



**Le Contrôleur général
des lieux de privation de liberté**

Annual report 2013

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Glossary

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

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

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

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

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

Foreword

Nobody disputes society's right to hospitalise patients suffering from mental illness who are not in a state to consent to treatment nor that – which is moreover an objective of constitutional importance – of pursuing offenders in order to identify, judge and, if necessary, sentence them. This obvious truth should enable us to avoid long, repetitive and pointless debates concerning security: as written in the following report “All those in favour of insecurity now raise their hands!”

Neither should anybody dispute that all patients and offenders, as well as all foreigners whose residence papers are not in order, and all juvenile delinquents..., in short, all those concerning whom there are grounds justifying the deprivation of their liberty, whether for a long or short period, possess fundamental rights. Their existence is not defined merely by the illness or the offence, however dramatic. It is also defined by the latter rights. Some of them are intangible. Human beings cannot be deprived thereof under any circumstances: as in the case of the right to life, and the right not to be subjected to inhuman or degrading treatment. Others, such as the rights of freedom of expression and respect for privacy, need to be balanced with the requirements of security, public health and the rights of other people. However, none of them can ever disappear.

The *Contrôle Général* is a gauge of the application of the fundamental rights of the person. Captives can easily be deprived of these rights, because the deprivation of their liberty separates them from our world (out of our sight). However, there is good reason to take heart: progress has been made in our democracies. Respect for fundamental rights is, for the most part, ensured by the conscientiousness of the vast majority of medical staff and public security professionals, moreover under difficult or very difficult conditions.

However this certainty should not conceal behaviours which are very far removed from such conscientiousness. A combination of three circumstances gives rise to a mechanism that needs to be dismantled. In the first place, the beliefs of a minority of officers, who are convinced, for various different reasons, that deprivation of liberty is concomitant with repeated terror and brutality. A proportion of the suicides in these places, not to mention other marks, is obviously attributable to acts of this kind: one might cite the example of one prison officer, in all due logic, saying “Commit suicide, it'll make some space” to a prisoner in distress. In the second place, lack of awareness or weakness on the part of a certain number of officers, who refuse to see the reality or avoid confronting the loudmouths, above all when they belong to a majority professional organisation. Thirdly, on the part of authorities, the desire to conceal or overlook unpalatable problems (failure to hand over documents, absence of reporting to the State Prosecutor's Office, cosy connivance etc.) All is for the best in the best of all possible worlds, as *Candide* would say. “I would like to ensure you, writes the head of one institution, that the treatment reserved for the prisoners of the remand prison cannot in any case infringe the rules guaranteeing respect for prisoners' fundamental rights, nor those concerning the code of ethics of the public prisons service”...

It is not easy to voice these realities. They are hurtful to those professionals, who are worthy of praise, who exercise their duties with competence and in compliance with the rules. For this reason, it is common to refrain from speaking about them. However, the *Contrôle Général*, for its part, cannot remain silent. It has to assert that praiseworthy officers can, in spite of themselves, act as a curtain concealing the doings of far less exemplary officers. It has to recall that, in addition to the prejudice caused to the persons under their responsibility, the latter professionals also cause harm to their colleagues. It has to point out that enforcing officers need to be placed in a position to be able to ensure that rules prevail over the settling of scores; that

low-ranking staff need to be thoroughly informed of their duties and that far greater involvement is needed on the part of high-ranking staff; and that the professions need to be better organised in order to ensure discipline and professional ethics with greater force and consistency.

Article R. 434-14 of the part of the Code of Internal Security (*Code de la sécurité intérieure*) concerning professional ethics, applicable at 1st January 2014, provides in particular that “police officers and gendarmes... shall in all circumstances ensure that they conduct themselves in an exemplary manner, likely to inspire respect and consideration in return”. The Code of Professional Ethics of the prison service is more specific still; article 17 thereof provides that “the staff of the prisons administration shall in all circumstances conduct themselves and fulfil their duties in such a manner that their example has a positive influence upon the persons for whom they are responsible and inspires their respect”. Nine prison officers out of ten inspire respect, but the remainder undermine their efforts: the persons concerned need to be aware of this fact.

In the field which is the *Contrôle Général*'s area of concern, everything fits together: the need for social order, respect for the fundamental rights of the person, the behaviour of officers and the conduct of persons deprived of liberty after their release. Indeed, among many other cases, the conduct of officers who inspire neither respect for consideration constitutes recidivism.

It is the role of the *Contrôle Général* to bring such conduct to light and to put forward solutions for positive change in “the state, organisation and operation” of institutions “as well as the condition of persons deprived of liberty” (article 9, Act of 30th October 2007). It shall do so unwaveringly. Each inspector makes this conviction their own.

It is this conviction in the first place, as well as the tireless conscientiousness which they apply to the fulfilment of their duties, and at the same time as the rigour and precision with which they complete the latter, which enables me to express my deep gratitude to the inspectors, whatever their role (in inspections, in the taking up of cases and in the administration): each of them indeed deserves to be mentioned.

Finally, I would like to take the opportunity of thanking all of those who have dealings with or communicate with us, persons deprived of liberty, public and private actors, workers in associations, hosts, visitors, chaplains and friends and families of captives who, in one capacity or another, accompany our activity, which is constantly illuminated by the richness of their humanity.

Jean-Marie Delarue

Section 1

The Contrôle Général's Political Analyses for 2013

The Act of 30th October 2007 establishing the *Contrôle Général des Lieux de Privation de Liberté* (General Inspectorate of Places of Deprivation of Liberty) provides that, on the strength of the information collected from the cases submitted to him and the inspections conducted, the *Contrôleur Général* makes recommendations to the responsible Ministers. All inspection reports submitted to the authorities are accompanied with recommendations of this kind without exception. Because of their importance, a certain number of the latter are published in the *Journal Officiel*. All of them are the fruit of analyses conducted with regard to existing conditions, drawn up according to the yardstick of the fundamental rights of persons, it being incumbent upon the institution to ensure respect for the latter.

These analyses are recalled below.

In the first place the content of the opinions and recommendations made public shall be recalled, before returning to that of the inspection reports sent to ministers in 2013.

1. Opinions and Recommendations made Public

Between the second half of 2008 and 31st December 2013, thirty-two opinions and recommendations were published in the *Journal Officiel* that is to say an average of almost six per year in the course of the period. These texts necessarily have the character of policy documents, since the other recommendations appear in the inspection reports.

In other terms, these thirty-two documents are far from setting out the whole of the Contrôle Général's analyses, but set out the aspects judged to be most important as far as prisoners' fundamental rights are concerned.

In 2013, four opinions and recommendations were made public by means of the *Journal Officiel*, more than in 2012 (three) but less than in 2011 (eight). It should be understood that this rate of publication is in no way systematic in nature, but rather dependent upon the information collected and the inspections conducted.

1.1 Urgent Recommendation concerning Young Offenders' Institutions

Article 9 (second paragraph) of the Act on the *Contrôle Général* provides for an emergency procedure, when inspections (or cases referred) reveal "serious infringement of fundamental rights". In such scenarios, as an exception to the normal process of publication, the *Contrôleur Général*:

- immediately informs the ministers concerned of his observations;
- gives them a period within which to respond, which in such cases can only be short;

- at the end of this period, determines whether or not the serious infringement has ceased;
- immediately makes public his observations and any responses from ministers, if he deems necessary.

As may be recalled, the *Contrôle Général* is far from having made excessive use of this procedure: it was used once in 2011, with regard to the prison of Nouméa (New Caledonia); and once in the following year, in order to denounce the living and working conditions in Baumettes Prison (in Marseille). This number is in no way the result of any calculation, but solely a consequence of facts ascertained on the spot.

In 2013, two teams of inspectors, of different composition, respectively visited “L’Arverne” young offenders’ institution at Pionsat (Puy-de-Dôme), between 27th and 30th August, and the “Txingudi” young offenders’ institution at Hendaye (Pyrénées-Atlantiques), between 23rd and 26th September.

The situations which they witnessed and reported led the *Contrôle Général* to consider that serious infringements of the fundamental rights of the children accommodated in these two institutions made it necessary to use the emergency procedure.

The two institutions were grouped together for the needs of the case (as well as in order to avoid directly calling individuals into question). Observations were submitted to the Minister of National Education, the Minister of Justice and the Minister of Health and Social Affairs respectively. [Responses were received from...]. They were therefore published, with the observations, in the *Journal Officiel* of 13th November 2013.

The facts ascertained are different in nature.

At Pionsat, the serious educational shortcomings existing in the institution were emphasised. Not that there was any shortage of tutors in the latter. A team was present, made up of persons of great goodwill, though inadequately qualified as is often the case (the difficulty of the task renders recruitment difficult, under the current given pay and working conditions). However this team, which could scarcely be termed educational, lacked any formal project: the institutional project, written before the opening of the institution (probably in order to obtain approval from the authorities), was entirely theoretical, and in any case, unknown to the staff. Under the supervision of the latter, the children were therefore on a daily basis led to improvise activities, the educational content of which was at best debatable.

Yet, article 29 of the Convention on the Rights of the Child stresses education and the meaning which it should have, with regard to the “development of the personality” and “mental and physical abilities” of each child “to their fullest potential”. This requirement is all the more important insofar as children placed in young offenders’ institutions by order of a judge are far from their families, while their criminal past bears witness to their individual instability, which educational efforts should endeavour to put right.

Moreover, the Act concerning young offenders’ institutions provides that they shall be subject to surveillance and control measures in order to “organise consolidated educational and teaching follow-up work which is adapted” to the personality of the minors catered for. It was manifest that these stipulations and provisions were in no way applied at Pionsat. There were serious shortcomings with regard to education and, in the absence of provision of appropriate educational measures, the children catered for were therefore placed in danger. It should only be added that a new director, who arrived in the days preceding the inspection, was fully aware of

the issues resulting from these shortcomings; after the inspection she may have been able to take the first corrective measures.

At the CEF of Hendaye, the dangers at the time of the inspection were of a far more material nature, threatening the children's health and placing them in danger of physical injury.

On the one hand, at the time of their on-site investigations, the inspectors discovered meat that was several months past its use-by date in the institution's freezers. It is impossible to assert that this meat could have been eaten, but proof of the contrary was obviously not provided. A real risk therefore existed.

On the other hand, pedestrian access to the institution is not possible in a manner ensuring safety. Although children accompanied by tutors could therefore enter the institution by car, via a roadway prohibited to walkers (because lacking the corresponding areas), they can only leave and return to the institution by crossing the railway (and tramway) lines that connect France and Spain, at their own risk. It is well known that adolescents in young offenders' institutions tend to run away, often for short periods (to buy cigarettes etc.). The layout of the premises exposes these children to risks above and beyond those usually incurred in leaving an institution without authorisation from the team of youth workers. It is obviously not enough to assert that, in leaving an institution without permission, children are defying a prohibition and therefore do so at their own risk.

The fundamental right to life means that appropriate measures need to be taken in view of the usual behaviours observed in such places. In other words, respect for fundamental rights is an extremely realist consideration. This spirit constitutes the foundation of the *Contrôle Général's* action.

1.2 The three Opinions Published in 2013

This refers to three documents made public according to the ordinary procedure under article 10 of the Act of 30th October 2007. One is concerned with psychiatric institutions and the other two with prisons.

1.2.1 Discharge from Units for Difficult Psychiatric Patients¹

In the course of their inspections of units for difficult psychiatric patients² (two had been inspected at 31st December 2013), it came to the attention of the inspectors that, while there are sometimes issues of waiting time as far as admission to UMDs is concerned (due to availability of beds), discharge is often an equally sensitive matter.

This is not attributable to the illness. Contrary to generally accepted preconceptions, under appropriate treatment, the illnesses suffered by many UMD patients undergo a process of change, and the danger that they may have presented to themselves and others at a given stage of their condition is abated or disappears³. There is therefore no longer any reason for these patients to remain in units which are no longer suitable for them, and are moreover often far from their places of residence, and they should return to their treatment institution of origin, after a

¹ Journal Officiel of 5th February 2012, text 0030.

² Units for difficult psychiatric patients or UMD (Unités pour malades difficiles) are hospital units catering for patients suffering from mental illnesses, whose violent state has led to their being judged undesirable in ordinary psychiatric units.

³ Thus in 2011, in the UMD of Montfavet, the average length of stay in the unit showing the longest stays (Les Tilleuls) was 170 days. In Cadillac, in 2010 the number of admissions to the UMD was equal to the number of discharges: forty-eight (for a capacity of forty-six beds).

proposal to this effect made by the medical treatment committee and a decision taken by the prefect of the department in which the UMD is situated.

However, after the decision has been taken, it is very common for patients to be unable to leave immediately, because no solution can be implemented for other accommodation. Contrary to undertakings made, the institutions of origin are reluctant for patients who may have caused disturbances in the ward to return. Or, if they are to be catered for within a new institution (after a move to a different place of residence for example), the latter can be difficult to determine.

Generally speaking, the “UMD” stamp gives rise to apprehensions, despite the treatment committee’s three psychiatrists having certified that the patient’s condition no longer justifies their being maintained in the unit. The opinion cites the situation of one patient who thus remained for two and a half years in one UMD after the prefectural decision authorising their return to another institution. Such situations maintain patients within a therapeutic framework, and above all under a set of constraints, which they no longer require.

In this regard, the restrictions placed upon their fundamental right to liberty⁴ exceed those called for by their condition. This excess is particularly worrying since it indicates an intention on the part of institutions to protect themselves against difficulties which no longer exist (according to the committee doctors), at the expense of improved well-being for the person.

The opinion points out that these difficulties need to be removed by means of issuing orders and allocating the task of taking the necessary measures in each case to regional health agencies, in order to ensure discharge of patients in accordance with medical instructions.

1.2.2 Possession of Personal Documents and Access to Documents that can be made available for Discovery and Inspection by Prisoners⁵

“Documents” in the broad sense are a source of difficulties in prison.

In the first place certain documents constitute a part of each individual’s personal life. Moreover, respect for privacy comes within the field of fundamental rights.

The keeping of such documents in a cell is something of a feat. Everything is known to others in prison, and even if the cell is considered to be a “private” space, any lawfully ordered search enables prison officers to get their hands upon any items kept there. Correspondence with lawyers, medical prescriptions, nothing is done to protect professional secrecy, always ignored on these occasions, not to mention letters from spouses (already inspected) and family photos (which do not always come out of searches unscathed, above all if there is an intention to “bully” the occupant).

Fundamental rights should allow the performance of security measures, but on the condition that the latter do not thwart respect for privacy. Any infringement of the latter should be necessary and proportionate.

For this reason, in order to ensure respect for these principles, it is proposed that lockers for such papers should be placed in each cell, and that the content thereof should only be verified by officers with authorisation for this purpose and in compliance with the laws on professional secrecy. If these conditions are met, it should be possible for documents concerning prisoners’ criminal cases (in particular those containing the grounds for imprisonment) to be placed therein,

⁴ Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁵ Journal Officiel of 13th June 2013, text 0159.

if so desired; the current Prisons Act provides for the compulsory filing of such documents at the registry; yet, the conditions of operation of the latter do not provide any better guarantee of the necessary confidentiality. It should therefore be possible to choose between either keeping personal documents in the cell or in the registry. However, in the latter case, confidentiality needs to be guaranteed by appropriate practical means. The possibility of making copies should be provided, without any possibility of the amount chargeable to the prisoner being greater than their production cost.

Under the conditions of the Act of 17th July 1978 (access to administrative documents and reuse of public data), of which nobody has ever disputed the applicability to prisons, every prisoner has the right to examine certain administrative documents.

Today in France, it is particularly shocking to ascertain that prisoners cannot gain access to the established texts governing prison conditions. The *Journal Officiel* cannot be found in prison libraries, nor can any substitute thereof or compendium of circulars. The passing on of official texts is not organised by the prisons administration department, other than in the form of department memoranda (poorly) displayed in passageways. As a result, prisoners do not, for example, have the benefit of the right, to which every citizen is entitled, to dispute the legality of texts applicable to them before a judge: once again, no provision has ever been made that this right should not apply to prisoners.

It is time for prisons to bring themselves into line with legal norms under ordinary law with regard to the texts applicable to them and access to administrative documents generally speaking. The opinion indicates ways and means of achieving this.

1.2.3 Mothers and Young Children in Prison

Current rules authorise imprisoned mothers to keep their children with them until they reach eighteen months of age⁶. This constitutes a compromise, unsatisfactory by its very nature, between the double necessity of not separating children from their parents⁷ and the prohibition – except in case of absolute necessity – of imprisonment of children⁸, above all, as in the scenarios described below, when they are indeed entirely without blame.

This possibility comprises two different scenarios: imprisonment of a mother accompanied by a young child and imprisonment of a pregnant woman who then gives birth to a child⁹. The first case is extremely rare (in general more or less suitable alternative solutions are found); the second is therefore the more frequent of the two scenarios. It applies to several dozen cases every year, the terms of which are governed by a circular of April 1999. The opinion comes after meticulous inquiries by the *Contrôle Général* in three of these institutions¹⁰.

There are inadequacies in the practical facilities possessed by the institutions, which present very different situations. Some of the latter flout the provisions of the circular of 1999, including in recent establishments. The least well-equipped are the “nurseries” comprising few

⁶ Until 4 years of age before 1945.

⁷ Cf. in particular articles 3 and 18 of the Convention on the Rights of the Child of 20th November 1989, applicable in France.

⁸ Article 37 of the same Convention.

⁹ Out of 2,017 women imprisoned at 1st October 2012, 1,751 (87%) were 50 years of age or older and 1,317 (65%) 40 or younger.

¹⁰ Consultable on the *cglpl.fr* website.

places (one or two) in women's "wings". However, overall, no significant shortcomings were noted.

On the other hand, three factors are more tricky to implement and give rise to difficulties.

The first of these involves the prison regime applicable to mothers and their young children. On the one hand, it is senseless to apply the same level of precaution to them as to ordinary prisoners: why install gratings on the cell windows, at the risk of submerging the latter in permanent half-light? Insofar as possible, excessive visibility of instruments of constraint should be avoided (grilles in passageways). On the other hand, how far should mothers and their children (who are not prisoners) be separated from the rest of the prison? Childbirth means profound solitude for the mother, who is separated from her companions (they take exercise alone for example), except insofar as there are other mums in the "mothers-children" wing.

The second concerns the mother's resources. Prison material assistance consists of covering a minimum of costs (food). The mother has to "canteen"¹¹ baby hygiene products, for example. Yet, very often, whether willingly or not, she is no longer able to work and no longer has means of her own. She can claim benefits from the social security office, but these are sometimes delayed or not applicable (foreign nationals without residence permits).

For this reason the third aspect, concerning relations between the mother-child couple and the outside, is decisive. Ties with the father (if they exist) need to be ensured, in the name of the right to respect for family life; as well as with the rest of the family. The health and education of the child need to be protected. Finally, preparations need to be made for the time when the child will leave the prison on reaching eighteen months of age (if the mother is not yet released). For this reason the existence of such young children in prison presupposes close liaison with the health and social authorities, including the public healthcare institutions and territorial authorities (French communes and departments) in particular. On this point, the realities vary widely from one prison to another. Positive experiences exist, but it is up to the administration to organise the distribution thereof and bring such practices into general use. The future of these children and, therefore, at least in part, that of their mothers, depends upon it.

2. The Recommendations contained in the Inspection Reports sent to Ministers

The Act (article 9, first paragraph) places an obligation upon the *Contrôleur Général* to inform the ministers concerned of his observations at the end of each inspection. The ministers may make comments in response to these observations whenever they deem necessary or when the *Contrôleur Général* expressly requests.

From the outset, the habit was established, on the one hand, of not sending the observations alone to the executive, but also the report recording the inspection on which the latter are based; and on the other hand, of systematically requesting that the ministerial authorities make known their point of view.

For this reason each inspection is followed, sometimes after a long interval¹², by the sending of two separate documents to the ministers concerned: the inspection report itself, the

¹¹ "Cantiner", that is to say to buy from outside using their own resources.

¹² Since 2008, the number of inspections conducted, the obligations arising from the drafting of the documents and the process of inter partes exchanges with the institution, followed by the double proofreading of the reports, have regularly led to lengthening of the time required for completion of the procedures. The reports for inspections

conclusions of which include a series of recommendations (of between five and fifty in number, or even more in the case of large institutions), and a summary of the latter, intended more particularly to be read by Ministers and their Private Offices.

The analyses which follow do not therefore concern the inspections carried out in 2013, but the observations contained in the reports sent between 1st January and 31st December 2013. They are set out according to the nature of the institution concerned.

2.1 Waiting Areas and Detention facilities for Illegal Immigrants

2.1.1 Refusal of Entry at Borders

Foreigners who do not produce the necessary documents for admission to France (article L. 211-1 of the Code for Entry and Residence of Foreigners and Right of Asylum, hereafter referred to as the CESEDA) or who present a threat to public order (article L. 213-1 of the same Code) or who, under certain conditions, are subject to a measure of removal from the country (same provision) or, finally, who apply for asylum, can be maintained in a waiting area located in a station, port or airport at the French border, for a period which cannot exceed twenty days. The permanent or temporary waiting areas in which they are placed (article L. 221-2 second paragraph) are obviously open to inspection by the *Contrôle Général des lieux de privation de liberté*.

While keeping to the fundamental issues, we intend to examine two factors concerning waiting areas which need to be criticised.

- Absence of Norms with regard to practical living arrangements in waiting areas

Practical living arrangements in waiting areas vary widely at best. Indeed, the number of persons “held” is of very different proportions according to the place in question.

As is well-known, 90% of these persons are dealt with by the border police of Paris Roissy Charles-de-Gaulle Airport. In other airports (Nice, Bâle-Mulhouse, Cayenne etc.), and *a fortiori* in stations and ports, the number of persons held is small, or even very small. The resources made available for these foreigners therefore also vary. It may be considered that the slender numbers only call for slender means.

From the practical point of view, there is a difference between waiting areas and detention centres for illegal immigrants. Whereas the latter are built under the sole responsibility of the State, on certain sites coming under public state property or over which the administration possesses prerogatives, in general waiting areas have to be established in premises which, not only come under the authority of third parties (concession-holding companies), but of third parties very little inclined to have elements as disturbing as foreigners in detention incorporated into the peaceful air travel landscape. Moreover, it is also to be deplored that negotiations with third parties are often left to decentralised State authorities, whose powers appear limited in relation to certain commercial corporations.

For this two-fold reason, and also in order to protect the dignity of persons, who need to be accommodated – for almost three weeks if necessary – in decent conditions, it is important that minimal norms should apply to the habitability of waiting areas.

conducted in 2010 and 2011 were only sent to the ministers in 2013 (cf. section Z, concerning the assessment of the work of the *Contrôle Général*).

Yet, although such norms exist for detention centres (the value of which will be seen below), none are applicable to waiting areas, as though the fate of newly arriving foreigners was even less worthy of interest than that of foreigners deported from France.

The current Act and regulations provide a certain number of elements in this respect.

Article L. 221-2 of the CESEDA provides that waiting areas may include¹³ “one or several accommodation premises” providing “hotel-type services”. Moreover, it mentions that these premises shall include a “space” enabling protection of the confidentiality of interviews between the person held and their lawyer. Finally, pursuant to the same provision, waiting areas and detention facilities shall be physically separate.

The requirements of current law as far as waiting area facilities are concerned go no further. They are completely inadequate.

In the first place, with regard to the issues dealt with. What is a “hotel-type service”? This should probably be understood to mean board and lodging, that is to say facilities for sleeping and eating. However, the expression “type” leaves the nature of the services open to varying interpretations. In fact, as far as accommodation is concerned, the *Contrôle Général* has, for example, inspected waiting areas in which the sleeping arrangements consisted of nothing more than the use of an air terminal waiting room, with rows of seats, large windows overlooking the tarmac, no bathroom facilities either for adults or for children, and lacking any protection against noise and light. The formulation of the law is therefore freely open to interpretation. On this particular point it should have referred to regulations.

It is also regrettable that foreigners and their lawyers (even if the latter only come infrequently) have nothing more than a “space” at their disposal. This is less than in most police custody facilities, in which a room is at the disposal of lawyers and their clients. The notion of space is extremely vague, allowing full scope for all possible arrangements and disadvantages.

As well as with regard to the issues that they pass over in silence. For example, the current law expressly mentions the case of lone minors (article L. 221-5). It does not make any provision for the separation of these children from other persons held in waiting areas. It gives no instructions concerning issues related to health, hygiene, movement and access to the open air and food, not to mention any possible activities (there are none..).

Generally speaking, as far as deprivation of liberty is concerned, the French legislature devotes attention to defining (in an abstract manner) the rights attached to individuals. It too often neglects the matter of protection of their dignity. Yet, apart from formal rights (telephoning a consul etc.), international law, and the European Court of Human Rights in particular, has long imposed upon the authorities an obligation to protect individuals’ lives and safeguard them from physical and moral harm. Current laws only reflect this requirement in an imperfect manner.

Such is indeed the case with regard to waiting areas.

The *Contrôle Général* therefore recommends an amendment of the law (article L. 221-2) in order to include a few essential general principles therein, corresponding to the considerations mentioned above. For example, rather than a “space” for lawyers, it needs to provide that the practical framework shall protect the secrecy and confidentiality attached to the duties of counsels to foreigners held in detention. The same applies to the privacy, right

¹³ Our emphasis.

to family life, health etc. of the persons concerned. The draft bill on asylum reform could serve as a vehicle for these additions.

It also recommends that, in application of these principles and by statutory reference, the regulatory part of the CESEDA (chapter 1 of title 2 of book II) should be supplemented by a group of provisions comparable (but not identical) to those appearing under articles R. 553-1 et seq. of the same code, concerning norms of habitability.

- Period of Detention of Foreigners in Police Stations without controls

The law provides that the holding of foreigners refused admission to the territory in waiting areas lasts for “the time strictly necessary for their departure” or, in case of asylum applications, similarly for the time strictly necessary, “for an examination” aimed at establishing whether or not their application is manifestly unfounded.

Examination of asylum applications by an officer of the French Office for the Protection of Refugees and Stateless Persons (OFPRA – *Office français pour la protection des réfugiés et apatrides*) cannot be organised in an impromptu manner. In this case, in view of the time required, a foreigner has every chance of rapidly leaving the police station in which they are held in the hours following refusal of admission, and being taken to an accommodation area if such facilities are available.

However, for foreigners who do not apply for asylum (the vast majority), the procedure can vary dramatically in different cases, it being understood that the law obliges them to return to their country of origin (usually by plane).

In cases where the means of transport to be used by the foreigner in order to leave France are unavailable for a considerable length of time (two days for example) the foreigner will in all likelihood, as in the abovementioned case of asylum seekers, be taken from the police station to the place providing them with “hotel-type services”. On the other hand, if a means of transport are available within a short space of time (for example if the aeroplane which brought them to France is set to return to its point of origin half an hour or so later, or after a stopover of a few hours), they will remain in the station, in an area under lock and key, until their departure.

These different situations lead to unacceptable inequality of treatment.

Indeed, **in the first case**, foreigners taken to accommodation areas, however uncomfortable, are not only seen by the police, but also come to the attention of third parties: health personnel, associations (French Red Cross, authorised associations), representatives of the UNHCR¹⁴, interpreters and lawyers. The possibility of exercising their acknowledged rights (for example to use the telephone) can be verified. Absence thereof can therefore be challenged. Furthermore, after four days in a waiting area, they are taken before a liberty and custody judge for a ruling concerning extension of their stay in the waiting area (article L. 222-1 of the CESEDA).

In the second case, the foreigner remains in the police station where they are unable to have any contact with third parties. Admittedly, their rights (to request an interpreter or doctor and to call for a lawyer or any person with whom they wish to speak) are applicable. But nobody can say how these rights are brought to their attention. No more than anybody is aware of the manner in which they are applied.

¹⁴ *United Nations High Commissioner for Refugees.*

Such is the case with regard to the right to communicate “with a legal adviser or any person of their choice” (article L. 221-4). Is a telephone available to foreigners in the police station? If so, under what conditions? If not, can the persons concerned keep their mobile telephones with them? Even if the latter are equipped with a function for taking photographs? And if they are able to keep them, whether these devices – by definition purchased abroad – have international mobile phone subscriptions, how far are they useful and what is substituted for them? These constitute so many questions whose answers are variable and lacking any control. In other words, the effectiveness of the right to communicate is in no way guaranteed.

There is all the more reason for doubts with regard to the form of notification of rights and implementation thereof insofar as the orders given to (and the professional interest of) police officers are to ensure that the greatest number of persons leave the country as quickly as possible, so as to avoid any “build up” of the presence of foreigners at the border.

Ideas of the following kind thus quickly prevail: the less foreigners are informed of their rights, the easier it is to take them back to their point of departure.

Or, still worse, to ideas according to which foreigners’ rights only commence when they are admitted to an accommodation area and, as long as they have not been so admitted, they can leave France without any formalities. Interpretations of this kind are nonetheless contrary to the text: the waiting area does not begin at the place of accommodation but at the “points of embarkation and disembarkation” (article L. 221-2). Foreigners present in police stations are thus already “held” in detention.

Yet, as already emphasised¹⁵, the differences in treatment arise exclusively from the assessments made by police officers. These can vary. Thus, the period for which a foreigner can remain “unadmitted” in the police station before being “held” in an accommodation area varies from one waiting area to another: two hours here, four hours there (no national orders exist with regard to this point). In any case, nobody is able to verify the application thereof. Although the precariousness of a foreigner’s condition in a police station rules out their being held there for several days, a period of half a day does not, in reality, pose any problem.

It is obviously not possible to assert that the difficulty is removed by the fact that, at the time of their arrival foreigners can, in theory, request the granting of a period of one clear day before being obliged to leave. It has already been stated – and even repeated – how the officers themselves completed the forms at the time of decisions of refusal of entry, including with regard to waiving the benefit of a clear day on the part of the foreigner¹⁶. In an exchange of correspondence on this point in the course of the year 2013, the authorities of the Ministry of the Interior once again asserted that the police are careful to ask for the opinion of persons refused admission. The *Contrôle Général* maintains all of its observations and recommendations in this regard.

There is no reason for thus dividing the procedure applicable to foreigners refused entry, and no provision of the law to support this practice. The reduction of these differences requires several recommendations.

On the one hand, the law (article L. 221-4) needs to specify that rights to which foreigners are entitled are applicable whatever their location in the waiting area and whatever the length of the period for which they are held in the waiting area.

¹⁵ *Annual Report of the Contrôleur général des lieux de privation de liberté for 2012, p. 21.*

¹⁶ *Annual Report for 2012, ibid. p. 22.*

On the other hand, such an extension presupposes the inclusion of specific provisions in the law (article L. 223-1 of the CESEDA) that persons checking the waiting area shall have access to all points thereof and that the regulations (article R. 223-2 et seq.) be amended accordingly. Although it is indeed provided, for example, that the representative of the UNHCR has access to all asylum seekers, this in fact means that the latter is only able to enter the accommodation area, since all asylum seekers are sent there. They cannot, for example, verify whether foreigners who may have requested asylum are held in a police station for immediate departure, without their application being processed.

Finally, due to the observed problems of operation, the *Contrôle Général* is led to recommend that a separate official record be drawn up concerning the allowed time of one clear day, and countersigned by the foreigner, or better still that a period of one clear day should be applied *de jure*, except in case of express request to the contrary on the part of the foreigner (article L. 213-2).

2.1.2 Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers due to be deported

Foreigners who have to leave the territory, by decision of an administrative authority or court, can be put in a place for the detention of illegal immigrants, foreigners refused entry to the country and asylum seekers when they cannot “leave French territory immediately” (article L. 551-1 of the CESEDA), for a maximum period which the Act of 16th June 2011 brought up to 45 days¹⁷. This is the time considered necessary for practical organisation of the return journey (plane tickets etc.); for obtaining the necessary documents from the country of destination in order to enable admission thereto of the foreigner deported from French territory; and finally for exhaustion of the available remedies before the administrative and ordinary courts. The place of detention is a detention facility for illegal immigrants (in general set up in a police station), or else a detention centre for illegal immigrants, specifically designed for the purpose, bringing a greater number of individuals together, for longer periods.

2.1.2.1 Detention of Foreigners

The previous annual report¹⁸, examined the consequences inferred from current European law (resulting from European Directive 2008/115/EC referred to as the “return” Directive) by the French Court of Cassation, as a result of which the placement in police custody of foreigners arrested for questioning became impossible on the sole grounds that their papers for entry and residence on French territory are not in order.

The Government and Parliament drew the conclusions thereof by adopting Act no. 2012-1560 of 31st December 2012, which enables police authorities to “detain” foreigners, for a maximum period of sixteen hours, when it emerges, at the time of control operations, that they cannot give any proof of their right to travel or stay in France (article L. 611-1 of the CESEDA). Such detention should make it possible to determine whether or not the detained person’s papers are “in order” with regard to the laws concerning entry to and residence in France. The inspections of police stations conducted in 2013¹⁹ have already provided some information on the manner in which the first of these detentions were implemented.

¹⁷ In its Report for 2012 (p. 12 et seq.), on the grounds set out at the time, the *Contrôle Général* requested that the period should be brought back down to that which prevailed before the reform of 2011, i.e. thirty-two days.

¹⁸ Pages 16 et seq.

¹⁹ By way of exception to the matters examined in this report, the findings here set out concern inspections conducted in 2013, without the corresponding reports necessarily having been sent to the ministers.

It is regrettable that, in spite of the fact that the Act's (inevitable) prescriptions were known several months before its promulgation, it was not possible for police stations and headquarters to be equipped with registers drawn up in accordance with a uniform model at the time of its coming into force. Many of them therefore "improvised", in most cases (but not always) successfully, a register for keeping a record of the persons detained and the procedures used. "Official" registers did not arrive until the summer months (and not everywhere).

In any case, the registers consulted are in general poorly kept, due to absence of the recording of necessary information. These gaps are all the more regrettable insofar as the length of detention is limited to sixteen hours as from the time when the foreigner is stopped for questioning on the public highway; yet failure to note the latter time, as well as the time at which the detention comes to an end, makes any control of compliance with the deadlines fixed by law impossible. Yet, it indeed appears, in the course of inspections, that in a relatively large number of scenarios the detentions last for twelve hours or more. Moreover, foreigners have rights, listed in the law: the manner in which the persons concerned are informed of these rights, on the one hand, and the manner in which the effectiveness thereof is ensured, on the other, is often equally impossible to verify. A reminder of the requirements for proper keeping of the register is called for.

Finally, it is provided that foreigners shall be detained in premises where they do not mix with persons in police custody: either in separate premises, or in police custody cells that are not occupied at the time of detention. From first findings it emerges that the overwhelming majority of foreigners are placed in police custody cells without it being possible to determine (it was impossible to interview any detained foreigners) whether they are indeed placed in different cells from those occupied by persons in police custody. It is to be feared that, in the best of cases, officers do as best they are able for better (or worse), i.e. depending on what is possible according to availability of premises.

These observations will receive special attention from the *Contrôle Général* in the course of the coming months.

2.1.2.2 - Detention Facilities for Illegal Immigrants

Although their number has fallen over several years, and those that exist are not necessarily permanent, several disadvantages of the principles governing detention facilities for illegal immigrants need to be pointed out.

Contrary to detention centres for illegal immigrants, detention facilities are not equipped with rules and regulations. In the case of the former, article R. 553-4 of the CESEDA makes provision for such regulations, in order to organise "daily life, under conditions in accordance with the dignity and safety of their occupants". For detention facilities, no such provisions exist. This is all the more regrettable insofar as the *Contrôle Général* has ascertained that there is a great risk of detention being treated as equivalent to police custody by many officers.

The list of practical items which detention facilities should possess, as given under article R. 553-6 of the Code, is inadequate. In accordance with international recommendations, these should include the possibility of access to the open air for every detained person at least once a day. Moreover, the intended facilities are far from always being provided. In one facility on which a report was sent to the minister in 2013, no room was provided to cater for any lawyers that may arrive: interviews were provided for in the room; yet, since the latter was shared, it was thus very difficult to ensure the confidentiality of exchanges.

Finally, article L. 6112-1 of the Public Health Code (*Code de la santé publique*), which makes public hospitals responsible for provision of treatment to persons in detention, does not make any distinction between detention facilities and detention centres: as a result, without making

such regular presence necessary, the hospitals of the towns in which detention facilities are established need to provide the necessary health care. The necessary contacts need to be established, in particular between prefectures and regional health agencies.

2.1.2.3 - Detention Centres for Illegal Immigrants

The majority of the reports sent by the *Contrôle Général* to the minister concerned in 2013 relate to follow-up inspections. They are therefore concerned with whether or not progress has been made and with assessment thereof: not on the basis of abstract imperatives; but rather on the basis of specific comments made in the course of previous inspections. Generally speaking, changes have been implemented in a positive manner. However, they do not make any substantial difference to the actual situation. As emphasised below in section 3 of the report, absence of change does not necessarily apply to costly improvements: this is characteristic of situations which resemble administrative paralysis attributable to the absence of initiatives going beyond the scope of the handling of immediate situations and lack of exchanges between the various centres.

a/ Diversity

Indeed, the most surprising aspect is the great diversity of applicable rules. Not about secondary questions – which would scarcely be of concern to the inspectors - but with regard to matters involving foreigners’ rights, including their fundamental rights.

The following elements have already been brought up in previous annual reports:

Access to associations providing support to foreigners in the exercise of their rights (article L. 553-6) is often limited; while in other centres, it is unrestricted, that is to say that it is not subject to the condition of agreement on the part of the officers and availability of one of the latter in order to accompany the applicant to the office of the association. The latter solution, as the *Contrôle Général* has already stated in writing, is more in accordance with the spirit of the texts. Why does it remain an exception?

The regular presence of officers in the detention area (rooms, exercise area) is an essential factor for successful maintenance of relative calm. Why, in large centres in the Parisian urban area, do dealings between detainees and the administration take place exclusively through the private company in charge of meals and solely via the intermediary of a speaking grille? The history of these centres is nonetheless far from lacking in incidents, some of them serious.

Such presence on the part of officials, in places where it is organised, may or may not be ensured by officers in possession of deadly weapons. Reflection on this point was requested from the Ministry of the Interior in 2009 which responded (before Parliament) with an objection to admissibility. The question needs to be asked once again.

b/ Practical questions

Although the building aspects of detention centres do not, in the majority of cases, raise any major difficulties (between the two inspections of the CRA of Saint-Exupéry, work was undertaken in order to limit the effects of humidity and put an end to effects attributable to the presence of asbestos), it is regrettable that in most centres, four persons to a room is the norm of occupancy and that, in the most recent centres, the rooms no longer contain bathroom facilities.

For all that, it is well known that in all places of deprivation of liberty collective showers are places conducive to violence and threats: this element manifestly appeared less important than possible damage. The assessment needs to be changed in this respect.

Receipt of postal orders sent from outside by close relations and friends of detainees (who often are not very well-off) is subject to difficult procedures, which give rise to loss of time. The representatives of the OFII²⁰ thereby lose time which could be put to better use. In one centre, the OFII may cash postal orders of an amount of less than twenty-four euros; however, postal orders equal to or greater than this amount are cashed by the French national police... Prefectures have to facilitate the sending of money, on the basis of national instructions, by identifying difficulties and, if necessary, entering into the necessary agreements, for example with the Post Office, present throughout French territory as a whole.

In the absence of the necessary accounting flexibility, representatives of the OFII do not have funds at their disposal for advancing sums of money required for detainees' external purchases. Some of them agree to do so from their personal funds. The Agency should put the necessary cash advances in place.

In theory, the sale of cigarettes on site is prohibited (but permitted in two centres), due to the provisions of article 568 of the General Tax Code (*Code général des impôts*). However, this article does not oppose sales made under the control of the French Directorate-General of Customs and Indirect Taxes (*Direction générale des douanes et des droits indirects*). Failing which, this provision could be supplemented by an exception in favour of places of deprivation of liberty, and in particular for detention centres for illegal immigrants. A measure of this kind does not appear to be of minor importance.

c/ Absence of Activities

Once again, attention must indeed be drawn to the notable inadequacy of activities in detention centres as well as to the associated idea that a television, installed in a common room²¹, with little facility for changing channels, is not enough to make up for the lack of activities. It needs to be repeated that the majority of centres are overflowing with boredom and anxiety.

Indisputable considerations are behind this dearth: cases of damage occur. Certain games and activities can be instruments of violence. Thus, for example, the idea of a sports room, the existence of which was possible in the past, was not taken up at the time of the recent rebuilding of some detention centres. Newspapers are never distributed since they can easily be burned. No ball games: the balls are too often lost. Etc. However, should this line of reasoning prevail? The possibility of damage, inevitable in a place of constraint, and the cost and risks thereof need to be balanced with a minimum level of well-being for detainees. The need to protect their dignity here coincides with that, to which the police should be sensitive, of avoiding the building up of frustrations and aggression. The latter may be avoided by greater constraint. The same end can also be achieved by means of suitable preventive measures, of which activities constitute an essential aspect.

In one centre, concerning which a report was sent to the minister in 2013, a video games room had been installed, which proved to be an unequivocal success. This constitutes the sole initiative of this kind in the centres inspected. It could be extended. Use should be made of other possibilities, in particular with regard to culture (films etc.), sport, reading and means of expression of all kinds, possibly in partnership with other public or private bodies. Shared national reflection could lay down the basic principles thereof. These need to include the possibility of access, under supervision, to the Internet or, at the very least, to e-mail.

²⁰ French agency in charge of migration and welcoming foreign people (Office français de l'immigration et de l'intégration), responsible for operations of daily life for detainees.

²¹ At the detention centre of Lyon – Saint-Exupéry, each room has a television.

d/ Family Ties

Various different measures, several of which have already been set out in previous reports, are needed in order to improve the respect for family life to which every detainee is entitled, whatever their situation.

