting by proxy or by obtaining a permission to leave. He adds that he has instructed the prison administration to distribute information more widely about exercising the right to vote, particularly in the run-up to the 2017 elections.

The CGLPL duly notes these measures and will ensure that they are effective.

4- Set up a procedure for drawing up and renewing identity and residence documents on their expiry date, so that there is no break in their validity.

The Minister of Justice draws attention to the response given to the fourth recommendation on prisoners' autonomy, dignity and integrity.

See part 1-1 "Autonomy, dignity and integrity", recommendation no.4.

5- Ease the conditions for renewing residence permits by issuing receipts for applications granting entitlement to social assistance benefits, better training of prison rehabilitation and probation counsellors, granting permissions to leave so that prisoners can take care of formalities themselves, based on the prefecture's reception conditions, upgrading legal information and advice points and enabling interpreters to be present.

The Minister of Justice draws attention to the response given to the fourth recommendation on prisoners' autonomy, dignity and integrity.

See part 1-1 "Autonomy, dignity and integrity", recommendation no.4.

6- Work towards the drafting, by the United Nations, of an international convention on the enforcement of sentences abroad.

The CGLPL upholds this recommendation.

7- Improve the processing of prisoners' appeals by systematically renewing their correspondence stationery free of charge, agreeing to oral appeals, widely displaying pictograms on input touchscreen terminals, adjusting the admissibility conditions of illiterate or non-French-speaking prisoners' appeals, issuing systematic acknowledgements of receipt and organising the traceability of appeals and automating alerts should responses not be received within the set timeframe.

The Minister of Justice points out that appeals, i.e. the written or oral requests that a prisoner makes to the penal institution, are recorded in the GENESIS program (which is now in use across all such institutions) in two ways:

- they are entered directly by the prisoner via the appeal terminals. The prisoner identifies him or herself at a terminal using a barcode and personal secret code. To comply with the regulations, the Prison Administration Department is planning to renew the terminal provision contract as well as trials for entering appeals in cells and activity rooms as part of the digital plan in prisons,
- warders enter any oral or written appeals that they receive from the prison population.

Appeals are not confidential. The service concerned can sort appeals pending responses to identify those which are for its attention and to provide a written response.

The creation of an appeal, at the appeal terminal or by a warder, leads to an acknowledgement of receipt being published for the prisoner, which particularly indicates an average processing time for appeals. When a response is given to an appeal, a document is published indicating the initial appeal and the response given by the service concerned. The appeal processing process in GENESIS does not result in any automatic processing in the program. It is intended to keep a record of prisoners' requests and of the responses given to their questions. The responses given to prisoners are therefore managed separately from GENESIS.

The CGLPL duly notes these measures and will ensure that they are effective.

8- Systematically identify vulnerable persons who do not make any requests known.

The Minister of Justice stresses the prison administration's vigilance as regards situations where prisoners withdraw into themselves and shut others out. The observational efforts on the part of warders and rehabilitation counsellors are absolutely crucial as far as this matter is concerned. This surveillance is particularly carried out as part of the policy aimed at preventing the suicide risk.

The CGLPL recommends that instructions be given to all staff.



9- Protect the right to access and the confidentiality of personal documents by providing prisoners with equipment for protecting their documents and ensuring that no personal documents discovered during cell searches or checks are destroyed and that confidential documents are never handed out in the presence of a third party.

The Minister of Justice maintains that, in order to protect the right to access and the confidentiality of personal documents, all cells in new prisons are now equipped with a lockable box built into the cupboard, the key for which is given to the prisoner. For older facilities, where it is not possible to install such equipment, a reminder of the instructions is given.

The CGLPL duly notes these measures and will ensure that they are effective.

10- Organise the confidentiality and accessibility of documents filed with the registry and give every prisoner the choice of either filing his or her documents with the registry or keeping them in his or her cell.

The Minister of Justice points out that all prisoners have the option of asking to access documents filed with the registry.

The CGLPL asks that instructions be issued such that filed documents can indeed be accessed in a confidential and prompt manner. It reiterates its request that prisoners be authorised to keep their documents in their cells and given the means for doing so while keeping them confidential.

11- Give each prisoner the possibility of photocopying documents.

The Minister of Justice states that the conditions for a prisoner to photocopy documents are those defined by the Ruling of 1 October 2001 on the conditions for setting and determining the amount for copying an administrative document.

The CGLPL duly notes this provision, but asks that instructions be issued as a reminder that, independently of the question of the price of photocopying documents, this must be possible on a systematic basis.

12- Grant access to non-personal administrative documents pursuant to the Act of 17 July 1978, within a reasonable timeframe.

The Minister of Justice recalls that these access rights and requests are considered within the context of claims and are in line with the standards.

The CGLPL duly notes this point.

## 1.5 Access to medical treatment and social benefits

1- Facilitate access to medical care by setting up free consultation slots in health blocks, systematic oversight of the fluidity of consultation circuits, automatic satisfaction of emergency requests for a consultation made orally, authorising emergency calls at night by any means and putting the patient directly in touch with the emergency services operator (15).

The Minister of Justice draws attention to the fact that access to care is guaranteed and determined with the Ministry of Health. Consultation times also depend on the organisation of medical units. In an emergency, requests are passed on by warders to medical staff or by making a call to an external service if this arises while medical staff are off-duty. It is technically difficult to put the patient in direct touch with the emergency services operator; precedence is given to the possibility that emergency crews have of accessing prisons so as to reach the detained patient.

The Minister of Health is considering testing out the possibility of allowing greater flexibility in the conditions for accessing health blocks with fairly small active patient populations. For larger health blocks

however, she is worried that opening up the possibility of free consultation may adversely affect appointment waiting times. Concerning the fluidity of consultation circuits, she recommends raising health teams' awareness in this respect, but does not believe it would be possible to set up a unique monitoring tool. She is of the opinion that the question of emergency calls made at night is a matter for the prison administration, which must be aware of health emergencies.

The CGLPL is well aware of the technical challenge putting this recommendation into practice poses, but asks that the Government do what is necessary to overcome this.

- 2- Perform a public assessment at regular intervals of the general health of the prison population and include prisoner health in scientific research funding programmes.

The Minister of Justice maintains that this recommendation primarily concerns the Ministry of Health. That said, initiatives are being taken by the prison administration, the risk reduction policy being one example (agreement with the Interministerial Addictive Behaviour and Narcotics Prevention Mission (MILDECA), assessment at Les Baumettes prison centre, for example).

The Minister of Health does not express any particular view on this point.

The CGLPL renews its recommendation.

- 3- Improve nursing staff's knowledge about the specifics of detention by adapting training pathways, getting physicians to come systematically in person to prisons and encouraging health personnel to participate in single multidisciplinary committees in strict compliance with the principles of professional confidentiality.

The Minister of Justice agrees with the merits of a multidisciplinary approach; multidisciplinary committees are a suitable setting, conducive to holding such discussions, to which nursing staff are invited to work together on the care arrangements of prisoners during their detention, in keeping with the principle of physician-patient confidentiality.

The Minister of Health recommends explaining the interest of taking part in multidisciplinary committees to health teams depending on the quality of communication practised within each institution, but believes that she can only invite them to take part voluntarily. She is giving thought to the possibility of offering internships in prisons for medical interns and student nurses, but believes these are difficult changes to introduce.

The CGLPL invites the Government to do everything possible to encourage health professionals to take part in the overall care of prisoners while guaranteeing strict compliance with the principle of physician-patient confidentiality.

- 4- Ensure equal access to medical treatment between prisoners and the rest of the population – particularly for the most sensitive specialties, including dental care, pain relief, ophthalmological care and prosthetic devices and physiotherapy.

The Minister of Justice underscores its interest for a healthcare offering and access to different consultants. It reiterates that this comes under the Ministry of Health.

The Minister of Health is weighing up several options, such as modelling the budget for financing health blocks, hosting interns in prisons, considering bonuses for working in prisons and the hiring-out of staff by the relevant hospital centre. She fears, however, that the tight budgetary framework and demographics of health professionals coupled with the low appeal of working in prisons, represent considerable barriers. She highlights the recent increase in numbers of nurse and psychologist positions and sees merit in boosting the appeal of working in prisons to be able to fill existing vacant positions. In terms of dental care, the Minister points out that following the Act on modernising the French health service of

26 January 2016, a trial is being planned across some thirty penal institutions for a systematic consultation for all new prison arrivals. She is concerned, however, that this screening might bring other health needs to the fore that it will be difficult to meet – such as providing prosthetic devices. She explains that physiotherapy is the sector that bears the brunt of the medical demographics problem encountered in prisons and recommends tackling this difficulty by organising external movements.

The CGLPL renews its recommendation, and stresses that the concern that new needs might emerge must not prevent screening methods from being set up. It will watch with interest the trials being conducted according to the options outlined by the Minister of Health to diversify the healthcare offering in institutions.

5- Guarantee the confidentiality of care in penal institutions, not least by installing protected consulting facilities, including in solitary confinement wings or disciplinary wings, adapting the delivery of medicines to the prison context and patient profiles, making sure that warders or fellow inmates are not called on as interpreters, protecting the conditions under which medical records are kept and transferred and banning all forms of video surveillance in a care facility.

The Minister of Justice reiterates that fact that there can be no video protection means in care facilities (these zones are excluded on the same grounds as search facilities, for example). Health blocks are facilities that guarantee the confidentiality of the treatment of prisoners. In specific sectors, such as the solitary confinement or disciplinary wing, the conditions for a prisoner to meet with a member of nursing staff are created to guarantee confidentiality and ensure the safety of nursing staff.

The Minister of Health recommends supporting health blocks in patient-based delivery of medicines and draws attention to the fact that this is already the case for opioid substitution therapy. The delivery of medicines by nursing staff only is stipulated in the texts in force, but alternatives are being looked into: a recent report suggests entrusting to the prison administration the distribution of the most common medicines and the prison administration has mentioned installing a locker system. The Minister highlights that the recommendations on protecting medical records are already being applied, but that a procedure is necessary which authorises the prison administration to enable any external physicians called to intervene in an emergency to consult these records.

The CGLPL duly notes the measures described and asks that the procedure whereby external physicians can consult prisoners' medical records be developed as requested by the Minister of Health.

6- Facilitate prisoners' access to psychiatric care by getting epidemiological studies under way on mental problems in places of deprivation of liberty, improving staff training on psychiatric disorders and improving emergency psychiatric treatment.

The Minister of Justice is in favour of setting up this assessment, as it is likely to shed light on the reality of the situation as regards people currently in detention who suffer from mental problems. He gives a reminder that this must be set up in liaison with the medical staff.

The Minister of Health talks about the efforts in progress on developing joint training for prison and health staff.

The CGLPL duly notes these guidelines and will monitor their implementation.

7- Ensure the medical treatment of people committed to open prisons via agreements with the local medical network.

The Minister of Justice indicates that, since open prisons do not have health blocks, agreements have indeed been signed with the nearest hospital. He goes on to clarify that new open prisons are equipped with facilities for holding medical consultations.

The Minister of Health mentions the possibility of drawing up contracts with municipal health centres or private medical practitioners in the vicinity and stresses, firstly, that open prisons can be situated a long way from public hospitals and, secondly, that health professionals are sometimes reluctant to welcome prisoners.

The CGLPL recommends that the Government set up a medical treatment procedure tailored to the local situation in each institution accommodating prisoners in open conditions.

8- Limit the number of external movements undertaken for medical reasons by having consultants within prisons, developing telemedicine and issuing permissions to leave for medical reasons.

The Minister of Justice recalls the response to Recommendation no.4 on access to medical treatment and social benefits and highlights the merits of limiting external movements for medical reasons by an appropriate healthcare offering within the institution.

See Part 5 "Access to medical treatment and social benefits", Recommendation no.4.

9- Improve the conditions under which external movements for medical reasons are carried out by adapting the use of restraint methods to objectively identified risks and making sure that no security officials are present during the consultations and administration of treatment.

The Minister of Justice states that a reminder of the specific instructions concerning external movements for medical reasons and the use of restraint methods is given in a memo to the prison administration department dated 5 March 2012.

The Minister of Health clarifies that cross-government talks were initiated during the inter-ministerial health-justice committee meeting of 23 March 2016 and that some 40% of external movements are cancelled by the prison administration. She goes on to point out that, despite the proposal of nicotine replacement therapy, the smoking ban in hospitals is often the reason why prisoners refuse care.

The CGLPL urges the Government to make sure that security measures are proportionate to the risks which are genuinely observed on a case-by-case basis, and are not a barrier to the organisation or acceptance of care because warders are too often present during consultations.

10- Lay down conditions for accommodating prisoners in hospitals that are specifically tailored to their situation.

The Minister of Justice explains that specific measures are being taken, under the partnership with the relevant hospitals, to determine the right accommodation conditions - striking a balance between the treatment and security requirements. Moreover, a proactive policy has led to a secure room being created in the relevant hospitals to foster access to care and the security requirement.

The Minister of Health says that some hospitals have already set up dedicated pathways and that positive experiences must be capitalised on. It nevertheless cautions about the very real problem posed by architectural constraints.

The CGLPL duly notes the measures taken and recommends taking up the matter of older institutions.

11- Remind physicians of the legal provisions concerning the non-negotiable nature of physician-patient confidentiality.

The Minister of Justice claims that this recommendation is a matter for the Ministry of Health.

The Minister of Health indicates that cross-government talks were initiated on this point during the inter-ministerial health-justice committee meeting of 23 March 2016, but underlines how some health professionals feel unsafe working with prisoners and ask for a warder to be present during the consultation.

The CGLPL recommends that information for health professionals about how to behave around prisoners be improved so that physician-patient confidentiality can be kept.

12- Adjust the conditions for accommodating prisoners in secure rooms so that they can benefit from all their due rights while in detention.

The Minister of Justice maintains that the right to receive visitors and maintain family ties is, for example, enabled by the systematic communication to the prefectural authorities of existing visiting rights (guards who remain in place to keep watch are provided by the homeland security forces).

The Minister of Health recommends raising the awareness of hospital practitioners in how to treat prisoners in secure rooms, not least via the ongoing revision of the methodological guide to treating prisoners, but clarifies that the action taken following this recommendation depends to a large extent on each institution's specific policy. The coordination between treatments in a secure room and placements in interregional specialist hospital units (UHSIs) could be reviewed following the decision to evaluate these units, made at the interministerial health-justice committee meeting of 23 March 2016. She recommends drawing institutions' attention to the need to systematically hand each new arrival the hospital welcome booklet and the need to designate a reference physician for the health of prisoners. She recommends drawing up a protocol for secure rooms on prisoners' rights, similar to the one in place for UHSIs, but makes the point that some prisoners' rights (the right to smoke for example) may be at odds with hospital rules. Regarding equipment in secure rooms, especially cupboards and TV sets, the Minister stresses that these are possibilities that currently exist, but that they can only be made compulsory by amending the interministerial specifications on secure rooms – something which, by her understanding, the prison administration are not greatly in favour of.

The CGLPL asks that instructions be issued to institutions on this point.

13- Guarantee access to fertility treatments for any prisoner under the same conditions as for the rest of the population.

The CGLPL upholds this recommendation.