In the first place, visits from detainees' close relations and friends should be guaranteed, naturally without imposing any requirements whatsoever upon these close relations with regard to lawfulness of residence papers. The fundamental right of family ties transcends obligations born from French law. Visits should have no consequence with regard to the presence of members of the family within the territory. This point is understood by most heads of detention centres; it would be desirable for this pragmatic requirement to appear in the texts.

In the second place, the privacy appropriate to family relations needs to be respected for meetings, within the framework of the supervision which is obviously necessary. However, the latter needs to give priority to certain preconditions. Except in case of specific circumstances – it is difficult to justify the presence of a police officer at the time of the reuniting of close relations as being proportionate to the risks involved. The possibility of ensuring security with regard to the visitor, if necessary by means of frisk searches (apart from the compulsory depositing of certain objects), is less shocking than the presence of a third party during the exchanges.

In the third place, as already pointed out, the meeting places need to be subject to national specifications, applicable at least in detention centres (minimum surface area, separate cubicles) and paragraph 8° of article R. 553-3 of the CESEDA appropriately supplemented on this point.

Finally, in the fourth place, the length of visits should not be shorter than half an hour, except in case of constraint justified on specific grounds involving the person or exceptionally large numbers of persons, which have rarely been noted by the *Contrôle*. Moreover, this duration appears in the rules and regulations: the managers of centres need to ensure minimum application thereof. Indeed, in some centres extensions are naturally accorded when there is no reason to deny them. Close attention also needs to be given to the quality of reception of close friends and family. The possibility of the latter's going to the centre needs to be ensured: too few signs on the public highway, too little public transport.

e/ Healthcare

In the vast majority of centres, article L. 6112-1 of the Public Health Code, which entrusts provision of treatment of detainees to public hospitals, naturally comes into application.

The material conditions of exercise thereof are not always satisfactory. In one of the centres inspected, the healthcare premises consisted of a single room of 12.9 m², which obliged the nurse to come in the mornings and the doctor in the afternoons, without ever meeting each other, in order to respect the confidentiality of treatment. Article R. 553-3 of the CESEDA (paragraph 7° thereof), which currently provides that each centre shall contain “one or several rooms equipped with medical facilities”, clearly also needs to be amended and supplemented with regard to this issue.

A difficulty exists with regard to the distribution of medicines to detainees.

In the absence of sufficient presence, the nurses are often led, in particular towards the end of the week, to hand over prescriptions in various different forms (in envelopes etc.) to

police officers, who then pass them on to the persons concerned. These practices are contrary to the permitted rules; means need found to ensure distribution by healthcare professionals, handing over a course of treatment for several days to the patient concerned when it is impossible to do otherwise.

The nature of the health care given – or rather not provided – can be a source of difficulties.

Although the vast majority of general practitioners fulfil their duties with competence and dedication, a few appear to consider that the necessarily short length of stay in detention should lead them to only provide treatment insofar as is useful for such short periods. The inspectors have even encountered one doctor who considered that, since a treatment had been postponed before arrival at the centre, due to the patient, the said treatment was not to be undertaken in the course of the detention. It is difficult to reconcile practices of this kind with the medical code of professional ethics (articles R. 4127-7 and R. 4127-9 of the Public Health Code), under the terms of which doctors shall provide help to persons “in all circumstances” and “shall... provide assistance to all patients in danger”.

Finally, in the course its inspection of one centre the *Contrôle Général* was able to evaluate *in vivo* the manner in which the presence of Legionella in the bathroom facilities was dealt with. It was ascertained that the administration of the centre was too easily left to its own devices by the bodies concerned with public health matters, which provided incomplete and inappropriate information. The technical solutions provided by a company proved to be ineffective. The prefecture, for its part, delayed closing the centre for as long as possible, a measure which nevertheless proved inevitable, the infection constantly increasing as the days went by. The head of the centre endeavoured to inform the detainees in an appropriate manner, but with the incomplete information at his disposal, was unable to answer the foreigners’ simple questions: can the water be used for washing? For making tea? Etc.

f/ Applications for Asylum

Once again, changes to the channels for asylum applications (of which moreover few are made in detention) are requested from the authorities. Applications are made on the sole initiative of the foreigner concerned, who is to deal with the French Office for the Protection of Refugees and Stateless Persons (OFPRA) alone for this purpose and, if necessary, a third party of his or her choice. The “registry” of the detention centre (that is to say the police administration) should not interfere with this procedure, including for the purposes of verifying that applications are complete and, *a fortiori*, informing the prefectural services. The only information that the border police should supply to the OFPRA is the starting point of the five-day deadline (in order to make an application for asylum) mentioned under article L. 551-3 of the CESEDA. Nothing more. On the other hand, subject to confidentiality, nothing stands in the way of the association present in the centre passing on the application to the OFPRA, if asked to do so by the person concerned.

g/ Duration

Finally, once again, since nothing has changed since the previous annual report, it is firmly recommended that the maximum period of detention of illegal immigrants and asylum seekers be brought down from forty-five days to thirty-two days, the maximum period before the reform of 2011.

Without returning to the mistaken presuppositions which were used to justify the lengthening of this deadline²², it should be observed that such extension of the period only leads,

²² Annual Report of the CGLPL for 2012, pp. 13-14.

assuming that this is really the intended objective, to a very small number of foreigners actually becoming eligible for deportation.

On the other hand, as already pointed out²³, the disadvantages resulting from this extension for foreigners who are not deported are considerable (loss of employment and accommodation) and deeply destabilising, out of all proportion to the charges against them.

An even more critical view should be taken of prefectural services which, even after having been finally informed that a foreigner cannot be deported (usually due to a final refusal on the part of the destination country to issue the necessary travel documents), refuse to lift detention measures until the full period thereof (forty-five days) has expired.

One cannot content oneself with the fact that, in such scenarios, in accordance with the instructions given by the Constitutional Council of France (no. 2003-484 DC of 20th November 2003, § 63 et seq.), remedies before a judge continue to be guaranteed. The vain maintenance of this guarantee is the mark of total indifference towards the person’s interests, and above all a flagrant violation of the law, which only provides for detention of foreigners “who cannot immediately leave French territory”: when it emerges, in an indisputable manner, that the foreigner “can no longer leave” the territory within a specific deadline, detention is no longer possible. Since the latter is an exceptional measure, it is only acceptable in the limited cases defined by law.

2.2 Police Custody Facilities

2.2.1 Police Facilities

The number of police custody facilities inspected by the *Contrôle Général* allows it to set out a comparative analysis of police stations and headquarters, for which the reports were sent to the Ministry of the Interior in 2013, rather than giving a reminder of its recommendations in a descriptive manner.

A number of typical orders of magnitude have thus been distinguished for the institutions inspected. These are far from reflecting the manner in which fundamental rights are respected in the places inspected, in either quantitative or qualitative terms. They do not show data, which the inspectors always collect, concerning calls for doctors and lawyers and, of course, requests by persons in police custody to have close relations and employers informed of their situation, and the time within which these calls and notifications are carried out. However, on the one hand, the figures below shed light on the data concerning police custody in a certain number of very different police districts and, on the other hand, on the manner in which placements in police custody proceed.

2.2.1.1 Quantitative Data concerning Police Custody

For greater clearness, the data has been divided into two tables, concerning fifteen towns.

	Amiens 2009	Angers 2009	Chartres 2009	Chessy 2009	Douai 2009	Metz 2010	Montereau 2010	Niort 2010
Rate of PI	29.6‰	23.2‰	20.2‰	84‰	11.2‰	21‰	26‰	19.5‰

²³ *Ibid.*

Rate of PC	21°/00	12.4°/00	12.5°/00	33.3°/00	6.6°/00	12.3°/00	14.8°/00	6.16°/00
PC/PI	58.5%	53%	61.6%	39.4%	59.2%	58.5%	70%	31.5%
Minors/PC	28%	14.4%	9.33%	5.31%	18.3%	14%	14.01%	8.6%
Road traffic offences/PC	17.4%	19.5%	27.1%	8.66%	31.2% ⁽¹⁾	20.9%	22.99%	8.6%
PC > 24 hrs.	NP	11.9%	10.9%	12.3%	17.8%	15%	4.29%	12.53%
Length of PC (average)	20 hrs. 23 min.	15 hrs. 14 min. ⁽²⁾	NP	15 hrs. 37 min.	16 hrs. 20 min.	17 hrs. 5 min.	17 hrs. 3 min.	12 hrs. 36 min.
PC/day	10.7	6.65	3.1	6 ⁽³⁾	3.7	11.2	1.5	1.2

NP = information not provided

In 2010 for minors in police custody alone

At the time of the inspection, the police station of Chessy housed persons in police custody from other police stations that were undergoing building work.

	Pointe-à-Pitre	Saint-Denis	Saint-Quentin	Saint-Ouen	Troyes	Vénissieux	Villeneuve-St.Georges
Rate of PI	26°/00	31°/00	28.2°/00	48°/00	20.8°/00	24°/00	27.07°/00
Rate of PC	16°/00	32°/00	19.2°/00	39.3°/00	10.7°/00	12°/00	19.1°/00
PC/PI	64.3%	103% ⁽¹⁾	60%	80.8%	51.4%	45.2%	70.6%
Minors/PC	13.8%	20%	9.6%	15.3%	20.7%	40%	NP
Road traffic offences/PC	16.4%	14.34%	31.21%	10.8%	40.2%	15.42%	29.1%
PC > 24 hrs.	14%	22%	14.8%	13.2%	18.5%	14%	NP
Length of PC (average)	NP	20 hrs. 38 min.	15 hrs. 10 min.	15 hrs. 56 min.	16 hrs. 13 min.	15 hrs. 16 min.	17 hrs. 27 min.
PC/day	4.4	10	3	4.7	4	2.6	3.5

NP = information not provided

Persons committing traffic offences have not been included among persons implicated. If the latter are added to the persons implicated and then placed in police custody, the total number of cases of police custody becomes greater than that for persons implicated alone.

A number of remarks need to be made concerning this data, which is made up from statistics provided by the institutions inspected.

a/ In the first place, the left-hand column requires explanation.

The acronym PI refers to “persons implicated”, that is to say suspected of having committed offences or arrested while committing offences, stopped for questioning and then taken to the station by a police squad. Only some of them are placed in police custody (PC) by the senior law-enforcement officer (OPJ) (articles 62-2 and 63 of the Code of Criminal Procedure (*Code de procédure pénale*)). Under ordinary law²⁴ police custody is fixed at 24 hours but can be extended by an equivalent period by a public prosecutor at a court of first instance: the table therefore mentions the portion of cases of police custody extended beyond twenty-four hours. In police custody, minors²⁵ on the one hand, and persons committing traffic offences²⁶, on the other, can be set apart: as shown by the headings “Minors/PC” and “Road traffic offences/PC”.

b/ In the second place, the figures are calculated in a number of different manners.

The rate of persons implicated and the rate of police custody, given in “x” per thousand, place the absolute numbers of persons implicated and persons placed in police custody in proportion to the population of the district coming under the authority of the police station inspected. Strictly speaking, persons who cannot be subject to police custody measures, and children under ten years of age in particular, should be subtracted therefrom. These figures are therefore approximate. The ratio between the number of cases of police custody and the number of persons implicated is based upon precise data. The national average comes to 49.4 % for 2009 and 45.6 % for 2010.

However, as indicated in the note above, the figures for traffic-related offences are not included in this national data. If the figures were exhaustive, the “PC/PI” percentage would probably be closer to 60%. Establishment of the “Minors/PC” and “Road traffic offences/PC” ratios does not pose any special difficulties. The same applies to the proportion of cases of police custody of more than 24 hours as compared with the total number of cases of police custody. The number of cases of police custody per day is based on the total number of cases of police custody divided by the number of days in the year.

Finally, the average length of police custody is not calculated on the basis of the absolute total of hours: indeed, a calculation of this kind would be much too cumbersome in view of the number of placements in police custody; moreover, in too many registers, as the *Contrôle Général* has noted on many occasions, the time of ending of police custody is often omitted. The average length shown above is calculated from a (random) sample of between twenty and thirty official records of the end of police custody, which the inspectors systematically ensure are handed over to them; these official records almost always include the times of commencement and ending of police custody.

c/ In the third place, and above all, a few remarks are required concerning these figures.

As far as the rate of persons implicated is concerned, the differences vary from 11.2 in a thousand to 84 in a thousand, which is clearly considerable.

However, this difference is deceptive. Indeed, there is no reason to assume *a priori* that all of the persons implicated live in the police district: the higher the flows of movement in the

²⁴ With regard to organised crime and delinquency, the period can be brought up to seventy-two hours (article 706-88 of the Code of Criminal Procedure).

²⁵ Minors can be placed in police custody from thirteen years of age. However, from ten years of age, children suspected of having committed serious crimes or offences can be “detained at the discretion” of an OPJ for a twelve-hour period, which may be renewed once (article 4 of the statutory instrument (ordonnance) of 2nd February 1945).

²⁶ These persons are not included in the statement (État 4001) in which the police list their activity.

sector the less this is so and conversely. In this respect, two very specific cases, Chessy and Saint-Ouen, need to be excluded from the list of fifteen towns here examined. The police station of Chessy picks up the crime focused on the Disneyland Park and associated facilities (hotel business), which in the vast majority of cases is not committed by members of the district's population, but by criminals originating from elsewhere: the number of persons implicated is admittedly very high as compared with the local population, but in an artificial manner; the proportion is therefore of little importance. The same applies, though to a lesser degree, to Saint-Ouen, for analogous reasons associated with the presence of a "Flea Market" three days a week. If these two towns are excluded, the difference is substantially reduced, by 11.2 to 31 per thousand. It remains considerable, even for towns where it may be assumed that crime is for the most part (in terms of number of cases) local in origin: thus a factor of 2.5 separates Saint-Quentin (28.2°/00) and Douai (11.2°/00). These differences are obviously not attributable to crime alone; they also reflect police activity and therefore the organisation thereof, number of officers etc.

Similar comments need to be made with regard to rates of police custody, which are affected by considerations arising from the more or less serious nature of crime, and the propensity of local OPJs to place persons brought to them in police custody. This is reflected in the ratio between the number of placements in police custody and the number of persons implicated. Once again, the calculations for each town here show substantial differences, ranging between a minimum of 31.5 % (less than a third of persons arrested for questioning and taken to the police station are placed in police custody) and a maximum of 80% (Saint-Denis probably constituting a special case). Admittedly the seriousness of the offences committed provides part of the explanation for this difference. Probably only a minor part however. Local traditions are likely to have a considerable influence, along with the ideas held by persons in charge with regard to the role of police custody. The objectives of the latter, as set out under article 62-2 of the Code of Criminal Procedure²⁷ can give rise to different interpretations. To this may be added the desire to use custody measures in order to "punish" offenders who, in view of the level of seriousness of their offence, is unlikely to be referred to trial.

The differences in the proportion of minors and persons committing road traffic offences in the number of persons placed in police custody are also marked and surprising. Indeed, the proportion of juvenile delinquency is variable: in view of the sociology of the district of Vénissieux, the reasons for the relatively high number of children placed in police custody (40%) are evident; this is moreover a sign that gives cause for concern. Once again, this proportion is admittedly dependent upon the denominator, that is to say upon the volume of crime that is in no way "juvenile" in character ("intelligent" crime, burglaries etc.). However, were these the only factors, it would be impossible to explain the differences between the levels in Amiens and Pointe-à-Pitre, a city in which the population pyramid contains very large numbers of young people, where local delinquency accounts for a considerable part of crime as a whole and the phenomenon of youth gangs (the "Squirts" ("*Microbes*"), the "Street Dogs" ("*Chiens Lari*") etc.) has grown to proportions unheard of in Metropolitan France. The police station of Pointe-à-Pitre shows a percentage of youths in police custody that is half that of Amiens. The differences in the proportion of road traffic offences in the number of placements in police custody as a whole, which varies from 8.6% to 40%, i.e. a ratio of 1 to 4.6, are less related to the social composition of districts and are therefore even more difficult to explain. However, in this case the influence of police activity can be taken into account in view of the fact that driving without a licence, for example, constitutes an offence (article L. 221-2 of the Highway Code (*Code de la route*) and that officers, according to the proceedings of the State Prosecutor's Office, only have to station

²⁷ *Enabling the execution of investigations, prevention of tampering with evidence, prevention of collusion between offenders and intimidation of victims etc.*

themselves next to a road in order to detect a few offenders, with a clear-up rate of 100%, the latter always being identified.

The proportion of placements in police custody that continue for more than twenty four hours²⁸ as well as the length of police custody as a whole are relatively uniform. Excluding the case of Montereau, the highest level is twice that of the lowest (ranging from 11% to 22%) and divergence from the average is small. The average length of custody, which is relatively high, especially when compared to the length of questioning, varies between a minimum of 12 hours 36 minutes and a maximum of 20 hours 38 minutes. In this case again, methods of operation are as important as criminal activity itself in accounting for these differences.

Finally, the number of placements in police custody per day reflects considerable differences in the activity of police stations, which are obviously dependent on data concerning the population of the police district²⁹, the volume of crime and the activity of the departments. The highest level (11.2 per day at Metz) is ten times greater than the lowest (1.2 at Niort), which naturally leads to very different workloads from one establishment to another, as well as different workflow management. The workload of one police station may be temporarily increased, because persons placed in police custody in other establishments are sent to it due lack of personnel, above all at night.

Within the sharp contrasts of this overall picture, the conditions of exercise of fundamental rights now need to be examined.

2.2.1.2 Data concerning Practical Details of Police Custody

For the purposes of clarity, the data is once again divided into two tables. They list about fifteen items which the inspectors are careful to verify during each of their inspections. Once again, the table is far from reflecting the reality of inspections³⁰, but nevertheless gives an initial idea of the practical details of police custody.

	Amiens	Angers	Chartre	Chessy	Douai	Metz	Montereau	Niort
No. of individual cells	4	5	3	4	7	2	6	0
No. of collective cells	1	1	1	1	0	2	1	2
No. of cells for minors	0	0	1	0	1	2	0	0
Total cells	5	6	5	5	8	6	7	2

²⁸ National average: 17.3% en 2009 (excluding road traffic offences; though the latter seldom lead to extensions of police custody); 18.2% in 2010.

²⁹ The average population of the seventeen police districts studied comes to 94,900 inhabitants, for a range of between 31,943 (for Chessy) and 204,500 (for Douai).

³⁰ For an exhaustive view refer to the inspection reports of police custody facilities published in their entirety on the cglpl.fr website.

No. of rooms for sobering up	2	4	3	4	3	4	0	2
Toilets in Cells	no	no	no	no	no	no	yes	no
Cell intercom	no	no	no	no	no	no	no	no
Inadequate cleaning of cell	yes	yes	yes	NP	yes	yes	yes	yes
Clean blankets	yes	no	no	no	yes	(1)	no	yes
Shower	no	2 not used	1 not used	1 not used	1 not used	no	1 not used	no
Hygiene “kit”	yes(2)	yes	no	no	no	no	no	no
Systematic security search	yes	no	no?	no(3)	no	no(3)	no	yes
Bras always taken away	yes	NP	yes	yes	yes(4)	yes	yes(5)	yes
Signature of register at start of PC	yes	yes	NP	yes	NP	NP	NP	NP
> 1 OPJ per office	yes	no	yes	yes	yes	yes	yes	NP
Designated PC officer	no	no	yes	yes	yes	yes	yes	NP

NP = information not provided

No blankets are available at Metz. In case of need, “survival blankets” (polyester film used to conserve body heat, in particular by the fire brigade, for injured persons) are used; in which it is very difficult to sleep.

No hygiene necessities properly speaking, but hygiene products (soap, toothpaste etc.) are available.

“Intermediate” searches, halfway between frisking and security searches, are very common, consisting of asking the person concerned to undress (the clothes being searched) while keeping their underwear on.

Almost always if the bra is underwired.

	P. à Pitre	St.Denis	St. Quentin	St. Ouen	Troyes	Vénissieux	Villeneuve St.Georges
No. of individual cells	10	2	3	6	9	3	3
No. of collective cells	2	2	0	1	1	0	0
No. of cells for minors	2	0	0	1	0	0	0
Total cells	14	4	3	8	10	3	3
No. of sobering-up rooms¹.	0	3	4	0	0	3	1
Toilets in cells	yes(1)	no	no	yes	yes	no	no
Cell intercom	no	no	no	no	no	no	no
Inadequate cleaning of cell	no	yes	yes	yes	no?	yes	yes
Clean blankets	(2)	no	no	(3)	(4)	no	no
Shower	1 not used	3 not used	no	1 not used	2 not used	1 not used	2 not used
Hygiene "kit"	no	no?	no	no	no	no	no
Systematic security search	yes	no	yes	(5)	(5)	no	yes
Bras always taken away	yes	yes	yes	yes	yes	yes	no?
Signature of register at start of PC	NP	No	NP	NP	NP	NP	NP

> 1 OPJ per office	yes	yes	no	yes	yes	yes (6)	yes
Designated PC officer	yes	yes	yes	yes	NP	NP	NP

Except in cells designed for minors.

No blankets available.

Blankets no longer available in this police station at the time of the inspection.

Contradictory testimonies: according to the officers blankets were given to persons in police custody; when questioned, the latter asserted that no blankets had been given to them.

“Intermediate” search very common, as explained in note (3) of the previous table.

In ten offices out of thirteen, there were at least two OPJs.

A number of remarks are once again necessary with regard to these tables of a more qualitative character.

Several additional criteria have been deliberately singled out with regard to different elements.

a/ The first of these concerns available space. The number of cells and rooms for sobering-up was noted. In police stations of recent construction, no distinction is any longer made between the two. Persons in a state of public and manifest drunkenness taken to the police station (after a ritual visit to the hospital for the issuing of a certificate of refusal of hospitalisation) are therefore placed in cells also used for police custody. This confusion appears logical, since cells in these police stations are henceforth equipped with toilet bowls, which were previously reserved to rooms for sobering-up alone: it was probably considered that since the facilities are identical, there was no longer any reason for the distinction; this is even likely to simplify management, since drunken persons suspected of having committed crimes, initially left to sober up, may be placed in police custody after having regained their sobriety, without any need to change the place in which they are accommodated. However, this confusion might be regretted at the legal level: placement for sobering up is an administrative police measure; police custody takes place within the framework of law-enforcement operations aimed at the pursuit of offenders and criminals.

The absence of specific rooms for sobering-up is therefore characteristic of the most recent police stations.

In principle, collective cells are used when all of the individual cells are occupied. This distinction is also dependent upon the age of the police station concerned. The oldest stations only possess collective cells, which are few in number. The most recent stations have a majority of individual cells and sometimes, as in the case of Saint-Quentin and Vénissieux, do not possess any collective cells at all. However, placement in either type of cell may depend upon other factors, such as the sex of the persons in police custody, or the prevention of communication between persons charged in the same case.

In general, minors are placed in separate cells from adults. However, in reality, the cells for minors mentioned in the above tables are not those in which children are actually placed (in principle next to the guard-room), but merely cells originally designed to be occupied exclusively by minors. Less than a third of the police stations and headquarters listed here possess such cells. Moreover, they do not possess any specific facilities and may even be less well-equipped than others (Pointe-à-Pitre). This might be regretted.

A connection may be made between the number of cells and the number of inhabitants of the police district, at least in towns where crime is, for the most part, local (therefore excluding Chessy and Saint-Ouen for the reasons already given). This does not constitute a rigorous approach, since some crime originates outside of the police district. Above all, as mentioned above with regard to the level of persons implicated, the differences bring other factors into play, in particular the scale of police activity. However, the cell/inhabitants ratio at least provides a sign of the manner in which the necessary facilities were thought out within the managing bodies. As might be expected, there are considerable differences: varying between one cell to 4,400 inhabitants (at Troyes) and one for 34,200 inhabitants (at Amiens), that is to say a difference of 1 to 8. The geography of distribution does not necessarily coincide with high crime figures. The best-equipped towns, apart from Troyes, are Montereau-Fault-Yonne, Pointe-à-Pitre and Saint-Quentin; the most poorly-equipped, apart from Amiens, are Angers, Niort and Saint-Denis. The logic of real estate opportunities and reconstructions presumably prevailed over that of adaptation of means to crime levels. This is understandable, but also to be regretted.

Naturally, a connection needs to be made between the number of cells and the daily number of placements in police custody, in order to shed light upon phenomena of cell overcrowding if necessary. Admittedly, a connection of this kind is somewhat tenuous, since placements in police custody last for under twenty-four hours and the same cell may therefore be occupied two or three times in succession in the space of twenty-four hours. However, the above data establishes that the average length of police custody is in the order of 17 hours and that the factor of shorter placements needs to be weighed against the need to separate the sexes and different age groups as well as the requirements of investigations. Furthermore, as already mentioned, additional fluxes may be generated by persons originating from other police stations. It is therefore not unreasonable to establish a parallel between the respective magnitudes of these two sets of figures.

The towns in which the average daily number of placements in police custody is greater than the number of available cells (not including sobering-up rooms) are Amiens, Angers, Metz and Saint-Denis. In all of these towns, the police station contains collective cells, which it may therefore be assumed may often contain considerable numbers of people. At Vénissieux and Villeneuve-Saint-Georges, the numbers (placements in police custody and cells) are very close but there are no collective cells: considerable congestion in small cells may occur, at least at certain periods.

Finally, the data is optimal.

Damage and the slowness of repairs (electricity, plumbing, door and window frames), which is everywhere observed, means that certain cells are permanently taken out of service because they represent a threat to personal safety (e.g. exposed electrical wires). A certain number of existing cells are therefore unavailable, which may heighten the risks of congestion.

b/ The second criterion concerns the “comfort” of cells. Two elements are here taken into consideration. On the one hand, the existence of absence of toilets (in the exclusive form of toilet bowls, without seats; one should not set one’s hopes too high), which are present in police stations built or renovated over the last twenty years or so. In principle, these toilets are placed behind a low wall intended to protect privacy. They are usually accompanied with a water supply built into the wall directly above the toilet. Such facilities still account for a minority of cases: less than a quarter of the police stations in the sample. In the others, persons in police custody are obliged to call if obliged by necessity, with more or less happy results. In the first place their call has to be heard and secondly an officer needs to be available. Dirtiness of cells arises from provocation; but also from urgent and unsuccessful requests to come out of the cell, as the testimonies show.

Indeed, the other selected criterion of “comfort” is that of the presence of intercom devices in the cells. The reluctance of staff to willingly accept such facilities has already been emphasised in the Report of the *Contrôle Général* for 2012³¹. It therefore unsurprising that none of the police stations inspected possessed any cells equipped with intercom devices. In five police stations out of fifteen (often the most recent), the existence of call buttons in the cells was noted, use of which results in the switching on of a signal light on an indicator board in the guard room.

c/ **The third criterion taken into account is that of hygiene**, which, it certainly has to be said, is rarely a source of great satisfaction in police custody facilities. To this end, cell hygiene and personal hygiene are considered separately.

As far as the premises broadly speaking are concerned, two factors are considered.

The first of these concerns the **cleanliness of cells**. Since assessments in this regard may be marked by subjectivity (according to the inspectors), the inspections of police stations aimed to determine whether the most frequently occupied cells were least often cleaned, due to the man or woman entrusted with cleaning being unable to enter them. In other words, does the organisation of police custody premises provide for moving persons in police custody in order to enable cleaning of the cell? Or again, is the cleaning of cells all the rarer insofar as they are more frequently occupied? The affirmative answers in the table above thus indicate that occupants are not vacated from cells and that the latter are therefore rarely cleaned and are accordingly dirty or even repulsive.

Out of the fifteen police stations in the sample, twelve present a situation of this kind. Because they are occupied, the cells are not cleaned.

Depending on the establishment, they may therefore be rarely or never cleaned, while of course nobody thinks about setting up a cleaning schedule. Moreover, taking into account the additional constraints imposed in police custody (possible absence of toilets, lack of availability of officers) and the provocations in which certain malcontents may engage, it is easy to foresee (and smell) the state of certain premises. This state of affairs is principally attributable to a given mode of organisation of the service, rather than being a “state of nature” of offenders...

The second item concerns **clean blankets**.

A great many police custody facilities are cold at night and, in order to have any hope of resting (rest is, need it be recalled, provided for under the Code of Criminal Procedure, article 64, paragraph 2), protection against the temperature is needed. This is the reason for blankets.

Indeed, this area provides a clear demonstration of the issue of margins of truth described in the first section. A practical fact as simple as determining whether blankets are placed at the disposal of persons in police custody and whether they are clean when granted is, in the reality of inspections, very difficult to establish.

Most police stations possess blankets. Absence thereof only occurs in exceptional circumstances: due to the local climate (Pointe-à-Pitre) or to an interruption of supply which has not been resolved (Metz). However, this does not for all that mean that covers are given. In accordance with one of the constituent unspoken laws of the French administration, which is very deeply entrenched in practice, a great many officials consider that in the absence of request on the part of the persons concerned (in this case persons in police custody), there is no reason for them to spontaneously offer anything whatsoever. This attitude, which is moreover well adapted to the very real burden of the tasks to be performed, assumes two elements which are far from being certain: on the one hand, that persons in police custody **know** that they can ask for

³¹ Published by Dalloz, pp. 43-44.

blankets and that, on the other hand, they **dare** to make such a request in the dependent situation in which they find themselves³². During inspections, the respective declarations of officers and persons in custody are often contradictory in this regard. When the stock of blankets is small, there may be all the more reluctance to offer them; or again, since cleaning is expensive, there are reasons for not incurring excessive expenditure. These considerations call into question the possibility of rest given to persons in police custody, in other words their ability to respond to investigators' questions under reasonable conditions of clear-headedness³³. In practical terms, the fundamental right to defence is also thereby indirectly called into question.

Are the blankets provided clean? Certain police stations now distribute blankets in a transparent plastic film (as done by dry-cleaners), which guarantees cleanliness. This constitutes an exception. It is more usual to find them on the ground in the cells, in a state which need hardly be described.

To the question, "Are the blankets cleaned after every use?" officers readily reply in the affirmative. The reality does not corroborate these words.

Out of the thirteen police stations in which it is certain that blankets were distributed, only three allocated clean blankets, that is to say which one might willingly use to cover oneself. The regularity of cleaning of blankets in the other establishments cannot be determined, due to great discrepancies in the information provided (once a fortnight, every month, from time to time etc.). No documents concerning any cleaning contracts that might exist (which, it is true, can be entered into by the SGAP³⁴) have ever been shown to the inspectors. Solutions exist which enable police stations to establish partnerships for the cleaning of blankets with hospitals or prisons a low cost (or free of cost): such initiatives are neither promoted nor encouraged and remain the fruit of local efforts. As far as rest for persons in police custody is concerned, each person does what they can, when the question attracts any interest³⁵.

As far as personal hygiene is concerned, two other aspects attracted special attention from the inspectors: **the existence of a shower cubicle** (and *a fortiori* of several) in the police station and the **distribution of hygiene necessaries** to persons in police custody, including soap, toothpaste, towel etc.

As far as shower cubicles are concerned, the situation is simple. Considerable investment has been made by the authorities, over the last twenty years, in order to install shower cubicles in police establishments, thus enabling persons in police custody to wash, either before the end of the period of custody, or before possible appearances in court. These efforts have been significant. Out of the fifteen police stations here considered, thirteen have at least one shower. One might therefore think that great progress had been made, in order to guarantee the cleanliness of, and therefore the hygiene of persons in police custody (and indirectly therefore of staff).

Naturally, in the *Contrôle Général's* field of jurisdiction, it is always necessary to question the effectiveness of rights, in this instance the practical possibility for the persons concerned of

³² The idea that it is possible for persons in police custody to ask for something from officers amounts to saying that relations between the latter and persons in custody are completely neutral and lacking in any effects of domination.

³³ In the same way as offenders in a state of drunkenness are left to sober up before they are questioned.

³⁴ Police administrative authorities (Secrétariat général pour l'administration de la police), established in each defence zone.

³⁵ Other solutions of course exist, such as disposable blankets (different from survival blankets, which are scarcely designed for rest) to be thrown away after use, made of very fine synthetic material. Their presence has recently been noted in gendarmeries in the course of inspections; though never in police stations.

using these shower cubicles. Once again the response is very simple: it is overwhelmingly negative.

Out of the thirteen police stations equipped with these facilities, seventeen showers are available; not one of them is used. Or rather, none of them is used in accordance with their intended purpose. On the other hand, they provide a practical opportunity for storing brooms, various different utensils and old equipment.

In this case, the explanations make reference to the unspoken law written above: no requests are made. Once again, the questions are not raised of determining whether the persons have been informed of the existence of a shower and whether they have been placed in a position to be able to use it. Since they are not raised, it is easy to determine the answer. In reality, as already pointed out in the previous reports, staff workloads are here in question. In order for a person to take a shower, it would be necessary to take an individual in police custody out of their cell, take them to the appropriate premises (in principle in the immediate vicinity), give them the necessary items, keep an eye on the proper conduct of the operation, and finally take the person concerned back to their cell. On this point, a clear answer is given without hesitation: there are not enough staff (without, one might add, any effort to improve productivity³⁶) to carry out these tasks.

It is only to be regretted that it was not possible to evaluate this assertion earlier, before incurring the expenditure of the funds necessary for the installation of showers to no purpose whatsoever. However, in any case, the *Contrôle Général* cannot content itself with this situation.

Under these conditions, it is not surprising that the problem of possible distribution of hygiene necessities is easily settled in the negative. Thirteen police stations out of fifteen do not have and therefore do not distribute any (with a small amount of uncertainty in the case of Saint-Denis). Only the police stations of Amiens and Angers make toiletries available, and the latter alone in the form of issuance of necessities specifically intended for that purpose. Police logistics have drawn the logical conclusions of absence of use of the showers.

These shortcomings with regard to showers and hygiene necessities are open to criticism and, in each case, are obviously to be placed in the context, on the one hand, of the existing bathroom facilities in use (sinks) and the hygiene products placed there (soap, toilet paper etc.) and, on the other hand, the opportunities provided for use thereof. Without here dwelling on details, it must be admitted that to describe the situation with regard to bathroom facilities as being rarely satisfactory³⁷ is an understatement.

d/ The fourth criterion is that of the dignity of persons, which, as is well-known, most directly expresses the manner in which fundamental rights are observed.

Once again two aspects which dispense with assessments marked by subjectivity were selected: these concern, in the first place, the systematic character of so-called security strip searches (body searches), which consist of getting persons entering police custody to completely undress, in order to examine their clothes and remove any item that could be dangerous for themselves or others. In the second place, the systematic taking away of brassières, in the case of women placed in police custody³⁸.

³⁶ However, the productivity of officers in charge of police custody is a factor that is difficult to assess, and in any case the question is never raised.

³⁷ Further information on this point is given in the inspection reports for police custody facilities, published on the website of the *Contrôle Général* cglpl.fr

³⁸ It is well-known that this question, to which we will not fail to return in the rest of this report, has been dealt with by the *Contrôle Général* since its first annual report.

This choice calls for details with regard to two points.

The observations with regard to police stations set out below were made before the Act of 14th April 2011 concerning police custody. The latter introduced two new articles to the Code of Criminal Procedure respectively specifying that “police custody shall take place under conditions guaranteeing respect for the dignity of the person”³⁹ and that “security measures... cannot consist of a strip search. During questioning persons in police custody have the items at their disposal of which the possession or wearing is required for the respect of their dignity”. It may be added that strip searches, when the investigation renders them necessary (cf. below), have to be noted in the official record of the end of police custody. Systematic “body” searches and taking away of brassières clearly go against these provisions, whose effective application was closely followed by the *Contrôle Général* after the Act.

These two elements are affected by the same considerations which apply to everything based upon declarations by officers. Only the continuous presence of inspectors for a long period (several weeks) in a police station, which is currently out of the question, would make it possible to verify the veracity thereof. However, the observations already made provide strong indications for establishing the information in the tables concerning these two aspects commented on below.

With regard to body searches, in the first place, a double ambivalence needs to be noted.

On the one hand, in eight police stations out of fifteen (with a question concerning the establishment of the findings at Chartres), body searches are not systematically carried out. There is no reason to assume that in these police stations security is more difficult to ensure than elsewhere (in terms of suicide and assault).

And all the less insofar as the geographical distribution of generalised use of security strip searches in no way corresponds to the geographical distribution of crime, and in particular of trafficking in illicit substances, which often serves as grounds for this practice. How can the circumstance be explained that such searches are universally applied at Niort, but not at Saint-Denis or Vénissieux? As has been pointed out in previous annual reports, use or absence of general practices of this kind depends more upon local traditions and the weight of the OPJ (who, in theory, has to order measures of this kind) than upon a rigorous, or at least rational analysis of security requirements⁴⁰. The distribution of this practice is therefore the result of chance, or of an incident that may have occurred at some occasion in the past, with consequences that have been perpetuated without any identifiable reason.

However, on the other hand, in half of the police stations that do not conduct body searches, the practice of intermediate security searches has been introduced, which consists of asking persons to undress down to their

³⁹ A response to the concerns expressed by the Constitutional Council of France in its priority preliminary ruling on constitutionality QPC no. 2010-14/22 of 30th July 2010.

⁴⁰ By way of example, in its referral report no. 2008-146 of 15th December 2008 concerning the placement in police custody of Mrs N.S. at Lens on 4th December 2008, the National Security Ethics Committee (Commission nationale de déontologie de la sécurité, incorporated into the Défenseur des droits ombudsman in 2011) pointed out: “The Committee notes that, in the procedure submitted to it, no elements whatsoever justified a strip search of this kind. Indeed, there was no reason to assume that Mrs N.S. was concealing items dangerous to herself or to others. In addition, she had gone to the police station on her own initiative and had not shown any aggressiveness at the time of her placement in police custody. Neither the offence of which she was accused, nor her attitude, were of a character giving reason to assume any dangerousness whatsoever. The Committee considers that the very fact of obliging a person to completely undress in front of a police officer, even when the latter is of the same sex, in the absence of any specific grounds, is a violation of their dignity and a humiliation”. The Committee regularly returned to this topic (cf. its reports for 2005, p. 16, and 2006, p. 20).

underwear, thus allowing their clothes to be searched while avoiding complete nudity.

The instructions of the national police customarily distinguish between frisk searches (as implemented on admission to stadiums for example) and security searches. When the latter consist of strip searches, they have to comply with certain procedural requirements (they have to be ordered by an OPJ⁴¹). The “intermediate” searches (security searches without total removal of clothes) dealt with here (in truth, much closer to strip searches than to a frisking) dispense with the need for any procedure (orders, traceability) since none is provided for. They can lend themselves to humiliation which, without reaching the level of that which can occur in the course of security searches, are nonetheless real for all that. The requirements to which they correspond are unclear: either the person concerned does not present any special signs of danger, in which case frisking is sufficient; or, if the opposite is established, a security search can then be justified. Practices whose implementation does not correspond to any definite objective should not be instituted. Unless such “intermediate” searches are considered sufficient in the most problematic cases; if so, strip searches should be avoided.

This is the choice made by the Act of 14th April 2011: security strip searches are not to be used simply for the purposes of security in police custody (but only when the constraints of investigation make them essential and in the absence of other means; article 63-7 of the Code of Criminal Procedure). But in case of suspicions, security searches make it possible to inspect clothing without complete undressing. “Intermediate” searches are thus justified. They cannot however, any more than strip searches, be systematic in nature. Such is nevertheless the case noted in half of the police stations not making use of strip searches in the observations made before the Act of 2011. Subsequent inspection reports will show whether the Act has been sufficient to ensure changes in practice.

With regard, in the second place, to general use of the practice of taking away brassières from women placed in police custody

The practice appears to be in use on a massive scale, in thirteen out of fifteen police stations, with the exception of two in which its use is not entirely general. In addition, for the last police station but one (Villeneuve-Saint-Georges), the information obtained does not appear to be certain (once again due to the difficulty of establishing the veracity of facts); for the last, it was not possible to obtain any information⁴². In other words, to far greater extent even than searches, the removal of brassieres appears to be a fundamental guarantee of security in police work.

It nevertheless needs to be recalled that in the memorandum of 8th February 2008 (in response to the ministerial directive of 11th March 2003, the Director General of the French national police force recalled that a person **may** be “asked to remove a piece of underwear” (ah! such gentlemanly terms...), and bras in particular, from the moment that the wearing thereof **may** constitute a danger for them. Indisputably, the wearing of brassières in police stations is **always** a source of danger.

We shall not here repeat what the *Contrôle Général* has been writing with consistency, and even stubborn insistence, but without any illusions, since its annual report for 2008⁴³. We shall only recall that the reason for this

⁴¹ In particular since the ministerial directive of 11th March 2003. This requirement has been included in Code of Criminal Procedure since 2011 (article 63-7).

⁴² It is nevertheless easier to identify the implementation of taking away of brassières by examining the lists of personal effects taken from people placed in police custody, without trusting to the declarations of officers alone.

⁴³ P. 113 et seq.

subject being mentioned once again is that it constitutes a case in point of a security measure entirely lacking in any justification, neither detected nor *a fortiori* proven, but of which the humiliating effects are guaranteed with complete certainty⁴⁴. Such is the nature of the irrational, even (and above all?) in the subjects of most concern to public opinion.

e/ In order to complete this examination of the objective conditions of police custody, attention is drawn to the **implementation of the rights attached to persons placed in police custody**. Not so much from the formal point of view of compliance with the rights guaranteed by the Code of Criminal Procedure, such as, for example, the information given to the person by the OPJ in application of article 63-1 of the Code of Criminal Procedure. But once again, from the perspective of the effectiveness of acknowledged rights.

To this end, three indexes have been taken into consideration.