14- Provide prisoners with clearer information concerning their appeal options on the way they are treated during medical care.

The Minister of Health is considering providing health blocks with a similar welcome booklet to the one that exists in a specially-equipped hospitalisation unit and interregional specialist hospital units.

The CGLPL is fully in favour of this intention.

15- As far as possible, ensure that minors can be recognised as beneficiaries of their parents' health insurance scheme and avoid registering them in their own name.

The Minister of Justice indicates that all prisoners (minors included) are members of the general health insurance scheme pursuant to Article L381-30-1 of the Social Security Code. The question of continuing to recognise the status that minors enjoyed prior to their imprisonment as beneficiaries of their parents' health insurance has not been studied to date.

The CGLPL recommends that the Government look into this point.

16- Harmonise the rules for reimbursing appointment fees that exceed the standard rates.

The Minister of Justice claims that this recommendation is for the attention of the Ministry of Health. Further, he points out that prisoners do not have to bear the cost of co-payments and that a physician may not charge them for any appointment fees that exceed the standard rates.

The CGLPL recommends interministerial discussion on this point.

17- Do everything possible to ensure that placement in detention does not affect the continuity of the "chronic conditions" system.

The Minister of Justice draws attention, through the partnership with the Ministry of Health, to all measures being taken to ensure the detention conditions of a prisoner recognised to be suffering from a chronic condition take this on board. Assignment in a specially-equipped hospitalisation unit is a wholly worthwhile measure in this regard.

Moreover, if a person has been recognised as suffering from one or more chronic conditions prior to imprisonment, the health block physician must get in touch with the prisoner's usual physician or, failing that, the competent medical consultant of the French Health Insurance System in order to receive the care protocol.

The CGLPL recommends that clear, straightforward instructions be issued to ensure that these rights are effective.

18- Facilitate formalities aimed at obtaining the allowance for disabled adults and ensure that the reductions of this allowance factor in the fixed expenses of the prisoner.

The Minister of Justice recalls the involvement of prison rehabilitation and probation services in assisting prisoners in obtaining the allowance for disabled adults. The circular of 30 July 2012 on the conditions for accessing and terms for calculating the minimum income support (RSA) and the allowance for disabled adults (AAH) for offenders (who are either in prison or benefit from a sentence enforcement or adjustment measure) sets out the consequences of imprisonment on AAH and RSA entitlement; it presents the various sentence enforcement or adjustment options which convicted offenders are likely to be able to benefit from, before outlining the conditions for receiving or maintaining AAH and RSA entitlement as regards someone under sentence adjustment or benefiting from an end-of-sentence enforcement under electronic tagging). Lastly, it presents the means that debiting organisations can mobilise, in liaison with the justice departments.

The CGLPL duly notes these provisions.

19- Do not identify beneficiaries of invalidity pensions via a prisoner register number.

The Minister of Justice states that all prisoners are identified via a prisoner register number, irrespective of whether or not they receive an invalidity pension. But this identification is specific to the prison administration. Since invalidity pensions are managed by social security, identification in this respect is via the person's civil status and social security number.

The CGLPL duly notes this point.

20- Retrospectively settle the necessary contributions for validating qualifying quarters that go towards calculating retirement pensions for anyone having worked in detention before 1 January 1977.

The Minister of Justice specifies that the retirement pensions for anyone having worked in detention before 1 January 1977 are calculated on the basis of detention certificates.

The CGLPL asks that an interministerial audit check that this measure is systematically applied.

21- When calculating their retirement pension, do not penalise prisoners who volunteer for work in detention but regarding whom the administration has been unable to offer them the activity requested.

The Minister of Justice stresses the point that only an activity actually carried out can lead to payment of contributions.

The CGLPL upholds its recommendation.

22- Introduce into legislation the requirement for affiliation to a supplementary pension attached to the work undertaking agreement between the prisoner and the prison administration.

The Minister of Justice points out that, to date, no legal provisions have introduced the requirement for affiliation to a supplementary pension.

The CGLPL upholds its recommendation.

23- Amend the provisions of the Criminal Procedure Code on suspending sentences for medical reasons so as to make this possible for treatments that cannot be subject to permissions to leave or external movements because of their repetitive nature, to extend this possibility to people placed in temporary detention, also authorise it for the sole reason of an improvement in the prisoner's health and remove the requirement for a second expert opinion.

The Minister of Justice maintains that some of the Health-Justice working group's proposals on adjusted and suspended sentences for medical reasons (this working group was set up in 2013 at the joint request of the Minister of Justice and Minister of Social Affairs and Health) were incorporated in Act No. 2014-896 of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions.

As such, since 1 October 2014, the conditions for granting a suspended sentence for medical reasons have been made more flexible (Article 720-1-1 of the Criminal Procedure Code/CPP):

- a sentence can also be suspended for medical reasons if the offender's mental health is incompatible with detention;
- only one medical expert opinion is necessary to pronounce the sentence suspension measure;
- the urgency of the measure can now be assessed in a broader manner – the moment it is no longer dependent on the sole fact that the offender's condition is life-threatening.

The Act of 15 August 2014 has thus created two new measures:

- release on parole for medical reasons (Article 729 of the CPP) which allows a convicted offender, who has been benefiting from a sentence suspension measure for medical reasons for more than three years and whose condition is not going to be compatible with being kept in detention anytime soon, to be granted release on parole;
- release for medical reasons (Article 147-1 of the CPP) in favour of detainees who have not been convicted (untried persons in temporary detention).

The CGLPL duly notes these changes, but finds that they are difficult to apply in practice; it recommends that an interministerial audit be conducted on them.

24- Allow experts who are consulted as part of a request for a suspended sentence for medical reasons to observe the detention conditions and introduce a requirement to communicate with the general practitioner in the health block.

In his response to Recommendation no. 23 on access to medical treatment and social benefits, the Minister of Justice recalled the significant changes made to the framework for applying sentence suspensions.

The CGLPL finds that the changes described do not take this recommendation into account, which is therefore upheld.

25- Effectively prepare the external reception conditions of detainees benefiting from a suspended sentence for medical reasons.

The Minister of Justice explains that the prison rehabilitation and probation services work in partnership with medical staff to assist with preparing for the discharge of detainees, as soon as the request for suspension is made.

During its visits, the CGLPL finds that there are several practical problems hampering the external reception of detainees benefiting from a suspended sentence for medical reasons; it recommends a more proactive interministerial policy in this regard.

26- Maintain the competence of the sentence enforcement judge of the original institution to rule on requests for a suspended sentence for medical reasons, including when a transfer of the applicant takes place after this procedure has got under way.

The Minister of Justice makes it clear that this recommendation does not feature in the major changes made to the sentence suspension framework – which are recalled in its response to Recommendation no. 23 on access to medical treatment and social benefits.

The CGLPL upholds its recommendation.

## 1.6 Rights of defence and discipline

1- Ensure the confidentiality of communication between prisoners and their lawyers by fitting out appropriate facilities where there is no video surveillance or surveillance of phone conversations. During hearings by video conference, plan for the possibility of the prisoner and lawyer conversing alone when it is not possible for the lawyer to be physically beside the prisoner, as should be the principle.

The Minister of Justice stresses that the confidentiality of these conversations is guaranteed. Adjustments and hearing facilities are planned to facilitate such exchanges.

The CGLPL duly notes this principle but during its visits finds that it is not always respected; it requests that measures be taken to ensure that it is systematically honoured.

2- Regulate the use of video conferencing with legislation providing that it is only authorised for purely procedural hearings, that it can only be made obligatory for reasons of law and order or if it is the only way a reasonable timeframe can be kept for organising hearings, that economy of means should not justify the use of video conferencing, that the informed consent of the person concerned must be obtained, that the decision to use video conferencing may only be taken by the authority with the powers to make the final decision and that it must be possible to renounce this option at any time.

The Minister of Justice draws attention to the fact that the conditions for using video conferencing during criminal procedures are primarily set out in Article 706-71 of the Criminal Procedure Code. This legal provision allows telecommunication means to be used at all stages: investigation, examination, sentencing, application of sentences, unless the prisoner refuses. The use of video conferences has been clarified to jurisdictions in a dispatch dated 27 July 2015 on the conditions for carrying out external movements, which particularly underlines the situations in which video conferencing can be used.

The CGLPL duly notes these provisions and renews its recommendations.

3- Ensure the dignity of accommodation conditions in disciplinary wings by respecting the minimum 6 m<sup>2</sup> of living space per cell and guaranteeing correct access to natural light, a fire protection system, means for communicating with



staff, correct hygiene, suitable exercise yards, which may possibly be accessed by several people, the possibility of showering once daily and access to a variety of reading materials.

The Minister of Justice recalls the measures taken to bring disciplinary cells and wings into compliance with the fire risk. Access to the exercise yards is allowed daily, and access to the showers is organised according to the routine applied in the institution. In all new institutions, the disciplinary cell is up to standard in terms of surface area, washing facilities and in-cell shower.

The CGLPL duly notes these measures and asks that special attention be paid to disciplinary cells in older institutions.

- 4- Improve the clarity and transparency of disciplinary procedures by complying with a maximum timeframe of two weeks between the offence and appearance before the disciplinary body, organising meetings and interviews with the necessary witnesses – including during hearings – and informing prisoners of the decisions made concerning the classification of incident reports.

The Minister of Justice specifies that instructions are given to encourage the disciplinary committee to meet as close as possible to the commission of the offence, in compliance with the necessary procedural timeframes for the investigation, organising the debates and honouring the adversarial process. Prisoners are informed of the drafting of an incident report and the action planned in this respect as part of the investigation (circular of 9 June 2011 on the disciplinary regime of adult prisoners).

See the recommendation below.

- 5- Improve the way disciplinary bodies are run by holding them in a specially fitted out space where the *Declaration of the Rights of Man and of the Citizen* is on display, abstaining from asking prisoners to prepare their belongings before appearing before a disciplinary committee, prohibiting two successive full-body searches on people appearing before a disciplinary committee, separating out the roles of the committee secretary and reviewer, involving the civil society reviewer – duly trained to carry out this role – in the debate, watching the relevant video surveillance recordings during the audience, organising interviews with witnesses and planning, where necessary, for an interpreter to attend.

The Minister of Justice indicates that disciplinary committees are held in dedicated rooms with the necessary equipment (particularly IT equipment) for holding debates. The committee's panel of members takes into account the regulatory requirements and staff availability constraints (this may lead to a reviewer also acting as the committee secretary).

The CGLPL asks that the running of disciplinary procedures be regulated more precisely and renews its recommendations.

- 6- Strictly limit placement in the disciplinary wing for preventive purposes to emergencies, keep a record of each use of restraint means during preventive placement, film and retain the images of placements for preventive purposes when they are carried out using protective gear.

The Minister of Justice confirms that cases of preventive placement in disciplinary wings are strictly limited. There are no plans to make use of other video recording devices than the video protection devices already installed in institutions.

The CGLPL upholds its recommendation.

7- Do not consider the suspension of educational and vocational training activities as a necessary consequence of a confinement punishment, but make sure it remains a specific disciplinary sanction.

The Minister of Justice recalls that confinement in a cell does not lead to detained minors being temporarily deprived of any schooling or training (Criminal Procedure Code R 57-7-40).

The CGLPL duly notes this rule and will ensure that it is effective.

8- Consider medical opinions diagnosing unfitness for committal to the disciplinary wing to be a cause to cancel and not merely suspend the committal decision.

The Minister of Justice clarifies that, if a medical opinion diagnoses unfitness for committal to the disciplinary wing, the disciplinary cell sanction is not applied in practice.

The CGLPL acknowledges this principle, but asks that it be adopted as a rule rather than as a simple observation.

9- Do not allow medical staff to take part in the decision-making process leading to a disciplinary sanction.

The Minister of Justice recalls the compliance with the strict framework for implementing the disciplinary procedure, defined in the Criminal Procedure Code (R57-7 et seq.).

The CGLPL duly notes this point.

10- Put in place possibilities for effectively appealing against decisions bearing on committal to a disciplinary wing and, in particular, acknowledge this measure as an emergency situation that opens up the possibility of an interim suspension procedure.

The Minister of Justice recalls the strict compliance with provisions enabling a prisoner to exercise his or her rights to appeal decisions.

The CGLPL renews its recommendation.

11- Inform the people placed in disciplinary cells of the options open to them to appeal their situation and ensure that a record of their requests is kept.

The Minister of Justice draws attention to the fact that these rights are recalled and mentioned in the documents presented to the prisoner during the disciplinary procedure.

The CGLPL duly notes this rule and will ensure that it is effective.

12- Clamp down on disguised sanctions, including in institutions for minors, by carefully drawing a distinction between the scopes of the legislative provisions concerning citizens' rights in their relations with the administrations and those resulting from the disciplinary procedure.

The Minister of Justice indicates that the scopes of the provisions concerning the disciplinary procedure are set out in the circular dated 9 June 2011 on the disciplinary regime of adult prisoners.

The CGLPL duly notes this rule and will ensure that it is effective. It recommends that identical provisions be drawn up as regards minor prisoners.

13- Clamp down against the following disguised sanctions: change in allocation, repetitive or brutal cell searches, systematic full-body search, use of emergency protective gear, scrapping of financial aid for people without sufficient means because of their behaviour, automatic demotion on the grounds of placement

in the disciplinary wing, ban on activities or exercise outside and return to an enclosed sector under a differentiated regime for example.

The Minister of Justice insists that several provisions, grounded in the adversarial principle, regulate work demotion procedures. Likewise, the application or termination of measures to assist persons without sufficient means is examined by a single multidisciplinary committee.

The CGLPL duly notes these provisions and will ensure that they are effective.

14- Introduce oversight over the more severe disciplinary measures by the liberty and custody judge.

The Minister of Justice maintains that the options for appealing against disciplinary decisions are defined in the Criminal Procedure Code and stipulated in the Circular of 9 June 2011 on the disciplinary regime of adult prisoners (preliminary administrative appeal compulsory; appeal for abuse of power; interim suspension decision; interim liberty decision).

The CGLPL duly notes this point.

15- Regulate the conditions in which the disciplinary investigation is carried out so as to guarantee the competence of the investigator, the adversarial nature of the procedure and the exhaustive gathering of evidence.

The Minister of Justice insists that the adversarial principle is guaranteed during the disciplinary procedure, which is performed by the authorised persons. They are particularly described by the circular of 9 June 2011 on the disciplinary regime of adult prisoners.

The CGLPL asks that the conditions for implementing this circular be subject to regular inspections under the authority of the Minister of Justice.

## 1.7 Activities and work

1- Organise gender diversity in activities.

The Minister of Justice states that Article 28 stipulates as follows: "subject to maintaining order and safety within institutions, and on an exceptional basis, activities may be organised for both sexes to participate in". In this context, institutions organise mixed activities. For example, men and women work together in a workshop at the Bordeaux Gradignan remand prison.

The CGLPL duly notes this example, which is, for the time being, unique and certainly positive; it asks that similar practices be rolled out on a broader scale.

2- Organise a range of sports activities including individual and team practices, indoor and outdoor areas and provide for separate access for the reception of external teams – including on a regular basis.