On the one hand, the *Contrôle Général* focused on determining at what point in the procedure the person in police custody was asked to sign the second page of the police custody register concerning them. This page traces the various stages of police custody (questioning sessions, rest, meals, medical examination, lawyer, return of items and amounts taken away at the beginning of custody etc.).

On the other hand, it was noted whether the questioning – which never takes place in the offices reserved for the purpose, but instead always in the offices of OPJs (generally speaking in the floors over the police custody facilities) –, was conducted in the sole presence of the OPJ with authority in the case, or if other persons were also present.

Finally, the existence of a police officer (lieutenant, captain or commander) specifically responsible for police custody was verified at the time of each inspection. This post is intended to consolidate managerial control of the conduct of police custody. It results from the ministerial directive of 11th March 2003.

The signature of the register by persons in police custody in principle takes place at the time of the return of the items taken away from them, that is to say when the custody is brought to an end. In this context, the signature is doubly important: it certifies that all of their personal effects have been returned; it also establishes, assuming that it has been possible to read it, that the information concerning the various different stages of the police custody are accurate. This fact naturally increases the veracity of the register⁴⁵.

In the course of the inspections conducted in police stations, the *Contrôle Général* realised that the practice of signature of the register at the end of custody was in no way in general use, but that, on the contrary, a very different practice appeared to be widespread, consisting of getting the person to sign the register at the commencement of police custody, that is to say at the bottom of a blank page as yet containing no information.

This way of doing things might be understandable. The formalities for the commencement of police custody are always carried out under the control of an OPJ, since only senior law enforcement officers can make placement decisions. On the other hand, placement measures can be brought to an end at any time and an OPJ may not necessarily be available. However, this argument is unconvincing, since follow-up measures after placement in police custody are decided upon by the State Prosecutor's Office, and the practical end thereof is not subject to any special formalities. An ordinary police officer can equally well take the person's signature of the register, under conditions enabling *inter partes* assessment of the different stages

⁴⁴ Here we have no wish to mention other more unclear intentions on the part of officers, by nature unverifiable.

⁴⁵ Strangely, this aspect is disputed by the Interior minister, on the grounds that the Code of Criminal Procedure does not provide that signatures attest to the truth. However the law is not always necessary for proper sense.

of the placement in custody. In other words, depending upon its time of signature, the police custody register is more or less easily verifiable⁴⁶.

The reality of the time of signature is difficult to establish since in this respect the claims of persons in custody and of OPJs need to be in agreement, which is not always the case. For this reason certainty is only reported in eleven cases out of fifteen in the sample. In the four remaining cases, it is established that signatures were taken prematurely (at the beginning of the placement in police custody) in three police stations. When it can be identified, the time of signature is therefore in most cases problematic.

The procedure for questioning has to conform to strict rules of confidentiality. Article 11 of the Code of Criminal Procedure provides that: “The procedure in the course of the investigation... is secret”. For this reason it is preferable for questioning to take place on a one-to-one basis. This is not the case when there is another OPJ in the room in which the questioning takes place. Not only is this “third party” senior law enforcement officer able to hear the exchanges, a point which is open to criticism while not being too problematic, since compliance with confidentiality is incumbent upon them (“any person involved in the procedure is bound by professional secrecy”); but, in case of busy periods, they may have another person in police custody with them, involved in another case. Many OPJs make every effort to avoid situations of this kind (leeway with times of questioning), but this is not always possible.

An effort has been made to list the scenarios in which, due to insufficient availability of offices in the police station, the risk of “unintentional presence of third parties” could arise. The answer is devoid of any ambiguity: with the exception of two police stations which only have one OPJ per office, and another for which the data is unclear, all of the others have at least two OPJs in each office where questioning takes place, and sometimes three. The material conditions for strict respect, that is to say effective respect⁴⁷ of the secrecy of investigations are therefore not taken care of in most police stations.

Finally, the existence of an officer, that is to say the head of a managerial corps, expressly entrusted by the head of the police district with ensuring the proper execution of placements in police custody, is likely to consolidate the effectiveness of the rights attached to the latter. Of course, it is also necessary for these officers to fulfil their role. Since they are often in charge of other demanding duties (head of local security unit for example), this is not always the case. Their existence is at least the sign of a will to establish internal controls in this respect.

The circumstance that in four police stations out of fifteen it was not possible to determine whether an officer had been appointed head of police custody indeed appears to indicate that, in certain cases, the activity of this head is not notable by its visibility in the day-to-day handling of persons in police custody. On the other hand, in nine other cases, such an officer exists and is identifiable by means of the orders given and checks carried out. Although it was not possible to establish any correlation (in the absence of comparison over time) with the handling of persons in police custody, it may be hoped that the existence of this officer has been, as was the intention of the initiators of the directive of 2003, a factor of improvement. It should nevertheless be pointed out that, several years later, two of the fifteen police stations in the

⁴⁶ *It is indeed true that apart from the register, consultation of the police reports, and the official record of the end of police custody in particular, enable identical verification. However, on the one hand, the police reports themselves need to be exemplary, which is generally the case, but there are exceptions; on the other hand, the Code of Criminal Procedure in no way postulates that completion of the register is unnecessary due to the existence of police reports, quite the reverse.*

⁴⁷ *It goes without saying that compliance with confidentiality on the part of a third party – in this instance a person in police custody listening to the questioning of another person in police custody – is far more uncertain than on the part of a professional.*

sample had not in any way followed up the official instructions, whose form (ministerial document) was far from being trivial.

In conclusion, it should be noted that, beyond the differences between the establishments, closely linked to the individual history of each of them, the sources of violations of fundamental rights (in particular with regard to the dignity of persons and the right to defence) result from material difficulties, which budgetary investments and reorganisation of modes of operation, of modest, or even minimal dimensions, should make it possible to resolve: such is the case with regard to cleaning of blankets, cleaning of premises, normal use of showers, confidentiality of questioning and signature of registers etc. Although it is still necessary for internal (police custody officer) and external (State Prosecutor’s Office) controls to be attentive to these questions.

2.2.2 Gendarmerie Facilities

The operation of the police custody facilities of the national gendarmerie sometimes differs considerably from that of national police facilities.

Although the provisions of the Code of Criminal Procedure are obviously applicable to them, the instructions, circulars and memoranda can be different: thus the prescription concerning special police custody officers is not applied, since it is customary for the OPJ in charge of each investigation to be personally responsible for the whole of the stages of the period of police custody.

Furthermore, the volume of police custody cases is in no way comparable, since the populations of the areas coming under the authority of the gendarmeries, which are for the most part rural, are much smaller than those coming under the national police districts. Finally, the gendarmes, whose facilities are not open twenty-four hours a day, unlike police stations and headquarters, play a greater part in practical tasks⁴⁸ and maintain relations with the population as the principal objective of their action, which is not without positive effects with regard to the manner in which police custody is conducted.

2.2.2.1. – Police Custody Facilities and Management

For the gendarmeries concerning which the inspection reports were brought to the attention of the Interior minister in 2013, a similar exercise has been carried out as for police stations, in order to set out the principal police custody data in a comparative manner. The results are given in the following table.

	Sainte-Ménehould (51)	Varennes-en-Argonne (55)	Saint-Chéron (91)	Tarascon-sur-Ariège (09)
No. inhabitants	13,520	2,200	16,000	12,380
Rate of PI	9.6‰	11‰	7.5‰	8.4‰

⁴⁸ For example for the cleaning of “secure rooms”, which are used without distinction as police custody cells and sobering-up rooms.

Rate of PC	2.5‰	5.9‰	2.3‰	2.9‰
PC/PI	26.1%	54.1%	30.6%	34.6%
Minors/PC	35.3%	7.6%	6.6%	11.1%
Road traffic offences/PC	NP	38.4%	NP	NP
PC > 24h hrs.	8.8%	15.4%	6.6%	7.7%
Length of PC	14 hrs. 30 min.	NP	NP	16 hrs.
PC/month	3.3	1.1	2.8	4.4
No. secure rooms	3	2	2	2
Cleaning	1 per week	1 per month	after occupation	after occupation
Bras systematically taken away	no	no	yes	no

NP =information not provided PI = persons implicated PC = police custody

A few initial observations are required.

This data, and the calculation of rates in particular, needs to be treated with greater caution than the data originating from the inspection of police stations, with regard to the number of arrests and placements in police custody, of which the differences from one year to the next can lead to considerable variations.

By way of illustration, the data observed at Sainte-Ménéhould is as follows:

	2009	2010
Persons implicated	199	130
Placements in police custody (PC)	86	34
PI/PC	43.2%	26.1%
PC of more than 24 hrs.	31	3
PC > 24 hrs. / PC	36%	8.8%

This data can only be interpreted in a valid manner over a long-term period and inspections only enable the collection of figures for a period of two or three years at the most. In

order to reduce the effects of these fluctuations, the number of placements in police custody per month has been calculated over a two-year rather than a one-year period in the table above.

The populations of the districts are very different, as are the locations of the gendarmeries inspected. The unit of Sainte-Ménéhould corresponds to a grouping of gendarmeries whose surface area extends over three cantons. Varennes-en-Argonne is a “local gendarmerie” whose authority necessarily covers a smaller district. Saint-Chéron has the characteristics of a peri-urban area with a considerably higher population. Finally, Tarascon-sur-Ariège is a gendarmerie with authority over large district, characteristic of the French department in which it is located.

The comments made *supra* with regard to the national police, concerning the relation between crime and the local population, also apply for the above table, although to a lesser degree. The offences are more usually committed by inhabitants of the district, but in proportions difficult to determine and variable according to the case. Saint-Chéron, which is close to major axes of communication, shows offences committed in particular by persons from “outside”. This is not the case for Varennes (in spite of the close proximity of the A4 motorway). The higher proportion of minors in the placements in police custody at Sainte-Ménéhould is explained by the presence of a young offenders’ institution in the commune: the share of crime attributable to the latter institution is in the region of 28% for the year studied (but for a limited volume of offences). There the comparison finds its limits.

Finally, a table concerning fundamental rights, comparable to that for national police establishments, has not been drawn up, since the selected items are less significant in the case of gendarmerie units: thus, there are never showers in gendarmerie facilities⁴⁹; the question of their use is therefore not an issue. Generally speaking, police custody facilities in gendarmeries are more basic, from the point of view of both bathroom facilities and available premises (rooms reserved for consultations with doctors and lawyers, or for noting particulars, are extremely rare). Two useful circumstances have nevertheless been singled out: on the one hand, the cleaning of secure rooms and, on the other hand, the systematic taking away of brassières from women placed in police custody.

Having made these preliminary observations, what comments can be made about the table?

Out of the four gendarmeries studied here, the highest rate of persons implicated is smaller than the lowest rate observed in the police stations (Douai). For the latter, the average observed rate is 29.3°/°° (23.6°/°° if Saint-Ouen and Chessy are excluded); for the gendarmeries here examined, it is 9.1°/°°, thus being three times lower. This very considerable difference does not tell us anything about crime in itself, but reflects differences attributable both to crime and to the practices of the police forces and gendarmeries in question.

The differences are of the same proportions with regard to police custody, and even somewhat higher since the rate at which persons implicated are placed in police custody by gendarmes is in general lower than that resulting from police activity (35.6 % on average for the former; 60.4% for the latter)⁵⁰.

The proportion of minors in police custody is also lower, though not markedly so: 16.5 in “police zones”, 15.1 % for gendarmeries. However, the characteristics of police custody at Sainte-Ménéhould push up the rate in “gendarmerie zones” (ZGN [*Zone Gendarmerie Nationale*]). Similarly, the percentage of placements in police custody of more than 24 hours is lower in the gendarmeries (9.6 %) than in the police stations (13.9%): it may be tempting to conclude that this

⁴⁹ *The Contrôle Général has already pointed out that, even in the architectural projects for gendarmeries currently decided by the central administration, no provision is made for showers, which is highly regrettable.*

⁵⁰ *It is recalled that, excluding traffic-related offences, the national PI/PC rate (persons implicated/police custody) was 49.3% in 2009 and 45.6% en 2010.*

is a reflection of the seriousness of the crimes involved, but other factors may also explain this difference.

However, the most notable differences concern the number of placements in police custody in each gendarmerie, as compared with placement decisions in police stations.

In the latter, police custody needs to be considered on the basis of the number of placements per day. In gendarmeries, it has to be counted on a monthly basis. The cases noted in the four gendarmeries analysed ranged between 1.1 and 4.4 placements in police custody per month. Admittedly, there are some gendarmeries in which the numbers of cases of police custody are considerably higher, in particular in the peri-urban zones of large urban centres. However, police custody is, generally speaking, a relatively rare event for gendarmes and a much more routine occurrence for the police. It is easier, for the former, to adapt the service to the character of the person placed in police custody rather than the inverse, as is done in police stations: taking the person into the yard for a smoke, allowing them to eat their meals outside of the secure room etc. It is striking, for example, how rare it is to find gendarmeries that possess means of restraint for agitated persons (hitting themselves against the walls etc.); most police stations, on the contrary, are equipped with crash helmets, and even means of physical restraint, for this purpose. In gendarmeries issues of this kind are resolved through dialogue, or otherwise by means of medicalization.

These small numbers explain why gendarmeries do not experience congestion of their secure rooms, allocated without distinction to offenders and persons in a state of drunkenness, without any premises reserved for minors or women, for example.

There is never more than one person per “room”, which means that there is no shortage of equipment (a bed board and a blanket in each secure room): for example there are no cases of persons sleeping on the ground due to lack of space in shared cells. And in case of exceptionally large numbers, any extraneous persons are sent to neighbouring gendarmeries. The low rate of frequency also probably explains why the registers are in general much more efficiently kept by the gendarmes than by police officers, who are moreover divided into several different departments.

These low numbers have their own consequences: inspectors have found “tubs” of food whose use-by date had expired. Although it is true that similar discoveries have been made in police stations⁵¹.

The cleaning of blankets – in spite of much lower costs – does not appear to be much better organised in the gendarmeries. In one of those examined here, no provision was made for cleaning.

The two purposes (sobering up and police custody) for which secure rooms are used explains why each of them contains a toilet, which avoids difficulties concerning access to bathroom facilities. Cleanliness is usual and bears no comparison with the generally dirty state of most police cells: “secure rooms” are much more infrequently used; the soldiers keep closer watch; persons in police custody in gendarmeries are more often allowed out of their cell (see below); finally, even when cleaning is entrusted to a private company, cleaning of the secure rooms is incumbent upon the gendarmes (the occupants are apparently sometimes asked to put the premises back into proper order before their departure). This cleaning is regular although it is regrettable that, in two cases out of four, it is carried out according to a schedule, and not after each occupation.

⁵¹ *Annual Report of the CGLPL for 2011*, p. 58.

Finally, brassières are only systematically taken away from women in police custody in one of the four gendarmeries. The number of occurrences may be small. However, the policy adopted is indeed that of adapting the measure to the person's state and character. The fact that no more tragedies result therefrom clearly shows the difficulty of following the logic of systematic confiscation. It is not deemed necessary to here provide proof thereof: it has already been produced.

2.2.2.2. -Practical details of Rest

As recalled above with regard to police stations, periods of police custody should be punctuated with periods of rest for the person, which should be noted in the official record of the end of police custody (article 64 of the Code of Criminal Procedure).

This prescription corresponds to the necessities of investigations: individuals suspected of offences or serious crimes cannot be questioned all of the time; separate operations have to be conducted in order to carry out verifications, hear witnesses etc. The length of questioning, measured by the inspectors, is very short⁵² in comparison to the length of police custody. However, rest also serves to protect the physical well-being of persons in police custody and their capacity to defend themselves. On the contrary, deprivation of sleep, above all if it imposed in order to obtain confessions, is an inhuman and degrading treatment according to the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms. Rest is therefore far from being a minor aspect of police custody: it certainly constitutes an “appropriate guarantee”⁵³ thereof according to the meaning understood by the Constitutional Council of France.

The manner in which these rests are organised needs to be clarified with regard to the national gendarmerie.

In inspections of gendarmeries the *Contrôle Général* has often observed that “the periods of rest, as set out in the registers and above all in the official records of the end of police custody, take place in part in cells and also in part, sometimes for significant lengths of time, in the soldiers’ vehicles or in questioning rooms.”

There are two practical explanations for this approach: needless movements for short periods should be avoided (on-the-spot investigations without the presence of the person in police custody; no reason to return to the gendarmerie); questioning rooms should be preferred to secure rooms for the “comfort” of the person in police custody, since the latter scarcely present any comfortable elements: in particular, they are often dimly lit even during the daytime (weak bulb behind a block of glass) and above all, with a few rare exceptions (renovations since 2008), the cells are practically never heated. It is therefore, with regard to the latter point, more in accordance with respect for the dignity of persons to spare them from being cold.

The *Contrôle Général* willingly agrees with the latter conclusion, but cannot subscribe to the line of reasoning that leads to it.

The issue in question is the nature of the rest. Yet, from the remarks made by the heads of the gendarmeries inspected, the conviction (apart from “those are the directives”, which cannot be deemed sufficient) or the idea emerges that during police custody there are only two possible situations: questioning and rest. Not only, therefore, as moreover is abundantly shown

⁵² The length of police custody could probably be reduced in a certain number of scenarios, already noted by the *Contrôle Général*, for example with regard to road traffic offences etc.

⁵³ Cf. *Conseil constitutionnel, décisions no. 2010-14/22 QPC of 30th July 2010, consid. 25 and n° 2011-125 QPC of 6th May 2011, consid. 7.*

by the police reports examined, does rest start whenever questioning by the OPJ (momentarily) comes to an end, wherever the latter may take place, but the stages of noting particulars (taking of fingerprints etc.), interviews with lawyers, medical examinations, eating of meals etc. also constitute periods of rest.

This approach is contrary to the letter and the spirit of article 64 of the Code of Criminal Procedure.

Contrary to the text, since article 64, which mentions the sections to be completed by the OPJ in the official record of police custody in order to trace the stages of police custody, in the first place, differentiates between questioning and rest, in its 2nd paragraph, while, in the second place, also draws a distinction, in its other paragraphs, between questioning and rest, on the one hand, and the other moments of police custody, on the other, in particular the notifications and requests under articles 63-2 et 63-3-1. **Contrary to the spirit**, since although the law mentions rest time, it does not do so in order to fill the latter with other activities which, were they to continue, would deprive the person of the moments to which they are entitled (one might think of the duration of travelling to and waiting at a hospital for a medical examination for example). Moreover, rest needs to be accompanied by the necessary practical arrangements for sleeping (this is the reason for which bed boards are installed in the secure rooms). Finally, and above all, persons should be able to take their rest alone, out of the presence of any soldier. In the opposite case – and without suspecting anybody whatsoever – it may be imagined that, even without questioning, but due to conversations, or noisy activities, persons could find themselves deprived of effective rest.

Although it may therefore be admitted that, for the requirements of an investigation, a person in police custody may be kept in a vehicle or in a questioning room, these moments, as well as those used to fulfil the requirements of police custody, both in terms of duties (taking of particulars) and rights (doctor, lawyer), are not rest time.

Only those moments may be regarded as rest time during which the persons is alone in the secure room or else taken out at their request (and by authorisation) or with their consent – for example in order to smoke or drink coffee in the morning. As far as the coldness of the cells in concerned, without taking away from the indisputable merit of the attention given by the soldiers to the state of the persons for whom they are responsible, it is more in accordance with current provisions to seek to improve the habitability of the secure rooms (by installing heating in them when necessary) than to cast doubt upon the reality of the rest to which every person in police custody is entitled.

For this reason, it is requested, on the one hand, that the directives of the central administration abrogate any conflicting memorandum or circular; on the other hand that paragraph 2 of article 64 of the Code of Criminal Procedure be supplemented by the addition of the following note: “...and the rests that separated these questioning sessions, *independently of the formalities required by the investigations and the exercise of their rights*, the times at which they were able to eat...”.

2.2.2.3. – Release of Minors from Police Custody (Gendarmerie and Police)

In both gendarmeries and police stations, it was noted that the release of minors from police custody could be problematic and called for clarification.

Indeed, naturally no soldier or police officer would dream, when a period of police custody comes to an end, of showing the child the door of the police station without any other formality. In the same way, after having informed the State Prosecutor’s Office, OPJs have to

inform “the parents, guardian, person or department to which the minor is entrusted”⁵⁴, and similarly, when the police custody comes to an end, they have to hand the child over to a person who has custody of the child and possesses parental authority⁵⁵.

This handover cannot take place instantly. A more or less long period of time passes between the end of the detention and the arrival of the adult. The responsibilities and practical details involved during this period need to be clarified.

Other periods of this kind exist. Thus, when police custody comes to an end and the person is brought before the State Prosecutor’s Office, between the opening of the cell and effective appearance before a judge, a certain period of time may pass. This difficulty was broadly resolved by article 803-3 of the Code of Criminal Procedure as far as law court cells are concerned⁵⁶. The Constitutional Council is careful to specify “that the period between the end of police custody and the time of the person’s appearance before [the public prosecutor at a court of first instance] is placed” under the control of the latter⁵⁷. The same applies to foreigners who, at the end of a period of being “held” (and before police custody) are taken to a detention centre for illegal immigrants: the time that separates the one from the other is uncertain. But the habit is established of informing them of the rights attached to detention of illegal immigrants and asylum seekers due to be deported as soon as the holding period comes to an end so that, legally speaking, the person concerned may be considered as being detained as an illegal immigrant.

The time that passes at the end of police custody of children poses the double question of responsibility (and control) and the practical details of how the child is taken care of.

Until the parent – or tutor – has arrived, it appears impossible to imagine that either of them might be responsible for the child. Admittedly, they exercise parental authority but, at the same time, within the police station, the child is subject to the will of the officers by whom it is detained. Responsibility for any threat to the child’s well-being caused by a third parties is obviously incumbent upon the officers. In this sense, it may be said that after the ending of police custody, the minor remains “under the control” of the officers, until their effective handover to a holder of parental authority.

The practical details are left too much to the discretion of the officers present and the situations observed vary considerably. A minor has been found handcuffed to a bench, after the end of police custody, in a waiting room, near the guard room, used as a waiting area for all newly arriving persons taken in for questioning by the service.

Such situations are not acceptable, especially for periods of time that cannot be determined in advance by the officers. On the other hand, the latter obviously have to ensure that the children are present, and prevent attempts at running away which could place them danger. A balance has to be found between real constraint and the fact that police custody has ended.

With regard to this sensitive issue, central directives thus need to be sent to the departmental police administrations in order to clarify the conduct that officers should adopt.

⁵⁴ II of article 4 of the statutory instrument (ordonnance) of 2nd February 1945 concerning juvenile delinquency.

⁵⁵ Although this method of procedure is not formalised in any text.

⁵⁶ But not as far as jails are concerned, which are still awaiting a suitable statutory prescription, as the *Contrôle Général* previously pointed out three years ago (Rapport d’activité for 2010, p. 49).

⁵⁷ Decision no. 2011-125 prev., consid. 8.

It is recalled that the Report for 2012⁵⁸ gave the figures for the number of cases of police custody of minors each year at just under one hundred thousand: this is far from being a question of minor proportions, even if the number of children involved may be smaller (some of them may be placed in police custody several times in the course of a year).

2.3 Young Offenders' Institutions

We will not here return to the recommendations made in 2013 with regard to the young offenders' institutions of Hendaye (Pyrénées-Atlantiques) and Pionsat (Puy-de-Dôme), which were described at the beginning of this section. On the other hand, several common traits concerning the majority of the institutions inspected need to be taken up again.

2.3.1 Concerning a number of Conditions of Operation

The inspections for which the reports were sent in 2013 once again reflected a reality that is often difficult and always contains sharp contrasts.

Rather than returning to the negative factors weighing upon many of these institutions, as has been done at length in previous annual reports, and which it would be easy to confirm after a year of additional inspections, it would probably be judicious to note a certain number of good practices that have been highlighted by the inspectors and to request both the confirmation thereof by the national authorities and their bringing into general use, naturally in forms adapted to each institution.

2.3.1.1 - Staff

a/ There cannot be any educational project without tutors, that is to say staff trained for the purpose.

Admittedly, the conditions prevailing in young offenders' institutions indeed lead to a dearth of candidatures, providing a perfect illustration of a vicious circle. Because it has not been possible to engage a sufficient number of qualified persons, there are considerable discrepancies between persons in terms of qualifications. Generally speaking, the latter are inadequate and staff often lack previous training designed to help them fulfil their duties. This tends to be more frequently the case in institutions managed by associations. By default, provision should be made for a minimum level of qualified tutors, below which centres cannot be opened. Moreover, when positions for qualified tutors are not filled, the acquisition of knowledge by persons lacking qualifications needs to be included among the tasks to be set and, as the *Contrôle Général* has already pointed out, access to in-service training made imperative.

Such acquisition of skills should give priority to the mentality of adolescents and how to engage in appropriate dialogue with them. It should provide teaching on how to speak with them, encourage them to express themselves and deny them when necessary. It needs to assert the necessity for equanimity and composure. It needs to explain the interpretation to be given to behaviours and how to respond to the latter. It needs to proscribe any violence and teach techniques of restraint that can be used in case of necessity.

It needs to simultaneously address provision of social and legal support from children, in particular but not exclusively in CEFs, and the necessary organisation of deliberate and consolidated team work. It needs to explain the partners that are indispensable, and families in the first place.

⁵⁸ Report of the CGLPL for 2012, published by Dalloz, p. 266-267.

This training obligation cannot be solely aimed at persons holding the position of tutor. According to their respective roles, persons in charge of workshops, cooks, “house mistresses” and night warders need to receive the necessary training for relations with children in difficulty. This is not a question of confusing different roles, but of helping the adults to share the same approach to the minors catered for and to speak to them in a single voice. Nobody should enter and stay in a CEF in order to work without having received the necessary training.

b/ There cannot be any tutors without an educational project.

It is incumbent upon the heads of each institution to elaborate a project concerning the children catered for. This project needs to be composed of objectives and means.

The objectives are concerned with the contents of the children’s learning. The learning itself concerns their behaviours, their social life, attitudes towards the offence and behaviours to be promoted and achieved. The means concern the forms of individual and collective life and the rules to be applied to the latter, in particular with regard to discipline and incentives, contact with the exterior, and practical arrangements, belonging to the young offenders’ institutions or accessible, which can facilitate fulfilment of the objectives.

Initially drafted by the heads of each facility, the project needs to be taken up by the staff, and educational staff in particular. The latter need to enrich the project by bringing their experience to it, so that they can then assimilate it. It should constitute the common cement of their attitude towards the children, so that there is as little disagreement as possible with regard to fundamentals concerning to the latter (while differences in expression thereof are on the contrary welcome).

The project needs to be regularly revised, as experience is acquired, in close coordination with the educational team, for example every two or three years, without these periods being absolutely fixed. These amendments of course have to be compatible with the official texts governing CEFs.

c/ There can be no education without formalisation.

The educational project should serve as a basis for the individual observations which need to be included in the documents concerning each adolescent catered for (document on individual measures for dealing with young offenders referred to as the DIPC / *document individuel de prise en charge*), which are too often neglected.

For the purposes of mutual sharing, support and progress, professional practices should be formalised in the various different accessible documents to be adapted according to the institutions.

In one institution inspected, “behavioural files” were drafted by the management on the basis of common reflection: the tasks were thus coordinated and made easier.

d/ There cannot be any education without consistency on the part of adults.

Frequent meetings should enable coordination of responses to questions concerning young people arising from their behaviour.

Agreement needs to be established with regard to the question raised, the conclusions to be drawn therefrom and the response to be made. It is necessary to avoid confusion of children due to divergent attitudes and different responses on the part of adults. The soundness of the response also depends upon the consistency and lack of ambiguity thereof.

When necessary, house staff, who can provide information on young persons and their attitudes, should take part in these meetings.

The *Contrôle Général* has already emphasised how greatly it is to be regretted that “house mistresses” and other staff, able to provide insight that is likely to make fulfilment of everybody’s work easier, are not included in certain meetings.

Nurses, psychologists, when present in the institution, doctors and teachers are also persons whose knowledge of individuals is essential and therefore need to be consulted, in strict compliance, it has to be specified, with confidentiality of treatment and professional secrecy.

According to the methods that appear to them to be most appropriate, the supervisory staff and management are completely free to organise the necessary contacts between them and the educational team, as well as within the educational team itself.

Adults need to be as simple and direct as possible in their handling of the children: therein lies the difficulty of their task.

The educational principles need to be of the same nature. Any inhuman and degrading treatment obviously has to be banned and children’s sensibilities treated with care: in this regard the *Contrôle Général* has already mentioned certain search procedures at the time of return of adolescents from weekends spent with their families. On the other hand, firmness and, all the more so, refusal are in no way to be excluded. The young persons cannot be allowed to do whatever they want, including in terms of respect for their own dignity: the inspectors have seen many young persons’ rooms in very sorry state. It is the same at home with their family it may be said. However, education indeed consists of promoting change in these situations. Shared meals have a meaning. As do services rendered. Prohibitions need to be respected rather than simply serving as a reference for punishment, as the *Contrôle Général* has already written. Tutors cannot act exclusively as adolescents’ close friends, leaving it to gendarmes and police officers to come for all kinds of reasons, in order to make up for the failings of a collective life that has not been properly established.

Finally, because of the difficulty of their work, the staff of CEFs indeed deserve not only verbal support, but concrete conditions for dealing with their difficulties.

Regular supervision needs to be established, in the absence of the management and in the presence of a supporting third party, as recommended by the *Contrôle Général*⁵⁹ and as already implemented in many young offenders’ institutions. Difficulties can provoke disputes and proceedings for the resolution thereof (mediation etc.) need to be provided for by the managers of institutions. Industrial disputes also need to be carefully assessed and other signs, such as staff absenteeism (and, conversely, duration of presence in the institution, for example) need to be specifically taken into account. These efforts are required in order to increase staff stability, which is also a condition of success.

2.3.1.2 - External Assistance

Too many CEF are, so to speak, left to their own devices after having been set up, without any external support to contribute to the success of the educational project.

Mistrust prevails, it is true, at the local level and when plans to establish an institution are mentioned, the principal concern of local residents is to isolate and exclude it as the *Contrôle Général* noted at Hendaye.

⁵⁹ *Opinion (Avis) of 17th June 2011, Journal Officiel of 12th July 2011*

It is, on the contrary, necessary to organise the integration of institutions, by means of initiative on the part of their managers and those in contact with them. Among the latter, it is necessary to distinguish the assistance of the central administration, of the departments of the judicial youth protection service and of managing associations, on the one hand, and that of local partners, on the other.

It is incumbent upon the central, interregional and departmental sections of the judicial youth protection service (*protection judiciaire de la jeunesse/PJJ*) to facilitate the establishment, preparation, implementation and inspection of each young offenders' institution and its activities. Much greater efforts than those accorded over the last ten years need to be developed, including in particular:

The elaboration of frames of reference for the professions whose tasks are performed in young offenders' institutions with regard both to management positions, heads of education units, tutors, sport tutors, technical trainers, night warders, house mistresses cooks etc. It would be useful for such frames of reference to be designed, in cooperation with the administrations concerned, for nurses, psychologists and teachers. They need to describe the objectives assigned to these staff, the requirements in terms of training and personality, the tasks to be performed and the way to succeed fulfilling them. According to the information collected by the *Contrôle Général*, the administration of the PJJ has only elaborated instruments of this kind in a general manner ("job descriptions"), covering all of the institutions for which it is responsible. Reflection is here requested to facilitate the practice of professions in CEFs;

Under the current texts, this frame of reference could only apply to persons working in CEFs managed by the judicial youth protection service itself, and not in those managed by authorised associations. For this reason it would be highly desirable for it to be jointly elaborated, on the basis of acquired experience, by the administration of the judicial youth protection service and the representatives of the associations sector, in order to apply it in an overall manner in the interest of the children catered for;

Updating of the initial requirements for CEFs, which has been promised for several years and is still pending;

Attentive supervision of the operation of each young offenders' institution on the part of the decentralised administrations with, at least for those coming under the judicial youth protection service, receipt of regular information from the institutions, sending of methodological tools, attentive listening to professionals and managerial staff and the holding of regular focus meetings;

The implementation of exchanges between professionals at the regional and national level aimed at pooling experience and identifying and promoting good practices.

Regular visits by the departmental and regional managers should be conducted for the purposes of information and exchange. Whenever necessary, audits and inspections should be conducted, with periodical summaries of their findings and the development of instruments for keeping track of the application of their recommendations.

For its part, the network of associations needs to endeavour to undertake similar measures with regard to the young offenders' institutions for which they are responsible. In this regard, everything that can be jointly undertaken with the administration of the judicial youth protection service, in accordance with respect for all parties, will naturally be welcome.

Administrations coming under the authority of other ministries also need to put in place instruments for exchange and capitalisation of the experiences of their staff working in CEFs. This applies in particular to the ministry of National Education and the ministry of

Health. In the fulfilment of such sensitive tasks, presenting difficulties on a daily basis, these exchanges are also a form of acknowledgement and support of the persons involved.

Local partners are also necessary for proper operation of the institutions.

The latter need to establish the closest possible relations with the town councils of the communes in which they are established, which are in a position to make all initiatives easier and above all to calm concerns arising from the setting up of an institution which is never desired.

Formalised relations with the police and gendarmeries departments also need to be established, in order to provide for rules for dealing with all forms of offences, on the one hand, and children who run away, on the other hand. However, the police, like the gendarmerie, cannot constitute the sole defence against disorder. It is incumbent upon the staff alone to organise the basic requirements of collective life by the necessary educational means.

As the *Contrôle Général* has already made known in its previous reports, the education of children also requires connections with the health administration (insofar as possible, agreements need to be entered into with hospitals specialised in the treatment of mental illness); with the educational administration (with regard to organising the presence of teachers in due time and, if necessary, sending a child accommodated in the institution to school; with the representatives of private businesses and public institutions, for the development of work experience in companies⁶⁰; and finally with the administration of cultural services, with a view to organising the implementation of projects. As far as the establishment of relations with the public administrations in particular is concerned, approvals and authorisations for opening institutions need to be subject to minimum conditions (for example the presence of a nurse, required for healthcare and health education, one or one and a half days per week)⁶¹.

Finally, the steering committee provided for by the texts needs to be regularly convened with its members present, in particular the prefect or a representative of the latter and the judicial authorities. Its members should be able to make inspections of the young offenders' institution for which the committee is responsible. Similarly, juvenile court judges having sent or planning to send adolescents to an institution should be able to have access thereto.

2.3.1.3 - The Children

The conditions applicable to children accommodated come under the authority of educational and criminal policy and rulings made by judges.

However, a certain number of precautions need to be taken care of.

The requirements of education, discipline and rules of collective life always need to be reconciled with the special protection to which children are entitled (cf. Beijing Rules, article 26⁶²) and with their fundamental rights, in particular those concerning the prohibition of inhuman and degrading treatments, the right to respect for private and family life and the right to freedom of expression. The managements of the institutions have to ensure that no orders or practices infringe these principles, to which the full attention of audits and inspections needs to be devoted. The manner in which searches are implemented at the time of children's return from

⁶⁰ In one CEF concerning which the report was finalised in 2013, vocational experience (of very short duration) was organised, for the greater well-being of the young persons, in the town's police academy.

⁶¹ With regard to mental health issues, see the proposals detailed in section Y below "Fundamental Rights tested by Mental Health".

⁶² The so-called Beijing Rules were adopted by the United Nations General Assembly in 1985. They concern the administration of juvenile justice.

weekends spent with their families, for example, can be problematic, as can disciplinary sanctions. The manner in which telephone calls are made, the receipt and sending of letters and the organisation of personal consumption also constitute sensitive issues. National directives, on the part of both the judicial youth protection service and the associations, need to do exclude any vagueness and hesitation in this respect. The same applies to the educational projects mentioned above. It would be desirable to display or make available the Charter of rights and liberties of persons committed to the institution.

As a consequence, children need to be protected by adults from violence, fear and behaviours not in accordance with health and well-being.

Clear instructions need to be given to the staff of institutions with regard to this point: no laxness or complicity in these areas is admissible. Particular attention needs to be devoted to the manner in which, in practice, this educational work can be continuously fulfilled by all.

Work with families, which may themselves be in difficulty, is inseparable from educational action aimed at their children.

In the first place, the institutions need to organise reception of families on the site (which requires norms concerning premises) and ensure the greatest possible involvement of the latter in the efforts made with the children, except in cases where harm for the latter might result therefrom (regular provision of information in both directions, feedback on weekends etc.); and, in the second place, they need to be in a position to notify the social services of the family home in case of special difficulty (the youth worker charged with following the child's development being able to serve as an intermediary).

It should never be possible for children to be admitted to young offenders' institutions without preparation.

Experience shows that the more the stay is explained to the young person placed in an institution, the better it is accepted by the latter, and that relations with the other adolescents are all the easier in so far as the latter have been prepared. Initial contact with a tutor, a transitional phase (a night in a hotel), reception documents which are carefully composed and handed over (models could be established if necessary) are always preferable to dramatic encounters. Juvenile court judges should understand the necessity thereof.

Adolescents need to receive education through responsibility in their daily lives and the activities proposed to them.

They are entitled to moments of relaxation and solitude, although understanding with others is indispensable, and they need to comply with the rules of time decided upon: boredom is not educational. Teaching and leisure activities need to offer them opportunities for improving their behaviour, in accordance with simple, clear and shared frames of reference. Periodical stages of progress need to be distinguished, for which passing from one stage to the other cannot have an automatic character.

Extensions of stays beyond their usual duration of a six-month period renewed on one occasion (a total of one year therefore) by juvenile court judges should not be ruled out, on an exceptional basis, even in case of judicial supervision, when the child is engaged in a very positive course of action in the CEF, including for example the preparation of a vocational training qualification (over a two-year period). This possibility means an amendment of the third paragraph of 2° of II of article 10-2 of the statutory instrument (*ordonnance*) of 2nd February 1945.

Practical means of expression may be given to the accommodated adolescents in the form of periodical common meetings with staff, and tutors in particular. Collective life and education in speaking and listening may be thereby consolidated.

The institution should be able to appropriately assess the results of its action.

To this end, it should be possible to inform them of what happens to children after their accommodation thereof, insofar as, after the CEF, they still come under measures of education and deprivation of liberty. To this end, it needs to be possible for the file mentioned under article 5-2 of the statutory instrument (*ordonnance*) of 2nd February 1945, to be consulted by the persons it has appointed for this purpose, under the control of the competent juvenile court judge.

On these necessary conditions it will be possible to make the provision of good educational chances to the children catered for and acceptable conditions of work for staff – as is already the case in some CEFs – the general situation within young offenders’ institutions as a whole.

2.4 Penal Institutions

Any observations that the *Contrôle Général* may have made in the reports concerning its inspections of penal institutions, are given in the chapter below concerning assessment of the Prisons Act, to which the reader should refer.

2.5 Mental Health Institutions

2.5.1 *The development of the law*

In its report for 2012⁶³, the *Contrôle Général* had recalled the important change marked by the Act of 5th July 2011, likely to consolidate the rights pertaining to patients hospitalised without their consent, in particular by means of a hearing before the liberty and custody judge, at the latest fifteen days after their admission to hospital.

The Constitutional Council of France, by means of its ruling no. 2012-235 QPC of 20th April 2012⁶⁴ clarified a point, with regard to the non-coercive nature of treatment programmes outside of hospital, and censured two of the provisions of the Act of 2011.

The first of these concerned the possibility for judges, in view of their rulings, to apply to the prefect for committal to full hospitalisation of persons appearing before them: the Council found that the procedure was not surrounded by adequate guarantees.

The second, concerning persons judged not to be criminally responsible for their actions or having stayed in units for difficult psychiatric patients (UMD), led the Constitutional Council to consider that the definition of the latter, in the absence of more specific guarantees with regard to admission to UMDs, had insufficiently justified consequences for such persons.

The ruling obliged the legislature to revise the Act of 5th July 2011, before the deadline of 1st October 2013 fixed by the Constitutional Council.

Parliament then took initiative in this field by commencing work on a bill aimed at putting right the unconstitutional points thus identified.

⁶³ P. 69 *et seq.*

⁶⁴ Journal Officiel of 21st April.

More specifically, the French National Assembly's social affairs committee delegated the task of elaborating proposals to a fact-finding mission on mental health and the future of psychiatry. This mission produced a progress report in the spring of 2013: this was used as the basis of Act no. 2013-869 of 27th September 2013 (published on the 29th), which amended the Act of 5th July 2011, within the deadline called for by the constitutional court. The mission handed over its final report to the social affairs committee, which adopted it on 18th December 2013, approving thirty proposals in particular. Further legislative changes are therefore to be expected concerning mental health (the authorities are planning an act in this regard) but probably in areas other than treatment without consent.

The Act of 27th September 2013 not only corrected the provisions criticised by the Constitutional Council but was also intended to remedy difficulties highlighted by the application of the Act of 2011.

Points were clarified, respectively by article 4 and point b of 5^o under section IV of article 10 of the provisions of the text of 2011, of which the uncertainties had led the Constitutional Council to rule that the guarantees for persons thus coming under these measures were inadequate. The Constitutional Council will no doubt return to this question by means of a priority preliminary ruling on constitutionality (*question prioritaire de constitutionnalité*) referred to it by the Court of Cassation at 4th December 2013 (no. 2013-367) concerning the constitutionality of article L. 3222-3 of the Public health Code, which will be examined below.

The Act (article 2) re-establishes the temporary discharge authorisations abolished by the text of 2011, for short periods, as part of treatment programmes that can be partly administered in hospital, and partly by means of outpatient treatment. This should give grounds for satisfaction: these temporary discharges constitute a good way of preparing for final discharge and the limitation of their duration avoids the excesses which prevailed before the Act of 2011 (involving periods of some months or even years), which were sometimes implemented on treatment grounds, but also due to management considerations.