The Minister of Justice indicates that the prison administration fulfils its missions in partnership with a number of local and national associations through a performance-based policy, which requires scrutiny of the actions financed so as to most effectively meet the requests and needs of offenders. These partnerships are also in place with a view to facilitating the rehabilitation of offenders and their inclusion in common law schemes. The prison administration departments are particularly involved in forging and strengthening their partnerships with civil society stakeholders, aware that access to common law schemes is a decisive factor in preventing recidivism and the social rehabilitation of convicted offenders. The participation of associations in carrying out the public prison service has been confirmed in Article 2-1 of the Prison Act no. 2009-1436 of 24 November 2009, introduced by Act no. 2014-896 of 15 August 2014 on sentencing according to individual offender requirements and improving the effectiveness of criminal sanctions, which stipulates that prison administration partners "ensure [...] that convicted offenders can access common law schemes and rights in such a way as to facilitate their integration or rehabilitation". The

prison administration has signed agreements with twenty-three partner associations and seventeen sports federations.

The CGLPL duly notes these guidelines and will ensure that they are effective.

- 3- Allow teachers to benefit from training and guidance that is tailored to practice in the prison environment and develop educational and training activities.

The Minister of Justice draws attention to the effective partnership with the Ministry of National Education in developing educational activities. The partnership concerns all areas which play a part in meeting the targets set by the two central administrations: physical teaching conditions, conditions underpinning dialogue and information-sharing, definition of the responsibilities of managers at local, regional and national level, coherency of educational and institutional plans – budgetary procedures in particular. (Convention and framework circular dated 8 December 2011 on education in prisons).

The CGLPL duly notes these measures but stresses the need for specific teacher training concerning working in prison environments.

- 4- Improve the conditions for learning the French language by any means – including radio and television.

The Minister of Justice makes it clear that French lessons or refresher courses are a major component of education provided by the National Education system. Moreover, several initiatives and activities are carried out by the prison rehabilitation and probation services to facilitate access to reading in detention.

The CGLPL duly notes these measures and asks that proactive policies be developed in this regard.

- 5- Organise specific activities for prisoners placed in solitary confinement and plan for them to participate in the institution's ordinary activities.

The Minister of Justice gives a reminder that placement in solitary confinement does not lead to access to activities being denied. That said, the requirement to keep a prisoner in solitary confinement, either for the prisoner's own safety or the security of the institution, does not enable participation in ordinary activities.

The CGLPL asks that instructions be issued to encourage activities to be offered to detainees in solitary confinement.

- 6- Legally define the role of work in detention, regulate work relations and access to work in cells and set a general framework of rules bearing on worker protection and safety.

The Minister of Justice specifies that Article 717-3 of the Criminal Procedure Code, amended by the Prison Act of 24 November 2009, provides that, within penal institutions, all measures are taken to provide professional activity, vocational or general training for any prisoners requesting such activities. Prisoners' work relations are not subject to a work contract. An exception can be made to this rule for activities pursued outside penal institutions. The rules concerning the distribution of prisoners' professional revenue are determined by decree. Prisoners' professional revenue cannot be subject to any deduction for maintenance expenses in a penal institution. The remuneration that prisoners receive in return for work cannot be less than an hourly rate set by decree and linked to the minimum growth wage defined in Article L. 3231-2 of the Labour Code. This rate can vary depending on the regime under which prisoners are employed.

In December 2016, the CGLPL submitted to the Government an opinion on work and vocational training in detention calling for the drafting of a prison social law. Following on from this opinion, in 2017 the CGLPL will revise all of its recommendations bearing on work and training in prisons.

7- Regulate the procedure for designating persons called to work among those selected and provide for a procedure guaranteeing the transparency of decisions regarding access to work – not least in terms of absence of any discrimination.

The Minister of Justice explains that the work selection procedure provides for an examination of requests and a decision to be made by a multidisciplinary committee - ensuring a shared analysis of the request.

See Recommendation no.6 above.

8- Regulate the conditions for making work compatible with participation in other activities.

The Minister of Justice explains that better coordination between work and other activities is encouraged. When this has been possible, some sentencing institutions have been able to set up a so-called "continuous day" form of detention organisation, whereby workshop activities are organised in the morning and access to activities in the afternoon. These positive experiences are difficult to roll out on a broad scale, however, given the constraints and complexity they entail in the organisation of detention and the running of the institution.

See Recommendation no.6 above.

9- Provide for compensation for loss of earnings due to the temporary closure of workshops.

The Minister of Justice states that there is no supervision of this recommendation.

See Recommendation no.6 above.

10- Set up a dynamic policy for searching for job opportunities.

The Minister of Justice points out that the range of work opportunities faces the same problems as in economic activity. Staff assigned to this mission in the interregional department take action in this context to diversify and secure a sustainable range of work opportunities. Concerning institutions under delegated management, or under public-private partnerships, a reminder is given that contracts incorporate payroll and employment targets.

See Recommendation no.6 above.

11- Define the conditions for paying a minimum wage to prisoners selected for work and for clarifying the way remuneration is calculated and its distribution between the three parts of the personal account.

The Minister of Justice recalls that Article 717-3 of the Criminal Procedure Code, amended by the Prison Act of 24 November 2009, provides as follows: "the remuneration that prisoners receive in return for work cannot be less than an hourly rate set by decree and linked to the minimum growth wage defined in Article L. 3231-2 of the Labour Code. This rate can vary depending on the regime under which prisoners are employed." Once the interprofessional minimum wage (Smic) has been revised, the hourly pay for each category of work in general service and in production workshops is revised and communicated via a memo.

See Recommendation no.6 above.

12- Ensure funding for vocational training, improve its coordination with internal employment in institutions and give precedence to content with practical opportunities.

The Minister of Justice indicates that the Prison Act of 24 November 2009 has provided for a trial where the organisation and funding of vocational training is transferred to the Regions. Initiated on 1 January

2011 for a four-year period, this trial enabled the Pays de la Loire and Aquitaine Regions to have a say in the management and coordination of vocational training activities for prisoners in publicly managed prisons in their area, on the basis of general guidelines defined by the prison administration.

After the first three years, the progress report reveals that the regions have got involved as financial partners and facilitators of the prison strategy in terms of managing prisoners and preparing for their release. The Act on mobilising regions for growth and employment and on promoting territorial equality provides for the trial of the transfer of organisation and funding of vocational training to be rolled out as from 1 January 2015 within more regions for all publicly managed institutions and, when the contracts reach their term (2016, 2018) for institutions under delegated management.

See Recommendation no.6 above.

## 1.8 Staff training

- 1- Do everything possible to guarantee the regular presence in detention of institution managers and prison rehabilitation and probation counsellors.

The Minister of Justice maintains that reminders are given at regular intervals of instructions to encourage the presence of management staff and prison rehabilitation and probation counsellors in detention. Hearing facilities have been located in accommodation sectors, for example.

The CGLPL asks that the importance of these instructions be stressed.

- 2- Systematically set up an easily accessible supervisory system, which is non-hierarchical but based on solely the personal decision of the official concerned, and which guarantees confidentiality.

The Minister of Justice explains that there is a network of psychologists present in each interregional department offering any staff the possibility of being heard and supported, with strict confidentiality being upheld.

The CGLPL duly notes this point.

- 3- Set up specific training in the performance of disciplinary investigations as regards the behaviour of officials.

The Minister of Justice specifies that measures are being taken to explain to staff how to behave in the event of disciplinary investigations. Furthermore, the prison administration has drafted a disciplinary procedure guide concerning prison administration officials. The aim of this guide is to answer questions that might be raised by department managers finding themselves having to initiate a disciplinary procedure against an official at fault, human resource managers in charge of this type of case file and every employee of the prison administration team. To facilitate the widest possible dissemination of this guide, it is available online on the prison administration department's intranet site.

The CGLPL duly notes these measures.

- 4- Redefine the role and duties of new warders and senior prison officials.

The Minister of Justice points out that discussions concerning the occupations are in progress in the prison administration following on from the Occupations seminar of July 2016, particularly in terms of talks concerning the reform of the chain of command.

The CGLPL duly notes this measure and asks to be kept apprised of its successful outcome.

## 2. Recommendations concerning mental health institutions

## 2.1 Right to dignity and physical integrity

- 1- Within each institution and in accordance with a national model, implement a traceability system bearing on solitary confinement and restraint measures which particularly indicates when these begin and end, and which is subject to oversight by the *Département*-level Commission for Psychiatric Treatment.

The Ministry of Health states that this measure will be included in the implementing instruction for Article 72 of the Act on modernising our health service dated 26 January 2016, which establishes traceability of solitary confinement and restraint measures.

The CGLPL duly notes these intentions and will ensure they are effective in the implementation of the 26 January 2016 Act.

- 2- Install call devices in seclusion rooms.

The Ministry of Health maintains that this recommendation will be set out in the French National Authority for Health (HAS) good practice guide on the use of restraint and solitary confinement, which is due to be published in the first quarter of 2017.

The CGLPL duly notes these intentions and will ensure that they are effective.

- 3- Ensure that placement in a seclusion room goes hand in hand with proper surveillance and systematic interviews at the start, end and during the measure.

The Ministry of Health indicates that this measure will be included in the implementing instruction for Article 72 of the Act on modernising our health service dated 26 January 2016, which establishes traceability of solitary confinement and restraint measures, and a reminder of it will be given in the French National Authority for Health (HAS) good practice guide on the use of restraint and solitary confinement.

The CGLPL duly notes these intentions and will ensure that they are effective.

- 4- Adopt binding national measures guaranteeing that hospitalised detainees benefit from exactly the same medical treatment as other patients and are not placed in solitary confinement because of their legal status, but solely on the grounds of their clinical condition.

The Ministry of Health explains that the implementing instruction for Article 72 of the Act on modernising our health service dated will clarify that seclusion rooms must not be perceived in the same light as secure rooms, but may only be used as part of measures to protect the patient and the people in his or her environment.

The CGLPL duly notes these intentions and will ensure that they are effective.

- 5- Allow all patients admitted in free healthcare to choose a place in an open unit.

The Ministry of Health believes that this option is guaranteed by a 1993 circular and 2004 recommendations. It stresses that if the management of units requires patients admitted in free healthcare to be looked after in a closed unit in reality, this situation must remain exceptional and access must be organised so that patients can move around.

The CGLPL does not consider the situation described to be an accurate reflection of what it has observed in practice, and recommends that the Ministry take all steps to ensure that provisions protecting the freedom to come and go for patients admitted in free healthcare are effective.

- 6- Do not perform full-body searches when there is no express provision therefor in any regulatory texts.

The Ministry of Health points out that there are currently no regulations organising the doctrine for full-body searches in health institutions, but that case law has recognised an institution's liability during a

dispute in which the failure to conduct a search of a patient with suicidal tendencies has been considered to constitute negligence. It highlights that the 1998 recommendations contained security checks intended to prevent the presence of dangerous objects.

The CGLPL considers the regulations and case law referred to by the Ministry to be unsatisfactory, insofar as they place institutions under obligation without specifying how the latter can comply. It therefore recommends that the Ministry adopt clear measures that protect patients' rights and honour the responsibility of nursing staff.

- 7- Equip each room accommodating patients who are hospitalised without their consent with washing facilities designed with account taken of their state of health.

The Ministry of Health calls for this recommendation to form part of the work of the psychiatry steering committee on psychiatry concerning the technical operating conditions of authorised institutions. It stresses that new builds and renovated facilities alike are now equipped with washing facilities which include showers in each room.

The CGLPL confirms that new institutions do indeed comply with its recommendations and recommends that the Ministry increase its vigilance of access to washing facilities in older institutions.

- 8- Ensure that the obligation to wear pyjamas is proportionate to the medical need and limit this obligation to a short period of time during placements in seclusion rooms.

The Ministry of Health is of the opinion that this is a matter for discussion between scholarly societies and institutional professionals.

The CGLPL does not agree, and asks that measures be taken, either by the administration or by the National Authority for Health, in the form of instructions, recommendations or a good practice guide, such that pyjamas no longer have to be worn systematically or on disciplinary grounds in the many institutions where this practice persists.

## 2.2 Rights of defence

- 9- Improve information for patients and the general public by circulating documents drawn up in liaison with users' associations which explain, in plain language, the legal system underpinning hospitalisation without consent and existing avenues for appeal. In each institution, display the list of lawyers with the relevant competence as well as contact details for the Bar association's office. Give each patient a welcome booklet specifically drawn up for the psychiatric service and display the institution's internal rules in each room.

The Ministry of Health points out that each institution gives every patient, upon their admission, a welcome booklet to which the charter for hospitalised patients is appended. It recommends including the CGLPL's recommendation in the work of the National Mental Health Council taskforce which will be set up to address the implementation of Article 69 of the Act on modernising our health service, with regard to the setup of the territorial mental health plan.

The CGLPL duly notes these intentions and will ensure that they are effective.

- 10- Take all necessary means to guarantee that the rights of patients hospitalised without their consent are properly notified, and records kept thereof, give them a copy of the admission decision made concerning them and establish an official system for gathering and filing their comments.

The CGLPL upholds this recommendation.



11- Give systematic and precise information to patients hospitalised without their consent about the role of the "trusted person" and enable them to appoint one if they wish.

The CGLPL upholds this recommendation.

12- Systematically hold hearings involving the Liberty and custody judge in a hospital setting.

The CGLPL underscores the importance of upholding this recommendation by reminding that the law currently requires hearings in a hospital setting. It urges the Minister of Health to liaise as necessary with the Minister of Justice, particularly to avoid that services cite unnecessarily restrictive technical specifications as grounds for delaying the setup of mobile hearings.

13- Guarantee that patients can access a lawyer, including during the adjustment period recommended by psychiatrists and, in this regard, train lawyers who are specialised in this type of dispute and ensure that they do not receive less pay than what they would have received for other disputes.

The CGLPL underscores the importance of upholding this recommendation.

14- Only hold hearings by video conference with the informed consent of the person concerned and for purely procedural hearings, as determined by the authority with the powers to make the final decision, and respecting the systematic and confidential nature of conversations between the patient and his or her lawyer.

The CGLPL upholds this recommendation.

15- Set up legal access points in mental health institutions.

The CGLPL upholds this recommendation.

16- Record the reasons for any refusal to sign any register in which the signature of someone hospitalised without their consent is compulsory.

The CGLPL upholds this recommendation.

## 2.3 Right to privacy and family life, relations with the outside world

1- Lift the absolute blanket ban on sexual relations and work on obtaining the consent of the people concerned as well as on the means that may be made available to them for managing their personal life.

The CGLPL upholds this recommendation.

2- Systematically guarantee the confidentiality of hospitalisations in mental health institutions.

The CGLPL upholds this recommendation.

3- Enable patients to access their financial resources.

The CGLPL upholds this recommendation.

4- Only restrict visiting terms and authorisations for communication with the outside world on a case-by-case basis and on justified medical grounds.

The CGLPL upholds this recommendation.

- 5- Protect all patients' freedom of correspondence, including when they are hospitalised without consent, by banning any mail checking practices, installing letterboxes in hospital buildings and La Poste (French national postal service) letterboxes inside the hospital. Only allow a limited number of authorised staff members to handle patients' letters. Keep a specific register for correspondence for the attention of the administration and judicial authorities when patients wish to have such letters recorded.

The CGLPL upholds this recommendation.

- 6- Harmonise practices bearing on authorisation to make phone calls in mental health institutions, authorise mobile phones to be kept unless they are contraindicated for medical reasons and guarantee the confidentiality of phone calls and access to the phone for bedridden patients.

The CGLPL upholds this recommendation.

- 7- Inform families of the institution's internal rules and organise for communication between the families and medical teams.

The Ministry of Health calls for this recommendation to be included in the work of the National Mental Health Council taskforce which will be set up to address the implementation of Article 69 of the Act on modernising our health service, with regard to the setup of the territorial mental health plan.

The CGLPL duly notes this intention and will ensure that it is effective.

- 8- Only restrict family visiting rights for a limited period of time and for a reason that is duly explained to the family concerned.

The Ministry of Health maintains that the current regulations are in line with the CGLPL's recommendation.

The CGLPL does not dispute that the current regulations are in line with its recommendations, but nevertheless finds, during its visits, that more restrictive practices are common. It therefore calls on the Ministry to take every measure to ensure that practices abide by these regulations.

- 9- During hospitalisation, respect those rights of which detained patients avail while in detention.

The CGLPL underscores the importance of upholding this recommendation and advocates that joint Ministry of Justice-Ministry of Health instructions define the respect of detained patients' rights when they are committed to a mental health institution. It asks that the Ministers then take specific measures to ensure that these instructions are applied in practice.

- 10- Facilitate access to IT and the Internet, particularly for professional or educational practices, and authorise access to messaging services, the sole limits to which are set by medical decision or according to the patient's criminal status.

The CGLPL upholds this recommendation.

## 2.4 Activities

- 1- Encourage activities that enable social rehabilitation in line with patients' wishes, by involving them in care plans, ensuring that patients' are informed of activity plans and organising their traceability.

The Ministry of Health calls for the CGLPL's recommendations to be included in the work of the National Mental Health Council taskforce which will be set up to address the implementation of Article 69 of the Act on modernising our health service, with regard to the setup of the territorial mental health plan.

The CGLPL duly notes this intention and will ensure that it is effective.

- 2- Ensure that detained patients are not restricted in their access to activities, except when justified by their clinical condition.

See Recommendation no.9 above.

- 3- Bring national education into mental health institutions.

The CGLPL upholds this recommendation.

## 2.5 Access to healthcare

- 1- Ensure that a somatic examination is systematically carried out for all patients hospitalised without their consent.

The Ministry of Health states that improving access to somatic care for patients suffering from mental problems is one of the aims of the national mental health strategy. It explains that this recommendation could be referred to during the work by the psychiatry steering committee on the organisation of care.

The CGLPL duly notes this intention and will ensure that it is effective.

- 2- Systematically inform patients, in the welcome booklet, about how to access their medical record.

The CGLPL upholds this recommendation.

- 3- Make sure that the principle whereby patients are free to choose their physician – and this also includes psychiatrists – is respected.

The Ministry of Health draws attention to the fact that the law as it currently stands complies with this recommendation. It nevertheless admits that the recommendation can prove difficult to implement in practice.

The CGLPL is aware of the difficulties of putting this locally into practice, but asks that everything possible be done to ensure it can be applied, and particularly that patients and families are provided with documented, traceable information concerning this right.

## 2.6 Freedom of conscience

- 1- Ensure that freedom of conscience is respected by granting requests for religious practice, welcoming chaplains, allowing individual and collective religious practices and enabling dietary customs that are compatible with religious requirements, without enforcing them upon any patients who do not wish to follow them.

The CGLPL upholds this recommendation.

## 2.7 Rights associated with measures coming to an end

- 1- Initiate discussions at national level on the preliminary discharge procedure or end of measure decision so that patients do not find themselves bound by

restrictions that would not be justified by their current state of health but by procedures prior to the treatment they have been following.

The CGLPL upholds this recommendation

- 2- Call time on any discrimination in the release from hospitalisation without consent regime, including when this concerns persons who have been deemed criminally irresponsible or have spent time in units for difficult psychiatric patients.

This recommendation has no longer been applicable since the Act of 27 September 2013.

- 3- Avoid any problem of continuity between the end of hospitalisation in a unit for difficult psychiatric patients and their committal to an institution in the patient's home *département*. For that, ensure that readmission orders are adopted immediately and that, should there be any doubt, an identified procedure enables the patient's host institution to be chosen.

This recommendation has no longer been relevant since the Decree of 1 February 2016, which henceforth authorises the prefect of the unit in which the unit for difficult psychiatric patients is situated to name the institution responsible for accommodating the patient in the unit release order.

## 2.8 Service organisation and staff

- 1- Systematically organise for supervision of officials who oversee persons deprived of liberty in a non-hierarchical manner, based on their personal decision and in keeping with confidentiality.

The CGLPL upholds this recommendation.

- 2- Encourage the development of units responsible for accommodating psychiatric emergencies and scale up the means in admission units.

The Ministry of Health indicates that improving the organisation of psychiatric emergencies is one of the aims of the national mental health strategy. It calls on this recommendation to be included in the work of the psychiatry steering committee on managing the organisation of psychiatric emergencies.

The CGLPL duly notes this intention and will ensure that it is effective.

- 3- Open up committees on relations with users and management quality to associations of users or patients' families as well as to legal professionals, and systematically consult these committees about draft internal rules bearing on units and seclusion room equipment.

The Ministry of Health maintains that this committee, now titled "users' committee" receive an annual report from each institution on the policy for reducing solitary confinement and restraint practices and that the CGLPL's recommendation will be taken into account in the implementing instruction for Article 72 of the Act on modernising our health service, which regulates the use of solitary confinement and restraint.

The CGLPL duly notes this intention and will ensure that it is effective.

- 4- Determine the number of nursing staff required for hospital structures to operate efficiently and scale up the human and logistical means of extra-hospital structures.

The Ministry of Health draws attention to the fact that the aims of the national mental health strategy are in line with these recommendations.

The CGLPL duly notes this point.

## 2.9 Legislative amendment

- 1- Merge the two types of hospitalisation without consent and entrust the principle behind this decision to the judicial authority.

The CGLPL upholds this recommendation.

## 3. Recommendations concerning custody facilities

### 3.1 Custody facilities of the national police

- 1- Mobilise the necessary means to make up for the gross shortfall in the national police force's operating budget, which is undermining custody conditions and officers' working conditions.

The Minister of the Interior considers it over the top to refer to the national police force's operating budget as suffering from a "gross shortfall" and that, at a time when finances are tight, it will only be possible to bring facilities progressively up to standard. He believes that, although access to showers is often difficult, it should be borne in mind that custody is only temporary – lasting less than 16 hours in 85% of cases – and he highlights that toiletry kits are becoming steadily more widely available. He explains that the blankets, which are often difficult to clean, are gradually being replaced with disposable space blankets.

The CGLPL continues to hold a very dim view of the hygiene conditions in which people placed in custody find themselves and police officers have to work. It recommends that budget appropriations continue to be earmarked for improving hygiene. It cannot consider the use of space blankets (which are very uncomfortable) to be a satisfactory solution to overcome a logistics problem.

- 2- Give the custody officer a greater role to play.

The Minister of the Interior claims that this concern, raised by the CGLPL on a regular basis, has been taken on board and was the subject of an instruction in April 2013.

The Minister of Justice is of the opinion that the appointment of law enforcement officer to the position of senior custody officer is additional proof that custody measures are being properly carried out. He nevertheless bemoans the lack of legal and regulatory provisions whereby the judicial authority could play a part in the administrative organisation of investigation services.

The CGLPL duly notes this measure and recommends that the supervisory authorities and General Inspectorate of the French national police force do everything possible to encourage the proper performance of this new duty. It only sees advantages in the judicial authority playing a part in the administrative organisation of investigation services.

- 3- Demonstrate more careful judgment in the confiscation of personal belongings.

The Minister of the Interior maintains that instructions given to law enforcement issue regular reminders of the fact that careful judgment must be demonstrated in the implementation of security measures. He particularly stressed that the decision to confiscate bras is only made if there are fears the person placed in custody could use it to try and injure herself or make an attempt on her life. He draws attention to the fact that an instruction addressed these measures in May 2011 and that senior management are keeping a very close eye on their application. He highlights how difficult it is to assess in practice the risks posed by people placed in custody and commended the work of the National Police Internal Oversight Steering Committee (COCIPN) which enabled the CGLPL to make an active contribution to the thought process of this institution.

Without underestimating the difficulty of assessing risks in practice or the merits of the work in which it took part within the COCIPN, the CGLPL thinks that it is necessary to ensure that officers are not held accountable as long as they have taken appropriate measures in view of the reasonably analysed risks. It is important to subject them to a simple obligation of due diligence rather than an absolute blanket obligation centred on results.

The Minister of Justice states that public prosecutors set great store by the fact that custody measures are carried out in conditions ensuring that personal dignity is respected. He nevertheless indicates that the decision to take and repeat security measures is an administrative one over which the judicial authority has no supervision pursuant to the regulatory provisions. He is in favour of using appropriate restraint means in very specific situations, but considers that the CGLPL's proposal to ease the conditions for holding gendarmerie or police officers accountable in the event of an incident appears at odds with the accountability principle that must prevail over any measure to deprive a person of their liberty.

The CGLPL considers it justified, notwithstanding any regulatory provisions to the contrary, that the public prosecutor exercise scrutiny over all of the measures taken to carry out a custody operation.

#### 4- Remove any physical barriers to the respect of rights granted by the Criminal Procedure Code (interview with a lawyer, medical examination).

The Minister of the Interior says that, after a significant amount of work, it has been possible to reach a consensus on the role of the physician in custody situations and to update the organisational framework underpinning legal medicine and the conditions for its implementation. An April 2012 circular defines this organisation. He concedes, however, that police officers do often struggle to find a medical practitioner who can attend within a reasonable timeframe and may not have any other option than to call on the accident & emergencies unit of the local hospital. He ends by underlining the fact that these difficulties do not prevent the person placed in custody from being able to benefit from a medical examination, as is his or her right.

In the Minister of Justice's view, it seems preferable that medical examinations of people placed in custody take place in investigation service facilities so that physicians can ascertain *in concreto* the compatibility of the person's health with the physical conditions in which he or she is placed. He says that discussions are under way with the departments of the Ministry of Health and Ministry of the Interior to increase the appeal of conducting custody examinations on-site.

The CGLPL is not unaware of the local difficulties that can arise from the medical demographic situation. But it drives home the need to maintain systematic contact with the hospitals or *département*-level medical associations so that agreements, based on the specifics of each district, organise the arrangements according to which the right of people placed in custody to benefit from a medical examination must be exercised. It strongly recommends that medical examinations be conducted in the facilities where the custody measure is being carried out.

The Minister of Justice confirms that the public prosecutor has also observed difficulties as regards the availability of lawyers. He explains that the organisation of the proper performance of Bar associations' criminal desks is the sole responsibility of lawyers' associations and their President, and stresses that the Ministry of Justice's departments give a regular reminder of this requirement – even though the means are currently lacking to find a direct solution.

Well aware of the difficulties of which the Minister of Justice speaks, the CGLPL can but encourage the Ministry of Justice's departments to persevere in this sense. It draws attention to the fact that lawyers often complain of their low pay and above all the lengths of time they are required to wait to be paid. As a result, the CGLPL asks that the Minister of Justice not overlook the positive impact that could come of administrative and financial improvement measures. As suggested by the Minister of Justice, the CGLPL will play a direct part in raising the awareness of lawyers' representative organisations.

#### 5- Improving relations with the public prosecutors' offices

The Minister of the Interior feels that relations with the public prosecutors' offices are steadily, albeit unevenly, improving, depending on local constraints and the wide range of practices of different prosecutors' offices. He nevertheless highlights the complexity of the procedural red tape that law enforcement officers

must tackle and is delighted to hear the measures announced by the Prime Minister on 14 October 2015 to lighten the purely procedural workload of police officers.

The CGLPL acknowledges the improvement in relations between law enforcement officers and prosecutors' offices, and recommends that national instructions be issued to make it a reality across the board. It insists particularly on the need to put properly into practice the judicial authority's oversight of custody facilities. It also draws the Government's attention to the fact that "procedural constraints" also guarantee the rights of people placed in custody and can only be lightened with careful judgment. Rhetoric aimed at stigmatising "the burden of procedural red tape" is not risk-free.

The Minister of Justice claims that public prosecutors demonstrate the utmost vigilance in their scrutiny of custody registers during the inspections they carry out of custody facilities each time they deem this necessary – and at least once a year. He emphasises that work is being carried out on setting up an electronic custody register. He announces the deployment of modern communication means for the public prosecutor's office to exercise proper oversight of night custody situations, an adaptation of the staff numbers with the responsibility of encouraging the real-time processing of the oversight of custody purposes and stresses that "video conferencing is in no way an exception to the physical presentation principle, but one of the presentation means placed on the same footing as physical presentation. Lastly, he states that in some prosecutors' offices, the on-duty magistrates travel to gendarmerie and police stations for the purposes of extending the custody measures.

The CGLPL duly notes the planned improvement in means. However, it cannot consider that presentation via video conference equates to the same thing as physical presentation. It recalls that video conferencing is only possible with the consent of the person concerned and that this technique must not prevent the latter from being able to converse directly with his or her lawyer.

The Minister of Justice also reports that measures have been taken to ensure oversight of the physical conditions in which custody situations take place. He cites the main observations made by the public prosecutors in this respect: they confirm the CGLPL's usual findings.

Despite these similar observations, the CGLPL is still critical of the finding, during its visits, that oversight by prosecutors' offices of custody facilities continues to be inadequate and very unequally ensured. On this point, it can do no more but recommend to the Minister of Justice that the work currently in progress between its departments and the CGLPL on disseminating instructions on the oversight points for the prosecutors' offices regarding custody facilities delivers.

### 3.2 Custody facilities of the national gendarmerie

#### 1- Ensure night surveillance of people who are placed in custody.

In a General Directorate of the National Gendarmerie memo dated 29 April 2016, the Minister of the Interior reminded the departments concerned that surveillance of people placed in custody must be constant, sustained and tailored to the health and behaviour of the person placed in the cell. The memo also indicates that this surveillance must be carried out at night in constant contact with the senior officers heading up the unit where the measure is being carried out. The General Directorate is also planning the gradual installation of alert buttons to round off rounds and visual checks. The Minister ends by explaining that places of deprivation of liberty are now organised into three levels: the first level corresponds to daytime use, the second to mostly night-time surveillance and the third applies to additional cells, created depending on the available means, in very busy units.

The Minister of Justice points out that, because of incidents arising in gendarmerie unit jails, its departments have referred this matter to the General Directorate of the National Gendarmerie and suggested grouping together any people who have to remain in custody overnight in the facilities of district-level gendarmerie stations, or any other more relevant organisation, so that their surveillance can be ensured.



The CGLPL duly notes these changes and recommends that, when it proves necessary to extend a measure overnight, the people in custody be taken to units where there is round-the-clock surveillance.

- 2- Crack down on the abusive nature of security measures applied with regard to people placed in custody.