It institutes (article 3) visiting rights for mental health hospitals, as the Act of 15th June 2000 had done in the case of penal institutions.

The conditions under which liberty and custody judges give rulings on measures of committal to full hospitalisation without consent are specified, in particular, insofar as, on the one hand, they henceforth have to rule within a deadline of twelve days as from admission rather than fifteen as was previously the case. On the face of it, earlier decisions on the part of judges might seem desirable: however, the doctor still needs to be in a position to give them precise information on the disorder affecting the patient; certain pieces of information can only be given after a period of scarcely less than two weeks of observation. On the other hand, the Act provides that judges can rule without a public hearing if the latter is likely to infringe the patient's right to respect of their private life, which constitutes a satisfactory provision; and that the ruling has to be delivered in a hearing held by the judge outside of the ordinary bench of the court, in a specially-equipped room in the hospital, except in special cases. These two provisions correspond to recommendations made by the *Contrôle Général*⁶⁵.

Articles 8, 9 and 10 endeavour to limit the number of documents required of institutions and doctors by the Act of 2011 with regard to the management of patients hospitalised without consent. The institutions inspected by the *Contrôle Général* greatly complained of a marked increase in the number of documents to be produced in this area and streamlining efforts were probably going to be necessary. In the first place, a satisfactory balance needs to be struck: indeed, deprivation of liberty and the terms thereof (as well as treatment) call for a high level of

⁶⁵ Cf. *Annual Report of the CGLPL for 2012*, pp. 72-73.

availability on the part of staff; but they also require precise traceability of the measures implemented, which needs to be indisputable, though its practical details may vary.

Finally, with regard to prisoners hospitalised on mental health grounds, the Act specifies (with a strange repetition of the same provision in article 12 and in article 13) that they may be hospitalised with their consent in a Specially-Equipped Hospitalisation Unit (UHSA), which could appear ambiguous (but in fact was hardly so) from reading the text of the Act of 2011; it also abrogates the note on Units for Difficult Psychiatric Patients, which the Act of 5th July 2011 had considered appropriate to include (that is to say article L. 3222-3 mentioned above) in the belief that UMDs are merely psychiatric departments, and although they are admittedly special, their principle is the same as that of other departments, and there is therefore no more reason for them to appear in the law than there is for the latter.

The Act has not resolved everything: such was not its ambition, although it may have gone further than the Constitutional Council's requirements.

The *Contrôle Général*, which is concerned with patients' fundamental rights, observes that it has specified the role of the judge, and therefore the terms of control of deprivation of liberty by the courts. It would be desirable for patients' other rights, and fundamental rights in particular, to be more effectively introduced into the law⁶⁶.

2.5.2 A number of Specific Assessments concerning Psychiatric Institutions

The inspection reports for institutions show great continuity as compared with previous annual assessments. However, a number of major factors which call for changes need to be emphasised.

2.5.2.1 – Real Security Issues

The right balance between patients' rights and security has not yet been found. The downward spiral characteristic of many places of liberty unfortunately becomes established in psychiatric hospitals just as irresistibly as elsewhere. Should a regrettable incident occur – in this case, a patient running away – prefects immediately call for the reinforcement of security measures likely to prevent recurrence thereof. In general, this very heavy process is only applied in the direction of greater constraint: after months or years without running away, the measures are not reversed.

These measures, - and closed units in particular, at a time when outings are becoming rare due to lack of sufficient staff in many institutions -, reinforce the feeling of being cut off from the outside world among patients, cause anxiety and weaken them. The fact remains, as has already been pointed out in a previous annual report, that there are as many cases of patients running away from closed units as there are from open units⁶⁷. If all institutions catering for patients suffering from mental illness are not to be transformed into units for difficult psychiatric patients, the required **proportionality** between the measures taken and the reality of the dangers incurred needs to be borne firmly in mind, and this is even more the case, as already stated, with regard to the **balance** between patients' rights and the requirements of security.

However, even more decisively, these measures comprise an error of perspective. As psychiatrists constantly emphasise, patients suffering from mental illness are more in danger than they are dangerous. Moreover, they feel in danger. And rightly so. The *Contrôle Général* has already had occasion to mention violence and non-consenting sexual relations within units. However,

⁶⁶ Cf. section 9 below, concerning the rights of patients suffering from mental illness.

⁶⁷ Annual Report for 2012, p. 78.

from an even more general point of view, it is necessary to highlight the feeling of vulnerability that often weighs upon patients for very practical reasons.

Thus, the vast majority of rooms lack any effective locks and, at night, numerous patients fear sudden visits, probably wrongly, perhaps rightly so. It is not difficult to make provision for rooms that can be locked at the initiative of their occupants, of course without the lock being an obstacle to the admission of medical staff, with the aid of a (carefully protected) master-key. This measure, which a few institutions have implemented, has already been called for. It has scarcely been put into effect.

Similarly, in order to ensure a minimum of privacy in the rooms, a film is often placed on the external windows, which lack any shutters or blinds (and often on the ground floor), which makes them opaque from the outside. However, this inexpensive technique, apart from the fact that it reduces daylight and visibility, does not resolve the issue of the privacy necessary after nightfall, when the light in the room is switched on. Once again, this results in an impression of weakness which makes patients uneasy and, as before, causes anxiety.

If security measures need to be taken, it is indeed in this area. It is surprising that, whereas scarcely any expense was spared in terms of funds for the completion of **external** security, **internal** protection is so often neglected, despite its far lower cost. In other terms, resolution of the problem posed by the feelings of anxiety suffered by patients is much more important than that arising from the possibility of a patient running away. Assuming, moreover, that the former difficulty is unrelated to the latter, which is far from being certain.

Progress needs to be made on these issues.

2.5.2.2 – The Issue of Activity

Similarly, progress needs to be made with regard to the issue of inactivity.

Any activity in psychiatric units is of course subject to medical decision. But once this principle is granted, the question arises of the volume and nature of these activities.

Even a rapid visit of most units is enough to become aware of the inactivity in which patients are kept for a great deal of their time. The areas and staff devoted to the various different possible therapies (occupational therapy, art therapy etc.) are insufficient in the vast majority of cases. As is well-known, in spite of the wishes of medical staff, outings also have to be limited, in the absence of sufficient numbers of staff.

As we have already written, these shortcomings are partly attributable to the spirit in which psychiatric hospitals were designed forty years ago: that of being places for crises. They were therefore conceived as places for short stays. From this point of view, there is no need to develop activities to any great extent for patients who do not stay for long.

However, this line of reasoning is questionable. On the one hand, although it is true that the average stay often comes to a few weeks, the duration is not the same for everybody. In particular, persons committed for treatment without consent in the form of full hospitalisation stay for markedly longer periods, especially patients committed to psychiatric treatment at the request of a representative of the State (formerly hospitalisation by court order) Admittedly, this is perhaps the population for which, due to its state, activities are the least easily accessible, but this circumstance cannot be erected as a general law. On the other hand, the question of activity needs to be raised with insistence in the case of “inactive” stays of longer than two months, as a means of contributing to restoring the person, when this is possible. On the other hand, subject to more general data, the assessments made by the *Contrôle Général* during its inspections tend to show that the average length of stays is currently increasing, which moreover explains the

phenomena of congestion of units that can occasionally be observed. The question of each patient's activity is therefore, if anything, more important today than in the past.

The nature of activities is also a source of difficulty. The care and patience of staff, who tirelessly try to occupy patients by listening, talking to them and providing them with various different pastimes, is clearly worthy of high praise. However, generally speaking, there is scarcely any difference between these pastimes and those that might be offered in institutions for elderly people.

Of course, certain units show obvious elements of similarity with the latter, particularly geriatric psychiatric units, which pose the question here addressed in specific terms. However, in other units the age range is very wide. In the case of young people, should one content oneself with allowing them to watch the television, play a few simple board games and do some baking? Is it not necessary to find occupations that prompt them to take greater responsibility? There are examples of institutions in which the activities are clearly more sophisticated. For example, one hospital has a cafeteria accessible to patients, managed by a "board" on which patients are members.

Generally speaking, overall reflection needs to be undertaken in this regard. It would be worth conducting an overall investigation of three areas in particular: nature activities, and gardening in particular (which admittedly imposes the necessity of patients going outside as well as tools); sports which can be played (UMDs are not exempt on this point); and, finally, use of the Internet, which it is surprising to see has not given rise to any coordinated reflection, to the point that institutions offering (limited) use thereof to their patients are rare. The necessary control of such activities should not become an insurmountable obstacle to their implementation. Moreover, it would be worth introducing exchange of innovations between institutions, which would facilitate assessment with regard to the results thereof for patients using these new facilities.

5.2.2.3 - Issues concerning Units

Once again, prompt reflection also needs to be called for concerning the differences that exist between the sectors of individual institutions, and all the more so between institutions.

Once again the point of departure is unquestionable. Every head of department obviously has to assess the best treatment to be given to the patients they cater for. The major therapeutic differences that separate units are not therefore here in question.

What is in question, on the other hand, is the respective places that should be held by necessary treatment and the fundamental rights, which are just as necessary, attached to every patient. Each person's rights may have to be adapted to the context of their health, their safety, and that of others... However, it is inconceivable that the scope of these fundamental rights should vary mechanically with each change of sector, and therefore of unit. There could thus be no better illustration of the supremely contingent character thereof. Yet, it is precisely this latter character which is inadmissible, with regard to rights that give expression to the dignity of the person.

For this reason, the management of each institution, with the support of the CME and of the heads of department, needs to define the elements that are unaffected by differences between sectors and are exclusively based, and only when necessary, on the differences between patients' disorders. This needs to apply:

With regard to conditions of committal, especially those according to which patients are informed of their rights, in particular their rights to remedy and the means at their disposal to exercise them;

With regard to the conditions under which they appear, within the deadlines laid down by law, before the liberty and custody judge; with regard, in particular, to the information that may be given to them by the staff before and after the hearing;

With regard to their relations with the exterior. *A priori*, the manner in which correspondence, telephones (including cell phones), visits and other means of personal contact (iPhones and messaging) are regulated needs to be identical, only varying – temporarily – over time according to the patient's state.

With regard to rights concerning freedom of expression: the patient's right to communication, in the sense of personal expression to others, on the one hand, and of receiving, on the other; in particular with regard to freedom of information, free access to religious worship and respect for associated prescriptions⁶⁸.

With regard to all that follows from respect for their private life and, in particular, their privacy, obviously under conditions compatible with the requirements of collective life and security: conditions of family visits, protection of the room (cf. above) etc.

Finally, **with regard to possessions, to which the right to respect for their personal property is attached.** Although, in most cases not of great monetary worth, the value that the patient attaches to them should be manifested, as the *Contrôle Général* has noted in a certain number of inspections, by procedures such as inventories on admission and discharge, protection of possessions of value and the possibility of taking care of due dates for properties outside (payment of rents etc.). Such is the case, in particular, of patients for whom no provision has been made for protective measures. In this regard, the appointment of a trusted person as legal representative (which also involves procedures that need to be standardised between units) is likely to facilitate the effectiveness of this right⁶⁹.

It would be useful for these various different elements to be specified in a circular issued by the minister in charge of Health, in order to shed light upon and facilitate the deliberations of the institutions.

⁶⁸ See section 8 below Reviewing the Question of Secularism in Prisons.

⁶⁹ See section 9 below concerning patients' rights.

Section 2

Actions taken in 2013 in response to Opinions, Recommendations and Cases taken up by the *Contrôle Général*

As every year, in 2013, the *Contrôleur Général* has attempted to gauge the influence of his initiatives on the situation of persons deprived of liberty. From the moment when opinions, recommendations and cases taken up set out difficulties, and sometimes serious difficulties, with regard to respect for fundamental rights, gauging the action taken to address them means preventing the worsening thereof.

1. Responses to Findings and Inspection Reports

As in previous years, in 2013 the *Contrôleur Général* received several ministerial responses to the inspection reports sent. Sixteen responses were received from the minister of Social Affairs, thirty-six from the Interior minister, twenty-three from the minister of Justice, two responses from the minister of National Education and from the Economy and Finance minister.

Since its creation, the procedure of the *Contrôleur Général des Lieux de Privation de Liberté* has become well-known to the administrations and authorities concerned in questions of deprivation of liberty.

In the first place, the factual findings are sent to the managers of the institutions and organisations inspected, then an inspection report is elaborated containing recommendations sent to the ministers concerned for responses and observations. Although the time required for the sending of the findings is in general short (a few months), a longer period may be needed for the sending of the inspection report, since the latter requires an initial response from the head of the institution, which then has to be taken into consideration in the text, and finally the elaboration of recommendations by the team of inspectors having taken part in the inspection. The length of this procedure is explained by the will to take observations into account, as well as to make any corrections to the text of the findings if necessary. Publication on the website of the *Contrôle Général* only takes place, once all of the responses have been received from ministers or when their responses have not been received after a period of more than six months.

Certain criticisms have emerged concerning the time, considered to be too long, required for public access to the *Contrôleur Général's* reports.

In the first place it needs to be noted that the Act of 30th October 2007 does not provide for the public announcement of inspection reports. In this regard, the Act only mentions emergency observations justified by serious violations of fundamental rights. Such public announcement is not compulsory and is only implemented if the *Contrôleur Général* deems necessary after having received the observations in response from the authorities concerned. Similarly, the public announcement of opinions, recommendations and proposals for legislative and statutory amendments is simply a possibility (article 10). The publication of the Annual Report alone is an obligation incumbent upon the *Contrôleur Général des Lieux de Privation de Liberté* pursuant to the Act of 30th October 2007. In spite of this absence of obligation, since the

beginning of his term of office, the *Contrôleur Général* has systematically made the inspection reports, opinions and recommendations public, after periods of time justified by the necessity of first obtaining comments from the authorities responsible for the places inspected (local level, in the first place, and then ministers). Apart from the fact that such public announcement is not an obligation resulting from the law, it needs to be reconciled with the number of inspections conducted every year (almost 150) and the need to ensure the quality of the reports resulting from these inspections. This quality and the pertinence of the observations recorded in the reports is dependent, in particular, upon the nature of the collective responsibility involved in the drafting and rereading of reports. Collective responsibility is a guarantee of quality which requires time, moreover the period required by the *Contrôleur Général* for rereading the whole of the reports and ensuring the overall consistency of the recommendations sent to ministers also has to be taken into account. Finally, it also (regrettably) needs to be noted that, so far, the periods required for the publication of inspection reports do not constitute any hindrance to their basic pertinence, since the pace of change in the mode of organisation and operation of institutions (the main subject of the inspections) remains compatible with the slowness inherent to the elaboration of documents subject to *inter partes* assessment and collective responsibility.

The responses made to findings by the local managers of the places inspected bear witness to the variable attention paid to the observations elaborated by the inspectors. It is sometimes difficult to realise the concrete effects of inspections, beyond declarations of principle concerning the close attention given to respect for fundamental rights.

In particular, it needs to be emphasised that since the findings are only sent to the head of the institution, broad distribution thereof to the staff concerned as a whole is a good indicator of the level of importance given to the findings issued. Thus, some hospital directors state that they have broadly distributed the report among the personnel and managerial staff, that centre meetings are held concerning the various observations and that the latter are also included on the agenda of the institution's Medical Committee. Conversely, it is manifest that certain heads and directors of institutions do not sufficiently disseminate the findings and only respond to them in a partial and formal manner.

Neither is it rare to see assertions in the responses from heads of institutions which contradict the inspectors' observations on specific points, without properly sustained argument.

Thus, the head of one medical centre, whose letter is appended to the response from the director of a hospital, reacted to the inspectors' findings concerning lack of follow-up care for patients and absenteeism among certain doctors, stating that: "Medical follow-up care for patients is properly organised and medical schedules are followed, with the occasional exception." In one police station in the South of France, strip searches are conducted in the security entrance leading to the police custody cells. At the time of their visit, the inspectors ascertained that this place does not enable respect for the privacy of persons in police custody. In response, the Director General of the French national police force (whose letter was passed on to the *Contrôleur Général* in response to the sending of the inspection report, via the intermediary of the head of the Interior minister's private office) writes: "This operation, which sometimes requires the persons to be completely undressed, is conducted by a senior police officer in the security entrance allowing access to the cell. This place is out of view of other police officers and cannot be referred to as a "place of transit"."

Still on this issue of protection of the privacy of persons in police custody, in an autonomous territorial gendarmerie of the South of France, the head of the Interior minister's private office responded that "most of the recommendations concerning building infrastructures were taken into account with a view to the protection of human dignity." However, the further

detailed comments state that: “The layout of the gendarmerie quarters does not make it possible for actions to be conducted out of all view. Persons in police custody are photographed outside, behind the premises of the department, in a space between these premises and the building housing the gendarmes’ families. When photographs are taken, persons placed in police custody are not within view as far as neighbours are concerned, but may be so for the families.” It is understood that no provision is planned in order to put this situation right, concerning which recommendations are made in the inspection report.

With regard to the hygiene problems of persons in police custody, in one police station in the Parisian urban area, the inspectors noted the impossibility of taking a shower (this finding moreover applies to virtually all of the police stations visited by the teams of inspectors). In response to the inspection report, the Interior minister sent the *Contrôleur Général* a note signed by the head of local security for the Parisian urban area, stating that: “The Administration does not provide shower necessities, indispensable for bathroom use for the personal washing of persons in police custody. Moreover, the taking of showers by persons in police custody would pose problems of security and availability of staff.”

The examples quoted above bear witness to the fact that ministerial responses to inspection reports are in most cases limited to the passing on of responses provided by the direct managers of places of deprivation of liberty at their level, even when the latter mention administrative practices that it would be appropriate to abandon.

Few ministerial responses, with the exception of the annual response drafted by the Interior ministry, set out any detailed overall reflection on the recommendations made in the inspection reports.

It is true that it is more the role of the opinions and recommendations published in the *Journal Officiel* to prompt responses whose scope goes beyond any individual places of deprivation of liberty. Nevertheless, it has to be noted that, since its creation, the *Contrôle Général* has endeavoured to maintain overall coherence in the examination of each place of deprivation of liberty and in the recommendations resulting therefrom. As a result, the inspection reports could equally provide an opportunity for prompting overall change with regard to issues of constant concern, such as the protection of privacy and freedom of expression for persons deprived of liberty, to only mention two examples which constantly recur in the reports.

It would appear that the inspections and findings indeed make it possible, in the best of cases, to remedy isolated difficulties (which is in itself very important for the persons deprived of liberty concerned) but fail to prompt far-reaching changes at the appropriate level (i.e. the central level of ministries).

2. Actions Taken in Response to Two Emergency Recommendations

On 12th November 2012, the *Contrôleur Général des Lieux de Privation de Liberté* made emergency recommendations following the inspection of Baumettes prison in Marseille. The inspection, conducted by about twenty inspectors, took place between 8th and 9th October. On 13th November 2013, new emergency recommendations were made, this time concerning two closed young offenders’ institutions located at Hendaye and Pionsat, inspected between 23rd and 26th September and between 27th and 30th August respectively.

In both cases, the *Contrôleur Général des Lieux de Privation de Liberté* considered that serious violation of fundamental rights justified his observations being passed on immediately to the authorities concerned.

Moreover, the emergency procedure provided for under article 9 of the Act of 3rd October 2007 enables the publication of the *Contrôleur Général's* observations, once the responses, which make it possible to ascertain whether the violations noted at the time of the inspection have been brought to an end, have been received from the authorities.

2.1 Actions taken in response to the Emergency Recommendations concerning Baumettes Prison in Marseille.

The recommendations stress the very dilapidated state of the institution and conditions of detention that are clearly a violation of human dignity. The latter are all the more shocking in that this situation of dilapidation (and of the men's remand prison in particular) has long been known and has been denounced in particular by the European Committee for the Prevention of Torture (CPT), which conducted two inspections of the prison (in 1991 and 1996).

The *Contrôleur Général* pointed out that the dilapidation of the institution is worsened, in particular, by the lack of everyday maintenance of the buildings and the chronic inadequacy of the funds allocated for such maintenance (the latter were even reduced in 2012 as compared with 2011). The material conditions of accommodation were not the only factor that led the *Contrôleur Général* to publish emergency recommendations concerning Baumettes prison. Lack of activity (only nine persons had the benefit of work in a workshop at the time of the inspection) and the violence which reigns in the institution (in the exercise yards in particular) also contribute to creating conditions conducive to manifest violations of fundamental rights. The various different points are set out in detail in the text which appeared in the *Journal Officiel* on 6th December 2012.

In response to the *Contrôleur Général's* emergency recommendations, the minister of Justice announced a certain number of measures aimed at improving the situation of persons deprived of liberty. Thus, "priority" work was detailed which needs to be undertaken in order to remedy the highly dilapidated state of the institution, pending an overall redevelopment plan in course which should be completed in 2017. In this respect, it needs to be emphasised that this programme does not address the particularly worrying situation of the men's remand prison, since there are, to date, no plans for the construction of a new detention centre on the latter site. In this regard, the response given to the recommendations is not satisfactory.

The *Contrôleur Général des Lieux de Privation de Liberté* therefore continues to call for the reconstruction of the men's remand prison within the framework of the planned redevelopment.

In her response to the emergency recommendations, the minister of Justice listed the urgent work planned by the prisons administration in response to the *Contrôleur Général's* recommendations. This involves the implementation of partition walls for privacy in 161 cells, the withdrawal of the fire safety committee's reserves (work concerning the electrical system) and urgent protective repair work aimed at reinforcing the waterproofing of the roofs of the men's remand prison building.

In addition to the undertakings of the minister of Justice, a number of directives were issued by the administrative judge following a summary application for an interim order based

upon article L. 521-2 of the Administrative Law Code (*Code de justice administrative*)⁷⁰, brought by the OIP⁷¹, in which several other corporations took part. In these circumstances, the *Contrôleur Général des Lieux de Privation de Liberté* deemed it necessary to carry out a certain number of verifications by means of an additional inspection of the institution. The latter was conducted between 23rd and 27th September 2013.

It was a question of gauging the effect on the ground of the emergency recommendations and taking these changes into consideration in the inspection report that would follow up the first visit of the *Contrôle Général's* teams to the institution, one year previously.

On 18th October 2013, the *Contrôleur Général* passed on this inspection report to the minister of Justice. It was accompanied with a special examination reporting on the remedies applied to the situation described in the emergency recommendations.

The most manifest effort made had been with regard to insalubrity. The prison was thus improved at the level of both the management of refuse (unfortunately, in particular by means of the installation of gratings on the windows depriving prisoners of daylight) and of the effect thereof in terms of the presence of dangerous materials (at the time of the second inspection, the inspectors noted a reduction in the presence of certain types of such materials, which had previously been strikingly present in the prison). The inspectors also noted that considerable effort had been made with regard to restoration of the cells to proper condition. Three operations had been undertaken: painting the walls, restoring the plumbing and electricity to proper condition and the installation of new windows.

The inspection report drew up an inventory of the renovated cells and of their new condition. Although the work undertaken should give cause for satisfaction, the *Contrôleur Général* nonetheless points out his concern with regard to the non-permanent character of the funds and human resources devoted to renovation. The additional inspection also made it possible to stress that certain elements giving cause for concern ascertained in 2012 continue to exist: the level of violence and the number of transgressions committed in the prison remain high, there is still a high level of staff absenteeism (in spite of the readjustment of the organisation chart at last obtained by the management) and the very low level of activity in the workshops remains unchanged. These issues require far-reaching and continuous work in the long-term and a constant will to change the reality, which is notably and inexplicably lacking to date.

2.2 Actions taken in response to the Emergency Recommendations concerning the Two Young Offenders' Institutions

The recommendations made as a matter of urgency concerning Baumettes prison, and the echo to which they gave rise in the media, may have given the impression that the emergency procedure and the notion of “serious violation of fundamental rights” mentioned under article 9 of the Act of 30th October 2007 were reserved for cases in which the inspectors ascertained particularly shocking dilapidation of places of imprisonment⁷². The recommendations concerning

⁷⁰ A summary application referred to as a “liberty” procedure, of which both the lower court judge and the appeal judge justified the urgency, thus confirming the point of view of the *Contrôle Général*.

⁷¹ The French section of the OIP international prisons watchdog (Observatoire international des prisons) had referred the state of Baumettes prison to the liberty procedures urgent applications judge of the administrative court of Marseille, with a request for several urgent measures to be ordered.

⁷² This was moreover also the case of the emergency recommendations concerning the prison of Nouméa inspected in December 2011. It has to be said that a dilapidated material condition of places of imprisonment lends itself particularly well to striking photographic illustration, which enables all to realise the degrading character that can be attached to the fact of living in certain places. One should make no mistake however: the fact that certain violations of rights are less easily shown in images does not make them any less serious for all that.

the two young offenders' institutions of Hendaye and Pionsat prove that this is in no way true. In this case, it was the manner in which children deprived of liberty were treated which constituted a serious violation of their rights. The right to safety and health and the right to education. These rights are fully recognised by the Convention on the Rights of the Child, which France has signed and ratified.

The institution in Hendaye, established beside the Bidasoa river, is located in a place to which access is difficult (to the point that one might even wonder whether it was chosen precisely because it constitutes a place of spatial if not of social relegation), exposing the children accommodated to considerable risks connected with the fact that they have to use a dangerous road, which is prohibited to pedestrians, or cross railway lines, which is equally prohibited. The inspectors also discovered stocks of meat which were several months past their use-by date in the kitchens of this institution. For its part, the institution in Pionsat was characterised by the total absence of any educational project, of which the children complained, and by the absence of any teaching staff at the time of the inspection, that is to say a few days before the start of the new school year.

The minister of Justice and the Assistant director of the minister of National Education's private office responded to the emergency recommendations concerning the young offenders' institutions. With regard to the location of the institution, the minister stated that the solution found consisted of making the premises secure by means of a "very high" grille making access to the railway and to the Bidasoa River impossible. Increase in the institution's inmate capacity (at the risk of a deterioration in the conditions of accommodation) is not called into question and this is manifested in increased risks of accident⁷³. After having emphasised the management of young offenders' institutions noted by the minister of Justice, the assistant director of the minister of National Education's private office, announced the imminent arrival of a primary school teacher at the institution in Pionsat and forecast better leadership of the "system" by means of the creation of a new position for an academic director of national education services (*directeur académique des services de l'éducation nationale* / "DASEN") in Puy-de-Dôme, "in charge of files coming under interministerial policy in particular", at the start of the 2013 school year.

As in the case of the emergency recommendations concerning Baumettes prison, the *Contrôleur Général's* observations on the young offenders' institutions had been sent to the minister of Health and Social Affairs. The *Contrôleur Général* did not receive any response to the sending of either of these sets of observations⁷⁴.

3. Actions taken in response to the Opinion of 17th January 2013 concerning Unjustified Stays in Units for Difficult Psychiatric Patients

On 5th February 2013, the *Contrôleur Général des Lieux de Privation de Liberté* published an opinion in the *Journal Officiel* concerning unjustified stays in units for difficult psychiatric patients (UMD).

Persons who "present a danger for other persons of such a nature that the necessary treatment, surveillance and security measures can only be implemented in a specific unit" (according to article L.3222-3 of the Public Health Code abrogated as from 30th September 2013) can be committed to specialised psychiatric institutions known as units for difficult psychiatric

⁷³ These future risks are by no means lessened by the fact that there have not been any accidents to be deplored in the course of the last ten years, as stressed in the response.

⁷⁴ As in the case of the observations sent to other ministers, a period of fifteen days was left to enable responses to be made to the *Contrôleur Général*.

patients (UMD). Admission to UMDs always takes place with the patient having the status of a person hospitalised by court order, henceforth referred to as “committal to psychiatric treatment at the request of a representative of the State” (ASPDRE), that is to say by decision of the prefect. Discharge is also decided upon by order of the prefect after an opinion has been issued by the medical treatment committee of the UMD, considering the patient to no longer represent a danger requiring their maintenance in a UMD. In most cases, it is decided that the patient is to return to a traditional psychiatric ward in their institution of origin; the regulations lay down a deadline of twenty days for this purpose.

Yet, from inspections conducted and letters received, the *Contrôleur Général* has ascertained that patients remain in UMDs even when the medical treatment committee and the prefect have pronounced a decision in favour of their discharge. Apart from the fact that, due to spontaneous apprehensiveness, the institutions of origins are reluctant to readmit patients who have represented a danger for staff, it is above all the vagueness of the texts that makes it impossible to determine which authority is in a position to impose the institution that is to cater for a patient discharged from an UMD, thus leaving room for negotiations of uncertain results. During this time, the patient is obliged to remain in the UMD, sometimes for up to two and a half years.

In his Opinion, the *Contrôleur Général* recommends that, by means of a circular, the authorities should:

- on the one hand, recall that prefectural orders bringing stays in UMDs to an end shall at the same time be followed by an order on the part of the prefect of the French department in which the institution of origin is located, readmitting the patient to the latter; these orders naturally being binding upon the institution, which is liable towards the patient and to the latter’s close relations for any failure to act.
- on the other hand, elaborate a procedure enabling the regional health agency concerned (or, in case of several agencies, the central administration), to which the case is referred in due time by the management of the UMD, to take care of immediately determining, in case of doubt, the institution to which the patient is to be returned, the fundamental criterion to be followed in this respect being the patient’s capacity for rehabilitation, in particular with regard to the latter’s family relations, the prefect of the department thus established then immediately issuing the necessary order.

At the date of publication of this Opinion, the *Contrôleur Général* had not received any response from the minister of Social Affairs. He received the latter’s response at 15th March 2013. The minister states that situations in which patients are maintained in UMDs in an unjustified manner are exceptional and that solutions have been found for the cases raised by the *Contrôleur Général* in his letters on the subject since 2011, thanks to measures taken by the regional health agencies (ARS) concerned. She also points out that she subscribes to the *Contrôleur Général*’s request to remind regional health agencies of the rules applicable to the end of stays in UMDs. However, to date, the *Contrôleur Général* has not been informed of the issuing of such information. The inspectors will continue to exercise special vigilance with regard to the length of stays in UMDs and all the more so insofar as all of the latter have been inspected and it is now a question of follow-up inspections of these organisations.

4. Actions taken in response to less recent Recommendations, Opinions and Cases taken up

4.1 Renewal of Prisoners' Residence Permits

The Annual Report for 2012 mentioned the referral to the Interior minister of the issue of major difficulties encountered by prisoners in obtaining the renewal of their residence permits. After the referral of this case, a joint circular from the Interior minister and the minister of Justice appeared on 25th March 2013 in the *Journal Officiel*.

It is aimed, as the *Contrôleur Général* had requested, at fixing a standard procedure for processing applications for the issuance of initial residence permits or for the renewal thereof made by persons of foreign nationality placed in custody. In order to make the procedures easier for the obtainment or renewal of residence permits by prisoners, it will be possible for special correspondents to be appointed within the prefecture of each department in which a prison is located. Agreements may be entered into at the departmental level between prefects, prison services for rehabilitation and probation, penal institutions and legal information and advice access points, in order to coordinate their actions. As stated above the appointment of such persons specifically in charge of dealing with residence permit applications and the signature of agreements is simply a possibility and not an obligation incumbent upon prefectures.

The inspectors continue to encounter prisoners of foreign nationality who experience the greatest difficulty, on the one hand, in finding assistance in carrying out the necessary formalities for the renewal of their residence permits and, on the other hand, once these formalities have been completed, in obtaining a response within a deadline compatible with their plans for rehabilitation or applications for reduced sentencing measures.

This circular therefore needs to take full account of the facts in order to change the current situation of prisoners of foreign nationality.

4.2 Absence of Compliance with Regulations concerning Minimum Wages within Prisons

In his Annual Report for 2011⁷⁵, le *Contrôleur Général* stressed the failure of companies employing prisoners to comply with the decree (*décret*) of 23rd December 2010 fixing a minimal legal level for the payment of work carried out within prisons in reference to the guaranteed minimum hourly wage in France (decree issued in application of the Prisons Act of 2009).

At the time of their visits the inspectors had ascertained that the remuneration was in reality lower than the levels fixed by two memoranda of 2010 issued by the prisons administration department setting levels that were themselves lower than that fixed by the decree. This results in very low levels of pay as well as considerable differences between institutions and between contract-holding companies.

In September 2012, the *Contrôleur Général* referred a case to the director of the prisons administration department, drawing attention to the low level of pay within the production workshops of a prison in the West of France. In response to the referral of this case, the director stated (letter of 6th March 2013) that the “prisons administration is concerned to ensure that current regulations are applied” but that it was equally concerned to maintain employment within prisons. From discussions conducted “with the various different parties”, it apparently emerged that these two objectives proved to be difficult to reconcile. In conclusion, the director of the prisons administration department stated that the prisons administration hoped to “progressively implement the new provisions provided for under the prisons act and its implementing decree in the course of the year 2013”.

⁷⁵ P. 184 et seq.

One might be surprised to see norms dating from 2009 referred to as being “new”. Moreover, in the course of the year 2013, the inspectors did not see any change with regard to prisoners’ pay. The latter continues to be very low and the Act voted in 2009 is still not applied in this regard.

4.3 Assistance for Prisoners in a situation of social Precarity

The circular issued by the minister of Justice at 17th May 2013 concerning the fight against poverty in prison responds to several cases referred and recommendations made by the *Contrôleur Général* in this regard. It enables the points ascertained by the inspectors in all of their inspections to be underlined: lack of resources is a hindrance to life in detention and constitutes an obstacle to the maintenance of family ties and to rehabilitation and, finally, is contrary to the protection of dignity. According to this circular, a quarter of the prison population is affected by precarity.

Three points in the circular more specifically reflect the *Contrôleur Général*’s recommendations. These are concerned with the distribution of kits for personal hygiene and upkeep of the cell which should be systematically issued to prisoners on their arrival, the allowance of ten euros which is provided for in order to enable persons without resources to have access to family life units and, finally, administrative assistance with a view to release. The latter consists of enabling the examination of applications upstream from release by means of initiatives on the part of bodies such as CCAS public centres for social action (*Centre communal d’action sociale*), the CPAM (state health insurance office), the CAF (social security office) and the French national employment agency.

Indeed, the inspectors too frequently ascertain in their inspections that access to welfare rights on release is not a subject of concern within penal institutions. This is nonetheless an essential factor for rehabilitation after release. A shortcoming of the circular is its failure to state which departments within institutions should take care of the preparation of prisoners’ social welfare applications, the signature of agreements with prefectures and local authorities and the list of useful addresses which should be issued to prisoners on their release. The prison service for rehabilitation and probation is not designated as being in charge of these actions likely to guarantee access to rights under ordinary law on release from prison.

4.4 The Interministerial Circular of 11th July 2013 concerning Prisoners’ Access to Welfare Rights

In its Annual Report for 2011, the *Contrôle Général* gave a survey of access to welfare rights for persons deprived of liberty, in particular with regard to recognition of disablement and invalidity⁷⁶.

On the basis of considerations linked to the ageing of the prison population and to the latter’s poor state of health, it pointed out that payment of the Allowance for Disabled Adults (AAH) was an essential, and often the only source of income for many prisoners. It noted that the respective roles of beneficiaries (of prisoners in this instance), social workers and health unit doctors did not appear to be defined with sufficient clarity. It therefore recommended, on the one hand, the drafting of an interministerial circular (Social Affairs and Justice) in order to facilitate the granting and renewal of entitlements to AAH; and, on the other hand, that the reduction of the amount of AAH paid to prisoners⁷⁷ should be made more than sixty days after

⁷⁶ Rapport pour 2011, Paris, published by Dalloz, p. 135 et seq.

⁷⁷ Article R. 821-8 of the Social Security Code (Code de la sécurité sociale).

the start of their imprisonment and take any fixed costs still chargeable to the beneficiary (for example the payment of rent) into account.

A circular was published on 30th July 2013 (dated at the 11th) under the double stamp of the Directorate-General for Social Cohesion (*Direction Générale de la Cohésion Sociale*) and the prisons administration department⁷⁸. It is concerned with the twin issues of payment of RSA⁷⁹ income-related benefit and AAH to prisoners. It replaces a previous circular dated 30th July 2012, which proved to be short-lived.

Its basic purpose is to specify the rules for the payment of these two benefits in case of reduced sentencing decisions by judges responsible for the execution of sentences and to provide that, in case of partial release, electronic tagging or release on parole etc., the whole of the person's entitlements are restored. In addition, it provides for better coordination between the Prison Service for Rehabilitation and Probation (SPIP) which manages prisoners' applications and the social security bodies by which the benefits are paid, by means of the appointment of a suitable person within the latter.

This clarifies important points but does not provide a response to the questions raised in the Report. In particular, with regard to the role of doctors practicing in prison in the necessary assessment of the prisoner's condition prior to the granting of entitlement to disablement benefits; with regard also to a smaller reduction in the amount of benefits if prisoners have standing costs outside. On this point, it is even contrary which prevails, since although it is recalled that the beneficiary can receive an "income supplement" for charges such as rents, it is specified that the payment of this supplement also comes to an end after a period which is however brought up to sixty days (even though the charge justifying the granting thereof has been officially established and remains unchanged).

The only positive element of this evaluation is that, for the determination of whether persons suffering from disabilities are subject to severe and long-term limitation of their employability (RSDAE / *restriction sévère et durable à l'emploi*), the circumstance of whether they are granted employment in the course of their imprisonment is not taken into account: due to the modesty of the tasks thus granted they should not be confused with employment "outside".

4.5 Degrading Treatment of Transsexual Prisoners

On 6th December 2012, the *Contrôleur Général* referred the case of a transsexual prisoner, who had expressed a desire to change their sexual identity since 2005, to the director of the prisons administration department.

At the end of a long course of treatment, the person was refused the final sex change operation. For all that, their physical appearance corresponds to their desired sex, thanks in particular to having long followed a course of hormone replacement therapy in prison and the wearing of suitable clothing. This prisoner was also granted the right to officially change their first name by the civil courts.

The director of the institution in which this person is accommodated had given permission for the latter to be searched, in particular at the time of removals from prison in order to go to hospital, by persons of the sex with which the prisoner identifies rather than sex of birth, which is not

⁷⁸ *Circul. GGCS/SDIC/DAP/2013/203 of 11th July 2013.*

⁷⁹ *Revenu de solidarité active income-related benefit defined under articles L. 262-1 et seq. of the Social Action and Family Code (Code de l'action sociale et des familles).*

mentioned in the latter's civil status record (in France, change of civil status being subject to a prior sex change operation). The director of the prisons administration department called for the revocation of this memorandum.

When asked the reasons for this demand, he stated, in his letter of 13th June 2013, that the person concerned had not undergone a “sex change” and that article 57-7-81 of the Code of Criminal Procedure⁸⁰ was therefore entirely respected. He added: “However, in the legitimate interest of avoiding any ambiguity, I informed the institutions of the possibility of appointing a graded officer to be present during these searches”.

In the case of prisoners, access to a medical sex change operation is much more difficult and uncertain than for persons who are not imprisoned. No course of treatment is organised at the national level. The fact of making the conditions of imprisonment of transsexual persons dependent upon this medical operation alone, in reality leads to treating them in a degrading manner on a daily basis⁸¹. When they do not threaten public order and security, it needs to be possible for arrangements, identical to those found by the director of the institution concerned in the case, to be implemented on a case-by-case basis (as is often noted on other issues), in the legitimate interest of protection of dignity. Conversely, the idea of involving another prison officer in searches, who is asked to “be present” (and therefore to watch) does not appear very appropriate, to say the least.

4.6 Use of Data Recorded by Video Surveillance Systems in Prisons

Several cases taken up by the *Contrôleur Général* raised the issue of the period for which images are kept, which are recorded by video surveillance cameras within the communal areas of prisons. The circular issued by the minister of Justice on 15th July 2013, concerning the terms of implementation of the processing of data of a personal character from “video protection systems” installed within and in the areas around premises and institutions of the prisons administration, does not enable any response to these questions.

Indeed, it describes video surveillance as a technical means of protection enabling dissuasion of the commission of unlawful acts as well as pursuit thereof in case of ascertainment of offences, in liaison with the courts. Yet, contrary to the requirements of use for the purposes of recording evidence, the circular does not mention any minimum period for which images are to be conserved. Only the maximum period for which they can be stored (one month) is mentioned and imposed upon the heads of institutions (after this deadline, images have to be deleted). As a result the period for which images are kept may be very short and will not, in any case, be standardised between different institutions.

This lack of control is likely to prevent any use of images for recording acts of violence committed within prisons and exposing the perpetrators thereof.

Neither does the circular deal with the issue of the possible use of the images recorded within the framework of investigations prior to the appearance of prisoners before the disciplinary committee. This was one of the recommendations made by the *Contrôleur Général* in the part of his Annual Report for 2012 concerning discipline in places of deprivation of liberty⁸². The latter noted the poor quality of inquiry reports leading to appearances and the absence of any

⁸⁰ This article provides that “Prisoners shall only be searched by officers of their own sex and under conditions which, while ensuring the effectiveness of checks, maintain respect for the inherent dignity of the human being”.

⁸¹ The consequences of this treatment are manifested in particular by acts of self-harm (self-mutilation and suicide).

⁸² Annual Report for 2012, p. 111 and table of recommendations, p. 304

inter partes hearing within disciplinary committees. Neither does the circular contain any list of authorities able to request the handing over of the recorded images (apart from the courts).

In the cases that he takes up and in inspections, the *Contrôleur Général* may need to obtain the handing over of recorded images. The Act of 30th October 2007 provides that “the *Contrôleur Général des Lieux de Privation de Liberté* shall obtain any information or document useful to the performance of his duties from the authorities in charge of the place of deprivation of liberty”.

Without speaking of refusal to hand over evidence which might be considered obstruction of the *Contrôleur Général*'s duties, the deletion of images might constitute a clever and legal means of getting around the obligation to hand them over.