The Minister of the Interior clarifies, on the one hand, that the General Inspectorate of the National Gendarmerie has been conducting an oversight and assessment campaign since 2015 of custody conditions and, on the other, that instructions have been issued to ensure that security measures (confiscation of spectacles and bras, handcuffing) are appropriate in light of the danger posed by the person concerned and guided by the principles of necessity, proportionality, discernment and dignity for the person. He indicates that the procedure for keeping an inventory of confiscated items has been automated in a software program used for managing custody situations.

The CGLPL duly notes these measures and will ensure that they are effective.

- 3- Ensure the confidentiality of hearings carried out by law enforcement officers as well as interviews with lawyers and medical consultations. Ensure that people placed in custody do not cross paths with members of the public or officers' families.

The Minister of the Interior maintains that these requirements have been taken on board in the construction of new service facilities.

The CGLPL has indeed observed that recent facilities are in line with its recommendations; it upholds the recommendation aimed at improving older service facilities to the extent possible.

- 4- Ensure that the right of people placed in custody to benefit from legal counsel and a medical examination is respected.

The CGLPL upholds this recommendation.

- 5- Limit the use of video conferencing for presentations to the prosecutor's office.

The CGLPL upholds this recommendation.

- 6- Improve conditions bearing on hygiene and in which meals are taken.

The Minister of the Interior states that the gendarmerie will improve procedures for cleaning blankets and that breakfast for people placed in custody - until now provided out of generosity by the gendarmerie staff - will henceforth be covered by a contract common to the police and gendarmerie.

The CGLPL duly notes these improvements and will ensure that they are effective.

### 3.3 Custody and detention facilities of the General Directorate for Customs and Excise

- 1- Demonstrate more careful judgment in the application of security measures.

The Minister of Finance and Public Accounts and Secretary of State for the Budget deem body searches to be investigatory procedures that cannot be performed as security measures. They point out that, during customs detention measures, only the confiscation of items of clothing may be regarded as a security measure. They stress that both of these measures must be justified in terms of the principles of necessity and proportionality and must respect the dignity of the person concerned. The ministers recommend reminding departments of the need to abide strictly by these principles. They also intend to issue instructions on plans for an adversarial inventory of items confiscated during placements in customs detention and on

drawing the attention of officials to the importance of not using handcuffs in the event of public exposure, unless the sufficient security conditions are met.

The CGLPL duly notes these intentions and will ensure that the instructions issued have the intended effects.

- 2- Ensure that rights are respected, particularly regarding the length of time customs detention can last, and better guarantee the confidentiality of exchanges.

The ministers duly note that the CGLPL is in favour of appointing a "contact officer" for each procedure. However, they do not consider it appropriate to bring the start of the customs detention measure back to the start of the check, for this is not coercive. Instead, they believe that the customs detention measure should only be considered to run from when the commission of an offence has been observed. They claim to have asked the customs departments to provide lawyers and physicians with secure facilities and, where necessary, to bring customs detention cells up to standard. Lastly, they do not think the lack of audiovisual equipment for recording hearings with minors has much impact in practice, insofar as these do not crop up very often.

The CGLPL finds it difficult to agree that customs checks are not coercive. It asks the Government to bring the start of the customs detention measure into line with the start of the check, as is done for determining the length of time of custody measures.

- 3- Carry out the inspections provided for by law at more regular intervals.

The ministers maintain that instructions providing for the periodic signing by supervisors of the customs detention register were issued in 2009. They recommend reminding the departments of the importance of heeding these instructions and also draw their attention to the need for a periodic inspection of the general overall state and regular cleaning of cells.

The CGLPL duly notes these intentions and will ensure that the instructions issued have the intended effects.

### 3.4 General considerations

In order to expedite the dissemination of the CGLPL's recommendations and improve their application in practice, the Minister of Justice asks that reports on visits to custody facilities be forwarded systematically to the judicial authority, and an annual summary report sent to the Ministry of Justice.

These provisions will be implemented by the CGLPL.

## 4. Recommendations concerning detention facilities and centres for illegal immigrants

### 4.1 Legislative measures

- 1- Broaden the remit of France's immigration and integration service (OFII) to encompass support for certain persons leaving detention when this proves necessary because of their situation.

The Minister of the Interior does not consider this recommendation to be relevant insofar as the OFII can be contacted by anyone outside a centre for illegal immigrants.

The CGLPL duly notes this point.

- 2- Amend Article L552-1 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA) to exclude the length of time spent in an administrative detention facility as well as the days on which the clerk's office of the detention centre for illegal immigrants is closed from the calculation of the time limits for appealing against the placement in detention and deportation decision.

The Minister of the Interior indicates that the Act of 7 March 2016 on foreigners' rights has reduced the time-limit for referring to the Liberty and custody judge to extend the detention from five to two days.

Although worthwhile, this measure is not in line with the CGLPL's recommendation, which concerned the possibilities of a detainee lodging an appeal with the administrative judge against the measures which are being imposed on him or her. The CGLPL upholds its recommendation.

- 3- Reduce the maximum detention timeframe from 45 to 32 days.

The Act of 7 March 2016 has retained the maximum 45-day timeframe.

The CGLPL upholds its recommendation as it has observed in practice that it is ultimately only possible to deport those persons who are deported within the first two weeks of detention. Beyond that, the procedure cannot be successfully completed.

## 4.2 Dignity and integrity

- 1- Only use handcuffs if there is a proven risk of aggression or escape.

The Minister of the Interior specifies that two circulars have been adopted to emphasise that this precautionary measure must not be systematic, but justified by security measures, during the escort measure.

The CGLPL duly notes these timely provisions and will maintain a vigilant stance as to the conditions of their application.

- 2- Define a disciplinary procedure which limits the length of time a person can be placed in solitary confinement and ensures traceability of such measures, systematic information as regards the judicial authority and ongoing contact with the legal entity in charge of providing legal assistance.

In the same way as for handcuffs, the Minister of the Interior explains that two circulars have been adopted to set strict rules regarding the confinement of detainees. He considers that the system in place is sufficiently well regulated and that ex post oversight may be performed of indications written down in detention registers. He ends by pointing out that this measure is seldom carried out in practice.

During its visits, the CGLPL was able to note that such measures are indeed rare in most centres, but that there are institutions which resort to them more often. As a result, the CGLPL upholds the recommendation aimed at more strictly regulating the disciplinary procedure concerning detainees on the basis of the previously described criteria; it will maintain a vigilant stance in this respect.

- 3- Only practise searches on the grounds of a regulatory provision and in proportion with the risk.

The Minister of the Interior maintains that systematic full-body searches of new arrivals to the detention centre, where they are completely stripped, are no longer practised. Instructions were issued to that end in 2011 and 2014. From now on, the measure is carried out on decision of the centre manager, when the foreign national's behaviour may be likely to pose a characterised threat to the order or security of

the institution and as long as the measure is aimed exclusively at preventing this disorder. It must respect the principles of personal integrity and dignity.

The CGLPL duly notes these timely measures and will maintain its vigilant stance as to the conditions of their application. It nevertheless stresses the need to implement tools to ensure the traceability of check procedures.

4- Make the adversarial inventory of confiscated items systematic.

The Minister of the Interior considers that a 2010 circular setting out the list of items that must be confiscated as well as the conditions for their storage, inventory and return to owners addresses the difficulties encountered and allows for sufficient traceability of items.

The CGLPL duly notes these timely provisions and will maintain a vigilant stance as to the conditions of their application.

5- Prohibit the carrying of weapons inside detention centres for illegal immigrants

The Minister of the Interior claims that, on the grounds of internal provisions dated March and June 2009, only telescopic defence batons and individual tear gas canisters are allowed in detention areas. He clarifies that police officers are reminded of this instruction at regular intervals.

The CGLPL stresses the need for senior management to maintain constant vigilance as to the application of these texts.

### 4.3 Rights of defence

1- Facilitate the provision of information to prisoners by notifying them, in a confidential manner, of any measure concerning them and by making the internal rules available to them in plain, easy to understand language, which has been translated into the languages corresponding to the most common nationalities encountered in each centre.

The Minister of the Interior maintains that the applicable provisions of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA) and the circulars of his administration are in keeping with the CGLPL's recommendations.

The CGLPL confirms that the applicable texts do indeed conform to its recommendations, but regrets that they are often only partially implemented. As a result, it recommends that administrative measures (allocation of resources, instructions, training, inspections, etc.) be taken to guarantee that rights are respected – not least as regards the confidentiality of interviews, handing out of documents and their translation into all the necessary languages.

2- Make it easier for detainees to access a lawyer by providing a suitable facility, displaying the list of members of the Bar association and setting up a system for being able to contact on-duty offices.

The Minister of the Interior recalls the applicable provisions and considers that they enable the detainee to make a direct call to a lawyer or ask the association present at the detention centre for illegal immigrants to do this on his or her behalf.

The CGLPL concedes that the applicable provisions are in line with its recommendations but finds that their application in practice is very hit-and-miss. As a result, it recommends that administrative measures (allocation of resources, instructions, training, inspections, etc.) be taken to guarantee this application.

- 3- Facilitate access to assistance associations by guaranteeing the confidentiality of interviews and enabling these associations to access accommodation facilities.

The Minister of the Interior indicates that the measures recommended by the CGLPL are applied through the clauses of the legal assistance contract that the administration has signed with these associations.

The CGLPL concedes that the provisions of this contract are in line with its recommendations, but finds their application to be rather patchy. It recommends that the Ministry organise a systematic consultation of associations working in detention centres for illegal immigrants so as to clearly identify the difficulties they face and to look for appropriate solutions for each situation.

- 4- Improve the role of interpreters by requiring their presence for every detainee who is not proficient in French – i.e. by excluding the option of a fellow detainee providing the translation –, organising physical presence rather than over the phone and allowing the legal aid associations to benefit free of charge from interpreters' services.

The Minister of Interior claims that internal measures have been taken to act upon the CGLPL recommendations. He highlights in particular that access to legal aid associations and the services of the Interservices Migrants Interprétariat association is free and that, since the Act of 29 July 2015 reforming the right to asylum, an interpreter's services when submitting an asylum application have been financed by the administration.

The CGLPL duly notes these measures and will ensure that they are effective.

- 5- Facilitate asylum applications by guaranteeing their confidentiality, especially with regard to police officers, by requiring the dissemination of explanatory documents and duly translated applications, making interpreters available to asylum claimants and allowing legal assistance associations or a third party to transmit these applications.

The Minister of the Interior points out that the Act of 29 July 2015 on reforming the right to asylum has amended the system for asylum applications presented while in administrative detention. He explains that the new system aims at striking a better balance between compliance with the right to asylum requirements and the need to ensure that administrative deportation decisions are executed. An internal memo dated 1 March 2016 recalls the following principles: immediate notification to anyone placed in administrative detention of his or her asylum rights; immediate supply of the application form; possibility of benefiting from legal and linguistic assistance to complete the form. The memo states that police staff must not read the contents of the applications nor the documents submitted along with them. That said, the Minister refuses to allow associations to transmit the asylum applications directly to the French Office for the Protection of Refugees and Stateless Persons (OFPRA) on the grounds that this measure is prohibited by a regulatory article of the CESEDA.

The CGLPL duly notes the measures taken and will watch over their application. It nevertheless upholds the recommendation that legal assistance associations or trusted third parties be allowed to transfer asylum applications directly to the OFPRA.

- 6- Regulate the use of video conferencing by setting out legislative rules which authorise it, providing for obtaining the informed consent of the person whose application is being processed by this means, ensuring that an interpreter and counsel are present in guaranteed conditions of confidentiality and only using this technique in the event of proven necessity and on decision of the authority with the powers to make the final decision in the procedure concerned.

The Minister of the Interior states that the provisions of the CESEDA, last amended by the Act of 7 March 2016, usefully regulate the use of video conferencing in terms of hearings before the Liberty and custody judge, hearings before the administrative court and processing of asylum applications.

The CGLPL duly notes these provisions and draws attention to the fact that the person concerned by the video conferencing must give his or her informed consent. It stresses that everything possible must be done to ensure that the legal aid association and counsel assisting this person are present at the latter's side rather than that of the court members.

#### 4.4 Right to privacy and family life and relations with the outside world

- 1- Make sure that detainees can access their personal belongings at all times and provide the latter with cupboards that can be locked with a key.

The Minister of the Interior specifies that the regulations only provide for the opening of a luggage room within each centre and allow detainees to access it at any time with assistance from a police officer. He believes that the security measures do not allow for the provision of any furniture that can be locked which is likely to conceal banned items. What is more, he indicates that lockers, which had been installed in two detention centres for illegal immigrants, had to be removed due to damage.

The CGLPL upholds its recommendation and asks the Minister of the Interior to look into the setup of robust equipment and as well as effective and proportionate control measures.

- 2- Enable detainees to access personal documents concerning them and in each centre define the means for communicating these documents in a way that respects their confidentiality.

The Minister of the Interior points out that this access is guaranteed by the law and concedes that the administration could look into the possibility of amending internal regulations with an article regulating the conditions for detainees accessing their personal documents as well as procedural documents filed with the registry.

The CGLPL recommends that the Minister take concrete action on this intention.

- 3- Officially document the rights of detainees so as to ensure they can keep in touch with their family in acceptable conditions.

The Minister of the Interior maintains that maintaining family ties is guaranteed in the vast majority of cases, but deems this too general an objective to be able to provide a "precise response".

The CGLPL recommends that an administrative document (practical guide, instruction, training document, etc.) systematically list the components entailed in maintaining family ties and indicate the means for guaranteeing these.

- 4- Expedite the exercise of visiting rights by opening detention centres for illegal immigrants in accessible areas, signposting the centre and putting public transport services in place.

The Minister of the Interior states that these recommendations are taken on board when new centres are built and in the prefectural authority's relations with competent service providers.

The CGLPL duly notes these intentions and will ensure that they are implemented on a case-by-case basis.

- 5- Facilitate visitors' access to detention centres for illegal immigrants by authorising visits daily, with no time limits except on strictly necessary grounds, prohibiting systematic identity checks of visitors and laying out facilities appropriate for family get-togethers.

The Minister of the Interior recalls that the length of visits is not covered by regulatory provisions, but that a 2009 circular provides for a minimum visiting time of 30 minutes. He believes that this rule is applied with some flexibility and that longer visiting sessions are tolerated at regular intervals. He indicates that centre managers may "exceptionally" be obliged to reduce visiting times – particularly when they are not between families.

The CGLPL does not consider such practices to respect the rights of detainees and that the necessary administrative measures must be taken to ensure that family visits are possible daily, with no time limits or systematic identity checks of visits, in appropriate facilities for private conversations.

6- Allow detainees to exercise their right of correspondence by providing the necessary stationery and installing letterboxes.

The Minister of the Interior explains that detainees hand their letters to the police officers or associations working in the centre and can ask to be given writing materials.

These measures do not respect the prisoners' freedom of correspondence. Freely accessible letterboxes must be provided and writing materials handed out systematically.

7- Facilitate telephone use by improving the confidentiality of telephone booths, writing up instructions for using these booths in the necessary languages and lifting any ban on mobile phones.

The Minister of the Interior maintains that, pursuant to the provisions of the CESEDA, prisoners must be able to freely access a telephone. He also indicates that any telephones equipped with a camera are confiscated, but that prisoners have the option of taking the SIM card out and putting this into a mobile phone they may be provided with.

The CGLPL duly notes these provisions but does not consider them sufficient to guarantee prisoners' freedom of access to telephones. It recommends that access to a landline come hand-in-hand with a guarantee bearing on the confidentiality of exchanges. It does not consider the fact that a mobile phone is equipped with a camera to be sufficient justification for its confiscation: as a general rule, it should be enough to inform prisoners of their obligations in terms of respecting the right of personal portrayal. Exceptionally, if an offence is reported, telephones that can take photos may be confiscated. The current policy is not proportionate to the risk.

8- Systematically inform a prisoner's next of kin as soon as the latter makes such a request.

The Minister of the Interior does not consider the rights of prisoners to include the administration informing a next of kin or an employer. However, he is of the opinion that round-the-clock telephone access is a useful alternative.

The CGLPL acknowledges that the Minister of Interior makes a justified argument in the vast majority of circumstances, but recommends that, when a prisoner so requests, the administration inform his or her next of kin about the measure being carried out against the prisoner. Instructions must therefore be issued so that prisoners are actually able to make such a request in practice.

9- Always give precedence to house arrest for families with children to avoid placing these children in a detention centre for illegal immigrants, and systematically avoid separating couples.

The Minister of the Interior points out that the preference for placing families under house arrest has been restated in a 2012 circular and confirmed by the Act of 7 March 2016 on the rights of foreigners in France. He claims that this measure is chosen by the Prefect in view of the circumstances provided for by law and that families are never separated, but placed in centres with the suitable infrastructure for accommodating them. He highlights that placement in a detention centre for illegal immigrants enables the

family to be offered medical surveillance. He ends by stating that all measures are taken to make sure that the length of time spent in detention does not exceed the time strictly needed to prepare for deportation.

The CGLPL duly notes these provisions but underlines the fact that everything must be done to avoid locking up children in all circumstances.

10- Make the internet available to prisoners - possibly in a supervised manner.

The Minister of the Interior does not think internet access can be supervised, nor that the security of the equipment required could be ensured.

The CGLPL upholds its recommendation.

## 4.5 Activities

1- Install amenities and organise activities that are likely to meet the needs of populations who sometimes end up spending quite some time in detention centres for illegal immigrants.

The Minister of the Interior stresses that stints in such centres only last twelve days on average and that any leisure amenities installed are fairly quickly damaged "by certain detainees". He adds that the law does not determine the list of activities that should be offered to prisoners. He does, however, cite the example of three centres which, in 2016, were equipped with table football or table tennis.

The CGLPL is of the opposite opinion: that a twelve-day spell fully justifies the organisation of activities which, moreover, would contribute to the safety of people and property, and that the measures taken do not in any way meet the extent of the need. It therefore insists on upholding its recommendations. The fact that the administration is under no legal obligation should not justify the lack of necessary measures having been taken.

## 4.6 Right to health

1- Keep an eye on the way hospitals fulfil their obligations in terms of treating prisoners and update the provisions of the interministerial circular dated 7 December 1999 on medical treatment of prisoners.

The Minister of the Interior says that a working group has been formed to update the provisions of this circular.

The CGLPL duly notes the launch of this work, and will assess its results.

2- Train health workers in the specifics of medical treatment in detention centres for illegal immigrants and officially organise the health services available in light of the size of each centre.

The CGLPL upholds this proposal.

3- Facilitate access to psychiatric care by drawing up agreements between detention centres for illegal immigrants and mental health institutions, setting up shifts for psychiatrists in the centres, launching epidemiological research into psychiatric problems among prisoners and more effectively training professionals working in detention centres for illegal immigrants on mental health issues.

The Minister of the Interior does not believe having a psychiatrist present to be a requirement insofar as the number of external movements on the grounds of psychiatric problems does not justify it and, in theory, the nursing staff has the necessary knowledge for identifying psychiatric disorders which can usually be treated by calling on a nearby hospital.



The CGLPL has nevertheless observed in some centres that psychiatric disorders are not easily addressed, and recommends at the very least that agreements be systematically set up with hospitals with psychiatric services and that training for nursing staff and police officers in this respect be improved. It sets great store by the need for epidemiological research.

- 4- On decision of the State representative, a prisoner should be hospitalised when required by his or her psychiatric condition.

The CGLPL upholds this proposal.

- 5- In the institution's welcome booklet, systematically describe the conditions in which persons deprived of liberty can access their medical record.

The Minister of the Interior states that this proposal is being looked into.

The CGLPL duly notes this point and would like to be informed of the outcome of this proposal.

- 6- Guarantee the confidentiality of treatment and respect of physician-patient confidentiality by subjecting medicine distribution procedures to oversight, calling on professional interpreters for translations, fitting out suitable facilities, guaranteeing the independence of physicians working in detention centres for illegal immigrants and providing better staff training.

The Minister of the Interior does not consider it to be a given, during medical interviews, that the detainee should wish for the assistance of an official interpreter. He also believes that police officers are bound by a duty for discretion and it does not appear necessary to remind them of this. He explains that medicines are distributed by medical staff only and that police officers and medical staff alike do their utmost to guarantee the confidentiality of interviews, as provided for by the interministerial circular of 7 December 1999, but that the layout of facilities can sometimes make it difficult to honour these provisions.

The CGLPL recognises that the assistance of an interpreter is a measure aimed at protecting the prisoner, and should not, therefore, be an obligation. That said, the administration must do everything necessary to ensure that interpreters can be called on if requested by the prisoner, who should not, for all that, be prevented from calling on the person of his or her choice. Due to the large number of breaches of physician-patient confidentiality and confidentiality of treatment that the CGLPL has observed during its missions, it does not agree with the Minister of the Interior's opinion that the duty for discretion to which police officers are bound should be considered sufficient to protect physician-patient confidentiality. Organisation, training and oversight measures are therefore crucial.

- 7- Plan for a systematic medical consultation when new detainees arrive and ensure that the latter can ask for a consultation without having to go through an intermediary.

The Minister of the Interior maintains that the 1999 interministerial circular provides for the systematic proposal of this checkup, without the detainee being required to attend.

The CGLPL duly notes this provision but asks that all necessary administrative steps be taken to guarantee that it is effective.

- 8- When medically prescribed, set up appropriate methods of transport in light of the health of the persons being transported.

The Minister of the Interior clarifies that police officers working at the centre only apply the prescriptions of the centre's medical service that have previously been confirmed in writing.

The CGLPL does not have any objection to this formality, but asks that measures be taken to ensure that police officers do indeed have the means for acting on such prescriptions.

## 4.7 Freedom of conscience

- 1- Grant the request to practise any religion that has been recognised by a judge, within the extent of the possibilities for organising these religious practices and in respect of public order.

The Minister of the Interior points out that the rules organising the day-to-day lives of foreigners at the centre allow them to continue with their religious obligations. He stresses that religious practices are not recorded except when they require organisational measures to be taken (fasts) and indicates that detainees practising the same religion are often gathered together in the same living area. He makes no observation of any requests for spiritual support and maintains that access by a religion's representatives as visitors is possible – but that religious services are not.

- 2- Give precedence to the internal regulations and various rules governing institutions over the following of religious practices.
- 3- Ensure that the institution's organisation enables both freedom of access to religion and the protection of personal data concerning the exercising of this freedom.
- 4- Encourage the activity of chaplains through fair treatment, freedom of movement in institutions and protection of the confidentiality of their interviews with persons deprived of their liberty; include provisions on this point in the CESEDA.

The Minister of the Interior does not consider such regulations to be appropriate because of the short time detainees spend in detention centres for illegal immigrants and of the freedom to receive visitors.

- 5- Provide suitable facilities for practising religion, if possible set exclusively aside for cultural activities.

The Minister of the Interior states that the fitting out of facilities for practising religion in detention centres for illegal immigrants is not provided for by law and that the configuration of most centres is such that this is not possible. He also believes that such a measure is inappropriate on the grounds of public order and safety of individuals.

- 6- Provide menus that take into account dietary requirements to the extent possible, and subject to the health requirements of prisoners.

The Minister of the Interior explains that detention centres for illegal immigrants serve meals meeting religious customs in accordance with the texts. He specifies that meal times are adjusted during Ramadan and that these provisions seem to satisfy most prisoners.

- 7- Authorise prisoners to have items for religious practice in their possession, including discreet religious symbols.

The Minister of the Interior states that, irrespective of the religion in question, detained foreigners may keep hold of any items for religious practice which is not likely to pose a danger to people or for the security of the facilities.

The CGLPL duly notes all of these measures.

## 4.8 Rights associated with measures coming to an end

- 1- Harmonise rules on informing prisoners and set up a traceability tool for monitoring their application.

The Minister of the Interior recalls the legislative guidelines in this respect and indicates that there have been instances of people acting violently towards someone else or themselves after being informed of the date of their deportation.

The CGLPL does not consider that this risk, real as it is, in any way prevents the rules being harmonised in terms of informing prisoners of the measure concerning them coming to an end or the setting up of a traceability tool for monitoring application of these rules.

- 2- Inform nursing staff of deportation plans to avoid interruptions in treatment and stipulate by circular that there are no time limit conditions regulating the procedure for issuing a "sick foreigner" residence permit, which enables this procedure to be triggered (including late on) following reports of an illness by a physician in the detention centre.

The Minister of the Interior states that flights are systematically posted within the detention centre for illegal immigrants, which enables them to be brought to the attention of all professionals - including medical staff. He goes on to say that the "sick foreigner" residence permit is issued by the Prefect on the basis of an opinion established by a physician of the Regional Health Agency. He therefore considers that the physician at the detention centre for illegal immigrants is not competent in matters bearing on the triggering of such a procedure.

The CGLPL observes that posting of planned deportations is not systematic, and nursing staff are not always aware of them. It therefore asks that all necessary steps be taken locally to ensure the proper continuity of treatment. Regarding the "sick foreigner" residence permit, the competence of the regional health agency physician should not prevent the physician of a detention centre for illegal immigrants from being able to report, at any time, an illness that is likely to result in such a document being issued or from being able to immediately alert the legally competent authorities to trigger the procedure. The observation of the physician at the centre must be considered sufficient to suspend a planned deportation measure if necessary.

- 3- In the CESEDA, regulate the procedures for swiftly returning non-admitted foreigners.

The CGLPL upholds this recommendation.

- 4- Scrap the baggage allowances for removed prisoners, where necessary requiring them to pay any additional charges.

The Minister of the Interior points out that baggage allowances incumbent upon persons being deported result from the rules specific to each airline rather than from administrative provisions. He highlights that, in practice, the OFII takes charge of any luggage at the request of the removed prisoners' next of kin, and follows their instructions. He therefore considers that accompanied foreigners may transport the luggage of their choice by paying for any additional charges.

The CGLPL duly notes these provisions and will ensure that they are effective.

## 4.9 Service organisation and staff

- 1- Systematically supervise officials charged with surveillance and security missions, in the form of an option offered to each official, with no line management obligation, through individual or group interviews.

The Minister of the Interior states that officials assigned to detention centres for illegal immigrants are always supervised by their superiors.

The CGLPL makes it clear that supervision in the strict sense of the term does not have to be carried out by superiors. It therefore stresses the need of offering each official – with no line management obligation – the possibility of being supervised.

- 2- Organise specific training for officials assigned to detention centres for illegal immigrants and define their missions more clearly in job descriptions.

The Minister of the Interior clarifies that the job descriptions of officers and higher ranks of the constables and sergeants corps describe all of the missions they are required to undertake in detention centres for illegal immigrants.

The CGLPL duly notes this point.

- 3- Encourage multidisciplinary discussions between professionals working in each centre.

The Minister of the Interior indicates that meetings are held at regular intervals between the management of each centre and all partners working in the centre and stresses that such meetings form part of the legal assistance contract with associations each quarter.

The CGLPL duly notes this point and will ensure that these provisions are effective.

## 5. Recommendations concerning juvenile detention centres

### 5.1 Autonomy, dignity and integrity

- 1- Perform a complete, multifaceted and written analysis prior to choosing the locations at which juvenile detention centres are to be opened.

The Minister of Justice specifies that regulatory, administrative and technical measures were taken in 2015 and 2016 to improve the real estate of juvenile detention centres overall.

The CGLPL duly notes these measures and will ensure that they are effective.

- 2- Draw up a national doctrine on the management of minors in juvenile detention centres and organise supervision of professionals so as to compare practices and disseminate know-how and values bearing on educational management.

The Minister of Justice explains that documents in 2015 and 2016 laid down the management principles and organised national technical days for department directors as well as days in the interregional directorate to discuss the operating and organisational conditions of centres with a view to improving professional practices. Moreover, instructions were given in 2015 on how to manage violent situations.

The CGLPL duly notes these measures and will ensure that they are effective.

- 3- Enact national standards on the subject of discipline which establish an indicative scale, associated with a possibility of tailoring sanctions to individuals, and exclude sanctions which restrict or ban contacts with family.

The Minister of Justice states that the terms for managing disobedience were officially documented in 2015 in a memo on educational action and in guidelines on developing institutions' rules of procedure. These documents expressly provide for minors' contact with families to be respected. That said, the Minister of Justice makes the point that the specific context of each institution does not enable disciplinary responses to be completely harmonised across the board.

The CGLPL duly notes these measures, the effectiveness of which it will monitor, and draws the Minister of Justice's attention to the need to reduce the "specifics" mentioned to their accurate proportion and monitor them so as to justify a diversity of disciplinary measures.

- 4- Systematically notify public prosecutors' offices of any violence – however minor – committed by an adult towards a child.

The Minister of Justice explains that instances of a professional behaving violently towards a minor are systematically subject to intervention on the part of the territorial director. He also states that a protocol for managing incidents is drawn up, for each centre, between the territorial directorate, public prosecutor's office and competent gendarmerie and police services. This document sets out the terms by which minors and families must be supported when lodging a complaint.

The CGLPL duly notes these provisions but asks that they be rounded off by an instruction confirming the systematic notification of the public prosecutor's office by the head of service or territorial director.

- 5- Set up regulatory oversight of security measures – searches in particular – aimed at limiting their use to a closed list of situations.

The Minister of Justice maintains that a 2015 memo has restated the prohibition on performing searches, which may only be done by professionals who are specifically designated by the law (law enforcement officers) and shored up this prohibition with a ban on using individual detection devices. As part of the recast of the 1945 ordinance, the Minister plans a provision that will make visual checks of personal belongings and searches of cells possible – even in the absence of minors.

The CGLPL duly notes these measures and will ensure that they are effective. It nevertheless recommends that searches of cells and personal belongings not be allowed in the absence of the minor concerned.

## 5.2 Rights of defence

- 1- Give educational reports to minors to read before they are sent to the judge.

The Minister of Justice specifies that, under the provisions adopted in 2010 and 2015, the reports submitted to the judge are subject to commented feedback during an educational interview. He clarifies that the opinions of the minor and his or her family are obtained and mentioned in the report. That said, he remarks that the commented reading of reports must be considered with account taken of the young person's level of maturity and capacity to understand.

The CGLPL duly notes these provisions and will ensure that they are effective.