4.7 Prohibition of Fuel Tablets in Prison

On 7th February 2012 the *Contrôleur Général des Lieux de Privation de Liberté* had taken up the issue of the use of fuel tablets in prison, which is harmful to health and dangerous in safety terms, with the prisons administration department. On 13th June 2013, the director of the prisons administration department responded that fuel tablets would be withdrawn from sale in prison shops as from 1st July 2013 in all institutions, including those under delegated management.

Although the *Contrôleur Général* is pleased with this decision, he regrets the absence of any replacement solution enabling prisoners who buy foodstuffs in prison shops to cook or heat them up. In the absence of reflection on this subject, the prisoners will inevitably find themselves forced to use any means that they may find in order to heat up food, in disregard, once again, of their health and safety.

5. Actions taken in response to the Initiatives undertaken by the *Contrôleur Général* in order to Protect Prisoners against Distribution of their Image without their Consent

Several different cases were referred to the *Contrôleur Général* by prisoners concerned about what would happen to them after the broadcasting of television programmes recounting the cases for which they had been sent to prison in detail and giving details of their private and family lives. These persons wanted to be informed of their rights with regard to these programmes and to find out in particular whether they could oppose the use of their image.

The *Contrôleur Général* passed these letters on to the French independent authority for the protection of broadcasting freedom (*Conseil supérieur de l'audiovisuel*) and called the attention of its President to the special vulnerability of prisoners due to the violence and pressures exercised in prison after disclosures concerning the reasons for offenders' imprisonment and their private lives. A meeting on this was organised on 17th June 2012 at the French independent authority for the protection of broadcasting freedom (CSA). The meeting brought together the *Contrôleur Général des Lieux de Privation de Liberté*, the President of the CSA and two of its members then in office (Messrs Rachid Arhab and Patrice Gélinet) and representatives of France Télévisions and of the company producing the programme “*Faites entrer l'accusé*” [“Bring in the Accused”] broadcast on France 2. Following this meeting, the French independent authority for the protection of broadcasting freedom decided to recall the regulations concerning respect for the

rights of persons involved in past and present court cases by means of a letter to all publishers distributing programmes dealing with such cases.

This letter, which was passed on to the *Contrôleur Général*, contained the following paragraph: “The Independent Authority (*Conseil*) reminds you that freedom of communication and provision of information to the public through the broadcasting media does not exempt publishers from respect for the rights of persons mentioned on air, while ensuring that there is no infringement of their private life or of their image rights as defined under article 9 of the Civil Code (*Code civil*) [...] and in the case of prisoners, regulated by article 41 of the Act of 24th November 2009”. There followed a reminder of the content of article 41 of the Act of 2009 which provides that:

“Prisoners shall give their consent in writing to the broadcasting and use of their image or their voice when such broadcasting or use is likely to make it possible for them to be identified”.

Following the meeting of June 2012 and the letter received, the Chairman of France Télévisions replied to the director of the CSA. According to his analyses, persons deprived of liberty cannot have the benefit of any “right to be forgotten” due to the consistency of laws and case law protecting freedom of information. Moreover, according to the Chairman of France Télévisions, the broadcasting of images from the past concerning the prisoner (for example excerpts from a film made on the day of their marriage more than twenty years before the date of broadcasting of the programme) is linked to a commentary tracing the principal aspects of their life and fully corresponds to the legitimate purpose of provision of information to the public. Finally, the Chairman of France Télévisions gives his own interpretation of article 41 of the Prisons Act of 2009: indeed, he considers that the latter only requires the prisoner’s consent to the broadcasting of their image or of their voice when the latter are recorded in prison. Yet the law is silent as to the place of recording of the images. It lays down the general principle that consent is obligatory if the person concerned is imprisoned and can be identified. For images filmed before their imprisonment, prisoners obviously retain rights over the use of their image. In this instance, it is indeed a question of protecting them against acts of violence or blackmail of which they could be the victim following the broadcasting of the programme. On this point, in spite of the commercial arguments that may be put forward in order to justify the continuation of programmes of this kind, the risks incurred by the persons involved require changes.

6. The Reform of the Act of 5th July 2011 concerning Psychiatric treatment without Consent

The Act of 5th July 2011 concerning treatment without consent in the field of mental health was reformed by the Act of 27th September 2013.

The reasons for this reform were indicated in the previous section (two provisions of the Act of 2011 were censured by means of a priority preliminary ruling on constitutionality) and how Parliament did not content itself with remedying these unconstitutional points but, on the basis of important work on the part of the social affairs committee of the French National Assembly and its rapporteur, put right a certain number of elements that needed to change⁸³.

⁸³ On which light had in part already been cast in a report on the implementation of the Act of 5th July 2011 drawn up by Messrs Serge Blisko and Guy Lefrand, Member of the French National Assembly (Assemblée nationale, XIIIème législature, rapport n° 4402).

As far as the application of the Act of 2011 is concerned, in its Annual Report for the year 2012⁸⁴ the *Contrôle Général* had raised questions about the following points:

- in the first place, about the criticisms to which the new provisions gave rise among certain psychiatrists, which led some of them to systematically declare (therefore without any real connection to the patient's state of health) that patients were incapable of going through a hearing⁸⁵; in other words, for this reason, the Act was not applied in a uniform manner in mental health institutions;
- in the second place, with regard to the doubts concerning the role of the liberty and custody judge in this area and the nature of the control that should be exercised by the latter, in particular in light of hearings at which inspectors had been present;
- in the third place, with regard to the conditions of appearance before the judge: on the one hand, manifestations of the illness or of the diagnosis thereof could be revealed in a public hearing; yet, the latter may sometimes be the first circumstance enabling the reuniting of patients and their close relations, including (in the case of committal to treatment at the request of a third party) those having called for their committal; on the other hand, the moving of the patient to the TGI, often in public view, was a source of incomprehension and terror, though probably less so than use of videoconferencing, which was nonetheless recommended by certain judges⁸⁶.

The responses to the first two points did not involve the law itself, but rather the pedagogy with which it needed to be accompanied.

Time has not neutralised all criticisms on the part of professionals. However, this situation should change: the *Contrôle Général* has noted the existence of dialogue between organisations grouping psychiatrists together and the legislature. However, it would be desirable for the law to be applied to all patients in the same manner as rapidly as possible, and all the more so insofar as, as is well-known, sectorial divisions render the choice between different institutions and units very limited, or even inexistent. The rate at which this can be achieved is difficult to assess, in the absence of any statistics, known to the *Contrôle Général*, concerning use of the second paragraph of article L. 3211-12-2 of the Code, and therefore of any gauge of this form of opposition to the appearance of patients at hearings on the part of professionals.

On the other hand, time has helped judges, in the course of hearings, to better evaluate their role, which is that of determining, not whether committal to psychiatric treatment is justified or not, but whether the grounds justifying the continuation of treatment without consent are adequate and appropriate.

On the other hand, arrangements for the conditions of appearance of patients at hearings came entirely under the authority of the legislature, subject to areas of jurisdiction with regard to the power to make regulations. Considerable adjustments have been made to the conditions of appearance at hearings for patients, which are in accordance with the *Contrôle Général*'s recommendations:

- with regard to respect for private life, the law (article L. 3211-12-2 of the Code) provides that, if they deem necessary, judges can decide to continue the hearing in chambers (that is to say without any public presence); they may also make such decisions at the request of a party;
- all reference to videoconferencing has been abandoned;

⁸⁴ P. 71 et seq.

⁸⁵ Cf. the second paragraph of article L. 3211-12-2 of the Public Health Code (Code de la santé publique).

⁸⁶ On this point see the testimonies collected by the inspectors appearing in Section 6 below.

- in principle, the hearing takes place in a specially-equipped court room; in other words it is held outside of the ordinary bench of the court, which of course increases judges' expenses (in particular, in certain places to which access is difficult, for example in winter) as well as those of lawyers⁸⁷; but it enables patients to appear with a far less troubled mind than in the courthouse and under the conditions of a familiar setting, which is essential in this regard. It is true that the presiding judge of the court reserves the right to convene a second hearing in a room of the courthouse. It might be hoped that this option will only be put in to practice on an entirely exceptional basis.

However, pursuant to I of article 14 of the Act of 27th September 2013, the latter arrangements will only come into force on 1st September 2014, which probably provides the time necessary for fitting-out the required rooms in hospitals, virtually all of the latter having either already put such rooms in place, or declared that they are ready to do so. It may be hoped that the criteria originally provided for by the authorities with regard to these rooms (30 m² at least, with fifteen places for the public⁸⁸) will be somewhat reduced, in the interests of realism.

7. Actions taken in response to Inspections overall

The inspection reports sent in 2013, which make it possible to assess the actions taken in response to inspections of institutions generally speaking, confirm the trends which have already been emphasised in previous annual reports.

Several factors thus need to be emphasised.

In the first place, the small extent of the prisons administrations' influence with regard to obtaining the assistance that it requires, when the latter is financed by other corporations.

This is the case with regard to access to institutions by means of public transport. Between the *Contrôle Général's* two inspections of the institution for minors in Quiévrechain, near Valenciennes, the environment has become more urban; a neighbourhood (principally under home-ownership access programmes for low-income households) has been built. However, this was not followed by any extension of the public transport network, which is harmful for an institution which has made relations with imprisoned children's families an essential element of its policy.

The same may be said with regard to other sources of funding, whether at the municipal (social welfare), departmental (child welfare) or State (urban policy, professional training etc.) levels. Penal institutions suffer the knock-on effects of choices made elsewhere, without any possibility of negotiation. In this respect, the low level of investment in prisons on the part of prefects with regard to all considerations other than security is doubtless to be noted. Assessment meetings should provide an opportunity to address these issues, in a period of reduction in public funds. This is rarely the case.

In the second place, certain inspections are made in the context of ongoing renovation operations undertaken by the prisons administration, which have been in progress for considerable lengths of time. After the inspection, improvements may be noted, however these fit into a previously defined framework. Such is the case for Baumettes prison (already mentioned under § 2.1 above). This is also the situation with regard to the remand prison of Fleury-Mérogis, of which the "fans" (buildings) are refurbished one after the other. "Fan" D4, which housed the health unit and new arrivals in particular, is the last of the ordinary buildings currently being

⁸⁷ A fact which probably constitutes an argument in favour of an increase in the amounts paid to them in legal aid (on this point also see Section 6 below).

⁸⁸ Cf. Report of Messrs Blisco and Lefrand, *op. cit.*

repaired. There will then remain the young offenders' centre and the women's remand prison, for which the order and conditions of work will not be without significance (in particular for mothers with children, with regard to appropriate accommodation on a temporary basis⁸⁹). It is well-known that these operations, which for the most part consist of bringing old or relatively old buildings⁹⁰ into line with the habitability norms fixed for institutions built under recent major construction programmes, are demanding and expensive. Apart from the improvements that are thereby made, it may be hoped that this work will also put an end to the serious and continual disorders affecting daily life: in the case of Fleury-Mérogis, the cold reigning in cells in the winter (particularly on the lower floors) and the invasion of bugs which the management, in spite of its efforts, had been unable to resolve for years.

The renovation work constitutes a paradox, insofar as, although it remedies certain difficulties, it is far from providing solutions to other relatively serious problems, as pointed out above with regard to Baumettes. At Fleury-Mérogis, much of the inertia noted in the report will in no way be resolved by the work since it is not linked to the state of the buildings (the paralysing mode of organisation of movements; the existence of certain "decentralised" departments in the building fans while others remain centralised; the lack of provision of advice on the part of the service for rehabilitation and probation; the number of prisoners per passageway, which is out of all proportion to the number of prison officers etc.).

Administrative practices may even constitute steps backward. Between two inspections conducted by the *Contrôle Général* at the prison for minors (EPM) of Quiévrechain, the management of the prisons administration department stopped assigning officers recruited "by profile" and special motivation to EPMs and brought traditional rules of transfer into play, applicable to all jobs. This trivialisation of the special character of such positions is to be regretted, and is manifested by a risk of lowering the quality of supervision of imprisoned children.

In the third place, it is once again necessary to highlight the immediate consequences to which each inspection can give rise, when local or regional solutions can be found in order to resolve the shortcomings noted. The example of the open prison of Corbeil is typical in this regard. The most serious shortcomings in terms of fitting-out and operation were rapidly resolved at two levels:

- on the one hand the head of the institution (who had only recently arrived at the time of the inspection) immediately took the required protective measures (closing of a dormitory which was unfit for habitation and dangerous) and implemented undertakings made (opening of a sports hall), in addition to the attention given to deficiencies revealed by the behaviour of certain officers;
- on the other hand, in response to the report the director of the interregional department of prison services concerned quickly announced both a budget for the repair of certain premises (showers, controlled mechanical ventilation of cells, wiring for the putting in place of previously non-existent television receivers, additions to the fitting out of the exercise yards) as well as management measures (drawing up of an *inter partes* inventory and statement of the condition of cells at the time of arrival and when finally vacating them, new procedures for the notification of "incidents" to the State Prosecutor's Office etc.).

⁸⁹ It will therefore be necessary to renovate the young offenders' centre before the women's remand prison.

⁹⁰ It is recalled that the remand prison of Fleury-Mérogis was opened in 1968.

Of course, only a follow-up inspection can enable the *Contrôle Général* to measure the actual extent of the changes made.

Finally, in the fourth place, the inspections lead to few short-term solutions when relations in the prison appear to be difficult, not only between the staff and the prisoners, but within the staff. The approach to management of heads of institutions, long-accepted local traditions and low levels of presence of managerial staff in prison, have serious consequences which the *Contrôle Général* can only deplore and mention, without being able to prompt the implementation of measures which, for the most part, come within the field of local (the presence of particular individuals) and national human resources management (the conception of the role allocated to each person). Although these changes are difficult to obtain from the administration, they are even more difficult to obtain from private persons, in the case of administrators of penal institutions and associations in charge of young offenders' institutions.

These difficulties obviously do not constitute an obstacle to the *Contrôle Général's* practice of reporting behaviours far removed from professional ethics to local managers and, in case of suspicion of criminal offences, of implementation of article 40 of the Code of Criminal Procedure. This also constitutes one of the consequences of inspections conducted by the *Contrôle Général*. Use thereof was once again made in 2013.

Section 3

Why Do You Come So Late?⁹¹

(Twenty measures expected from the authorities)

It is well understood that, pursuant to the Act by which it is governed, the *Contrôle Général* only issues recommendations. It has always accepted this situation, better, it has to be said, than the persons deprived of liberty who write to it. Accordingly, it cannot hold it against the authorities when the latter do not necessarily follow its opinions: some reasons are foreign to politics while others are not.

It goes without saying: political decision-making is indeed, slow, though sometimes precipitate. "Tremble when you legislate" advised the dean Carbonnier. By which he meant: "avoid excess of normative texts". One might not assert that his advice has been entirely followed on this point. But, in any case, the process of overcoming trembling requires time. Admittedly, it may be shortened by repetition but, between the moment of awareness and that of translation thereof into legislative provisions, the need for dialogue, negotiations, writing, mediation and debate always has to be acknowledged.

It goes without saying, the State is short of money. Everyone has to adapt to the shortage of funds, in particular in departments that recent history (over the last thirty years) has for all that little accustomed to abundance, that is to say an easy financial situation. Such adaptation often comes down to limited imagination. One simply renounces any new measures that require outlay. The choice of making cuts in existing expenditure is, of course, much more sensitive. Appeals of principle concerning cost reduction are legion: specific plans for hacking up expenditure are

⁹¹ This film directed by Henri Decoin, with Michèle Morgan in the leading role as Catherine Ferrer, dialogues by Michel Audiard and music by Charles Aznavour, was released in 1959. Admittedly, its scenario, concerning a love story set against the background of defamation proceedings, does not bear any direct relation to the matter here examined. However, there remains the question, which for its part is entirely appropriate.

much rarer. The hydraulic press policy therefore prevails: bulky budgets are squeezed until they become as flat as a board, without showing too much concern for the point of what becomes of the excess (certainly not an increase in surface area...). In short, a kind of article 40 of the Constitution has henceforth become an integral part of the personality of each public servant. Thus the living conditions of persons deprived on liberty deteriorate, as well as the working conditions of those in charge of them. One might consider that this gives cause for satisfaction. One would be mistaken.

It goes without saying, security is an essential consideration for all action on the part of the authorities. Dyed-in-the wool actors (that is to say since 1995, the date at which the right of security – which is not the right of security of the Declaration of the Rights of Man and of the Citizen of 1789 – was included in interior law) and new converts stress this point: there can be no measures which weaken security, or above all, which appear to weaken it. Since it is difficult to gauge either the direct or indeed the indirect effects of a given measure in relation to “rises” (or falls) in the rate of crime. The latter is easily circumscribed to individual data concerning sex, age, level of wealth (or adversity) and family situation. Moreover, causal links with government decisions are tenuous, or even unpredictable. But little matter, it is thought necessary to keep to the tried and tested pedagogy of display of muscles.

Measures therefore have to be found which are bound to convince, from the moment that they are not exposed to criticism on the basis of any of these “obvious facts”.

The *Contrôle Général* has been putting forward proposals of this kind for almost six years. Admittedly, not all of its recommendations are of this kind: some of them are even costly. However, a considerable number of its proposals meet the conditions.

To legislate? This means overlooking that the law cannot do everything, as perfectly illustrated by the example of the Prisons Act of 24th November 2009, of which the practical effects in prison are slow to take shape⁹². Or rather, legal provisions, which the trembling hand amends, come up against numerous texts, instructions and memoranda of all kinds, as well as deeply-rooted practices, entrenched habits and different institutional cultures, which it is incumbent upon the authorities to change with a firm hand.

Spending? Among these measures, some cost very little or nothing. This involves taking a different approach, with the same means and the same staff and even, if possible, consolidating officials’ interests, and increasing their productivity in the process. It means, handling persons deprived of liberty in a more dignified manner, reducing tensions, and therefore facilitating change and return to normal life (that is to say without recidivist behaviours) on release.

Undermining security? Who would be so excessive as to be in favour of insecurity? Security is clearly a common good and the principle thereof is not in dispute, but rather the means of achieving it. In this respect, it has indeed often been shown in these reports that responses to requirements in this regard comprised improvisations, inappropriate responses and wholly irrational choices. Everybody has a right to security, including the staff of places of deprivation of liberty, whose profession is difficult. However, this right is not solely ensured by the thickness of the walls and the strictness of the discipline. It also requires respect for human dignity, through equal consideration for all and patient and multiple dialogue. During a period of deprivation of the liberty of a person, which is by its nature a trying time, each person should not only feel responsible for what takes place (or does not take place) during this period, but also for what will happen afterwards.

For several years, in its Annual Reports, public opinions and reports, and inspection reports, the *Contrôle Général* has emphasised the measures which appear to it to be necessary and

⁹² Cf. section 4 below concerning the implementation of this Act.

which do not fall within the scope of any of these three criticisms. It is justifiably surprised, not at having received negative responses, but rather at not having received the slightest sign of the manner in which these recommendations were received by the ministers concerned. It remains convinced that the measures in question are not only useful, but necessary. Should these measures resign themselves to being like the Arabic Sphinx, which is always spoken about without ever being seen⁹³? Is the situation of places of deprivation of liberty so exemplary that no decisions need to be taken?

Twenty measures, which have been put forward on numerous occasions, are set out below⁹⁴, of which the *Contrôle Général* once again requests the rapid implementation.

- 1/ That the telephones currently installed in penal institutions enable conversations that are not overheard by all.
- 2/ That prisoners' letters only be opened and checked by the post orderly.
- 3/ That cellular telephones be authorised in all open prisons.
- 4/ That the conditions of use of cellular telephones in prison should be rapidly specified by means of a study leading to controlled authorisation thereof.
- 5/ That all prisoners who so request (directly or through their counsel) have the right to view the video surveillance recordings of the circumstances for which they are appearing before the disciplinary committee. That in this scenario, these recordings be retained.
- 6/ That paragraph V and the final indented line of paragraph VI of article 19 of the prison model rules and regulations should be abrogated and their content, concerning freedom of expression and respect for prisoners' property, should be much more specifically defined, made more flexible and included in the regulatory part (decrees of the French Council of State) of the Code of Criminal Procedure.
- 7/ That (controlled) access to Internet should be made available in places of deprivation of liberty in which the length of detention is greater than four days (prisons, hospitals, detention centres, waiting areas and, on specific terms, young offenders' institutions). This access should include messaging (also subject to control if necessary).
- 8/ That use of means of physical restraint in case of removal from prison in order to go to hospital should be drastically reduced; to this end, escorts should only be held responsible in case of escape if the means used were manifestly inappropriate to the prisoner's personality.
- 9/ That the traceability of placements in seclusion in hospital psychiatric treatment should be ensured by means of an ad hoc register.
- 10/ That persons in police custody always be informed of the existence of a shower cubicle, if one or several of the latter have been designed, in the police station at the start of their police custody and that they should have access thereto upon request, during periods of rest.
- 11/ That women retain their brassières in police custody, except in case of special circumstance noted in the police report; glass should be retained under the same conditions.

⁹³ Così fan tutte, *act I, scene 1*

⁹⁴ This number is obviously arbitrary. Other measures might have been included. The *Contrôle Général* made its selection. To each their respective parts.

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

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

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

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

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

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

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

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

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

This is not a list of the *Contrôle Général's* priorities. It has a pedagogical virtue. That of showing that places of deprivation of liberty can and need to change, not only at the level of constant visible reinforcement of security, but at the level of a more attentive approach to handling prisoners, wherein real security lies. This is not necessarily a question of emphasising the most essential measures which, it might be added, the *Contrôle Général* has recommended, including in this report. It is rather a matter of pointing out those amongst them which can be implemented under the conditions recalled above.

It is also an invitation addressed to the authorities to confront the reality of deprivation of liberty, what is more, this is also in accordance with the suggestions of professionals, amongst whom there is often great lassitude.

The grounds for each of these measures would need to be set out. However, such is not the purpose of this exposition. Grounds and comments have already been provided for each of them in previous writings on the part of the *Contrôle Général*. Their existence cannot give cause for surprise to anybody. They have already been included in recommendations on numerous occasions.

They are here taken up once more because they still, quite needlessly, remain unimplemented. Indeed, all of them are clearly inevitable. For various different reasons: the situation requires them, as do applicable legal norms, and finally, the dignity of persons.

This being the case, “why do you come so late?”

Section 4

Assessment of the Application of the Prisons Act

1. Origins and Context

The origins of the Prisons Act of 24th November 2009 are well-known.

Poor prison conditions, in particular due to high levels of prison overcrowding, illustrated in the year 2000 by the reports of the select committees of the French Senate⁹⁵ and National Assembly⁹⁶, were the issues behind it.

In the same year, the report of Mr Canivet, President of the Court of Cassation, submitted to the minister of Justice on 20th March 2000, stressed the necessity of elaborating a Prisons Act. It was intended to define the duties of the prisons administration and to contain provisions regarding the status and general conditions of detention of prisoners. Moreover, the committee chaired by Mr Canivet had observed that the law did not satisfy the requirements of accessibility, openness and visibility laid down by the Constitution and certain international undertakings. It proposed re-examination of statutory provisions as well as standardisation of rules and regulations according to category of institution in order to standardise the content thereof and put an end to current inequalities.⁹⁷

Two texts, the Act of 12th April 2000⁹⁸ concerning improvement of relations between citizens and the administration and that of 15th June 2000⁹⁹ reinforcing presumption of innocence and victims' rights, constituted the first steps in a movement enabling prisoners to dispute administrative decisions taken against them and began the process of making the legality of enforcement of sentences subject to decision by the competent legal authorities. On 11th July 2007, the minister of Justice established the planning select committee (COR / *comité d'orientation restreint*) on the "major prisons act" in order to guide the departments of the ministry of Justice in the drafting of the future Bill¹⁰⁰. Four topics were set:

- the duties of the public prisons service and of its staff;
- the rights and duties of prisoners;
- reduced sentencing;
- prison regimes;

In spite of the short time allotted to the planning select committee (COR), more than thirty personalities (judges, doctors, managers of associations working in the prison environment, elected representatives, experts) were interviewed in depth and the eighty-page report handed over to the minister of Justice was unanimously/universally welcomed by all of the stakeholders. A section of twenty pages was devoted to "guaranteeing ordinary citizen's rights to prisoners and

⁹⁵ *Rapport* no. 449 by Messrs Hyst and Cabanel entitled "Prisons, une humiliation pour la République". *Report submitted on 29th June 2000.*

⁹⁶ *Rapport* no. 2521 by Messrs Mermez and Floch entitled "La France face à ses prisons". *Report registered by the presidency of the French National Assembly on 28th June 2000.*

⁹⁷ *The Committee chaired by Mr Canivet also recommended the creation of an external prisons inspectorate.*

⁹⁸ *Act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with public administrations.*

⁹⁹ *Act n° 2000-516 of 15th June 2000 reinforcing the presumption of innocence and victims' right.*

¹⁰⁰ *A draft bill was prepared but not presented in 2001/2002.*

ensuring compliance with the corresponding duties”. Recommendations were made concerning the following rights in particular: the right to the maintenance of family ties, the right to security, the right to health, the right to dignity and to respect for privacy.

Although most of the rights selected by the COR were taken up, the Bill submitted to Parliament a few weeks later nevertheless included many restrictions to these rights, which were justified by security imperatives. In spite of an emergency procedure which shortened the parliamentary debates and most probably prevented raising of awareness in society with regard to the significance of prison sentences, the National Assembly and, above all, the Senate broadly contributed to giving this text an ambitiousness, which it initially lacked.

The construction of the Prisons Act of 24th November 2009 takes up three kinds of provisions:

-Part I: Provisions concerning the public prisons service and the condition of prisoners.

This part comprises four chapters; the first is devoted to provisions concerning the duties and organisation of the public prisons service, the second to provisions concerning prison staff and the prison civil reserve, the third to provisions concerning prisoners’ rights and duties, and the fourth to various different provisions;

-Part II: Provisions concerning the passing of sentences, alternatives to remand, reduced prison sentencing and imprisonment.

This part comprises two chapters. Enforcement of sentences and reduced sentencing are the central issues. The importance of this part has led to the Prisons Act sometimes being referred to as the “Sentence Enforcement Act”.

-Part III: Final Provisions.

Article 100 of this part – the final article of the Act – mentions exclusion from the effect of the principle of placement in individual cells in remand prisons, applicable for a maximum period of five years as from the date of publication of the Act.

In 2012 the Parliament made an initial assessment of the Prisons Act. The National Assembly published a report on 1st February 2012¹⁰¹ and the Senate on 4th July of the same year¹⁰².

The overall conclusions of these assessments were as follows:

The application of the Prisons Act called for the publication of twenty-one regulations; one of the latter, devoted to the model rules and regulations of each category of penal institution, still remained to be taken at the time of drafting of the National Assembly’s report. Decree (*décret*) no. 2013-368 of 30th April 2013 filled this gap.

The rapporteurs of the work of the Senate pointed out that the putting in place of independent assessment of rates of recidivism with regard to each prison for definitively convicted prisoners had not yet been initiated; since the publication of their report it has still not been initiated.

¹⁰¹ French National Assembly, report no. 4262 submitted in application of article 145-7, paragraph 1 of the Regulations (Règlement), on the implementation of the Prisons Act no. 2009-1436 of 24th November 2009, by Messrs Jean-Paul Garraud and Serge Blisko, deputies. This report limits itself to listing the implementing texts necessary for application of the Act.

¹⁰² French Senate (2011-2012) “Loi pénitentiaire : de la loi à la réalité carcérale”, rapport d’information no. 629 of 4th July 2012 by Mr Jean-René Lecerf and Mrs Nicole Borvo Cohen-Seat, senators.

According to the rapporteurs, the effectiveness of the Act came up against four difficulties:

- the late arrival of the first implementing decrees¹⁰³ ;
- insufficient means, for the development of reduced sentencing in particular;
- administrative inertia;
- increase in the number of prisoners.

The *Contrôleur Général des Lieux de Privation de Liberté* intends to provide a view of the application of the Prisons Act in line with an approach that complements this parliamentary work. Naturally, it will be more specifically concerned with recognition of the dignity and rights of prisoners.

It of course takes into account the elements of context highlighted by the assemblies, as well as the emergence of European prison rules (EPR) since 2006 and the considerable changes made to the prison buildings infrastructure through the successive construction programmes, of which the latest, referred to as the “13,200 place programme”, dates from 2002. It is based upon the whole of the inspections conducted since the creation of the *Contrôleur Général des Lieux de Privation de Liberté* as well as the cases referred, in the vast majority of cases by prisoners and their families.

Its guiding lines are articles 4 and 22 of the Prisons Act, which make reference to “*respect for the fundamental rights*” and “*respect for the dignity and rights*” of prisoners.

The following seven issues will be successively examined:

- the well-being of the person;
- access to information;
- exercise of citizenship;
- respect for private life;
- access to *inter partes* procedures and remedy;
- access and rights in relation to healthcare;
- adaptation of the enforcement of sentences to the individuals concerned.

2. Respect for the Well-Being of the Person: Professional Practices that call for Change

The prisons administration needs to guarantee effective protection of each prisoner from bodily harm in all collective and individual premises.¹⁰⁴

¹⁰³ Decrees no. 2010-1634 and no. 2010-1635 of 23rd December 2010.

¹⁰⁴ Article 12 of the Prisons Act specifies that: “The warders of the prisons administration constitute, under the authority of the managerial staff, one of the forces at the disposal of the State in order to ensure internal security. Within the framework of their security duties, they ensure respect for the physical well-being of persons deprived of liberty...”

Article 44 of the Prisons Act specifies that: “The prisons administration shall guarantee effective protection of each prisoner from bodily harm in all collective and individual premises.

Even in the absence of fault, the State is bound to compensate for any injury resulting from the death of a prisoner caused by violence committed within a prison by another prisoner.”

To this end, it needs to prevent and suppress acts of violence suffered by prisoners at the hands of other captives or of representatives of the administration. It also needs to anticipate acts of self-harm.

During the first six months of 2013, the *Contrôle Général des Lieux de Privation de Liberté's* centre for referred cases received 2,112 letters sent from penal institutions. Relations between captives are brought up in 114 letters (5.39%) only ranking in tenth place. The second reason for writing concerned relations between prisoners and staff with 206 letters, that is to say 9.75% of the cases referred. Among the latter, 90 (43.69%) mention disputes between prisoners and staff, 59 (28.64%) acts of violence and 57 (27.67%) acts of disrespect on the part of staff¹⁰⁵.

All of these applications are subject to requests for explanations and inquiries. Two cases were brought to the attention of the courts in application of article 40 of the Code of Criminal Procedure. In one of the two cases, a person imprisoned in a specially-equipped hospitalisation unit (UHSA) complained of having been raped by a fellow prisoner at the time of their stay in a remand prison¹⁰⁶.

Moreover, cases of violence between prisoners were brought up at the time of inspections and led to disciplinary measures, as was also the case acts of violence committed by staff against prisoners. It needs to be emphasised that it is particularly difficult for acts of violence to be ascertained by inspectors in the course of inspections.

2.1 Public Order in Prison is not always appropriately organised

The inspectors have ascertained a considerable increase in the number of cameras installed, with the possibility of recording, in collective areas and in exercise yards in particular¹⁰⁷. However, the images are sometimes of very poor quality and blind spots remain in particular at the level of exercise yards. The recordings, when they exist, do not appear to be used in an optimal manner within the framework of disciplinary investigations or at the time of the holding of disciplinary committee hearings.

The absence of real measuring tools makes it difficult to assess the real impact of the installation of these cameras as far as change in levels of violence is concerned. However, it is certain that violence remains widespread both between prisoners and against staff.

Prison overcrowding obviously contributes to worsening the situation, as does the prison regime in certain cases.

Supervision of the movements of the prison population around institutions, and more specifically within wings and floors, cannot be left to the presence of cameras alone.

In this respect, the absence of warders, which is very often noted in places of detention, leaves a free hand for the strongest to exercise acts of violence against the weakest. Similarly, with

Any prisoner who is the victim of an act of violence committed by one or several fellow prisoners is subject to special surveillance and prison regime. They have the benefit of placement in an individual cell.

When a prisoner has caused their own death, the prisons administration immediately informs their family and close relations of the circumstances in which the death occurred and facilitates, at their request, the procedures that they may be led to undertake”.

Article 58 of the Prisons Act specifies that: “Surveillance cameras may be installed in collective areas presenting a risk of assault causing bodily harm to persons within prisons. This option constitutes an obligation for all penal institutions opened after this Act has come into force”.

¹⁰⁵ For an exhaustive analysis of these cases referred, see section 10, § 2 below.

¹⁰⁶ In the second case a prisoner placed in a remand prison for acts of marital violence and abduction of children had informed the inspectors of sexual abuse of their son committed by the child's maternal grandfather.

¹⁰⁷ In application of the aforementioned Article 58 of the Prisons Act.

the rare exception of a few long-stay institutions, exercise yards are always places in which there is an absence of prison staff.

The *Contrôle Général* recommends a more active presence on the part of warders and managerial staff in places of detention and among the prison population¹⁰⁸.

2.2 Placement in Individual Cells, an Unkept Promise

Placement in individual cells, which is inscribed in the law and is likely to eradicate violence within cells, is accessible in few remand prisons, due to their overcrowding. In order to limit violence, directors send victims to different cells or assign them to the solitary confinement wing. Unfortunately, it is obvious that the deadline (25th November 2014) granted to the prisons administration for the implementation of this measure will not be respected.

On the other hand, the *Contrôleurs* have had the occasion to ascertain that, in many institutions, since they are unable to bring placement in individual cells into general use, the managers endeavour to apply the recommendations of article 8 of decree no. 2010 – 1635 of 23rd December 2010¹⁰⁹ in particular the separation of untried prisoners and convicted prisoners.

The *Contrôle Général* recommends that the Act concerning placement in individual cells be applied.

If this objective cannot be entirely met for the time being, the regulations need to endeavour to meet in in phases, applying the measure to certain categories showing specific features of vulnerability (non French-speaking persons, deaf and dumb persons etc.).

2.3 Prevention of Suicide: Efforts showing little Reward

Article 7 of the Prisons Act specifies that “decree determines the conditions under which an independent watchdog [...] draws up an annual and public report also including [...] the suicide rate per penal institution. This report sets out an assessment of the actions conducted within prisons with a view to [...] suicide prevention”. Since the decree has not been issued, a report of this kind has never been handed over to the inspectors.

On the other hand, the latter can testify to the seriousness with which cases of prisoners presenting risks of suicide are examined within the single multidisciplinary committees (CPU) instituted by article 7 of decree no. 2010-1635 of 23rd December 2010. Sometimes, medical and healthcare staff do not take part in these meetings, for reasons of compliance with medical secrecy. Comparison of views with professionals in any case needs to be organised in order to ensure better knowledge of prisoners and thereby enable suicide prevention.

The conscientiousness with which prison officers keep watch on persons reported as being psychologically fragile during checks at night has also been noted. Certain persons, who are thus regularly awakened, complained of the disruption caused to their sleep. The installation of a camera inside the cell in order to monitor the prisoner without disturbing them, which is sometimes suggested, would be a worse remedy than the problem that it is intended to cure,

¹⁰⁸ Cf. *Recommendations concerning the remand prison of Villefranche-sur-Saône*, Journal officiel of 6th January 2009, and § 4 in particular.

¹⁰⁹ "When the regime of placement in individual cells is not applied, it is incumbent upon the head of the institution to separate:

1/ Prisoners on remand and convicted prisoners;

2/ Prisoners having reached the age of majority in prison and of less than 21 years of age, from other adult prisoners;

3/ Prisoners serving their first custodial sentences and those having already been imprisoned on multiple occasions;

4/ Solvent persons imprisoned for non-payment of certain fines (contrainte judiciaire)".

incompatible with respect for privacy. On the other hand, the installation of effective night lights should dispense staff from having to awaken the persons concerned.

The inspectors have also observed the existence in most institutions of “emergency allocation protective clothing” aimed at persons considered to be suicidal, made up of a tear-proof blanket and pyjamas. This equipment is intended for use for placements in emergency protection cells and sometimes at the time of placements in punishment cells. However, in a few rare cases, the inspectors ascertained failure to comply with the statutory conditions for use of this emergency allocation, in particular with regard to the duration thereof.

Moreover, prison overcrowding undeniably acts as a break upon further improvement in manner in which the prevention of suicidal acts is taken into account, since it constitutes an obstacle to better knowledge of the persons imprisoned.

In this context, the efforts made by the prisons administration and its partners have been unable to prevent the persistence of the high level of persons putting an end to their own lives within institutions which distinguishes the French prisons system¹¹⁰.

In the face of this failure and the human tragedies that it represents, the prisons administration needs to ask itself some far-reaching questions. In the first place, with regard to the causes of suicide among prisoners.

The reception procedure for new arrivals limits suicidal acts in the initial period of imprisonment measures, but their presence subsequently remains. Questions therefore remain with regard to the factors which lead to suicide, those attributable to the persons themselves, as well as those connected to the current state of prisons. It is presumable that prison overcrowding, the insecurity reigning within collective areas, the reduced presence of staff on the floors and in passageways (thus limiting communication as well as observation time), prisoners’ lack of activity and lack of means of expression are among the factors contributing to the emergence of such suffering that suicidal acts appear to be the only way out.

The *Contrôle Général* recommends that in-depth questioning with regard to the causes of suicides in prison should be conducted by the prisons administration department with the cooperation of its other partners.

2.4 Use of means of Physical Restraint: Practices which need to change

The inspectors noted that, in virtually all of the institutions inspected, persons removed from prison for medical consultations were systematically handcuffed and in most cases legcuffed.

These measures are applied irrespective of their personality and dangerousness. Only very elderly and manifestly handicapped persons are exempted from this practice. This is confirmed by examination of the files on removals from prison for medical purposes which the inspectors systematically ensure are handed over to them. In this respect, the inspectors encountered the emblematic case of one captive who, within the framework of a removal from prison for a medical consultation, had been handcuffed and legcuffed for an ophthalmological examination on the grounds that they presented a “high” risk of escape and assault and a “medium” risk of committing other disturbances of public order. For all that, at the same time, it appeared that this person did not have any disciplinary history of assault on staff, that they were almost at the end of their sentence, that they were authorised to go to the wall-walkway under the surveillance of

¹¹⁰ However, it needs to be recalled that the suicide rate amongst the general population in France is also one of the highest in the European Union: 14.7 per 100,000 inhabitants in 2010 as compared with 9.9 in Germany, 6.4 in United Kingdom and 5.8 in Spain (source: INSEE [the French national statistical institute]).

the works manager, that they had had the benefit of three temporary releases for the “maintenance of family ties” and “social rehabilitation” in the institution in which they were then accommodated and five temporary releases in their previous institution without any incident ever having been reported, a fact which very clearly casts doubt upon their dangerousness.

This practice, which is manifestly contrary to the law, is a consequence of the permanent fear of escape, as recalled in the Report of the Contrôle Général for 2012¹¹¹:

At the time of removals from prison in order to go to hospital, the *Contrôleur Général* once again recommends use of means of physical restraint that is strictly proportionate to the risk presented by the persons concerned and enables respect for their dignity as well as equal access to healthcare.

2.5 Searches, a source of tensions

The application of article 57 of the Prisons Act has also provided a striking example of absence of change in professional practices in the prisons administration in spite of the changes intended under the law with regard to searches¹¹².

The prisons administration has not been in a position to promote these legislative changes among its personnel. Due to its inertia, it has encouraged the professional organisations to call for the abrogation of article 57 of the Prisons Act.

In view of this situation, prisoners and their lawyers have brought cases before the administrative courts in order to dispute systematic searches.

The case law of the administrative courts has of course consistently condemned practices consisting of getting around the law and decisions of the prisons administration have regularly been set aside¹¹³. In order to bring this situation to an end, in a note of 11th June 2013, the director of the prisons administration recalls that the minister of Justice has stated that article 57 of the Prisons Act will not be amended and gives the following instructions to heads of institutions:

“To withdraw memoranda and provisions of rules and regulations concerning the prison population as a whole, prescribing systematic strip searches on leaving visiting rooms;

To implement frisk searches and the use of electronic means of detection in this sensitive area of prisons.”

In the same note, the director of the prisons administration also specifies that 282 new metal detector frames and 393 magnetometers will be provided to institutions that are not yet equipped. He also states that a new circular will be issued in order to specify the question of means of control of prisoners, in particular with regard to the conditions under which searches of prisoners are to be conducted on leaving visiting rooms. There are no plans to issue this circular in the course of the next few months.

On this specific question of searches, the intentions of the legislature have therefore been slow to come into practice. In the coming months, the inspectors will set out to examine the consequences, within institutions, of the central administration’s late adoption of this position.

¹¹¹ P. 52-60.

¹¹² Cf. *Annual Report of the Contrôle Général for 2011*, pp. 238-256.

¹¹³ Cf. most recently the order (ordonnance) of the judge of French Council of State with power to hear urgent applications (juge des référés du Conseil d’Etat), no. 368 816 of 6th June 2013, Section française de l’observatoire international des prisons, à ment. aux tables du recueil.

2.6 A strange relation to the norm

Article 11 of the Prisons Act provides for the creation of a code of professional ethics of the public prisons services, established by decree of the Council of State, fixing the rules that are to be complied with and the taking of an oath. This Code is intended in particular to ensure a respectful approach to dealing with persons deprived of liberty.

The creation of a code of professional ethics for the public prison service was established by the decree of 30th December 2010. It recommends that the code be handed over to every official and displayed in penal institutions in such a manner that it is also brought to the attention of persons placed in custody.

At the time of their visits, the inspectors noted that the code of professional ethics was displayed in the majority of institutions inspected. However, it is rarely displayed in detention areas. Moreover, although the whole of the staff having graduated from the School of the French National Prisons Administration (*Ecole nationale de l'administration pénitentiaire*) since the decree have taken the oath, few prison officers already in service have done so. At the time of inspections, it did not appear to the inspectors that staff had assimilated the code of professional ethics. To take one example: the use of the informal “*tu*” form when addressing prisoners remains widespread, whereas it is prohibited in the code. This may not be a sign of disrespect, but rather the manifestation of a desire for familiarity in order to create relations conducive to defusing current or possible situations of conflict or more simply an approach that is part of the history of the institution.

The *Contrôleur Général* recommends that the code of professional ethics be displayed in places of detention and the formal “*vous*” form be used by prison officers in addressing prisoners, as provided for under the code of professional ethics.

3. Access to information: How to overcome fears?

In prison, the issue of access to law and clarity thereof is crucial. Producing texts is futile if prisoners are not aware of them and cannot take advantage of them in their daily lives¹¹⁴.

3.1 In Search of Rules and Regulations

Drawing upon the Conclusions of the Report of the Committee Chaired by Mr Canivet, article 86 of the Prisons Act calls for the drawing up of model rules and regulations for each of the categories of prisons, in particular in order to standardise the rules within institutions of the same legal nature. The decree of the Council of State which determines the contents thereof was issued at 30th of April 2013, that is to say more than four years after the Act was voted.

The time required for the drafting of this norm provides a good illustration of the importance that was granted to this standardisation of the rules of prison life. From checks in prisons, at the time of visits by the inspectors, it emerges that in many cases the rules and regulations are in the course of being updated or awaiting validation at a higher level.¹¹⁵

Apart from being updated, rules and regulations are nonetheless without value if they are not distributed to the prison population. At the present time, whether updated or not, the

¹¹⁴ See Section 9 below, the figure of the “litigious person”.

¹¹⁵ The initial responses, which were often made to the issuing of the decree of the Council of State served to mask the management teams’ difficulties in designing a tool which, by its very nature, was not envisaged as an asset but as an excessively restrictive norm.

rules and regulations currently in service are little-known to the prison population overall. The *Contrôleur Général* recommends that the prisons Administration ensure that each prisoner has access to the rules and regulations of the prison in which they are accommodated.

Although the libraries of institutions are usually the place in which rules and regulations are filed (the inspectors often had difficulty in procuring them), in some cases prisoners are able to have access thereto on request from managerial staff, which appears to be a good practice. Digitising of the rules and regulations was noted in one of the institutions inspected (prisoners had access to them in the library).

For the *Contrôleur Général*, making rules and regulations easily accessible to prisoners in written form remains an objective to be reached, without overlooking the fact that a part of the prison population does not know how to read or does not speak French. In this case, translation is an essential requirement.

More specific rules and regulations, including those for punishment wings and solitary confinement wings, are almost systematically handed over to persons placed in punishment and solitary confinement wings. This approach is in accordance with the texts and should be encouraged.

In order to supplement the information contained in the rules and regulations, the applicable circulars should also be placed at prisoners' disposal in a compendium of prison regulations made available in the library of each institution.

3.2 Progress in the Reception of New Arrivals

The certification of the new arrivals reception procedure implemented within the framework of the application of European prison rules contributed to a considerable improvement in the provision of information to new arrivals in prisons¹¹⁶.

Close attention has been devoted on the part of institutions to the information booklets and the new arrivals. They are often drafted in several languages and correspond to the cultural diversity of persons deprived of liberty. They are handed over in person and their distribution is accompanied with a spoken explanation of their form and content.

Provision of information to new arrivals sometimes also supported by video aids. As a time when video channels are increasing in number institutions, it would be appropriate to take advantage of this means of dissemination to shed greater light on the daily life of prisoners.

3.3 The Information that gets into Institutions

In the course of their visits, the inspectors noted that the presence of daily or weekly newspapers in libraries is increasingly rare.

The cost of subscriptions is one explanation, as is loss of interest on the part of their readers. In order to partly make up for this development, local and regional daily papers are sometimes placed at the disposal the prison population, on the initiative of the press, in quantity and free of charge. The habit of making use of them is not absent in the passageways and, apart from the access to information that this provides to readers, it is also a manner of connecting prisons to local and regional life and therefore of contributing to prisoners remaining citizens.

¹¹⁶ At the end of the year 2012, 150 situations had been certified under the new arrivals reception procedure.

Television is now accessible in publicly managed institutions for a small sum, eight euros per month, in principle divided¹¹⁷ by the number of occupants in the cell and free for persons without resources. It is harmful that prisons do not all follow the same rules in this regard; those under delegated management, pursuant to the initial contract clauses, continuing to provide subscriptions at the price of eighteen euros per month. This constitutes a failure in equality of access to broadcast information which cannot be understood.

It needs to be emphasised that access to radio punishment wings marked a significant advance, although this provision was aimed more at breaking psychological isolation than promoting the right to information.

The fact remains that a large proportion of information from outside of prisons is today broadcast by Internet. A word which still gives rise to concerns within prisons, though experiments with cyber base platforms¹¹⁸ are in progress in a few institutions. The Contrôleur Général continues to recommend that prisoners should be able to make use of the Internet tool, in a supervised manner and of course without calling into question the necessary controls for the maintenance of public order and security in prison. The Contrôleur Général has been consistently making this recommendation for some time¹¹⁹.

Communication by means of information and communication technologies is today considered to present significant security risks in prison, as were the press, radio and television around fifty years ago. Different approaches in other countries show that such communication can be controlled and is not prohibitive in terms of cost. Opening such access would have the major advantage of bringing the closed world closer to the outside, thus fighting against the socially alienating effects of imprisonment. This would reinforce the maintenance of family ties, pursuit of university courses, preparation for release (accommodation, employment etc.) and place greater responsibility upon prisoners.

3.4 Legal Information and Advice Access Points

These schemes providing free legal consultations¹²⁰ within prisons¹²¹, in accordance with article 24 of the Prisons Act correspond to the legal information and advice access points put in place by the departmental committees for legal information and advice (CDAD / *Conseils départementaux de l'accès au droit*).

They are held by legal professionals, lawyers and jurists of mediation associations remunerated by the councils of French departments. This service is often subject to an agreement between the institution, the SPIP and the Council of the Department. In most cases it is coordinated by the SPIP, which is problematic since requests on the part of the prison population are obliged to pass through this prison service. At the time of inspections, the prison population encountered emphasised the importance of the scheme, and appreciated the collective meetings which can be organised on the initiative of the organisers of this legal information and advice. Although legal information and advice access points are mentioned in many booklets provided to new arrivals, certain prisoners informed inspectors that they were unaware of the existence of a scheme of this kind. This confirms the fact that information and the circulation thereof need to be a constant concern.

¹¹⁷ According to the regulations this sum should be systematically divided between the number of occupants. Such is far from being everywhere the case, according to the findings of inspections and letters received.

¹¹⁸ Eleven institutions were involved in such experiments at the end of the year 2011.

¹¹⁹ See the opinion concerning access to information technology for prisoners, Journal officiel of 12th July 2011. Cf. also section 3 of this report.

¹²⁰ These consultations are intended to fulfil any demand for legal information made by prisoners, with the exception of their penal situation, enforcement of sentences and disciplinary matters.

¹²¹ 150 were in place at the end of the year 2012.

The Controller General recommends better provision of information to prisoners concerning the precious aid that they can obtain from legal information and advice access points and extension of the latter's areas of authority.

3.5 Passage of Information from Inside Prisons to the Outside

Friends, relations and families are to a large extent overlooked by the present administration as far as information is concerned, except in the field of visits. Examples of provision of information to families about the organisation of life in prison are rare.

The *Contrôle Général* recommends the provision of information to families about conditions of detention and daily life in prison, which could contribute to reducing legitimate fears and anxieties. Such information could be provided in written form, or in the shape of meetings (a method used by certain heads of institutions). This is obviously an element which could enhance the life of institutions to the benefit of prisoners and their families, as well as prison staff.

The administration has left a part of the distribution of such information to the associations that run family reception facilities at visiting times. The latter fulfil this task with very great conscientiousness; however the administration cannot for this reason exonerate itself of all responsibility in this regard.

4. Access to Citizenship Still in the Course of Development

4.1 The Difficulty of Access to Voting Rights

The question of voting rights is addressed under **article 30** of the Prisons Act, which sets out the option for prisoners who do not have a personal legal place of residence to elect domicile at the prison for the exercise of their civic rights and specifies that a proxy procedure shall be put in place before each ballot.

The possibility of prisoners in entrusting their proxy votes to members of associations working in prison has already been mentioned in the Annual Report for 2012. The *Contrôleur Général* referred this point to the Director of the Prisons Administration Department on 1st February 2012. On 13th April 2012 the latter replied that not only does article D.221 of the code of criminal procedure allow members of associations working in prisons to be proxies but, moreover, proxy forms are to be drafted by the prisoners themselves, without any action on the part of the prison administration or through the person of senior law-enforcement officers.

However, in the course of their visits, the inspectors have noted that in spite of the fact that information is often properly distributed with regard to the practical terms of voting in the periods before elections, the number of prisoners who voted directly – which requires the obtainment of a temporary release – or by proxy remained extremely small.

They were provided with numerous testimonies concerning the difficulties of obtaining temporary release or appointing a proxy. Moreover personal documents such as voting cards and identity cards are in general placed in storage or entrusted to the registry; it sometimes happens that reissuing thereof is refused requires a considerable waiting period which, even if temporary release authorisation is granted at short notice, rules out the effective possibility of voting.

In its summary report on the application of the Prisons Act¹²², the Senate states that: “We have just been through an election period: prisoners who made use of their possibility of voting were extremely few in number, which is harmful both in terms of citizenship and in terms of return to social life for these people. In our estimation, the only solution for changing this situation is the putting in place of polling stations within the institutions, which would enable such participation to be encouraged.”

The Prisons Act hardly facilitated the exercise of voting rights by prisoners. It would be appropriate to put a procedure in place enabling persons placed in prisons to effectively exercise their voting rights. This includes greater facility in the issuing of identity papers, sufficiently early provision of information, a special regime of temporary release and, if necessary, greater flexibility of the rules for proxy voting, guaranteed by the registry.

4.2 Election of Domicile Remains a Rare Practice

According to the terms of article 30 of the Prisons Act, “prisoners can elect domicile at the prison [...] for the exercise of their civic rights, when they do not have a personal domicile, [...] in order to claim the benefit of the rights mentioned under article L. 121-1 of the Social Action and Family Code (*Code de l’action sociale et des familles*) [in particular in order to claim legal social security benefits], and they do not have any alternative legal place of residence at the time of their imprisonment or cannot provide any proof thereof [and] in order to facilitate their administrative formalities”.

In 2012, for a total of more than 64,000 prisoners there were only 275 cases of election of domicile, that is to say less than five out of a thousand persons. These figures are far from showing any effective improvement in the situation.

The Contrôle Général recommends that the Prisons Act should open the possibility of granting prisoners the option of electing domicile at the communal or intercommunal public centre for social action (*Centre communal/intercommunal d’action sociale*) nearest to the place in which they are seeking employment within the framework their preparation for release.

4.3 Impossibility of Collective Expression of the Prison Population

Article 29 of the Prisons Act mentions the possibility of consulting prisoners with regard to the activities offered to them, “subject to the maintenance of proper order and security within the institution”.

Moreover, the right of association in the prison environment is not prohibited by any statutory text.

During their visits, the inspectors regularly note the circulation of rumours in detention areas, spreading entirely unfounded or progressively distorted information. Such information may, for example concern financial questions – cost of products in prison shops, of the telephone etc. –, or be about more serious subjects such as the death of a person in their cell. This sometimes result in feelings of frustration and discontent which on occasion to generate into collective movements.

¹²² Report no. 629 presented by Mr Jean-René LECERF and Mrs Nicole BORVO COHEN-SEAT, *op. cit.*.

Incidents of this kind are linked in particular to the near impossibility for prisoners of expressing themselves in an official, organised and recognised form. As they often say to the inspectors, “prisoners are always wrong, the warders are always right”.

Today, in the majority of prisons in France, collective expression is strictly banned.

Admittedly, the organisation of collective expression in prison is a difficult undertaking to put in place; it needs to take account of the imperatives linked to imprisonment and maintain the principle of the prisons administration’s authority. It does exist in European countries, as emphasised by Cécile Brunet-Ludet¹²³: “For all that, such a right exists, in various different forms, in several Member countries of the Council of Europe, and has sometimes existed for several years. Are the issues any different in other countries? In France, it does not exist as a right, but is customary in a rare number of cases”.

It is highly regrettable that the work completed by Mrs Brunet-Ludet was not followed by changes in prisons despite the prisons administration having requested that article 29 should be manifested in experiments putting collective expression of the prison population in place, with one institution per region having been designated for this purpose.

The results of these experiments varied widely, some projects were not completed, others are still ongoing, all of them confirmed as allowing the prison population to speak did not result in prison disturbances.

Older practices exist in other institutions: “menus”, “activities” and “prison shop” committees have been put in place in a number of institutions with delegated management.

Practices of consultation prisoners need to be brought into general use and extended to issues such as rules and regulations; different actors should be involved in these practices such as warders, the service for rehabilitation and probation and the medical service as well as the private manager. The involvement of prisoners by means of established collective expression would lead to a change in the place of prisoners within the life of institutions; apart from being captive consumers, they can also be actors in the organisation of the latter and thus gain greater autonomy promoting better integration and future rehabilitation.

This reflection also needs to take into account the highly worrying disappearance of recreational associations¹²⁴, which have lost the right to manage the rental of television sets, which represented their principal source of funding. These associations sometimes offered prisoners, in the capacity of association members, to take part in the board of managers and administrative and other specific meetings. Nothing appears to be planned to fill the gap that they have left behind them.

¹²³ “Le droit d’expression collective des personnes détenues”, *Report to the DAP, February 2010*.

¹²⁴ Cf. *Annual Report of the Contrôle Général for 2012*, p. 62.

4.4 Progress Is Still Required with Regard to Religion

The fundamental right freedom of expression includes that of practising one's own religion, while respecting the convictions of one's neighbours. It should be possible to exercise this right in prison, within the limits of security requirements.

The Prisons Act devotes two phrases to the exercise of religion in prison (article 26): "prisoners have the right to freedom of opinion, conscience and religion. They can practice the religion of their choice, according to conditions suitable to the organisation of the premises, without any limits other than those imposed by security and proper order within the institution".

On 24th of March 2011, the *Contrôleur Général des Lieux de Privation de Liberté* published an Opinion¹²⁵ concerning the exercise of religion in places of deprivation of liberty.

From their inspections and the letters received, the inspectors ascertain that certain principles mentioned in the Opinion are rarely respected. The following are to be noted in particular:

- ignorance of religions on the part of prison staff, leading to the taking of arbitrary decisions with regard to determining which objects can be considered to be religious;
- a persistent lack of Muslim chaplains, sometimes resulting in the self-appointment of an imam among the prisoners, who may be acknowledged by their fellow believers more because of their radical positions than as a result of their knowledge of the religion; as well as major difficulties in finding Christian chaplains of Orthodox or Armenian confession;
- virtual impossibility for prisoners of Jewish faith to practice their religion in prison in particular in terms of dietary rules¹²⁶, as well as through fear of reprisals on the part of fellow prisoners;
- places of religious worship lacking peace and confidentiality.

Article 26 of the Prisons Act should be supplemented by a regulatory text providing for an increase in the means necessary for the exercise of religions in a satisfactory manner.

4.5 Labour Law Still Absent in Prison

On 14th of June 2013, the Constitutional Council, to which a question of employment in prison had been referred for a priority preliminary ruling on constitutionality (QPC), found that the Labour regime applied to prisoners was in accordance with our constitutional order, considering in particular that the absence of an employment contract for prisoners exercising a job in prison did not deprive them of their fundamental rights and liberties¹²⁷.

On the same day, the *Contrôleur Général des Lieux de Privation de Liberté* raised the question "of the compatibility of the organisation of work in prison with the most basic social justice".

¹²⁵ Journal Officiel of 17th April 2011, text 13 out of 30, NOR CPLX1110094V.

¹²⁶ Cf. section 8 below.

¹²⁷ Ruling (Décision) no. 2013-320/321 QPC of 14th June 2013.

Admittedly, the specific characteristics of imprisonment mean that the application of ordinary law has to be adapted, with regard for example to labour disputes and employee representation. However, the only exceptions to ordinary Labour rules should be exclusively based upon preserving the purpose of penal institutions

Thus, ignorance of the rules of ordinary law, with regard to hygiene and safety, labour relations and length of working hours, cannot be justified by any principle of sentence enforcement. The inspectors have nonetheless ascertained violation of these rules in many of the institutions inspected: persons working at night in their cells, “assistants” assigned to general services without the benefit of a weekly day of rest, a female prisoner refused admission to a workshop on the grounds that she was pregnant, toxic products handled without the proper equipment, virtual nonexistence of labour inspections, absence of daily sick pay in case of illness, uncertainty of compensation in case of industrial accident etc.

These blatant and unjustified infringements of Labour rules need to be examined in the light of the Prisons Act: article 32 of the latter law specifies the rules to be applied with regard to the calculation of pay – minimum index-linked value, according to the employment regime –; for its part, article 33 mentions the drawing up of an “instrument of engagement”, “signed by the head of the institution and the prisoner, [which] sets out the latter’s professional rights and obligations as well as the working conditions and pay. In particular it specifies the terms according to which, under conditions appropriate to their situation and notwithstanding the absence of an employment contract, the prisoner has the benefit of the provisions concerning integration through work provided for under articles L. 5132-1 to L. 5132-17 of the Labour Code (*Code du travail*)”.

Once again, it is regrettable to ascertain an imbalance in the consequences of failure to apply these two articles: in reality, the rules concerning calculation of wages and integration through work are not properly applied – in particular in terms of wages and length of working hours – without any consequences for the head of the institution who is “the employer”; on the other hand, any breach of duty on the part of a prisoner can lead to their “dismissal from employment”, without the *inter partes* hearing provided for under article 24 of the Act of 12th of April 2000 concerning the rights of citizens in their relations with the administrations.

The law needs, on the one hand, to clearly set out the role of work in prison in terms of preparation for integration and rehabilitation; on the other hand, to set more extensive rules in terms of labour relations, in particular with regard to the breaking off of these relations and pay; and, finally, to fix the general framework for the rules of safety and protection of workers in prison. Moreover, the rules set out under articles 32 and 33 of the said Act need to be applied by both parties – “employer” and “employee” – subject to sanctions for the commission of breaches, regardless of the party that commits them.

4.6 Professional Training, Experiment without Assessment

Two “pilot regions”, Aquitaine and Pays de la Loire, are involved in professional training schemes among the prison population. According to the terms of article 9 of the Prisons Act, the trial period should last for three years “as from 1st January following the publication of this Act” and a report is to be sent by the Government to Parliament concerning the implementation of this experiment six months before the end of the planned period.

The *Contrôle Général* recommends that conclusions should be publicly drawn from the two experiments undertaken and draws attention to the issues of equal access to training, which are raised by possible decentralisation of funds for the professional training of prisoners.

4.7 Teaching and Access to the Internet

The fight against illiteracy is indeed the major axis of teaching in prison, with the development of French language learning schemes (FFL) for foreign language-speaking prisoners.

The inspectors have often ascertained a shortage of teachers. As a result, other disciplines are little taught or entirely neglected, in particular higher education and access to university courses.

Moreover, during school holidays, unless teachers offer to come on a voluntary basis, no teaching is provided other than on a voluntary basis, except in situations noted by the inspectors, where the teachers have put an organisation of their holidays in place which avoids allowing an educational desert to exist for long periods.

Introduction of controlled access to the Internet tool in penal institutions would enable true progress in education in the prison environment, as mentioned above¹²⁸, in particular in order to develop access to higher education for prisoners serving long sentences.

4.8 Assistance for Persons without Adequate Resources, the Limits of the System

Pursuant to the terms of article 31 of the Prisons Act, the prisons Administration distributed a circular at 17th of May 2013 concerning the fight against poverty in prison. Thus persons having less than 50 euros at their disposal for their basic needs (purchases in prison shop, payment for television etc.) over a precise period (from the months preceding the taking of the decision) are referred to as persons “lacking adequate resources”. Persons meeting these criteria can then receive assistance in several different forms: in kind (clothes, toiletry necessities, correspondence necessities etc.) or in cash (supplied to a personal account or contribution to education costs, administrative measures etc.).

At the time of their visits, the inspectors have noted that, overall, these rules are applied in most cases. However, they denoted differences of interpretation which could go against the intended objective. Thus classification of persons lacking resources is sometimes effected at the beginning of the month, which results in their personal account balance being taken into consideration, for the previous two months rather than from the beginning of the preceding month.

The maximum sum that can be paid into personal accounts appears to be insufficient. One case was brought to the *Contrôleur Général*'s attention in which one person, having received a cash allowance of 20 euros, received a postal order of 30 euros the following month. Their personal account then having reached 50 euros, the person no longer met the criteria enabling them to have the status of person without adequate resources; they therefore had to survive for three months (the month in which they had the benefit of the allowance of 20 euros, the month in which they had received the postal order and the following month) with a sum total of 50 euros, i.e. an average of 16.67 euros per month.

Moreover, the inspectors have ascertained the existence of families in financial situations such that prisoners without adequate resources sometimes send them the sums granted to themselves.

In addition, it is established that the sums paid to prisoners within the framework of home help are sometimes taken into account in order to determine whether or not they qualify for the status of persons without adequate resources. This is contrary to the rules of ordinary law.

¹²⁸ § 3.3.

Finally, it is impossible for a person lacking resources to put any savings together, which could enable them, through saving on costs, to make purchases of more than 50 euros; responsible behaviour of this kind would nonetheless be conducive to a project of rehabilitation.

Situations in which prisoners are in great poverty need to be brought to an end: to this end, the rules for the receipt of minimum social benefits by prisoners need to be revised and a fixed ceiling of resources, excluding family resources, brought into general use for the payment of a considerably increased allowance.

5. Respect for Private Life: many a slip between cup and lip

Through the Prisons Act of 24th of November 2009, the legislature, without drafting an ad hoc chapter, thus included a certain number of provisions in the Act enabling prisoners to enjoy this minimum of private life and privacy.

5.1 Absence of Individual Cells in Remand Prisons

While the principle of placement in individual cells had been included in the Code of Criminal Procedure since 1876 – but was still just as little applied in 2009 –, there was good reason to be pleased that the legislature responsible for the Prisons Act of 24th of November 2009 clearly reasserts this principle¹²⁹ (against the opinion of the government).

The text did not lead to any improvement. Not only was the scope of this obligation already reduced by two of the three exceptions allowed by the Act but, article 100 of this same Act, reproducing the previous approach, instituted a moratorium on individual cell placement in remand prisons “on the grounds that the internal layout of the premises or the number of prisoners present did not enable its application”. In order to mitigate the effects of this restriction, article 100 concluded: “*Convicted persons and, subject to agreement from the judge in charge of the investigation, persons awaiting trial, can request transfer to the closest remand prison enabling placement in an individual cell*”.

The prisons Administration does not, in fact, have any obligation to fulfil all requests and, were it bound thereto, it would be unable to do so.

In view of the regular increase in overcrowding in remand prisons, on the one hand, and, on the other, the still inadequate number of so-called individual cells (between 6 m² and 11 m²) in these same institutions (in addition prison overcrowding has led to “doubling” a proportion of cells designed for a single person, this is the case in the most recently constructed remand prisons in particular). It is not surprising to ascertain that placement in individual cells proves to be a right that is too rarely applied for persons awaiting trial or convicted and serving short sentences; and that, when its application is implemented, it is after a necessarily long period of time: between six and twenty-four months, according to the aforementioned report from the Senate.

Requests for transfer, based on article 100 of the Prisons Act, are rare. This is probably because prisoners are not all informed of their right; presumably it is also attributable to the fact that those who are informed thereof are aware of the numerous difficulties to be faced in order for their request to be granted. Above all, in such scenarios, transfer on the grounds of a request for placement in an individual cell takes place at the expense of the right to move closer to their

¹²⁹ Article 87 of the Prisons Act: “Persons indicted or charged and any defendant placed on remand are placed in individual cells.

When indicted, charged and accused persons are placed in collective cells, the cells shall be suitable for the number of prisoners accommodated therein. The latter prisoners shall be fit for living with other persons. Their security and their dignity shall be ensured.”

family, which is also included in the law (*cf. infra*): indeed the prisoner virtually has to choose between placement in an individual cell and moving further away from their family ties.

In addition, the prisons Administration, as flux manager and guardian of order, tends to give priority, within the framework of easing the congestion of remand prisons, to the transfer of prisoners, who are overly insubordinate, make too many demands or are described as “dangerous”, to other premises. Conversely, prisoners who mediate and calm tensions or who, in the absence of a sufficient number of officially authorised associations and professionals, provide “free” services such as public letter-writer or rights specialist will be maintained for longer in a given institution rather than being transferred in order to have the benefit of placement in an individual cell.

Moreover, although requests for placement in collective cells are possible – they are often mentioned by prison staff in order to explain that placement in individual cells is not a common request among the prison population –¹³⁰ they need to be treated as an exception and not as the rule.

In fact, in remand prisons, the right to placement in individual cells comes up against both prison overcrowding and the lack of individualised space.

5.2 Impossibility of Moving Closer to Families in Reality

Although the Prisons Act acknowledges that the maintenance of family ties constitutes an essential element for ensuring prisoners’ integration and rehabilitation, it also authorises the prisons Administration to more or less strictly control this right.

In order to ensure that the place of imprisonment is not too far away from the family home and to facilitate the maintenance of family ties, and visits from close friends and family in particular, the law provides for different rights for untried prisoners and convicted prisoners. As far as remand prisoners for whom the investigation is finished are concerned, they “can have the benefit of being moved closer to their families” until their trial¹³¹. Whatever their status (untried or convicted), prisoners should be able to have the benefit of the right of maintenance of relations with the members of their family¹³².

The importance of family ties¹³³ is recalled by the law thus: “Family life units and family visiting rooms established within prisons can cater for any prisoner. Any prisoner can have the benefit at their request of at least one quarterly visit in a family life unit or a family visiting room, whose duration is fixed taking the distance of the visitor’s residence from the institution into account. For untried prisoners, this right is exercised subject to agreement from the competent court.

In the circular from the Minister of Justice of 21st of February 2012 concerning the orientation of prisoners in penal institutions, the first criteria of assignment for convicted prisoners is their dangerousness, a “particularly decisive” criterion. The maintenance of family ties is the second criterion, referred to, for its part, as “essential”.

¹³⁰ Moreover, how can the level of importance of this request be assessed as long as prisoners’ rights of expression are not effective?

¹³¹ Article 34 of the Prisons Act.

¹³² Article 35 of the Prisons Act: “The right of prisoners to the maintenance of relations with the members of their family is exercised either by visits that the latter make to them, or, for convicted prisoners and if their criminal situation so permits, by temporary releases from penal institutions. Untried prisoners can be visited by the members of their family or other persons, at least three times per week, and convicted prisoners at least once per week”.

¹³³ Article 36 of the Prisons Act.

Finally, the Code of Criminal Procedure also sets this objective¹³⁴: “With a view to encouraging the maintenance of the family ties of prisoners, the prisons Administration offers the latter, whenever possible, assignment to the nearest prison to their domicile that corresponds to their profile. Only considerations related to the security of persons and property or to the plan of enforcement of the sentence can constitute an obstacle thereto”.

As already recalled by the *Contrôle Général* in its Report for 2012¹³⁵, the geographical location of prisons is often unsatisfactory with regard to their accessibility (low or inexistent) by means of public transport; which constitutes a non-negligible hindrance to visits.

In the same Report, regret was expressed with regard to the small number of family life units (UVF / *unités de vie familiale*) and family visiting rooms¹³⁶; moreover, use thereof is sometimes too restrictive, taking the needs of the prison population into account; even if new institutions henceforth systematically have the benefit of these facilities. It would therefore be appropriate to bring family life units (UVF) and family visiting rooms¹³⁷ into general use, as well as the recent changes to regulations concerning conditions of use of these UVF: possibility of access for prisoners who are untried or have already had the benefit of temporary release, for example.

The material conditions of these visits still prove to be equally unacceptable in many old institutions and institutions of small dimensions: “*shared rooms where families talk to each other in the midst of an indescribable hubbub, with or without screens between the tables; cubicles with large glass-panels, excluding any possibility of privacy; concrete 1 metre-high walls separating the two (“inside” and “outside”) sides of the visiting room. Families are sometimes welcomed in a humane manner, and sometimes not, by prison officers of whom specialised teams have still not been formed*”¹³⁸.

It would be appropriate to improve the conditions of reception of families within prisons.

In remand prisons, the frequency of authorised visits and the duration thereof are minimal, due to the overcrowding of institutions of this kind. Moreover, the opening days of visiting rooms remain, for the most part unsuited to the availabilities of visitors; that is to say few or no visits at the weekend.

However, the increase in the number of family reception centres and the level of services to families provided there by both associations and private managers is to be welcomed. This trend should be continued in order, for example, to ensure that queues of families waiting in the rain are finally brought to an end.

The terms of obtainment of visiting permits and reservation of visiting rooms still prove to be discouraging in certain institutions. Admittedly, the prisons Administration Department has begun to make improvements: online applications for visiting permits for the remand prisons of Nancy, Evreux and Béthune¹³⁹; delegation of management of visiting rooms to private operators.

According to testimonies collected from families, visiting room reservation terminals are often defective and telephone reception is poor (telephone number are engaged, lack of politeness on the part of an anonymous correspondent). The *Contrôle Général* requests that these difficulties be put right.

¹³⁴ Article 717-1 AA of the Code of criminal procedure.

¹³⁵ p. 64.

¹³⁶ In June 2013, there were 33 family visiting rooms shared between 9 institutions and 74 UVFs shared between 23 institutions (site of La Chancellerie).

¹³⁷ Cf. Report of the *Contrôle Général* for 2010, proposal no. 29, p. 295.

¹³⁸ Extracts from the Report for 2012.

¹³⁹ Source: website of the French Ministry of Justice.

5.3 The Possibility of Engaging in Correspondence in a Confidential Manner, Progress Still to Be Confirmed

Without waiting for the Prisons Act to be voted, in his Opinion of 21st of October 2009 “concerning the exercise of the right to correspondence by prisoners”¹⁴⁰, the *Contrôleur Général* had noted a certain number of practices contrary to the private character of letters written and received by prisoners and had issued recommendations for the protection of this confidentiality.

Article 40 of the Prisons Act consolidates and specifies the right to engage in correspondence: “Convicted prisoners and, subject to the absence of opposition thereto on the part of the court, remand prisoners, can engage in written correspondence with any person of their choice. (...) Correspondence exchanged between prisoners and their defence counsel, French and international administrative and judicial authorities, of which the list is fixed by decree (*décret*), and the officially authorised chaplains for the institution, can be neither controlled nor withheld. When the prisons Administration decides to withhold a prisoner’s letters, it notifies the latter of its decision¹⁴¹”.

The *Contrôleur Général* has continually ascertained problems of operation in this field since 2010.

In order to ensure better organisation of the free flow and confidentiality of correspondence in future, including within prisons, the *Contrôleur Général* continues to recommend several measures¹⁴² and stresses the following in particular:

- making distinct letterboxes available in accessible places: for internal letters (applications, SPIP), for external letters, for letters to healthcare workers;
- taking into account of the importance attached by prisoners to applications made by putting in place computerised processing of these applications.

Finally the *Contrôleur Général* takes up the request set out on 4th July 2012 by the Senators who drafted the aforementioned report, that is to say that the prisons Administration should keep a record of correspondence withheld.

At the time of visits the inspectors have been led to note that the computerised processing of applications was progressing, although the weight of habit as well as the difficulty experienced by a part of the prison population in using the computerised terminals, led to continuing widespread use of paper media. In addition, the “response” made to these applications is often simple notification that they have been registered, but not real handling thereof, something which the *Contrôle Général* considers regrettable.

Differentiation of letter boxes according to the addressee is unquestionably a practice that is growing within situations.

5.4 The Right to Telephone, changes remain possible

Article 39 of the Prisons Act devotes six lines¹⁴³ to this right.

¹⁴⁰ Journal Officiel of 28th October 2009.

¹⁴¹ “Within 3 days at the latest” article 57-8-19, Code of Criminal Procedure.

¹⁴² See the CGLPL Opinion of 21st October 2009 on this issue as well as the responses of the Ministry of Justice.

In his Opinion of 10th January 2011 “concerning the use of the telephone in places of deprivation of liberty”¹⁴⁴, the *Contrôleur Général* had made a certain number of recommendations, of which some were taken up by the prisons Administration.

However, in his Report for 2012, the *Contrôleur Général* still noted the improvements required in order to make it possible to guarantee the confidentiality of conversations and increase conditions of access to this right¹⁴⁵.

In addition, and in his Opinion of 26th September 2012 “concerning the implementation of the partial release system”¹⁴⁶, the *Contrôleur Général* pointed out the inexplicable absence of telephone booths or simple “phone points” in independent open prisons.

Mobile phones are present in large numbers in prisons, in an illegal manner, and are themselves sources of trafficking, racketeering and an internal economy which is uncontrolled by the prisons Administration.

At the time of seizures, which are also very sizeable, it can be ascertained from reading the smartcard chips that these telephones are principally used for contact with family and friends and not with the objective of preparing escape plans or continuing acts of crime.

Since dealing in and possession of mobile phones is not prohibited outside of prison, the application of ordinary law inside is a prospect that should not be ruled out. The *Contrôleur Général* therefore regrets that the purchase of mobile phones in prison shops and use thereof (with a security and control device) has neither been planned nor even trialled in prisons.

5.5 Inexplicable Non-Application of Image Rights

Whereas article 41 of the Prisons Act¹⁴⁷ is not open to any interpretation or ambiguity, it turns out that the prisons Administration applies it in its own manner; that is to say, that even if prisoners give their consent for their face to be filmed, “blurring” is almost systematically imposed upon the photographer or film maker.

In his Annual Report for 2011, (section “Concerning Administrative Casualness”¹⁴⁸), the *Contrôleur Général* thus pointed out that “the administration itself can only oppose the broadcasting of a prisoner’s image if it has grounds (which of course have to be explicable and justified) to believe that it will cause difficulties with regard to respect for victims or the interests of the prisoner himself”.

Since that time nothing has changed and the constancy of this strange position raises questions; and all the more so in that the administration appears more inclined than formerly to authorise reporting within institutions.

¹⁴³ “Prisoners have the right to telephone members of their family. They can be authorised to telephone other persons in order to prepare their rehabilitation. In any case, remand prisoners shall obtain authorisation from the court. Access to the telephone can be refused, suspended or withdrawn, on grounds related to the maintenance of proper order and security and the prevention of offences and, with regard to remand prisoners, to the requirements of investigation. Control of telephone communication is carried out in accordance with article 727-1 of the Code of Criminal Procedure.

¹⁴⁴ Journal Officiel of 23rd January 2011.

¹⁴⁵ Cf. section 3 of this report.

¹⁴⁶ Journal Officiel of 23rd October 2012.

¹⁴⁷ “Prisoners shall give their consent in writing to the broadcasting and use of their image or their voice when such broadcasting or use is likely to make it possible for them to be identified. The prisons administration can oppose the broadcasting or use of the image or voice of a convicted prisoner, when such broadcasting or such use is of such a nature as to enable their identification and when this restriction proves necessary to the maintenance of public order, the prevention of offences, and the protection of the rights of victims and those of third parties as well as the rehabilitation of the person concerned. For untried prisoners, the broadcasting and use of their image or of their voice shall be authorised by the court”.

¹⁴⁸ Annual Report four 2011, section 8 “concerning administrative casualness (allegory)”, page 257.

Clarification is called for in accordance with the letter of article 41 of the Prisons Act by means of a circular. Pursuant to this article, any person who wishes to use a prisoner's image shall compulsorily obtain their consent, including when this image was not taken in prison, as long as identification of the prisoner is possible.

5.6 The Confidentiality of Personal Documents Remains Unsatisfactory

Although article 42 of the Prisons Act thus establishes this right to confidentiality: "All prisoners are entitled to the confidentiality of their personal documents. These documents may be entrusted to the registry of the institution which places them at the disposal of the person concerned. Documents mentioning the grounds for the committal of prisoners are compulsorily handed over to the registry on their arrival", through his inspections of institutions the *Contrôleur Général* ascertained the frequent absence of effectiveness of this right.

He was also led to issue an Opinion on 13th June 2013 "concerning the possession of personal documents by prisoners and their access to documents that can be made available for discovery and inspection"¹⁴⁹.

This Opinion of 2013 recommends that, subject to the strictly necessary controls, on the one hand, care should be taken to ensure better respect of the personal character of documents by providing prisoners all of the means, and practical means in particular, to protect the confidentiality thereof¹⁵⁰; and, on the other hand, to take care to truly guarantee free access to the consultation and reproduction of administrative documents as well as the whole of the applicable rules which govern daily life in prison.

More generally, the *Contrôleur Général* recommends an amendment of article 42 of the Prisons Act mentioned above as well as the abrogation of paragraph 2 of article 19-V of the model rules and regulations for prisons.

5.7 Mothers in Prison

Article 38¹⁵¹ of the law provides a succinct response to the delicate question of the quality of the close relationship between imprisoned mothers and their children.

For his part, the *Contrôleur Général* published an Opinion at 8th August 2013, "concerning young children in prison and their imprisoned mothers"¹⁵², including *in fine* three proposals: granting reduced sentencing; allowing the benefit of deferment of sentences for maternity; access to release on parole.

6. Access to *Inter Partes* Procedures and Remedies: Progress to be confirmed

At the time of their visits conducted after the Act, the inspectors noted that there were sometimes difficulties with regard to the principles of *inter partes* procedures and the effectiveness of means of remedy, in particular with regard to disciplinary proceedings and solitary

¹⁴⁹ See the Journal Officiel, 11th July 2013; the Opinion can be consulted on the cgpl.fr website.

¹⁵⁰ E.g.: "all cells should be equipped with a number of small metal lockers corresponding to the number of occupants, locking with a key or a padlock placed at the prisoner's disposal".

¹⁵¹ "A convention between the prison and the French department defines the social support provided for mothers imprisoned with their children and provides for a scheme enabling children to go outside of the institution on a regular basis in order to enable their socialisation".

¹⁵² See Journal Officiel of 3rd September 2013.

confinement and unfavourable individual decisions notified to prisoners. The inspection authorities sometimes have difficulty in accomplishing their duties.

6.1 Disciplinary Proceedings that leave Room for Improvement (on this point see the section devoted to this topic in the Annual Report for 2012¹⁵³)

6.2 Solitary Confinement, a Uniform and Often Inappropriate Solution

Article 92 of the Prisons Act provides for the possibility of placing any prisoner (except minors) under the solitary confinement regime.

The inspectors noted that the *inter partes* proceedings provided for by law, the implementing decree of 23rd December 2010 and the circular of 14th April 2011 were, in almost all cases, complied with.

The solitary confinement regime is in most cases uniform in virtually all prisons: solitary cell placement, exercise and activities carried out alone. Nonetheless, the decree of 23rd of December 2010 encourages heads of institutions to organise, “insofar as possible and according to the prisoner's personality, common activities for persons placed in solitary confinement”. It can only be noted that these provisions are rarely implemented: persons in solitary confinement are often placed in activity rooms and exercise yards on their own. Certain psychologically fragile persons may find these conditions of detention very hard.

Article 92 of the Prisons Act *in fine* provides that prisoners placed under the solitary confinement regime may refer their case as an urgent application to the administrative judge. The inspectors have noted that prisoners were not informed of the existence of these provisions, which are not mentioned in any document. In fact, urgent applications to judges against solitary confinement measures are extremely rare.

The majority of prisoners are placed under the solitary confinement regime at their own request. In most cases, these are persons subject to hostility from the prison population due to the nature of the offence committed (sexual offences), the previously exercised profession (membership of the police) or their psychological frailty (easy prey for the habitual racketeers within prisons). These persons are subject to a more severe detention regime than other prisoners.

The *Contrôle Général* questions the pertinence of placing these fragile persons under the solitary confinement regime. It would probably be preferable to organise prisons differently and accommodate fragile persons in specific wings to which access would be protected. They would then be able to have the benefit of a social life inside this wing, being grouped together in exercise yards and during activities.

In order to attenuate the negative psychological effects of placement in solitary confinement and maintain a minimum of social life, prisoners placed under the solitary confinement regime should be able, according to their personality and dangerousness, to have the benefit of a regime enabling them to come together at the time of activities and exercise.

¹⁵³ P. 129 et seq.

6.3 Satisfactory Application of the Act of 12th April 2000

At the time of their visits, the inspectors ascertained that the provisions of this Act were henceforth applied overall, after a period of uncertainty which lasted for several years.

This applies in particular to decisions of dismissal from employment and training on non-disciplinary grounds, which in most cases are written, justified and notified to the prisoner who can enlist the assistance of a lawyer. Decisions of suspension of visiting permits made against prisoners' friends and family henceforth comply with the *inter partes* principle.

6.4 Numerous but Not Always Effective Inspections

Judges are bound to visit the prisons within their territorial jurisdiction at least once a year (Article 10 of the Act). The inspectors noted that this obligation is very unevenly respected. Before drafting their annual reminder, it is very common for the heads of courts to content themselves with making contact with the manager or managers of prisons within their jurisdiction by telephone. It is extremely rare for written orders or observations to be placed in the register reserved for this purpose following visits by judges.

Article 5 of the Law instituted an assessment board (*conseil d'évaluation*), in charge of "assessing the conditions of operation of the institution and, if necessary, proposing any measures likely to improve them". These assessment boards replace the supervisory committees (*commission de surveillance*).