- 2- Inform minors and their parents about the situation of the minor in detention as well as the subsequent rights – particularly the possibility of reaching out to the Defender of Rights and Chief Inspector of places of deprivation of liberty.

The Minister of Justice maintains that measures to that effect were taken in 2015 and 2016.

The CGLPL duly notes these measures and will ensure that they are effective.

- 3- Ensure that minors sign, with their own hand, notifications they are issued by a court or authority and ensure that records are kept of any refusals to sign.

The Minister of Justice is not in favour of implementing this measure, which would require professionals to read documents handed out to minors.

The CGLPL duly notes this problem.

- 4- Set up arrangements for accessing legal rights, allow minors to contact the lawyer of their choice as well as the judge in charge of their file and offer minors support when accessing their file, unless circumstances require otherwise.

The Minister of Justice has not issued any precise instructions on these points. He stresses that their compulsory nature stems from centres' rules of procedure, an agreement between the Judicial Youth Protection Service Directorate and the National Bar Associations' Council which is intended to be rolled

out at territorial level as well as legislative provisions of the Social Action and Family Code which guarantee, for minors and their legal guardians, a right of access to any information or document concerning their care, unless stated otherwise by legislation.

The CGLPL duly notes these provisions and will ensure that they are effective.

### 5.3 Right to privacy and family life, relations with the outside world

- 1- Strike a balance between respect for professional secrecy and the sharing of information that is strictly necessary for properly assessing the minor's situation, without forwarding any information concerning the minor to a third party that is not involved in the minor's care.

The Minister of Justice points out that regulatory and administrative measures were taken in 2015 to define the conditions governing information exchange and the obligations bearing on professional discretion. On the date of his response, he also reports a proposal of a memo specifically given over to professional secrecy and the sharing of information.

The CGLPL duly notes these provisions and will ensure that they are effective.

- 2- Require that all computer files used in centres be declared beforehand to the CNIL and specify the data retention time limits.

The Minister of Justice maintains that these measures have been taken for the national software program for managing placements which is used by the Judicial Youth Protection Service Directorate.

The CGLPL duly notes this measure and recommends that the Minister, through his supervisory or hierarchical authority, ensure that identical measures have been taken for any locally used software program – including in the authorised associations' sector.

- 3- Involve families in educational measures without restrictions associated with a punishment or reward system of minors.

The Minister of Justice states that a 2015 memo stipulated that no violation of the rules of procedure by minors can lead to them being deprived of contact with their families or rehabilitation activities. He clarifies that this right is exercised in accordance with the judicial guidelines, which means that only a judicial decision can restrict it.

The CGLPL duly notes these provisions and will ensure that they are effective.

- 4- Favour regional recruitment of minors placed in juvenile detention centres so as to facilitate their ties with families and the "common link" educator in open detention environments. Develop family visits inside institutions and create facilities that are conducive to confidential, sociable encounters.

The Minister of Justice would like to maintain the national vocation of juvenile detention centres but stresses that instructions have been issued to ensure that the need for the minor to maintain ties with his or her family environment is factored into placement decisions. He specifies that 2015 provisions recall that minors' placements in detention should not prevent them from being able to keep in touch with family and observes that, from 2011, there were plans for a specially laid out room for welcoming families in the functional programme of juvenile detention centres.

The CGLPL duly notes these provisions and will ensure that they are effective.

- 5- Respect the freedom of correspondence of minors in detention by prohibiting the educational team from opening letters addressed to minors and planning for the judge to be notified of any violation of the freedom of correspondence and the reasons for this.

The Minister of Justice indicates that centres' rules of procedure provide for minors' freedom of correspondence to be exercised in the judicial context of their detention situation, which may provide for compliance with a communication ban to be monitored. The Minister of Justice nevertheless clarifies that, for security reasons, minors may be asked to open certain packages (not least bulky parcels) in the presence of an educator. He ends by pointing out that no formal instruction to notify the judge has been enacted.

The CGLPL duly notes these measures, the effectiveness of which it will monitor, and asks that the obligation to inform the judge of violations of the freedom of correspondence be formally documented.

- 6- After checking the identity of the person on the other end, guarantee the confidentiality and intimacy of telephone conversations.

The Minister of Justice indicates that instructions to that end were issued in 2015.

The CGLPL duly notes this provision and will ensure that it is effective.

- 7- Allow minors to access the internet as well as an email service – possibly in a supervised manner.

The Minister of Justice states that the 2015 instructions allow internet access with filtering systems as regards certain content, and provide for access to email services to be organised whilst respecting the confidentiality of correspondence. He explains that preventive actions on internet use and misuse are carried out with minors.

The CGLPL duly notes these measures and will ensure that they are effective.

- 8- Keep families or persons with parental responsibility informed of the minor's legal situation and any changes in his or her care, particularly via specific documents and the organisation of meetings with the educational teams.

The Minister of Justice recalls that these obligations stem from a 2002 Act and that they were most recently restated in 2015 and 2016 provisions to inform families of a change in placement status for a minor, of the chosen terms of action for the minor's care, of the institutions' rules of procedure and of the rights and duties associated with the placement. There are plans for a welcome interview to be held with the minor and his or her family, and an individualised care plan, drawn up with the minor and his or her family, is officially set out in the individual placement document. The Minister speaks of the legal difficulties encountered in imposing upon centres managed by the authorised associations' sector similar obligations to those to which the public sector is bound.

The CGLPL duly notes these measures and will ensure that they are effective. It is adamant about the need to adopt similar provisions in centres managed by the authorised associations' sector to those found in the public sector on involving families in educational actions.

## 5.4 Care arrangements

- 1- Plan the reception of children prior to their arrival at the centre and offer schooling, training, cultural, sports and recreational activities that are likely to help the minor to thrive and play a part in citizenship.

The Minister of Justice maintains that a 2016 circular lays down the conditions for accommodating minors. He also indicates that a 2015 ruling defines the need to permanently organise daytime activities to support educational actions. The same text organises the schooling of young people in care on the basis of an individual assessment of acquired skills, so that each youngster is given a personalised timetable aimed at encouraging their return to common law schemes.

The CGLPL duly notes these measures and will ensure that they are effective.

- 2- Appoint teachers in timeframes that are compatible with minors' needs, offer them specific training and guidance and ensure ongoing educational attention – even over the summer.

The Minister of Justice claims that the provisions in force stipulate the continuity of education and a series of training measures, including two annual groupings of teachers. He clarifies that these provisions are currently being updated, particularly with a view to improving the continuity of education and to helping teachers when they take up their appointments.

The CGLPL duly notes these provisions and will ensure that they are effective.

## 5.5 Right to health

- 1- Officially document the medical support available in centres through standard agreements.

The Minister of Justice indicates that work is in progress on this point and that it has already been possible "to lay the necessary foundations for effective partnerships".

The CGLPL strongly recommends that the work under way delivers quickly.

- 2- Improve the psychiatric care of minors in detention by conducting epidemiological research on mental disorders in juvenile detention centres, improving staff training so that they can identify problems and adapt their practices accordingly and involving centres in a care network grounded in local agreements.

The Minister of Justice draws attention to the fact that an epidemiological research project entitled "Study on certain medical and psychological characteristics among adolescents placed in juvenile detention centres" is currently being launched, that the initial training of educators comprises specific modules on mental health, that continuing professional development programmes are available on issues associated with this subject and that improving the presence of health professionals across all centres must play a part in improving the way mental health is addressed. He does stress, however, that local partnerships can be fragile as they depend on local resources.

The CGLPL duly notes these provisions and may well update its recommendations so as to take on board the findings of the planned epidemiological study.

- 3- In the institution's welcome booklet, systematically describe the conditions in which minors can access their medical record.

The Minister of Justice points out that this measure should feature in the *Technical Health Guide* of the Judicial youth protection service directorate, which is currently being revised.

The CGLPL duly notes this point.

- 4- Organise educational information actions on sexuality.

The Minister of Justice claims that this topic is included in the training priorities set out in 2015.

The CGLPL duly notes this point.

## 5.6 Freedom of conscience and expression

- 1- Ensure that minors' freedom of conscience and spiritual options are respected by granting requests for practising any religion that has been recognised by a judge, within the extent of the possibilities in terms of organisation and public order. Guarantee the confidentiality of religious choices.



The Minister of Justice states that the 2015 provisions allow minors in detention to ask to go to a place of worship or to be visited by a chaplain and that they may practise a religion in their rooms and have cultural items in their possession. He nevertheless cautions that the exercise of religion must remain private and is only possible as long as it does not disrupt the proper running of the service or attendance at educational activities. He ends by pointing out that the administration does not have any nominative list of minors stating their denomination.

The CGLPL duly notes this point.

- 2- Treat chaplains of all recognised religions fairly, allow them to access areas where persons deprived of their liberty are accommodated and ensure that their exchanges with the latter remain confidential.

The Minister of Justice specifies that there is no chaplaincy associated with the judicial youth protection service, but that it is quite possible for an external chaplain to be called in. He clarifies that chaplain visits must take place outside of institutions and that correspondence is thus kept confidential as regards chaplains under common law conditions. There are no collective religious practices in juvenile detention centres.

The CGLPL duly notes this point.

- 3- Provide menus in line with the special dietary requirements of religious practices, subject to the health requirements of prisoners, proper order within institutions or practical circumstances that make such considerations impossible. Allow fasting, subject to health requirements, and look for food supplies that have been prepared according to the rites approved by the competent religious authorities. Ensure that minors in detention are not subject to any dietary requirements of religious beliefs which they do not share.

The Minister of Justice explains that requests expressed jointly by the persons with parental responsibility and the minor concerned to obtain different dishes for professional reasons or to practise fasting may be granted. However, he states that the user's requirements in this regard should not exceed a reasonable level without risk of disrupting the proper running of the service. He makes it clear that denominational food may under no circumstances be served to all the minors in detention.

The CGLPL duly notes these provisions.

- 4- Set up life councils where youngsters can express their opinion in respect of the common interest.

The Minister of Justice points out that the 2015 provisions offer institutions several ways of involving users: social life councils, focus groups, initiative or project groups and systems for gathering opinions.

The CGLPL duly notes these provisions and recommends that local initiatives be assessed with a view to sharing any best practices.

## 5.7 Service organisation and staff

- 1- Increase the professionalism of educators by introducing a requirement for continuing professional development, specific training in the necessary know-how in juvenile detention centres, information concerning the legal situation of minors in detention and tools for sharing and capitalising on experiences.

The Minister of Justice indicates that the judicial youth protection service directorate has set up an initiative aimed at shoring up "efforts to increase the professionalism of stakeholders, common to both the public and authorised associations' sector". A specific mission has been set up within the directorate and

work is in progress to determine more precisely what the needs are in this area. Training programmes are already available at the National School for Judicial Youth Protection to the authorised associations' sector; they particularly bear on the legal situation of minors in detention and assistance with initial employment. Since 2015, for the public sector, support for mentors has been planned for any managers who would like to benefit from this. A two-day seminar is organised for department directors working in a juvenile detention centre to allow them to talk about their professional practices.

The CGLPL duly notes these measures but underscores the fact that the professionalism of staff working in juvenile detention centres - an issue tied in with that of stability - remains a weak point that it observes frequently. It therefore places great emphasis on the need to improve educators' training, both in juvenile detention centres in the public sector and those which are managed by the authorised associations' sector.

- 2- Organise the internal management of juvenile detention centres by ensuring that a service plan is set up and kept up-to-date. This plan must clearly organise the care arrangements for the minors accommodated, define a shared educational plan that can be monitored by the competent territorial services, organise the multidisciplinary management of minors and information exchanges between professionals, officially document the relations forged with the security services and define the conditions for coordinating and assessing the action taken.

The Minister of Justice states that all of these measures are stipulated in existing regulations and were the subject of reminders in 2015 and 2016, in either administrative or technical documents.

The CGLPL duly notes these measures, but points out that firm, committed action is required, on the one hand to ensure they are properly applied and, on the other, to ensure they are not mere rhetoric but become fully effective working instruments and tools for monitoring how minors are managed. It therefore recommends that the Minister of Justice perform a systematic and standardised assessment of measures taken in each centre as regards organisation and governance.

- 3- Systematically keep an individual care record and systematically issue a copy of this to minors in detention and to those with parental responsibility.

The Minister of Justice maintains that this requirement was reasserted in 2016.

The CGLPL asks the Minister of Justice to see that the instructions it has issued are applied.

- 4- Inform judges of what the educational action conducted in centres entails, and encourage both them and the members of the steering committee to visit the centres.

The Minister of Justice claims that instructions along these lines have been issued and that in principle the steering committees are held within the juvenile detention centres themselves.

The CGLPL duly notes this information.

# Appendix 5

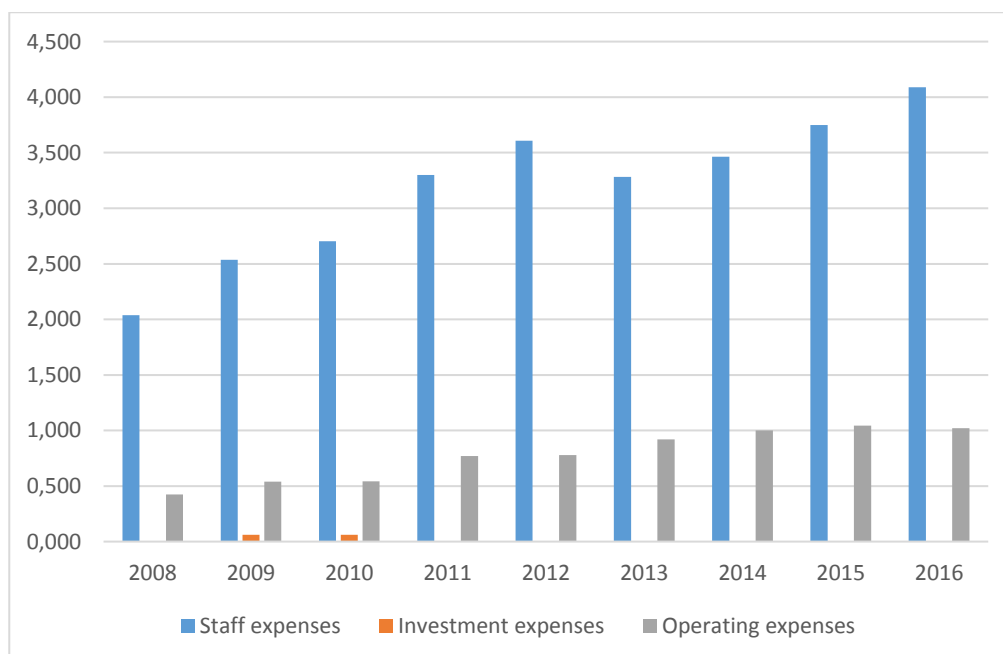
## Budget balance sheet

### 1. Budget allocated to the CGLPL in 2016

LFI 2016*		
<b>staff expenses</b>	€4,089,417	80%
of which permanent staff	€3,537,577	
of which casual staff	€351,840	
other expenditure		
<b>operating</b>	€1,020,368	20%
<b>TOTAL</b>	<b>€5,109,785</b>	

\*in payment appropriations after deduction of frozen sums and reserves

### 2. Changes in the budget since the CGLPL was created



## Appendix 6

### The inspectors and staff employed in 2016

#### Chief Inspector:

Adeline Hazan, judge

#### Secretary General:

André Ferragne, chief inspector of French armed forces

#### Assistants:

Nathalie Leroy, deputy assistant

Nathalie Brucker, deputy assistant (since 1 July 2016)

Franky Benoist, administrative assistant.

#### Permanent inspectors:

Adidi Arnould, director of the judicial youth protection service,

Ludovic Bacq, prison commandant,

Chantal Baysse, director of prison rehabilitation and probation services,

Catherine Bernard, public health general practitioner (until 15 November 2016),

Luc Chouchkaieff, public health medical inspector (from 1 December 2016),

Gilles Capello, director of prison services,

Céline Delbauffe, former lawyer,

Thierry Landais, director of prison services,

Muriel Lechat, chief superintendent of the French National Police Force,

Anne Lecourbe, president of the judiciary of administrative courts,

Cécile Legrand, judge,

Dominique Legrand, judge,

Philippe Nadal, chief superintendent of the French National Police Force,

Vianney Sevaistre, civil administrator,

Bonnie Tickridge, health manager,

Cédric de Torcy, former director of a humanitarian association

## External inspectors

Séverine Bertrand, rapporteur to the Autorité de la concurrence (until 15 November 2016),  
Dominique Bigot, former hospital director,  
Betty Brahmy, former hospital practitioner, psychiatrist,  
Virginie Brulet, physician,  
Cyrille Canetti, psychiatrist, hospital practitioner,  
Marie-Agnès Credo, former judge,  
Michel Clémot, former general of the gendarmerie,  
Isabelle Fouchard, research officer at the CNRS in comparative law,  
Jean-Christophe Hanché, photographer (from 15 March 2016),  
Yves Hémerly, psychiatrist, former hospital practitioner (from 1 May 2016),  
Hubert Isnard, former medical inspector,  
Michel Jouannot, former vice-president of an association,  
Gérard Kauffmann, former chief inspector of French armed forces,  
Gérard Laurencin, psychiatrist, former hospital practitioner, (from 1 June 2016),  
Philippe Lescène, former lawyer (from 1 December 2016),  
Dominique Lodwick, former director of the judicial youth protection service (from 15 March 2016),  
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,  
François Moreau, physician, former hospital practitioner (until 15 November 2016),  
Annick Morel, general inspector for social affairs,  
Félix Masini, former head of a lycée (sixth-form college) (until 31 March 2016),  
Bénédicte Piana, former judge,  
Dominique Peton-Klein, former public health chief physician (from 15 November 2016),  
Bruno Rémond, former chief auditor at the Court of Auditors (from 1 May 2016),  
Dominique Secouet, former manager of the Baumettes prison multimedia resource centre,  
Jean-Louis Senon, University professor, clinical criminology and psychiatry teacher and hospital practitioner,  
Christian Soclet, former director of the judicial youth protection service,  
Akram Tahboub, former prison training manager,  
Dorothee Thoumyre, lawyer.

## Departments and centres in charge of referred cases

**Legal Affairs Director:**

Jeanne Bastard, judge,

**Financial and administrative director:**

Christine Dubois, Head Attaché of Government departments,

**Archivist in charge of monitoring recommendations:**

Agnès Mouzé, attaché of Government departments

**Inspectors responsible for case referrals:**

Benoîte Beaury, legal expert,

Anna Dutheil, legal expert,

Sara-Dorothée Guérin-Brunet, legal expert

Yacine Halla, legal expert,

Maud Hoestlandt, lawyer

Lucie Montoy, legal expert

Estelle Royer, legal expert

**Inspector - responsible for the Scientific Committee:**

Agathe Logeart, journalist and former editor in chief of the *Nouvel Observateur*,

**Inspector – responsible for communications:**

Yanne Pouliquen, former employee of an association for access to legal rights

**Inspector - responsible for international affairs**

Anne-Sophie Bonnet, former representative on the International Red Cross Committee,

**In addition, in 2016, the CGLPL welcomed, for professional training or for fixed-term employment contracts (CDD):**

Guillaume Arnaud-Duclos (law student)

Ayça Cinic – Bachelier (law student)

Mari Goicoechea (student at the Toulouse Institute of Political Studies)

Florine Grand (student at the University of Bordeaux)

Djamila Hurault (trainee administration attaché)

François Joly (student at the Paris Institute of Political Studies)

Sarah Hatry (law student)

Marie Lannoy (trainee councillor of the administrative courts)

Mathilde Le Roux Larsabal (student at the Grenoble Institute of Political Studies)

Théo Ponchel (student at the Paris Institute of Political Studies)

Claire Simon (law student)

# Appendix 7

## Reference texts

### **Resolution adopted by the General Assembly of the United Nations on 18 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 1 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 least the following powers:

- 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 furnish 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 organisation 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.

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 dated 30 October 2007<sup>(1)</sup>**

O/R: JUSX0758488L - Consolidated version as on 24 December 2014

### ***Article 1***

Amended by Act no. 2014-528 dated 26 May 2014 - Art. 1

The Chief inspector of places of deprivation of liberty, an independent authority is hereby made responsible, subject to the prerogatives granted by law to judicial or quasi-judicial bodies, for inspecting the conditions of management and transfer of persons in custody, so as to ensure that their fundamental rights are respected. For the same purpose, he supervises the exercise by the administration of deportation measures against foreign nationals up until the hand-over to the recipient State authorities.

Within the limit of his powers, he shall not take instructions from any authority.

### ***Article 2***

Amended by Act no. 2010-838 dated 23 July 2010 - Art. 2

The Chief inspector of places of deprivation of liberty shall be appointed because of his expertise and professional knowledge by decree of the President of the Republic for a period of six years. This term may not be renewed.

He may not be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or action performed in the performance of his duties.

His appointment may not be terminated before the end of his office except in the case of resignation or inability to perform his duties.

The duties of the Chief inspector of places of deprivation of liberty are incompatible with any other public employment, any professional activity and any elected office.

### ***Article 3***

Amended the following provisions:

Amends the Electoral Code - Art. L194-1 (V)

Amends the Electoral Code - Art. L230-1 (V)

Amends the Electoral Code - Art. L340 (V)

#### *Article 4*

The Chief inspector of places of deprivation of liberty shall be assisted by inspectors that he recruits because of their expertise in the areas related to his task.

The duties of inspectors are incompatible with the performance of activities related to the establishments inspected.

In the performance of their tasks, the inspectors are under the exclusive authority of the Chief inspector of places of deprivation of liberty.

#### *Article 5*

The Chief inspector of places of deprivation of liberty, his team members and the inspectors assisting him are bound by professional secrecy regarding the facts, action and information of which they have knowledge because of their duties, subject to the information required for drawing up reports, recommendations and opinions as provided in Articles 10 and 11.

They shall ensure that no information allowing persons subject to the inspection to be identified is included in the documents published under the authority of the Chief inspector of places of deprivation of liberty and in his public statements.

#### *Article 6*

Amended by Act no. 2014-528 dated 26 May 2014 - Art. 2

Any natural person, and any legal person whose stated object is the respect of fundamental rights, may bring to the knowledge of the Chief Inspector of places of deprivation of liberty any facts or situations that may fall within his remit.

Matters shall be referred to the Chief inspector of places of deprivation of liberty by the Prime Minister, members of the Government, Members of Parliament and the Defender of Rights. He may also take up matters on his own initiative.

#### *Article 6-1*

Created by Act no. 2014-528 dated 26 May 2014 - Art. 3

Where a natural person or legal entity brings facts or situations to the attention of the Chief inspector of places of deprivation of liberty, 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 Chief inspector of places of deprivation of liberty may carry out inspections, where necessary, on-site.

When these inspections have been completed and having received the observations of all interested parties, the Chief inspector of places of deprivation of liberty 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 dated 3 January 1973 – Art. 6 (Ab)

## **Article 8**

Amended by Act no. 2014-528 dated 26 May 2014 - Art. 3

The Chief inspector of places of deprivation of liberty may, at any time, within the Republic of France, visit any site where people are kept in custody by the decision of a public authority, and any healthcare facility authorised to admit patients hospitalised without their consent pursuant to Article L. 3222-1 of the Public Health Code.

### **Article 8-1**

Created by Act no. 2014-528 dated 26 May 2014 - Art. 3

The authorities responsible for the custodial establishment may only object to the checks on-site provided for under Article 6-1 or visits provided for under Article 8 for serious, compelling reasons connected with national defence, public security, natural disasters or serious disturbance within the site visited, subject to providing the Chief inspector of places of deprivation of liberty with justification for their objection. They shall then suggest a deferment. As soon as the exceptional circumstances causing the deferment have come to an end, they shall inform the Chief inspector of places of deprivation of liberty of the fact.

The Chief inspector of places of deprivation of liberty shall obtain from the authorities responsible for the custodial establishment any information or document necessary for the performance of his task. At the visits, he may interview any person whose contribution he considers necessary, under conditions ensuring the confidentiality of the conversation.

The secret nature of any information and documents requested by the Chief inspector of places of deprivation of liberty may not be raised as an objection to him, except if their disclosure is likely to jeopardise national defence secrecy, State security, the secrecy of investigations and examinations or professional secrecy applicable to the lawyer-client relationship.

Statements relating to conditions under which a person is or has been detained, on any grounds whatsoever, in police stations, gendarmeries or customs shall be provided to the Chief inspector of places of deprivation of liberty, 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 dated 26 May 2014 - Art. 4

No penalty may be ordered and no prejudice may result solely because of links established with the Chief inspector of places of deprivation of liberty 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 Criminal Code.

## *Article 9*

Amended by Act no. 2014-528 dated 26 May 2014 - Art. 5

At the end of each visit, the Chief inspector of places of deprivation of liberty shall inform the ministers concerned of his observations regarding, in particular, the state, organisation and operation of the site visited, and also the condition of the persons in custody, taking into account developments in the situation since his inspection. Except for cases where the Chief inspector of places of deprivation of liberty gives dispensation, ministers are to make observations in response within the time limit provided, which may not be less than one month. These comments in response shall then be attached to the visit report drawn up by the Chief inspector.

If he observes a serious infringement of the fundamental rights of a person in custody, the Chief inspector of places of deprivation of liberty shall promptly notify the competent authorities of his observations, shall give them a period within which to respond and, at the end of this period, shall determine whether the infringement notified has ceased. If he deems necessary, he shall then publish the contents of his observations and the responses received.

If the Chief inspector becomes aware of facts suggesting the existence of a criminal offence, he shall promptly bring these to the attention of the Public Prosecutor, in accordance with Article 40 of the criminal procedure code.

The Chief inspector shall promptly bring to the attention of the authorities or persons having disciplinary powers any facts that might lead to disciplinary proceedings.

The Public Prosecutor and the authorities or persons invested with disciplinary powers shall inform the Chief inspector of places of deprivation of liberty of the action taken in relation to his procedures.

## *Article 9-1*

Created by Act no. 2014-528 dated 26 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 Chief inspector of places of deprivation of liberty may serve notice on the parties concerned to respond within a time limit which he shall set.

## *Article 10*

Amended by Act no. 2014-528 dated 26 May 2014 - Art. 6

Within his field of competence, the Chief inspector of places of deprivation of liberty shall issue opinions, make recommendations to the public authorities and propose to the Government any amendment to applicable legislative and regulatory provisions.

After having informed the authorities responsible, he may publish these opinions, recommendations or proposals, as well as any observations made by these authorities.

### ***Article 10-1***

Created by Act no. 2014-528 dated 26 May 2014 - Art. 7

The Chief inspector of places of deprivation of liberty may send to authorities having responsibility, opinions on construction, restructuring or rehabilitation proposals relating to any place of deprivation of liberty.

### ***Article 11***

The Chief inspector of places of deprivation of liberty shall submit an annual activity report to the President of the Republic and to Parliament. This report is published.

### ***Article 12***

The Chief inspector of places of deprivation of liberty shall cooperate with competent international bodies.

### ***Article 13***

Amended by Law no. 2008-1425 dated 27 December 2008 - Art. 152. 152

The Chief inspector of places of deprivation of liberty shall manage the appropriations required for the performance of his task. These appropriations shall be recorded in the programme of the “Government action directorate” mission related to the protection of fundamental rights and freedoms. The provisions of the Law of 10 August 1922 on the organisation of auditing of expenses incurred do not apply to the management thereof.

The Chief inspector of places of deprivation of liberty shall submit his accounts for audit by the Court of Auditors (Cour des comptes).

### ***Article 13-1***

Created by Act no. 2014-528 dated 26 May 2014 - Art. 9

Hindering the Chief inspector of places of deprivation of liberty 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 under Article 6-1 and visits provided for under Article 8;

2° Or refusing to provide information or documents necessary to the checks on-site provided for under Article 6-1 or visits 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 Chief inspector of places of deprivation of liberty in application of this Act;

4° Or ordering a penalty against a person solely because of links established with the Chief inspector of places of deprivation of liberty 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 law, including those under which the inspectors mentioned in Article 4 are called to participate in the task of the Chief inspector of places of deprivation of liberty, are stated by decree in the Council of State (Conseil d'État).

### *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.

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(1) Preparatory work: Act no. 2007-1545.

French Senate: Bill no. 371 (2006-2007);

Report by Mr Jean-Jacques Hyst, on behalf of the Legislation Commission, no. 414 (2006-2007);

Discussion and adoption on 31 July 2007 (Adopted text no. 116, 2006-2007).

French National Assembly: Bill, adopted by the Senate, no. 114;

Report by Mr Philippe Goujon, on behalf of the Legislation Commission, no. 162;

Discussion and adoption on 25 September 2007 (Adopted text no. 27).

French Senate: Bill no. 471 (2006-2007);

Report by Mr Jean-Jacques Hyst, on behalf of the Legislation Commission, no. 26 (2007-2008);

Discussion and adoption on 18 October 2007 (Adopted text no. 10, 2007-2008).

## Appendix 8

### The rules of procedure of the CGLPL

The CGLPL drew up internal regulations in accordance with Article 7 of Decree no. 2008-246 of 12 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](http://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 bonds, to healthcare and to employment and training etc.

Cases may be referred to the Chief inspector 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  
CS 70048  
75921 Paris cedex 19 FRANCE

The inspectors 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 two out of four 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 on 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 and professional privilege applicable to relations between lawyers and their clients.

At the end of each inspection, the teams of inspectors each write their draft report or initial report, which, according to the provisions of Article 31 of the internal regulations of the CGLPL<sup>54</sup>, “is submitted to the Chief inspector, 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 30 October 2007, the head of the institution is given one month to reply. In the absence of a response within this deadline, the chief inspectorate may commence drafting the final report.” This report, which is not definitive, is subject to rules of professional privilege 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 internal 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 edit 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 Chief inspector to the appropriate ministers having competence to deal with the facts ascertained and recommendations contained therein. In accordance with the above-mentioned Article 9, a deadline of between five weeks and two months, except in case of urgency, is fixed 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.

In addition the Chief inspector may decide to publish specific recommendations concerning one or several institutions as well as overall assessments on cross-cutting 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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<sup>54</sup> Internal regulations established in application of Article 7 of Decree no. 2008-246 dated 12 March 2008.



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