The inspectors observed that the assessment boards met once a year, never more; the deadline of 30th April each year provided for by the circular of 23rd of January 2012 is not always complied with. It appears that the first assessment boards resulting from the Act of 24th of November 2009, have not yet proven their greater effectiveness as compared to the supervisory committees of the past. The assessment boards appear too similar to the supervisory committees, which showed their ineffectiveness in the past. Furthermore, unlike the latter committees, it appears that many assessment boards have given up making any (even formal) inspections of the institution. The discussions in this regard are even more abstruse.

Giving this new body the means of fulfilling its duties of control remains an objective. The prison population and prisoners' families should be more systematically informed in advance of imminent meetings of this body, so that a greater number of letters setting out claims can be sent in sealed envelopes to the prefect, who is the chair of the assessment board. The members of the board should be able to hold discussions with prisoners in complete confidentiality before, during and after the inspection. Finally, new members could be added to the composition of the assessment board: the presence of elected representatives from internal professional representative organisations is one possible proposal, as is the presence of representatives of prisoners' families.

The *Contrôleur Général des Lieux de Privation de Liberté* has been inspecting prisons for more than five years in application of the Act of 30th of October 2007. His role within prisons was reasserted by article 4 of the Act of 24th of November 2009. 171 prisons were inspected in the period from 1st September 2008 to 1st September 2013. Nine follow-up inspections were conducted in prisons.

At the time of their visits, the inspectors noted that the *Contrôleur Général des Lieux de Privation de Liberté* did not systematically appear on the list of authorities with which exchange of correspondence is not subject to control. This omission in the rules and regulations sometimes leads to infringement of the provisions of article 4 of the Prisons Act

which prohibits any control of correspondence between the prison population and this independent government agency with specific regulatory powers. Similarly, the *Contrôleur Général des Lieux de Privation de Liberté* is not systematically mentioned on the list of bodies exempted from the rule of systematic monitoring of prisoners' telephone communications, even in booklets for new arrivals. Finally, whereas the Annual Report is systematically sent to each institution, it is rare for it to be available in the library.

Under the terms of article 6 of the Prisons Act, a representative of the *Médiateur de la République* independent government agency with specific regulatory powers is appointed within each prison. In the course of the year 2011, the *Défenseur des Droits* ombudsman took over the remit of the *Médiateur de la République*. In 2012, almost 150 representatives of the *Défenseur des Droits* ombudsman were present in 164 prison sites on a regular or case-by-case basis¹⁵⁴.

The inspectors noted that the brochures previously designed by the *Médiateur de la République* for the prison population, were updated (by the *Défenseur des Droits* ombudsman) at the end of the year 2013. The majority of cases referred to representatives of the *Défenseur des Droits* ombudsman are not concerned with difficulties related to prison (many claims are concerned with the loss of personal belongings) but with external disputes with the public services (tax, social security, family allowance office, retirement pensions, residence permit services).

7. Access and Rights in relation to Healthcare: deliberately overlooked?

Access to healthcare for prisoners has been a major concern of the prisons administration since the 1980s. Act no. 94-43 of 18th of January 1994, concerning the provision of healthcare to prisoners thus constituted a major step forward in the provision of healthcare.

Its implementation, which was fully completed at the end of the 2000s, made it possible to highlight a number of shortcomings¹⁵⁵, access to dental treatment and replacement therapies are two examples.

These were partly corrected by Act no. 2002-303 of 4th March 2002, however the difficulty of application of certain articles has still not been resolved, such as the incompatibility of maintenance in prison with medical imperatives.

In 2007, for its part, the Prisons Act Planning Select Committee (*Comité d'orientation restreint*) identified 14 points¹⁵⁶, which it considered essential in the provision of healthcare to prisoners.

The Prisons Act of 2009 includes articles of principle concerning prisoners' health and did not take up any of the Planning Select Committee's (COR) recommendations. Moreover, section 7 of the Act, which concerns health, only deals with provision of treatment to persons

¹⁵⁴ Summary Report (Rapport d'information) no. 629 (2011-2012) presented by Mr Jean-René LECERF and Mrs Nicole BORVO COHEN-SEAT, *op. cit.*

¹⁵⁵ Annual Report for 2012 of the *Contrôleur Général des lieux de privation de liberté*. Access to Healthcare – p. 223.

¹⁵⁶ Priority and place of treatment in prison life; choice of doctor; continuation of treatment begun outside; right to termination of pregnancy; treatment providing comfort or aesthetic benefits; treatment for which the patient is financially responsible; role of the MISP Public Health Medical Inspector

(Médecin inspecteur de santé publique); treatment without consent; disability and stays in prison; provision of information to the medical profession; medical secrecy: access to medical records; annual examination of persons over 75 years of age; prevention of suicide risks.

suffering from psychiatric disorders and the prevention of psychiatric disorders in two instances, under article 46 paragraphs 4 and 5, whereas the requirements of psychiatric care have become a vital question in French prisons.

In fact it has not contributed to any notable advance with regard to health issues in prison.

The ambition of bringing the rights of imprisoned patients into line with those of ordinary patients is still in progress (article 46 paragraph 2 of the Prisons Act).

7.1 Access to Healthcare: a Fundamental Right whose Implementation is often still disrupted

Lateness and omissions in the passing on of applications for treatment and delays in taking prisoners to health services are common. Delays in this “physical” access to healthcare can be explained in the first place by the practical and regulatory slowness inherent to the prison environment and connected to the necessary security measures. Thus, prisoners are rarely informed of the dates of their appointments within the medical unit and, for security reasons, are never informed of dates of removal from prison for medical consultations.

They may thus have to choose between a visit and an appointment with the doctor, a long awaited meeting with the prison rehabilitation and probation counsellor or dental treatment. This will then be a difficult choice. Similarly, the waiting times for appointments, which are often long, mean that symptoms disappear and anxieties become calmed, making them unnecessary. On the fringes, this is also linked to the behaviours of certain members of prison staff who may delay the passing on of patients’ applications when they are in dispute with the prisoners, their managers, or the doctors or nurses.

However, it has to be noted that, during the daytime, this does not apply to cases considered “urgent” or “serious”. In spite of the difficulties inherent to surgeries encountered throughout the territory of France, the inspectors have thus not noted any delay leading to loss of chances in emergency situations.

Outside of opening times, in particular at night, medical actions are set in motion by prison staff. They systematically call the CRRA call reception and control centre (*centre de réception et de régulation des appels*) of the SAMU Emergency Medical Services (*service d'aide médical d'urgence*)

At night, prisoners encounter considerable difficulties in making their calls heard. It would be appropriate to put this difficulty right by any useful means.

On two occasions, in one institution in the South of France, the neighbours in cells near to a person in an emergency situation, who was unable to attract the attention of the night warders, called the fire brigade directly on their mobile phones. The latter arrived at the door of the institution, thus informing the staff that there was an emergency within the institution.¹⁵⁷

¹⁵⁷ A protocol signed by the managing director of the regional health agency, the director of the interregional department of prison services, the head of the prison and the head of the health institution concerned defines the conditions under which actions are conducted by health professionals called to act in urgent situations in prisons, in order to guarantee access to emergency treatment to prisoners under conditions equivalent to those of which the population as a whole has the benefit.

7.2 The Need for Updating of the Protocols

The third version of the methodological guide¹⁵⁸ recommends updating of the protocols binding prisons and health institutions in order to standardise¹⁵⁹ provision of healthcare, and continuity of treatment in particular, which needs to prioritise support from local facilities.

This recommendation, which calls upon SAMU emergency medical services control, does not satisfy the prisons administration which, for reasons of security, wants doctors to come to the patient's bedside.

The inspectors thus frequently encounter prisons which had been backed up, for a certain length of time, by a local association providing medical treatment¹⁶⁰ which then withdrew, either due to lateness in payment, or to excessive delays before medical action (time required for passing through security bars, lateness in accompaniment by the night graded officer etc.), and usually for both of these reasons.

In a sample group of prisons inspected⁵⁶, only one doctor was noted for the institution for night and day emergency duties. In fifteen institutions, the on-call obligation is only fulfilled by a doctor of the institution during the week and in the daytime, in all other cases the *Centre 15* urgent medical aid service call centre is in charge of emergencies, in most cases (but not always) after having assessed the patient's state of health by telephone with the latter.

In addition revision of the procedures should make it possible to readjust staffing levels of medical teams, which suffer from uneven distribution according to the territory.

Forty-eight protocols entered into between the administratively attached hospitals and prisons were analysed in the course of inspections¹⁶¹ between January 2011 and August 2013; twenty were signed between 1994 and 1996, thirteen in the course of the 2000s, fifteen have been updated since 2010.

7.3 Access to Specific Treatments, a difficulty shared with the Outside

Certain specific treatments are not or are poorly provided in prison: dental treatment, ophthalmic care, physiotherapy etc. Matters relating to this question are often referred to the *Contrôleur Général* by prisoners and their families.

Out of the sixty-one institutions inspected, two did not make use of the services of any dentistry practitioner. In eighteen institutions the dentistry surgery time was of between two half-days per month and six half-days per month, in twenty-three institutions it was between two and five half-days per week.

These situations lead certain persons deprived of liberty to also be deprived of food, or to be forced, as best they can, to make themselves a gruel, which can be easily ingested without teeth.

Only half of these institutions provided physiotherapy treatment.

Article 46 of the Prisons Act specifies that “quality and continuity of health care are guaranteed to prisoners under conditions equivalent to those enjoyed by the population as a whole”.

¹⁵⁸ Interministerial circular No. DGOS/DSR/DGS/DGCS/DSS/DAP/DPJJ/2012/373 of 30th October 2012.

¹⁵⁹ 72% had been revised at the end of 2011 according to the report of the Senate on the application of the Prisons Act no. 629.

¹⁶⁰ For example SOS-médecins.

¹⁶¹ Sixty-one institutions.

Due to medical demographics, in certain regions the general population encounters difficulties for common treatments and has to travel, sometimes long distances, for specific healthcare. In such cases prisoners are overlooked by the healthcare system. In the sixty-one institutions inspected, only eighteen institutions were able to offer specialised consultations on-site (in most cases dermatological consultations).

The law needs to ensure equality for prisoners, in particular for certain specialised treatments, notably those to which access for the poorest persons is already difficult outside of prisons. It would thus be appropriate to take poor conditions of detention into account, which worsen the prisoner's state of health, and social difficulties before imprisonment, to which lateness in access to treatment is attributable.

7.4 Limited Rights for Imprisoned Patients

Although the principle of freedom to choose one's doctor is valid (Medical Code of Professional Ethics [*code de déontologie médicale*]¹⁶², Social Security Code [*code de la sécurité sociale*]), it does not apply to prisoners since they are obliged to use the medical unit doctors both for specialist and general consultations, as stated under article D.365 of the CPP¹⁶³.

Consent to treatment is not requested at the time of examination of new arrivals and screening for tuberculosis. This is not the case for the pre-release consultation, which is only offered (article 53 of the Prisons Act).

Article D 364 of the Code of Criminal Procedure provides that "if a prisoner engages in an extended hunger strike, they cannot be given medical treatment without their consent, except when their state of health seriously deteriorates and only by decision and under medical supervision". This article is not in line with the Tokyo protocol¹⁶⁴ (1974).

At time of removal from prison for consultations and explorations, the head of the institution has to decide the level of the escort in writing according to statutorily defined criteria¹⁶⁵. This liberty of assessment is rarely applied. Thus the presence of the prison escort during the consultation leads to violation of medical secrecy by breaking the one-to-one conference. Similarly, the wearing of leg-cuffs by the patient during clinical examinations, in bed or sitting down, has led to the condemnation of France for violation of article 3 by the ECtHR¹⁶⁶. A strict interpretation of article 803 of the CPP¹⁶⁷ needs to be applied.

The fundamental rights of hospitalised persons are set out in the Hospitalised Patients' Charter (*Charte de la personne hospitalisée*). Chapter 7 of the latter specifies that: "persons in police custody and hospitalised prisoners have the same rights as other hospitalised patients within the limits provided for by law¹⁶⁸ with regard, in particular, to communications with the outside and

¹⁶² Article 6 of the medical code of professional ethics: "the doctor shall respect the right of every person to freely choose their doctor" (article R. 4127-6 of the Public Health Code).

¹⁶³ "Prisoners can only be examined and treated by a doctor of their choice, except in case of a decision by the regional director of the Department of prison services with territorial jurisdiction. They shall then take financial responsibility for the costs incumbent upon them for this treatment".

¹⁶⁴ As far as the specific case of hunger strikes is concerned, the World Medical Association's Declaration of Helsinki and Declaration of Tokyo of the World Assembly of Prison Medicine specify that if prisoners are capable of forming conscious and rational judgements, hunger strikers shall not be artificially fed.

¹⁶⁵ Circular concerning the organisation of prison escorts for prisoners going to medical consultations, AP 2004-07 CAB/18-11-2004 NOR: JUSK0440155C.

¹⁶⁶ Decision of 23rd November 2003.

¹⁶⁷ "Nobody can be subject to the wearing of handcuffs or leg-cuffs except if they are considered to be dangerous for other people or for themselves, or likely to run away. In these two scenarios, all useful measures shall be taken, under conditions compatible with security requirements, in order to avoid a handcuffed or leg-cuffed person being photographed or subject to audio-visual recording."

¹⁶⁸ The special terms of R 112-30 to R112-33 of the CSP specify that prisoners cannot come and go as they please within the hospital.

the possibility of moving around inside the institution. Where a prisoner or person in police custody requests to leave the healthcare institution, measures are taken for them to be placed at the disposal of the authorities responsible for them”.

The hospital has to inform the prisons administration, and solely the latter, of any important event arising in the course of prisoner’s stay. Thus the persons to be notified cannot be directly informed of the state of health of their family member. Similarly, trusted legal representatives appointed by prisoners have to have (article 49) a visiting permit authorising them to confer out of the presence of prison staff.

The means of remedy open to prisoners with regard to health care treatment (access and quality) are little-known. They can make an application to the doctor responsible for them in the course of their hospitalisation, to the head of the institution or to the committee for relations between public health institutions and users thereof at the hospital. In last resort they can bring a liability action (sent to the director of the hospital beforehand). Prisoners need to be better informed of their means of remedy.

7.5 The Special Situation of Secure Rooms and UHSI

The Minister of Justice appoints managerial and supervisory staff to health institutions responsible for catering for prisoners, as well as administrative, social, educational, and technical staff, who come under the prisons administration and remain subject to their special status.

The competencies of regional health agencies with regard to the objectives and funding of health care activities in prisons are jointly exercised by the Minister of Justice and the Minister in charge of Health.

Security measures in places of hospitalisation, secure rooms for very short periods of hospitalisation and UHSI Interregional Secure Hospital Unit rooms, contribute to the existence of degrading treatment of hospitalised persons.

In one hospital in the North-East of France, the secure rooms have been entirely refitted according to current norms¹⁶⁹, however, the police are in the habit of permanently leaving ventral belts and other instruments of physical restraint for legs on the beds. During the inspection of these rooms, the inspectors were able to talk with a patient... under physical restraint.

In the UHSI of Lyon, on the other hand, the medical staff have obtained permission from the prison officers, for patients hospitalised for long periods and according to their profile of dangerousness, to wander about for a few hours a week in order to make up for the lack of an exercise yard.

On the other hand, most hospitals apply paragraph 8 of the Charter, which provides that “the health institution guarantees the confidentiality of information that it holds on hospitalised persons (medical, civil status, administrative and financial information etc.).”

7.6 Poorly kept Medical Secrecy

Article 45 of the Prisons Act imposes respect of medical secrecy upon the prisons administration. This secrecy is not only an obligation incumbent upon professionals but also a right of patients¹⁷⁰. Article L 1110-4 of the Public Health Code provides that “any person treated by a professional, an

¹⁶⁹ Circular DAP/DHOS/DGPN/DGGN of 13th of March 2006 concerning the fitting out and creation of secure rooms.

¹⁷⁰ Act no. 2002-303 of 4th March 2002 concerning the rights of patients and the quality of the health system.

institution, a health network or any other body contributing to prevention and treatment has the right to respect of their private life and to secrecy of information concerning them”.

An interministerial circular¹⁷¹ of 21st June 2012 on the sharing of information specifies the framework and limits for the pooling of operational information between health professionals and those of the prisons administration (AP) and of the PJJ. This circular, which specifies the terms of exchange of information, in the interests of imprisoned persons, has had the consequence of discouraging doctors from taking part in meetings of the single multidisciplinary committee (CPU). In 24 institutions inspected five medical teams did not participate in the CPU.

Prison conditions: overcrowding and the resulting lack of privacy and absence of private places, “signposted” consultations etc. constitute obstacles to respect for medical secrecy. The French National AIDS Council or CNS (*Conseil national du sida*)¹⁷² has thus been able to call into question the responsibility of health professionals in the violation of medical secrecy.

No progress has been made in the establishment of a common electronic medical file¹⁷³. Although some see the latter as a step forward in continuity of treatment for patients at the time of transfer from one prison another, others may think that consultation thereof will not be solely reserved to the medical profession. Similarly, the application of telemedicine¹⁷⁴, may give rise to fears of deterioration of human relations between patients and medical personnel.

More generally, the presence is to be noted among prisoners of feelings of disappointment and frustration with regard to relations between themselves and doctors and nurses. Particular tension arises when prisoners endanger their own health and bodies through acts of self-harm in protest against court decisions or internal decisions, in order for example to obtain a change of cell.

8. The Principle of Sentencing according to Defendants’ Individual Requirements: implementation thereof weakened by the prisons administration

Within the framework of the elaboration of the Prisons Act, the planning select committee (COR) envisaged the adaptation of custodial sentences to the individual requirements of offenders as a will on the part of “*the prisons administration to fight, on the one hand, against the harmful effects of the shortest prison sentences, implemented without regard to the convicted person’s family and social situation and, on the other hand, to make longer-term sentences part of a rehabilitation programme enabling real preparation for release.*”

8.1 Sentence Enforcement Programmes remain to be defined

Sentence Enforcement Programmes (PEP/*parcours d’exécution de la peine*) were established by paragraph 1 of article 89 of the Prisons Act of 24th of November 2009 which amended article 717-1 of the Code of Criminal Procedure. Prisoners’ PEPs should, in principle, set out “*the whole of the*

¹⁷¹ Interministerial circular no. DGS/MC1/DGOS/R4/DAP/DPJJ/2012/94 of 21st of June 2012.

¹⁷² Avis et rapport sur les situations médicales sans absolue confidentialité dans l’univers carcéral [“*Opinion and report on medical situations lacking complete confidentiality in the prison environment*”] - 12th January 1993.

¹⁷³ Measure 10 action 2 of the Plan d’actions stratégique 2010-2014 “politique de santé pour les personnes sous-main de justice”

¹⁷⁴ Measure 10 action 3: “Mettre en place un plan de développement de la télémédecine”.

*actions whose implementation is planned in the course of their imprisonment in order to promote their rehabilitation*¹⁷⁵. They form an extension of the “sentence enforcement projects” (*projet d’exécution de peine*) trialled at the end of the 1990s in ten prisons¹⁷⁶.

Generally speaking, penal institutions for convicted prisoners have put PEPs in place. Conversely, the majority of remand prisons have not put such programs in place, due to the shortness of imprisonment in these types of institution and the absence of recruitment of psychologists dedicated to the PEP. Yet, the provisions of article 89 of the Prisons Act state that PEPs are elaborated “for convicted prisoners” without making any distinctions between the various different types of institution. Moreover, a few remand prisons have succeeded in putting a PEP in place which fits into the long-term supervision of prisoners.

According to article 89 of the Prisons Act, “*from the time of their reception in the prison and after a multidisciplinary period of observation, a personality assessment is made of prisoners*”. This first phase of imprisonment needs to make it possible to give impetus to commitment to the PDP. The PEP psychologist is in most cases at the heart of the scheme. Thus in one of the institutions inspected, the PEP psychologist meets all new arrivals, conducts a fifty-minute interview and completes a standard form in order to summarise the prisoner’s situation. In others, either a PEP platform is organised by the PEP psychologist, the local employment manager and the local professional training manager, or collective meetings are organised with the professionals and the person concerned in order to elaborate a project.

*At the time of changes of assignment or transfers of prisoners, the *Contrôleur Général* has noted that the PEP elements elaborated in the previous institution are not systematically taken up again during the reception phase.*

The actors and staff specifically in charge of PEP need to support the steps undertaken by the person and guide them in their choices in order to elaborate a project with a view to rehabilitation. The factors taken into account in the assessment and guidance of the person, throughout the course of their imprisonment, vary from one institution to another: length of the sentence, factors connected with the health of the person concerned, financial resources, behaviour in prison and assessments made by staff concerning the prisoner in question, existence of a project on release etc. This diversity harms the clarity of the sentence enforcement programme execution procedure.

The observational data on the person are collected in particular in the electronic liaison register (CEL)¹⁷⁷ or in the computerised prisoner management software application (GIDE). The CEL is used appropriately overall, in particular in the drafting and passing on of summaries to the various different services and actors. In the observation of the behaviour of prisoners, carried out on a daily basis, negative elements are reported, those with positive connotations much less frequently (except for new arrivals).

Training of staff in the use of this working tool (CEL), with regard to the recording of behavioural observations, should enable their content to be made more balanced.

Article 89 of the Prisons Act provides that PEP should be worked out “*in cooperation*” with the convicted prisoners. The programme is established and the project studied for the person in a

¹⁷⁵ Article D.88. of the CPP.

¹⁷⁶ The experiments made it possible to establish three objectives: “giving more meaning to custodial sentences”, “improving judicial and administrative adaptation of sentences to the requirements of defendants” and “defining terms of supervision and observation enabling better knowledge of the prisoner”. Source: DAP circular of 21st July 2000 concerning the bringing into general use of sentence enforcement projects for penal institutions for convicted prisoners.

¹⁷⁷ On the use of the CEL, cf. CGLPL, Annual Report for 2010, p.18.

CPU meeting or by the CPU meeting as a COPEP¹⁷⁸. These committees generally meet at least once a month, but it was noted in one institution of the DISP of Strasbourg that they may meet every week.

The elaboration of the project “*in cooperation*” with the prisoner is subject to very different interpretations. In certain institutions, prisoners are asked to appear before the COPEP. In one long-term detention centre visited, the person is asked to make an annual assessment by means of a questionnaire fifteen days before their appearance before the CPU. The directions of the programme are then presented to them; “a kind of contract” between the person and the administration. In another long-term detention centre, prisoners present their projects for between thirty and forty-five minutes and end up with objectives and a schedule for meeting them. On their next appearance, they make an assessment of the objectives that had been set. Elsewhere, the presence of prisoners at the time of committee meetings ruling on PEPs is not required; only a summary is distributed to them. Nevertheless, in certain institutions, it is notified to the prisoners, who can add their remarks.

Appearance of prisoners before the PEP committee should be the rule.

The elaboration of the actual content of the PEP and the conditions of the latter are not straightforward for institutions, in view of the regulatory vagueness which prevails with regard to the concept in itself. This is manifested in remarks and recommendations made by the CPU which are sometimes vague and do not constitute objectives properly speaking.

Re-examination of the PEP by the PEP committee or the CPU enables proper fulfilment and follow-up of the programme and the objectives fixed. Yet, in one of the long-term detention centres visited, the inspectors noted that none of the situations of prisoners examined between 2007 and 2010, with one exception, had been reviewed. In the vast majority of cases, the situations of persons registered in the PEP are only re-examined once a year¹⁷⁹, which can prove very insufficient for persons close to release or likely to have the benefit of reduced sentencing. Although this rhythm appears suitable to the situation of persons serving long sentences, the latter should be able to request interviews with the professionals of the PEP scheme at any time, in order to have the benefit of support for projects that they wish to initiate.

In certain institutions, the PEP is only implemented according to requests on the part of prisoners and therefore only concerns a limited part of the prison population.

The combination of these practices, systematic study over time, and requests on the part of the administration and the persons concerned, is probably the most appropriate solution.

At the present time, the PEP scheme still concerns a limited number of prisoners. Thus, in one of the largest institutions of the West of France, the inspectors noted that only about 20 prisoners were followed by the PEP psychologist whereas 172 were registered on the programme at the time of the inspection. Similarly, in a prison of the South of France, the file of a single convicted prisoner accommodated in the remand prison was examined at the time of the PEP follow-up CPU meeting.

This situation is to a large extent attributable to problems linked to the human resources allocated to PEP, this factor appearing to be a major obstacle to the effectiveness of the provisions of article 89 of the Prisons Act. Indeed, in most cases, the burden of the scheme rests solely upon the PEP psychologist, the absence or departure of the latter leading de facto to suspension of the scheme.

¹⁷⁸ PEP Committee.

¹⁷⁹ CGLPL, *Annual Report for 2010*, p.18.

The principles of observation and cooperation are disproportionately weighted in favour of the former, enabling the prison services to have an overall view of the development of the persons for which they are responsible, but not enabling prisoners to be really involved in their sentence execution programs. The latter are implemented in a fragmentary manner and experienced by the professionals, “*as an element added to the constraints*”. In the same manner, certain prisoners perceive the PEP to be an additional instrument of control and not a support tool.

The *Contrôleur Général* recommends that precise, enforceable rules be instituted for the elaboration of PEPs and for following them up over time, including in case of transfer between institutions. He also recommends that the human resources essential to the success of this kind of follow-up tool should be put in place within institutions.

8.2 Differentiated Regimes: vague criteria and widely differing implementation

In the 1980s, in order to offset the increase in the length of sentences by greater autonomy in prison, the opening of cell doors was instituted within penal institutions for convicted prisoners (long-term detention centres and long-stay prisons). In 2002, some of these institutions trialled the putting in place of a “closed doors” regime, which was extended to several other sites, until the distribution of a note from the prisons administration on 20th of July 2009 endorsing existing practices and planning to provide them with a better framework “*in such a manner that they shall be a practical illustration of what the law will provide*”.

Shortly before this, following his visit to France between 21st and 23rd of May 2008, the Commissioner for Human Rights of the Council of Europe recommended that, within the framework of the reform of the Prisons Act in course, “*the differentiated regimes should not be legalised*.”

However, the second paragraph of article 89 of the Prisons Act legalises the practice of applying different prison regimes to prisoners “*taking their personality, health, dangerousness and efforts with regard to social rehabilitation into account*”.

The lack of precision of these criteria has been emphasised by the *Contrôleur Général* on numerous occasions. Thus, from his first public recommendations, concerning the inspection of the remand prison of Villefranche-sur-Saône¹⁸⁰, the *Contrôleur Général* noted the risk of “*pure and simple segregation between the various different buildings and stages of the institution, between prisoners likely to change in the course of their imprisonment and those marginalised, often in an irreversible manner, throughout the time of their imprisonment, in a passageway considered difficult both for them and for prison staff*.”

In the first place, it needs to be emphasised that these criteria in no way result from those prevailing in the establishment of different regimes as recommended by the Council of Europe through the European Prison Rules. Indeed, rule 51.4 provides that “*each prisoner is [...] subject to a security regime corresponding to the identified level of risk*”. It is a question of assessing, on the one hand, the risk that the person presents to the community in case of escape and, on the other hand, the probability of their attempting to escape alone or with the help of outside accomplices. Thus defined, these criteria appear easily identifiable as compared to the aforementioned criteria established by the Prisons Act. The absence of details and definitions of notions such as personality and dangerousness leaves room for subjectivity and the risk of arbitrary measures,

¹⁸⁰ Recommendation of 24th December 2008 concerning the aforementioned remand prison of Villefranche-sur-Saône.

very often experienced as such by persons deprived of liberty; certain decisions of assignment to closed regimes may, in addition, resemble undeclared intra-disciplinary measures¹⁸¹.

The criteria selected for assignment to closed regimes vary from one institution to another. In one institution of the DISP of Toulouse, the factors taken into account for initial assignment to a special regime are the capacity to be autonomous and put up with collective life, previous disciplinary history, psychological stability, criminal profile and the wishes of the person concerned. In another institution of the DISP of Lyon, the draft rules and regulations mention the fact that “*any disciplinary incident and any disturbance of order on the floor can lead to being sent down immediately to a closed floor*”, despite the fact that the DAP note of 20 July 2009 specifies that “*it goes without saying that differentiation of regimes cannot in any case be used in response to behaviour likely to constitute a disciplinary fault*” and also that “*the principle of automatic assignment to the controlled (the most restrictive) regime on release from the punishment wing shall be prohibited*”. Assignment to a “closed doors” regime following a stay in the punishment wing has nonetheless been noted in several prisons. In one prison of the DISP of Lille, the wing to which persons subject to the “closed” regime are assigned is referred to by prisoners as being the “wing for punished prisoners”. Finally, certain rules and regulations do not mention the conditions of assignment to the different regimes, contrary to the aforementioned note which provides that prisoners shall “*have the benefit of information on the overall system of supervision implemented in the prison and the objectives and terms thereof*”.

In the second place, it should be noted that this lack of precision of the assignment criteria results, on the one hand, from great heterogeneity of practices and, on the other hand, exclusion of persons without real means of remedy.

The variety of different applications of the provisions of article 89 of the Prisons Act can equally be seen in the names of the various different regimes, their number and the objectives attributed to them.

At the time of inspections, the inspectors noted that institutions which practice differentiation of regimes apply it in a variable manner with regard to the number thereof (between two and four different regimes, and sometimes more) as well as in their names. Thus, the “open doors” regime may be designated as the open regime, traditional regime, ordinary regime, responsibility regime or trust regime or even as the improved regime. The “closed doors” regime, for its part, is in most cases called the closed or controlled regime but may also be referred to as the observation regime or progressive regime as well as, as was noted in one institution in the North of France, the normal regime. The intermediate stage, referred to in most institutions as the semi-open regime, which in most cases involves the opening of cell doors on a half-day basis, is also referred to as the common regime, improved regime or intermediate regime as well as the trust regime. Other institutions compartmentalise prisoners according to their activities or their fragility. This is the case for the “unoccupied” and “protected” regimes etc.

This terminology highlights the considerable disparity in the implementation of these regimes and the relative confusion resulting therefrom between remand prisons, where the closing of doors remains the rule, and penal institutions for convicted prisoners, for which article 717-2 nonetheless provides that prisoners in the latter are subject “*to night-time solitary confinement only, after having undergone a period of in-cell observation if necessary*”.

Yet, and this is regrettable, the model rules and regulations for prisons, created by decree no. 2013-368 of 30th April 2013, introduce this standardisation of limitation of movements in prison, stressing that prisoners gain access to visiting room areas, to the health unit, to activity areas, to showers, to the telephone and also to the exercise yard in accordance with fixed times or

¹⁸¹ On this point, see in particular 2.2.1 of section “Discipline and Sanctions in Places of Deprivation of Liberty” of the Annual Report four 2012 of the Contrôleur Général, entitled “Organised Exclusion within “Differentiated Regimes””, p. 125 (published by Dalloz).

on request; these movements having to be accompanied by the prison staff. Furthermore, they have to eat their meals alone in their cells. This regime can however be adjusted, in particular by giving access to “*opening of cell doors during a part of the day*” and to free “*movement of the person inside their accommodation unit during the hours of opening of cell doors*”, while taking into account “*the personality, health and dangerousness of the prisoner [...] to support the latter’s efforts with regard to social rehabilitation by greater autonomy*”. This provision brings the regime of long-term detention centres dangerously close to that of remand prisons by making the opening of doors an “adjustment”, dependent upon assessment of the person’s behaviour by the administration, contrary to the objectives assigned to long-term detention centres which, in accordance with article D .72 of the Code of Criminal Procedure, “*comprise a regime principally oriented towards social rehabilitation and, if necessary, preparation of convicted prisoners for release*”.

Moreover, the managements of the institutions have chosen to assign buildings or different wings or even floors to the implementation of these regimes. Thus, the number of places devoted to the strictest regime varies from one prison to the next, ranging from 2% to more than 30%¹⁸². This difference, which is considerable, can but raise questions with regard to the criteria prevailing in the establishment of differentiated regimes. In addition, this steadiness in the numbers of prisoners assigned to the cells is not without posing difficulties with regard to implementation of the tailoring of regimes to prisoners’ needs. In the course of visits, the inspectors noted the existence of “waiting lists” in numerous institutions in order to move from the closed regime to the open regime, and vice versa, due to lack of available places. By setting up these sectors, the institutions also define *a priori* the number of prisoners whose behaviour should be considered incompatible with traditional open-door prison regimes.

The note of 20th July 2009 states that assignment decisions come under the authority of the head of the institution “*after the compulsory issuing of an opinion by the multidisciplinary committee*” and specifies that assignment to the controlled regime “*can only be decided for a set period*” and that “*the prisoner’s situation shall be re-examined at regular intervals*”. Yet, this periodic and joint character of decision-making is not implemented in numerous penal institutions for convicted prisoners.

Furthermore, it was noted that “closed door” cells were very often located on the ground floor (prisoners going up to different floors and regimes according to their “good” behaviour). Yet, this raises difficulties when the latter also accommodates cells for persons with restricted mobility (PMR/*personnes à mobilité réduite*)¹⁸³. Indeed, the persons concerned may find themselves *de facto* under a “closed doors” regime and nevertheless remain isolated when they are granted the option of moving freely about their wing, contrary to the supposed objective of the “open” regime, aimed at involving the prisoner “*in a process of socialisation, the principal features of which are autonomy and collective life*”¹⁸⁴.

Although article 89 of the Prisons Act provides that “*the placement of prisoners under a more severe prison regime cannot infringe the rights mentioned under article 22 of Prisons Act no. 2009-1436 of 24th of November 2009*”¹⁸⁵, itself worded in a vague manner mentioning respect for “rights” and the

¹⁸² From the examination of sixteen reports concerning long-term detention centres and “long-term detention centre” wings, it emerges that, at the time of the inspections, the proportion of places dedicated to the closed regime was under 10% in the case of six of the latter institutions, five had levels of between 10 and 20%, two of between 20 and 30% and three institutions had levels of over 30%. The highest level came to 37.56% of the places in a long-term detention centre wing in a prison of the DISP of Lille.

¹⁸³ See in particular the section “Deprivation of Liberty and Access to Health Care” in the Annual Report for 2012 and in which the Contrôleur Général recommends in particular that “the specially-equipped cells should be judiciously distributed between the various wings, without placing them in wings with closed-door regimes.”

¹⁸⁴ Prisons administration department circular of 20th July 2009 concerning the methods of implementation of differentiated regimes within prisons.

¹⁸⁵ Article 22 of the Prisons Act specifies that “the prisons administration guarantees respect for their dignity and rights to all prisoners. The exercise thereof cannot be subject to any restrictions other than those resulting from the constraints inherent to imprisonment, maintenance of security and proper order within institutions, prevention of

“dignity” of the prisoner, one can only note that exclusion affects access to activities (socio-educational, sports and professional activities etc.). Within certain institutions for convicted prisoners visited, the inspectors noted that a specific schedule limiting access to the exercise yard and activities had been set up for persons under the closed regime; the possibilities of moving about being linked to the presence of warders in order to open doors and accompany prisoners to the activity sectors. By way of example, in one institution in the South of France, the inspectors noted that no sport timeslot was reserved for the closed regime. Although these situations remain exceptional, they nonetheless remain problematic and contrary to the provisions of the aforementioned article.

Furthermore, in numerous institutions, it was noted that a considerable number of persons placed under the closed regime were so placed at their own request, in order to escape the climate reigning on the open-door floors. This situation ends up by diverting the differentiated regime from its objective since it is the most peaceful and vulnerable persons who find themselves under the closed regime. The existence of a wing dedicated to vulnerable persons is a solution which has been introduced in certain institutions. It also makes it possible to resort to solitary confinement less often. However, it raises questions with regard to the stigmatisation of a certain category of prisoners.

Moreover, until a recent period, placements in differentiated regimes were not likely to give rise to applications for remedy of abuse of power before the administrative judge; these decisions being considered to be measures of internal order. In 2011, the Council of State declared itself competent to rule on placements under “closed doors” regimes while asserting that such placements “do not affect their rights of access to professional training, paid employment, physical and sports activities and exercise yards”¹⁸⁶. It is to be regretted that the Council of State found that decisions of placement in closed regimes do not come within the field of application of Act no. 79-587 of 11th July 1979 concerning the justification of administrative acts. This position means that the head of the institution is not bound to organise an *inter partes* hearing in application of article 24 of Act no. 2000-321 of 12th April 2000 at the time of the decision, whereas, according to the findings made by the inspectors, this definitely goes against the person concerned. Indeed, this inevitably affects the prisoner’s conditions of detention. Within the framework of placement under special prison regimes and basing itself upon European prison rules, the European Court of Human Rights considers that restrictions imposed upon prisoners can be treated as disputes regarding rights and obligations of a civil character, which imposes the necessity of respecting the guarantees provided for under article 6 of the Convention¹⁸⁷.

Finally, it should be emphasised that long-stay prisons, for their part, decided upon the permanent closure of cell doors in 2003, following the occurrence of serious incidents in one of them. At the time of their visits to long-stay prisons, the inspectors noted that this instruction is very often made more flexible in the interests of both the prisoners and staff, who acknowledge that strict implementation of the “closed doors” regime does not fulfil its supposed goal of guaranteeing security, because of the amount of tension that it eventually generates, which increases exponentially with regard to persons serving long sentences.

When the question of complete closing of doors in a long-stay prison was referred to the *Contrôleur Général* the latter requested the observations of the director of the prisons administration Department with regard to the legality of such systematic closure, in view of article 89 of the Prisons Act of 24th of November 2009. In response, it was pointed out that the

recidivism and protection of the interests of victims. These restrictions take into account the prisoner’s age, state of health, disability and personality.”

¹⁸⁶ CE 28th March 2011, no. 316 977. Ruling confirmed by CE 24th August 2011, no. 341 240.

¹⁸⁷ ECtHR 17th Sept. 2009, *Enea vs. Italy*, req. no. 74912/01.

doctrine of the prisons administration has remained unchanged since 2003, that is to say strict application of the “closed doors” regime within long-stay prisons and wings of long-stay prisons.

It should be noted that the European Committee for the Prevention of Torture (CPT) has tried, on numerous occasions, to alert the French government to “*the necessity of providing prisoners serving long sentences with regimes offsetting the de-socialising effects of long-term imprisonment in a positive and proactive manner*”¹⁸⁸.

8.3 Diversion of the Right of Assignment

From their first visits to institutions, the inspectors ascertain the presence in remand prisons, of convicted prisoners waiting to serve their sentences in suitable institutions, sometimes for several years. Cases have been referred to the *Contrôleur Général* on several occasions, by persons expressing their incomprehension and discouragement with regard to the waiting times for transfer to penal institutions for convicted prisoners.

Accommodation in a long-term detention centre enables persons to have the benefit of more favourable conditions of imprisonment, specific prison support and even suitable medical care. With regard to conditions of detention in remand prisons, the question of assignment to a penal institution for convicted prisoners is particularly important for certain convicted persons serving medium or long-term sentences, who have already spent numerous years of detention in remand prisons.

Conversely, certain persons wish to be kept in remand prisons in order to maintain their family ties and prepare for their rehabilitation in their region of origin.

Article 88 of the Prisons Act of 24th of November 2009 introduces a right for persons with more than two years remaining to serve, to request transfer to a penal institution for convicted prisoners, within a period of nine months from the day on which their sentence becomes definitive. However, it allows convicted prisoners to be maintained in remand prisons when reduced sentencing is imminent.

The waiting times for assignment to penal institutions for convicted prisoners result from three factors: putting the orientation file together, the assignment decision taken by the Interregional Department of Prison Services (DISP) or the central administration¹⁸⁹ and the execution of the transfer properly speaking.

8.3.1 The Orientation Procedure

In application of article D .75 of the Code of Criminal Procedure, the orientation procedure [i.e. establishing a plan for the enforcement of the sentence] is compulsorily implemented for convicted prisoners with more than two years remaining to serve¹⁹⁰. It is optional in other cases, in view, in particular, of the convicted prisoner’s personality, the

¹⁸⁸ Report to the government of the French republic concerning the visit conducted in France by the CPT from 11th to 17th of June 2003.

¹⁸⁹ The respective areas of authority of the interregional departments and of the Ministry of Justice are fixed by article D .80 of the Code of Criminal Procedure.

¹⁹⁰ Cf. below on absence of implementation of the orientation procedure in clear cases of imminent reduced sentencing.

maintenance of their family ties and specific rehabilitation projects¹⁹¹. Moreover the DAP recommends that the DISP should carry out the orientation of all prisoners if this makes it possible to maintain balance in prisons and fight against overcrowding of remand prisons¹⁹². In several remand prisons, the inspectors ascertained that an orientation file is systematically opened when more than one year remains to be served.

The inspectors observe that, generally speaking, the orientation file is put together in the institution¹⁹³ within a period in the order of one to two months. The establishment of the orientation file can, however, be delayed by the period necessary for receipt of personal and/or court documents. Depending on the institution, the opinion of the court is requested by post, by exchange of post with the court of first instance or during sentence board meetings. In order to shorten these waiting periods, some of them pass on orientation files to the DISP without the obligatory court documents¹⁹⁴.

The time required for handling by Interregional Departments of Prison Services (DISP) vary considerably.

Certain institutions, whose number is constantly decreasing, do not possess any procedures enabling them to keep track of the passing on of orientation files. Files that had been forgotten, or even lost within institutions and higher authorities have come to the inspectors' attention. This is the case of one person, definitively sentenced in June 2011, whose orientation file was passed on to the DISP in July 2012, and of another, convicted in December 2010, who received their assignment decision in March 2012 because "*the person concerned's file was not sent to the correct place*".

The *Contrôleur Général* recommends the standardisation of the periods for putting together and handling orientation files in order to reduce the disparities ascertained.

8.3.2 Imminent Sentence Reductions

Article 88 of the Prisons Act provides that a person can be maintained in a remand prison "when they have the benefit of reduced sentencing or are likely to have the benefit of such measures in the near future"¹⁹⁵.

The prisons administration has drawn two consequences from this: on the one hand, the transfer of the person assigned is to be deferred until the court decision and, on the other hand, making up of an orientation file

¹⁹¹ In certain prisons, the head of the institution possesses delegated authority enabling them to assign convicted prisoners accommodated in the remand wing, with less than two years remaining to serve, to the long-term detention wing of their institution.

¹⁹² Circular of 21st of February 2012 concerning orientation of prisoners in penal institutions.

¹⁹³ The orientation file compulsorily includes opinions from the health unit, the SPIP, the judge responsible for the execution of sentences and of the head of the institution. In general, the opinion of the public prosecutor at the court of first instance is requested. It is then passed on to the territorially competent Interregional Department of Prison Services, or even to the central administration if the assignment decision falls under the latter's authority.

¹⁹⁴ The list of documents compulsorily passed on by the public prosecutor's office to the penal institution is fixed by article D.77 of the Code of Criminal Procedure.

¹⁹⁵ The circular of 21st of February 2012 concerning the orientation of prisoners in penal institutions specifies that the imminence of reduced sentencing shall be characterised by the passing on to the state prosecutor's office of a sentence reduction proposal within the framework of the simplified procedure provided for under articles 723-19 *et seq.* of the Code of Criminal Procedure or by the scheduling of an inter partes hearing following an application for reduced sentencing.

becomes optional even when more than two years of the sentence remain to be served¹⁹⁶.

The latter approach, apart from the fact that it is not in accordance with the provisions of article D.75 of the Code of Criminal Procedure, can prove problematic in case of refusal of the prisoner's application for reduced sentencing; however, it offers a certain flexibility to enable maintenance in remand prisons, in view of the specific situation of certain persons.

Conversely, the situation of persons subject to expeditious transfers, has come to the *Contrôleur Général's* attention, imposed in order to prevent them from taking advantage of the right to stay in remand prisons, for reasons of prison management.

Cases were referred to the *Contrôleur Général*, from the first months of application of the Prisons Act, concerning the difficulties of implementation of article 88. In the first place, the opinion of the judge responsible for the execution of sentences mentioned in the orientation file proved to have lapsed due to the long period between the putting together of the file and the execution of the assignment decision. Moreover, prisoners did not, in fact, have the possibility of invoking the provisions of the law, being in general informed of their effective transfer at the last minute. In order to offset this difficulty, the prisons administration Department asked registries to systematically verify the existence of hearings scheduled before the sentence board for prisoners to be transferred¹⁹⁷.

The inspectors ascertained that, in remand prisons of the Centre of France, the week before execution of transfers, the services of the DISP send an email to the registry of the remand prison in order to find out whether any factor currently stands in the way of the person's departure (planned temporary release, simplified reduced sentencing procedure or electronic tagging for the end of the sentence in course, entering of the case in the sentence board register etc.). In case of the filing of an application for reduced sentencing, the transfer is suspended.

In one institution in the South of France, the registry keeps a file of the follow-up of reduced sentencing applications, which it consults before each transfer. However, this procedure is not sufficient insofar as persons may make applications for reduced sentencing directly to the judge responsible for the execution of sentences (JAP), without the registry being informed of their application.

Following a case taken up by the *Contrôleur Général*, the head of an institution indicated that an agreement had been established with the judges responsible for the execution of sentences that, henceforth, the court registrar would inform the institution of applications made directly to the court. This procedure should be brought into general use.

In spite of the putting in place of these procedures, the *Contrôleur Général* observes that persons eligible for reduced sentencing continued to be transferred to other institutions.

8.3.3 The Difficulties of Implementation of the Right of Assignment

More than three years after the coming into force of the Prisons Act, it appears that, due to their occupancy rates, several penal institutions for convicted prisoners are still unable to implement the prescriptions of article 88.

¹⁹⁶ It should be noted that the circular provides for the possibility of exemption from compulsory orientation if "the seriousness of the formalities in course for the construction of an integration and rehabilitation project [make it possible] to envisage a reduced sentencing procedure in the short term".

¹⁹⁷ Note issued by the DAP at 8th June 2011.

Cases are often referred to the *Contrôleur Général* with regard to the situation of persons who have been waiting, for more than nine months, for their assignment to a penal institution for convicted prisoners. Indeed, actual transfer of persons may occur many months after notification of the assignment decision, it having been impossible for the decision to be implemented, due to lack of available space in the selected penal institution for convicted prisoners.

In the Parisian region (in the broad sense of the term), contrary to the declared objectives, the opening of new institutions¹⁹⁸ has not made it possible to reduce particularly long waiting times; in August 2013, the waiting periods for assignment to the long-term detention centres of Meaux-Chauconin and Melun were of around two years. The institutions of the South-East of France are also particularly congested: it is necessary to wait eighteen months for assignment to the penal institutions for convicted prisoners of Avignon-Le Pontet, Salon-de-Provence and Tarascon, and twenty-four months for transfer to Toulon-La Farlède¹⁹⁹.

Although the prisons administration Department keeps an estimated table of waiting times for decisions coming within its jurisdiction, no information is available with regard to assignment waiting times for persons coming under the authority of the DISP. Heads of institutions are in the dark on this point and are often unable to provide reliable information to the persons for whom they are responsible.

According to the central administration, the Interregional Department's waiting times for assignment are in general shorter, the turnover of prisoners being much larger in view of the length of the sentences pronounced against them.

The *Contrôleur Général*, who has taken up cases with the DISPs on the question of waiting times for assignment, observes that the management of places and persons remains particularly obscure.

It is not clear that the chronological order of assignment decisions is respected in the organisation of transfers. Moreover, the quality of relations between heads of institutions and the services of the security and detention Department of the DISP can prove decisive for the “negotiation” of more or less rapid departures, more or less in accordance with the prisoner's wishes. Thus prisoners may have legitimate grounds to raise questions concerning the mechanisms and approaches implemented with regard to choice and waiting period for initial assignment.

The state of overcrowding of remand prisons may, moreover, lead to persons being transferred to penal institutions for convicted prisoners, to the detriment of their personal situation and their stated wishes: “*it must be remembered that the waiting list is very long for assignment to the CP of Avignon Le Pontet [...] Mr X agrees to a compromise for assignment to the CD of Tarascon*”; “*a transfer decision to the long-term detention centre of Châteaudun was made with regard to Mr Y. He had requested the CP of Réau in priority, and that of Meaux as second choice. However, the waiting times for Meaux are currently of around fifteen months and those for Réau, which are tending to become shorter, remain longer than eight months*”; “*Indeed, Mr X was assigned to the long-term detention centre of Neuvic [in order to] have the benefit, in the shortest possible time, of the regime offered by long-term detention centres. At the time, Mr X had not produced any document proving family ties in Belgium*”²⁰⁰. One person having requested a transfer prison of Poitiers-Vivonne for the maintenance of family ties was informed of an initial

¹⁹⁸ Prisons of Réau, Lille-Annœullin, Le Havre and Condé-sur-Sarthe.

¹⁹⁹ It should be noted that these approximate waiting times are calculated as from the assignment decision taken by the prisons administration and not from the date at which the sentence became definitive.

²⁰⁰ Mr X's orientation file mentioned a request for assignment to an institution in the North or Pas-de-Calais in order to be closer to his wife and daughter domiciled in Belgium.

assignment decision to the long-term detention centre of Bédénac “on the following grounds: this assignment will enable rapid departure to long-term detention centre”.

The inspectors have examined numerous situations in which transfer to a penal institution for convicted prisoners constituted a major violation of the right to respect for the private and family life of the persons concerned and for which an *inter partes* procedure was not implemented.²⁰¹

It should be noted that the waiting times for assignment are lengthened still further when an initial assignment requires prior admission to the National Assessment Centre (*Centre national d'évaluation / CNE*)²⁰². By way of example, one person sentenced in June 2011, who had the benefit of an assignment decision to the CNE in March 2012, was transferred there in January 2013. Generally, persons are transferred to the CNE two weeks before the start of the session. Then, at the end of the six-week session, they are held in the institution pending their return to their initial place of assignment. The inspectors ascertained that, priority being given to persons leaving the CNE, the average waiting time between the end of the session and effective assignment to a penal institution for convicted prisoners is less than three months. However, at the time of the inspection of one of the CNEs, four convicted prisoners assigned to a long-stay prison referred to as being “overloaded” had been waiting for their transfer for eight or nine months, and three others for eleven months.

The situation of persons accommodated in institutions in French overseas departments and territories raises serious difficulties when their initial assignment is dependent upon a period in a CNE. At the time of their inspections in French overseas departments and territories, the inspectors ascertained that a considerable number of convicted prisoners refused to go to the CNE due to the major disruption that would be caused by a departure to metropolitan France. In one of the institutions inspected, it was pointed out that these persons, who could not legally be assigned to a wing of a long-term detention centre, would therefore remain in the remand prison wing, even when they had been sentenced to life imprisonment.

9. Conclusion

The Prisons Act, which initially gave rise to controversies, has been applied in an uneven and hesitant manner on certain major points concerning protection of the fundamental rights of prisoners and their daily life in prison. More than four years after it came into force, this bears witness to the fact that voting a law is not enough to fundamentally transform prison life and change common practices in prisons.

Its implementation suffered from the late appearance of the statutory implementing texts, which were postponed – for almost four years in certain cases – and still more from a political and social context which led to heavy prison overcrowding.

The choices made weighed upon its application. Refusal to call upon the provisions of ordinary law, as for example with regard to the question of employment or assistance for extreme poverty, sanctioned the idea that the prison world remained a special case, outside of society.

The limitations made to its principles on numerous occasions, for reasons of maintenance of proper order and security in penal institutions, weakened their force. The most significant example is that of article 41 (image rights), with regard to which the prisons administration's

²⁰¹ The circular of 21st of February 2012 concerning the orientation of prisoners in penal institutions provides that: “when the decision due to be taken by the authority concerned is likely to infringe the prisoner's fundamental rights and freedoms, the *inter partes* procedure shall be implemented”.

²⁰² Cases of compulsory admission are fixed by article 717-1 A of the Code of Criminal Procedure.

interpretation made the exception the rule. The example of searches is also emblematic in this respect.

The prisons administration has not always had the means to apply the Act in all of its dimensions. The context of economic crisis was certainly burdensome and human resources were lacking. Putting an activities obligation in place (article 27) without defining it, in a difficult economic context in terms of access to professional activity, employment and training, proved to be an impossible task. Exercise, healthcare and religious worship thus sometimes became “activities” in the arguments of prison staff: an admission of weakness as well as of great confusion.

The implementation of the Act was poorly supported by the central administration which allowed major disparities to develop in its application (whereas one of the objectives of this Act was indeed to put an end to differences between institutions). As far as the practice of searches is concerned, numerous judgements from the administrative courts were necessary before the prisons administration finally began to take notice of the legal texts governing the matter.

Dignity and respect for fundamental rights nevertheless also benefitted from the Prisons Act, as shown by the considerations set out above. The law has reached the inside of prisons in a more assertive manner. It has been possible for a part of the citizenship of prisoners to be exercised. The Prisons Act has also led to doubts and uncertainties, which make questioning and therefore future changes necessary. It is necessary to correct the imperfections of the current text and also to give it an even more ambitious dimension. Above all, it is urgent to take practices into account so that the law does not remain a dead letter, giving rise to disappointed hopes and flare-ups of protest.

Section 5

Architecture and Places of Deprivation of Liberty

The primary function assigned to places of deprivation of liberty is the prevalent feature of their architecture: imprisonment and surveillance in the case of prisons, confinement and treatment for psychiatric hospitals, maintenance at the disposal of the authorities pending a decision for police custody premises and, more recently, for detention centres for illegal immigrants.

With regard to escapes and running away, the term differs according to the place, the architectural concerns remain in all cases: the buildings and premises have to be designed to prevent them. In its objective of protection of society, the imperative of imprisonment or, in the case of psychiatric hospitals, of exclusion, was given priority over all others in the architecture of the oldest places of deprivation of liberty; one of the reasons, though not the only one, for the location of “asylums” far from urban centres is drawn therefrom.

In prison, this objective is coupled with the old desire to limit relations to the maximum in the name of security and maintenance of internal order. Accordingly, cells take a central place, prisoners spending most of their time in them; when they leave them, they always do so on justified grounds, in order to go to a defined place and often in a supervised manner. Relations are only permitted in clearly demarcated areas and timeslots²⁰³.

The architecture of the places expresses these concerns, while enabling surveillance at the least expense in terms of staff – centralised guardroom –, as well as organising control of movements by restricted itineraries and flow management by means of bars and remote-controlled security entrances. The most recent prisons have in no way abandoned this logic. When captives can move around without the accompaniment of a warder, their movements are predetermined and controlled, far removed from the movements of an autonomous person in a place in which they might be learning how to exercise their obligations and rights in relation to society.

Moreover, the provision of activity areas – work, sport, culture, housework and cooking – is always secondary, and rarely thought out.

Psychiatric hospitals, as the successors of the “lunatic asylums” of the 19th-century, have long had the vocation of protecting persons suffering from mental illness from society and, by the same token, of protecting society from the mentally ill, “madness” having the reputation of being a contagious social disease. Treatment was long a secondary concern, limited to ensuring patients’ acceptance of their conditions of confinement rather than promoting social reintegration.

When the patient’s release from the asylum was not envisaged, it was the hospital’s responsibility to maintain the confinement²⁰⁴. Today, patients treated without their consent are no freer in their movements and their test releases; they are discouraged from taking initiative for their social reintegration even when the latter does not take place under strict medical control.

²⁰³ According to the architect Christian Demonchy, each area (cell, workshop, exercise yard etc.) within penal institutions is designed as a prison within the prison. These micro-prisons are linked together by the circulation network within which the warders work (cf. Demonchy Christian, “11. L’architecture des prisons modèles françaises”, in Philippe Artières and Pierre Lascoumes, *Presses de Sciences Po “Académique”*, 2004 pp. 269-293).

²⁰⁴ Obligation recognised by the regime of liability without fault that weighs upon mental health institutions, in case of patients running away.

The premises of a great number of closed units in psychiatric hospitals correspond to the same concern with surveillance at a low cost in terms of staff. In too many units inspected, the patients are brought together for long hours during the day in “activity rooms”, and kept under the surveillance of medical staff with hardly any more occupation than watching the television or wandering about the corridors.

Thus, in their design, places of deprivation of liberty cause an *a priori* assumption of dangerousness, animosity and relational inadequacy to weigh retroactively upon the persons confined in them. The layouts of these premises and the procedures that they anticipate and accompany give rise to stress and can generate conduct on the part of their occupants, – aggressiveness, and depression – which confirm these fears after the event.

Their walls are strange mirrors for the captives, inexorably showing them the image in which they are held by society and confusing their own reality of themselves.

Prison security measures, and especially in the case of prisons with sections incorporating different kinds of prison regime, are identical for all prisoners, meaning that an identical presumption of desire to escape weighs upon prisoners serving short sentences, who nonetheless form the majority of the prison population, and multiple recidivists having numerous years to serve. This excess of security overlooks the capacity of acceptance of sentences. The resulting cost in terms of staff and means of surveillance is out of all proportion to the reality of the risks. This expenditure is made to the detriment of arrangements more appropriate to the other objectives of the punishment.

Indeed, although the Prisons Act of 2009 maintains that the sentence enforcement regime is aimed at the protection of society, from which imprisonment results, it also asserts the necessity, during the execution of the sentence, to prepare for rehabilitation and the leading of responsible life in order to prevent recidivism²⁰⁵.

Similarly, the Public Health Code asserts the right to treatment²⁰⁶, while the circumstance that this treatment is given without the patient’s consent should be without effect upon compliance with this right and the conditions of its implementation. Yet, attainment of autonomy presupposes that premises be made available where the latter can progressively be tried out, exercised and validated.

The inspections conducted by the *Contrôleur Général* highlight the fact that the architecture of most of the premises in which persons deprived of liberty stay do not take these objectives into account.

Although the weight of history and building constraints may, to a certain extent, constitute an explanation as to why all means are not yet implemented in order to enable persons deprived of liberty to exercise the whole of their rights, this is not acceptable in the case of the most recent institutions, and particularly for prisons with sections incorporating different kinds of prison regime, where security concerns combined with the desire for economies of scale take priority over rehabilitation.

²⁰⁵ *The Prisons Act no. 2009-1436 of 24th of November 2009, article 1: "The regime of enforcement of custodial sentences reconciles the protection of society, punishment of the convicted prisoner and the interests of the victim with the need to prepare the prisoner's integration and rehabilitation in order to enable them to lead a responsible life and prevent the commission of new offences".*

²⁰⁶ *Article L.1110-1 of the Public Health Code: "The fundamental right of protection of health shall be implemented by all available means to the benefit of all persons. Professionals, health institutions and networks, bodies of the health insurance system and all other bodies involved in prevention and treatment, and the health authorities contribute, with users, to developing prevention, guaranteeing equal access for all persons to the treatment required by their state of health and ensuring continuity of treatment and the best possible health security."*

On the contrary, architecture should support the imperatives of treatment and rehabilitation defined by the law.

More worryingly, it has been ascertained that very often, even when building constraints are not as heavy, at the level of police custody rooms or areas, the architectural organisation has not been changed – or designed in the case of recent buildings – in order to protect the fundamental rights of persons who are deprived of liberty there. Yet, in a great many cases, the premises of confinement and the consequences of their design upon the organisation of the procedures that take place inside them infringe fundamental rights in themselves. This is the case with regard to the right to physical well-being, privacy and dignity.

It is not the *Contrôleur Général's* place to decide upon the ideal plan for prisons and mental health institutions.

However, the observation of numerous places over the last five years and analysis of the effects produced by their architecture on their operation and, therefore, on the living conditions of the persons confined inside them, leads to specifying the conditions of establishment and design of institutions that enable the rights of rehabilitation and treatment to be exercised there and contribute thereto (II) as well as how the practical details of supervision and accommodation need to be organised in order to protect the fundamental rights to dignity, well-being and privacy (I).

1. Architecture, an Essential Factor of Respect for Fundamental Rights

The treatments and procedures to which persons are subject in the course of deprivation of liberty need to guarantee respect for their fundamental rights. These procedures are conducted in places and premises which themselves not only need to be designed and organised in order to enable the exercise of these rights – right to the maintenance of family ties for example – but, above all, in order to avoid violating the well-being and dignity of persons, and constituting a risk to their safety, due to their design and operation.

Respect for their privacy and the application of hygiene rules makes it necessary for certain practical conditions to be provided in suitable premises. Similarly, in order to guarantee respect for the rights pertaining to the procedure to which captives are subject, it is necessary for dedicated areas to be fitted-out enabling persons deprived of liberty to exercise these rights in practice.

1.1 Accommodation Premises that Protect Personal Well-Being

Over the period of its implementation, imprisonment should not lead to physical or mental deterioration for captives greater than that resulting from the sole limitation of their right to come and go. Protection of personal well-being requires that places of imprisonment be both healthy and safe. This is, for all that, far from being the case, in particular due to material conditions of accommodation.

1.1.1 Individual Rooms and Cells

While the Code of Criminal Procedure lays down the principle of placement in individual cells for both untried prisoners, defendants placed on remand²⁰⁷ and convicted prisoners²⁰⁸, only prisoners placed in long-stay prisons and long-stay detention centres – with many exceptions however in the case of the latter – occupy their cells on their own. In remand prisons, the sharing of cells by two or three persons, or even more in cell-dormitories, is the rule. Detention centres for illegal immigrants never provide individual rooms.

| In psychiatric hospitals, hospitalisations still occur in double or triple rooms. |

In one of the largest institutions in the Parisian region, units comprise “dormitories” of four or five beds, devoid of bathroom facilities. One thus ascertains that the norms of accommodation facilities for medical departments vary from one special medical field to the next. While in medical, surgical and obstetrics wards individual rooms have become the rule, this is far from being case in psychiatry, as though persons suffering from mental illness could not lay claim to comfort equivalent to that of other patients. The explanation appears to be drawn from their condition, which would apparently render them unconscious to their material environment. Families do not have any say in the often dilapidated conditions of accommodation, while sectorial divisions prohibit the possibility of choice between units. Nonetheless, the lengths of stays in psychiatric departments are very considerably greater than in other special medical fields, which should lead, on the contrary, to the provision of considerably better living conditions.

| Yet, prolonged and intense shared living throughout the length of a day with other persons leads, according to circumstances, behaviours and personalities, to forced positions of withdrawal or, on the contrary, indulgence, which are sure to be sources of mental distress. |

Moreover, the occupation of a room or a cell by several persons sometimes leads to frequent changes for the latter persons, in order to adapt the occupants to the various different requirements of compatibility: pathologies, convictions, age, sex, temper etc. Each arrival in the department or institution may lead to changes in the distribution of inmates in order to respect the whole of the constraints involved as best as possible, to the detriment of efforts that the occupants may have made in order to adapt themselves to the premises.

The use of non-individual cells and rooms should be prohibited. Moreover, the form of the cell or room should provide several possibilities for arranging the furniture in order to promote personal appropriation of the premises.

For all that, individual occupation of rooms and cells should not be established to the detriment of their surface area. The Building and Residential Code (*Code de la construction et de l'habitation*) provides for a minimum surface area per person of 10 m² beyond the first four inhabitants in the same apartment²⁰⁹. This surface area should be compulsory for cells and rooms, to which the surface area of the bathroom facilities with which they should be equipped also has to be added.

²⁰⁷ Article 716 of the code of criminal procedure “Persons indicted or charged and any defendant placed on remand are placed in individual cells.”

²⁰⁸ Article 717-2 of the Code of Criminal Procedure “Convicted prisoners are subject to individual imprisonment day and night in remand prisons, and solitary confinement exclusively at night in institutions for convicted prisoners after having undergone a period of in-cell observation if necessary”.

²⁰⁹ Article R .111-2 of the Building Code “the inhabitable surface area and volume of a dwelling shall be of at least 14 square metres and 33 cubic metres per inhabitant planned at the time of drawing up the building programme for the first four inhabitants and of at least 10 square metres and 23 cubic metres per additional inhabitant beyond the fourth”. Article 4 of decree (décret) 2220 of 30th January 2002 concerning the characteristics of decent accommodation: “The accommodation possesses at least one master room having an inhabitable surface area of at least 9 square metres and a height under the ceiling of at least 2.20 metres that is to say an inhabitable volume of at least 20 cubic metres”. The DAP 88G05G norms of 16th March 1988 provide that prison cells with a surface area of less than or equal to 11 m² can only be occupied by a single person.

Finally, all long-stay premises should be able to cater for persons with restricted mobility in a dignified manner. Rooms and cells intended for them need to make provision not only for the necessary facilities but also for the movement of a wheelchair between the room and the shower room, which needs to be possible without for all that depriving the latter of a door²¹⁰.

1.1.2 Layouts that respect the occupant's state of health

For the last twenty years, the norms of penal institutions have provided for more comfortable conditions of accommodation, in particular by the addition of bathrooms to cells. Similarly, newly constructed health institutions bear witness to a real concern to improve conditions of accommodation for hospitalised persons.

Nevertheless, the conditions of accommodation of patients and prisoners are far from always protecting their physical well-being from the consequences of confinement in the oldest institutions, which have not been renovated, as well as in the most recent institutions, which do not always take the effects of the length of confinement into account.

Adequate Light in Places of Accommodation

The poor quality of light in cells and rooms leads to pathologies of eyesight going beyond the effects of age alone, in particular for prisoners serving long sentences.

Prisoners cannot control the light in their cells, which is often affected by the orientation of the latter: too dark in cells facing north and too light in cells facing south. Prisoners offset this problem by making makeshift curtains (in principle prohibited in prison), at their own expense, with sheets or towels.

If the cell faces north and the window is obstructed by gratings and bars, the daylight is filtered through the latter and is insufficient to enable reading, above all if its window is placed high up on the wall, which is often the case in old institutions. In one remand prison in the East of France, the inspectors noted that in the cells, the bottom of the window – the latter being 0.40 m high and 0.90 m wide – was situated 2.30 m above the floor, with the handle of the window catch 2.50 m above the floor. In order to open the window, the occupant had to climb up on a chair. The light provided by the window was insufficient for reading, above all for persons placed in the bottom and middle bunk-beds. When the occupants do not remain in the half-light, sleeping or watching television, the electric light is switched on all day long.

Moreover, it was noted that one detention centre for illegal immigrants, previously destroyed by fire, had been rebuilt at basement level, necessitating artificial lighting at all times.

The fact remains that in prisons the latter rarely suffices for the provision of satisfactory lighting. The wall lights installed in the cells are placed high up, often very high, on one of the walls or on the ceiling. They are frequently covered with an opaque plastic globe and equipped with a light-bulb of insufficient power to provide adequate lighting, in particular for reading. Prisoners resort to buying additional lamps, and extension leads and adaptors in order to be able to plug them in, cells sometimes only being equipped with a single electrical socket.

Moreover, distance vision is limited to the largest dimension of the cell, rarely more than 4 m. The gratings on the windows make it impossible to offset this lack of distance. In one prison, the cell intended for persons with restricted mobility is located on the ground floor and

²¹⁰ Cf. *Annual Report for 2012, Section 5: "Deprivation of Liberty and Access to Health Care" 3. Daily Life in Prison for the elderly and persons suffering from disabling pathologies* (pp. 236-241).

overlooks a wall 3 m away from window. These limitations are not, after a stay of several months, without effect upon visual accommodation.

In a large number of psychiatric hospitals, the window panes of the rooms are made opaque, and for reasons of the security of persons, hinged sections of windows are blocked or their opening limited to about twenty centimetres, “looking out of the window” is impossible.

Plate glass windows should be designed in such a manner that they make it possible to “look out of the window”, without any obstacle, and allow the air to enter. It is to be recommended that the windows of rooms and cells should not be placed higher than average shoulder height, their surface area should be adjusted to the orientation of the room, larger when facing north, and to its size. They should be equipped with shutters.

Healthy Ventilation and Adequate Heating

The quality of ventilation of rooms quite often depends, in the absence of controlled mechanical ventilation, upon the position and operation of windows. When the latter are devoid of hinged sections, or are draught-proofed in order to provide protection against cold, as in old institutions, little or no provision is made for the ventilation of rooms, of which the door by definition remains closed in remand prisons. This situation can cause respiratory disorders and worsen any pre-existing conditions of this kind.

The ceilings of cells in old buildings are high. The inspectors have noted heights of 4 m in several institutions, the height of cells sometimes being twice as great as their width in such cases. In general, the windows in these cells, which are sometimes very small, are placed 2 m above the floor, as already mentioned.

In such cases, the heating, which is often provided by tube running along the bottom of the narrowest window wall, carrying hot water, is very inadequate and the occupants complain of cold in winter, as well as of humidity, which in certain premises allows patches of saltpetre to develop, due to lack of sufficient ventilation. The humidity is worsened still further when the cell is equipped with a shower, which is only very rarely equipped with a window and whose ventilation is not always properly ensured by controlled mechanical ventilation.

In virtually all gendarmerie facilities, the inspectors noted the absence of heating in police custody cells and faulty or even inexistent ventilation systems. Certain customs detention and custody facilities, of very small surface area (4.11 m²), are neither heated nor ventilated.

Whatever the captives’ length of stay, provision should be made for the rooms in which they are confined to be of limited height, without being lower than 2.50 m, and equipped with adequate means of heating.

Limitation of the Harmful Effects of Noise and Protection of the Right to Rest

The privacy of prisoners also presupposes that they are able to engage in an occupation or sleep, without noise from the neighbours or that inherent to the operation of the service preventing them from doing so.

The quality of the partitions between the rooms of institutions should ensure sound insulation, which is all the more necessary in so far as the occupants spend long hours in them every day. It is also important that the organisation of external premises and the elements of which they are made (doors, floor coverings) should reduce noise nuisances to a minimum.

Similarly, in some cases, although there is an air vent in the bathroom corner, it makes such a noise that the occupants block it up, as was noted in recent detention centres for illegal immigrants, as well as in new prisons.

Secure facilities in police stations situated in the basement, and far from the guardroom, are lit both day and night, in order to enable operation of the video surveillance cameras. This situation is particularly detrimental for persons placed in these premises who are then unable to rest or sleep properly at night. The inspectors noted that these cells were often lit by an external spotlight, giving off a strong light.

Moreover, the fittings in the secure facilities of police stations and gendarmeries often amount to no more than the existence of a concrete bench. It was noted that in old premises the dimensions of these benches did not correspond to those of the mattresses, rendering sleeping arrangements unstable and constituting an obstacle to persons in police custody being able to lie down and rest between questioning sessions. In collective cells, it is even more difficult for the latter to have access to rest and protect their privacy.

This question of the fitting out and equipping of cells in a manner which contravenes the requirement for rest provided for by law, needs to be resolved through the elaboration of norms enabling persons in police custody to rest in a lying position and to have the benefit of placement in individual cells. Old premises need to be renovated and adapted accordingly.

1.1.3 Spatial Organisation which Guarantees the Security of Persons

Imprisoned persons rarely have facilities at their disposal, call buttons or intercom devices²¹¹, enabling them to attract the attention of staff.

The absence of facilities of this kind obliges them to beat violently upon the doors when they want to call or attract attention.

In some cases secure rooms and sobering up rooms are located on a different floor from the guardroom; this architecture does not make it possible to ensure adequate security for prisoners. This location is a source of needless anxieties and tensions. The placement of facilities in locations of this kind should therefore be ruled out.

1.1.4 The special situation of Punishment and Solitary Confinement Cells and Secure Rooms

Placement in cells and rooms of this kind does not justify endangering the prisoner's physical or mental well-being.

In prisons, rather than being intended for the enforcement of disciplinary sanctions, cells in the solitary confinement wing are notably intended for the protection of the persons occupying them. They should comply with the same norms as those of ordinary prison buildings and, for example, provide sufficient space for normal activities which may be conducted inside them and have the benefit of access to natural light and adequate ventilation, as well as a partitioning system for the bathroom ensuring privacy.

In reality, this is not always the case.

Thus, in one long-stay prison, the inspectors ascertained that the eight cells of the solitary confinement wing were different from the institution's other cells. Five had windows whose hinged sections did not open. The only opening was located at the top of the window: a gap 20 cm high and 60 cm wide, covered in expanded metal²¹². The window as a whole was made secure from the exterior by bars. Apart from the absence of light, these fittings raised the question of ventilation of the cell, in a region of the South of France, which is hot in the summer.

²¹¹ With regard to intercom devices, see the Annual Report of the Contrôle Général for 2012, p. 43 et seq.

²¹² The window as a whole measured 1 m by 0.60 m.

All of the prisoners encountered reported the difficulty of living in a space of this kind. They explained to the inspectors that in order “to breathe”, they stood on a chair and pressed their face against the top of this tiny opening.

The three remaining cells of the solitary confinement wing were equipped and fitted out like the cells of the punishment wing, apart from the wire-meshed security entrances: the bed, table and stool were fixed to the floor, the sink was built into a concrete stand, the toilets lacked any means of separation, the only movable furniture was comprised of corner shelves and the window showed the same characteristics as those of the other cells of this solitary confinement wing (QI).

Asked about the reasons for the creation of these three cells, the contacts encountered stated that they had been designed in order to deal with the violent behaviour of certain prisoners: this being a question of protecting the persons themselves as much as enabling actions on the part of staff to be rendered secure.

With more specific regard to the punishment wing, the inspectors noted that the cells were still too often smaller than ordinary cells, since the security entrance takes up a part of the space reserved for accommodation, as well as being much darker, as recalled by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)²¹³.

In one long-term detention centre, the punishment cells have a surface area of 6 m², part of which is taken up by a wire-meshed security entrance of 1 m².

In one remand prison, the inspectors ascertained that none of the punishment cells were equipped with windows. Daylight entered by means of a wire-meshed light tube. In the long-stay wing of one prison, although the cells are equipped with an opening, which moreover is free of any bars or grilles, the latter is a small square window of 40 cm in length.

1.2 Arrangement of Premises which Respects Dignity, Privacy and the Concern for Confidentiality

The inspectors find that priority is given to the surveillance of patients and that the architectural consequences of this priority infringe the latter's well-being, dignity and privacy. The findings are identical for prisons, in which the priority given to the objective of the maintenance of order infringes fundamental rights, without any proof ever being provided of the manner in which this infringement of these rights might be necessary and proportionate.

Dignity, privacy and confidentiality are often closely interlinked and lack of respect for one of them very often leads to violation of another. Thus the circumstances under which a third party may be led to learn of a person's penal situation, for example by seeing them being led wearing leg-cuffs, infringe the confidentiality of their situation while also violating their personal dignity. Similarly, failure to make closed and soundproofed interview rooms available not only infringes the confidentiality of what is said them but also, in certain situations, infringes the privacy of personal relations.

²¹³ Cf. CPT/Inf/E (2002) 1 - Rev. 2011, English, page 35: “All too often, CPT delegations find that one or more of these basic requirements are not met, in particular in respect of prisoners undergoing solitary confinement as a disciplinary sanction. For example, the cells designed for this type of solitary confinement are sometimes located in basement areas, with inadequate access to natural light and ventilation and prone to dampness. And it is not unusual for the cells to be too small, sometimes measuring as little as 3 to 4m² (...).”

The architectural design of premises in which persons deprived of liberty live or pass through – secure facilities of courts, police stations and gendarmeries, secure rooms of general hospitals, intensive treatment rooms in psychiatric hospitals, new arrival and punishment wings in prisons – needs to reconcile security requirements with those of the captives being able to conduct their rudimentary activities and the guards being able to carry out the procedural acts in compliance with the rights of dignity, privacy and confidentiality.

1.2.1 *Maintaining Bodily Hygiene*

The material conditions of imprisonment do not always enable captives to meet their basic requirements with regard to hygiene under conditions which protect their dignity, because the necessary premises – shower rooms, bathrooms – are not accessible to them or because the conditions of access and use thereof are such that they intrinsically infringe their privacy and dignity.

Ease of Access to Bathrooms

Apart from the fact that a certain number of them are collective, hospital rooms only rarely contain full bathroom facilities. The inspectors noted that in many situations provision was made for nothing more than a sink, which was not always concealed by a screen. In certain rooms, patients only have slop pails at their disposal.

Seclusion rooms – whether of recent or old design – often do not have bathroom facilities, and toilets in particular. The latter are replaced by bedpans, urinals or pails etc. In one recent institution, the doctors had criticised the absence of direct access between the room and shower room, for which provision had not been made: according to them, apart from infringing upon the patient's dignity, slop pails could present a danger for the latter – there had been an occurrence of a patient tripping over the pail in the night – and for the medical staff – another patient had thrown the pail and its contents at a member of staff.

Police custody cells are not all equipped with toilets. In this situation captive persons have to ask to be able to go out in order to use the toilets, which are sometimes located outside of the secure zone. When there are bathroom facilities inside the cells, they often consist of basins level with the floor, without any pan, particularly unsuitable for women and persons with restricted mobility.

In any case, collective cells are never equipped with toilets. Similarly, neither are court jails (individual cells and collective cells) always equipped with bathroom facilities and a water tap. It was also noted in the accommodation areas of certain detention centres for illegal immigrants, that the detainees' rooms did not contain a separate bathroom area.

Numerous court jails are located in the basement, comprising individual cells and collective cell. In fact, characteristic features of the latter are the absence of any view of the exterior, as well as the absence of ventilation, heating and any facilities for washing.

Although prison cells are always equipped with a toilet and sink, which are essential for confinement, in certain prisons, the toilet bowl is placed in a corner of the cell, devoid of any partition.

When partitions are present, they are often inadequate or partial. In the oldest institutions, the inspectors ascertained that in some cases the partitions do not go up to the ceiling, in others sheets or curtains serve as doors, while elsewhere (due to poorly-designed partitioning) the bathroom surface area is so narrow that the doors, or whatever serves in place of the latter – in most cases double doors –, have to be left open when the facilities are being

used... This factor, on top of lack of privacy in cells, is the cause of a manifest infringement of personal privacy and even represents a real infringement of dignity when the cell is occupied by several persons.

Whatever the length of their stay, persons deprived of their liberty should have free access to bathroom facilities cut off from the rest of the room by partitions that go up to the ceiling.

Access to a Sink or Shower

The possibility of maintaining one's bodily hygiene at a dignified level constitutes a right that needs to be taken into account in the design of confinement facilities, and police custody facilities in particular.

The majority of secure facilities do not contain any shower or tap for access to water. In other places, the shower area is nothing more than a space for storage or clutter.

At the time of inspections, the soldiers of the gendarmerie pointed out to the inspectors that they allow persons who want to wash access to the sink which they use in the duty room, but without any hygiene necessities, that is to say with limited effectiveness. Yet, being unable to wash or even freshen up one's face and comb one's hair at the end of several hours of police custody, especially when one is immediately brought before a member of the National legal service, after which one may immediately appear before a court, is a manifest infringement upon dignity and can call the equality of parties in the trial into question.

Although they are always equipped with a toilet and a water tap, prison cells are rarely equipped with a shower and sink, which means that the sink is used both for washing and for doing the washing up. The installation of a shower inside each cell in the most recently constructed prisons constitutes an undeniable improvement.

However, this change currently only concerns a minority of institutions. Elsewhere, prisoners take their showers in collective rooms with, in the best of cases, minimal and inadequate partitions in terms of respect for privacy. Moreover, the ventilation systems in prison shower rooms are, in most cases, inadequate in view of the heavy fluxes of prisoners who passed through them every day, which contributes to their rapid deterioration.

Arrangements which Protect Privacy and Dignity

In certain health institutions, it was noted that although the rooms were equipped with a shower room the latter was devoid of any door, on the grounds of the necessity of preventing the patients from locking themselves in, and thus obstructing rapid action. The same absence of doors was noted in certain young offenders' institutions (CEF). Access to the bathroom facilities being located at the entrance to the room, any person entering the latter thus has an immediate view of the inside.

Similarly, it was noted in prisons that it was possible to partially view toilets lacking doors from the peephole. Generally speaking, in the majority of prisons, the bathroom facilities of cells in the punishment wing are directly and entirely exposed to the view of other people, from the peephole of the door or the security entrance. The same applies in the most recently constructed institutions, where a shower is installed inside each punishment cell, in general next to the entrance door.

Arrangements of this kind, which do not protect the privacy of the user, should be prohibited.

Rooms and cells should therefore be equipped with shower rooms comprising as a minimum a shower, a sink and a toilet, and be properly lit, as well as ventilated by means of windows or, at the very least, sufficiently powerful controlled mechanical ventilation.

From this point of view, separate heating for this room is desirable. Moreover, respect for privacy requires that the interior of these bathroom facilities should neither be visible from the peephole nor from the small window of the door, nor by medical or surveillance staff – who may enter the room in an untimely manner at any given moment – on entering the room. It therefore needs to be possible to close off the shower room itself by means of a full door.

1.2.2 Protection from the View of Other People

Deprivation of liberty, on whatever grounds, falls within the bounds of personal life and is not to be revealed to third parties. Yet, the organisation of the premises catering for the person, the procedures that they undergo there and the routes of access that they follow do not always, as such, protect them from the view of third parties not entitled to obtain knowledge about their situation.

Dedicated Routes of Access

Persons deprived of liberty and the escorts that accompany them in the secure rooms and medical jurisprudence units of general hospitals follow the same routes of access as other patients. Yet, these persons are often handcuffed and even leg-cuffed and are still too often exposed to public view in this accoutrement while crossing reception halls and waiting rooms, since they do not have the benefit of a specially-reserved route of access. More specifically, prisoners brought in from penal institutions are often catered for in the midst of other patients in hospital emergency departments.

Similarly, in some cases, the offices in which persons held in police custody are questioned are far from secure area. If the offices of the unit are located in an adjoining building or in a place outside of the secure area, the transfer of persons deprived of liberty has to take place using a non-dedicated route of access, in public view. The taking of fingerprints is sometimes, in gendarmeries in particular, carried out in the reception hall for the public or in a corridor when an ad hoc room is lacking. In order to carry out these movements in complete security within the building, persons in police custody, under the supervision of escort staff, sometimes move around with handcuffs or leg-cuffs. Their access routes are then liable to be the same as those used by victims.

With regard to the jails of courts of first instance (TGI), it was noted that persons appearing before a judge use the same staircase as the public in order to get to the courtroom or go through the public lobby, in public view and sometimes handcuffed. One law court in the West of France, split into two parts, obliges minors to be taken across a public highway under escort.

Seclusion rooms intended for agitated patients are not always directly accessible from the outside by means of a separate entrance. Patients taken there, sometimes in an intense state of agitation justifying their placement, cross through the unit in front of the other patients.

Not only does this forced exposure infringe upon their dignity but also upon the confidentiality of their situation.

In hospitals, provision should be systematically made for a specific route of access, exclusion in a cubicle with wheels and location of the secure room near to the technical support centre.

Premises Protected from View

Intensive treatment rooms sometimes leave patients to a large extent open to view by medical staff and other patients who go past the room. This infringement is all the more serious in that patients thus affected are not in a state to protect themselves.

Thus, in one hospital, in one room, once the door was open, the angle as well as the existence of two small glass windows made it possible to see the patient from the corridor, without even going into the security entrance; it had been specified to the inspectors that the door was of course immediately closed again by members staff who entered. Similarly, the bed, toilet with stainless steel bowl and, on the left, the shower, were, in succession, positioned exactly in line with the door. The toilet and the shower were not surrounded by any enclosure and once again left the patient on view to persons entering the room.

In one hospital, the three seclusion rooms of the unit catering for patients hospitalised without consent were equipped with a microphone and video surveillance camera. The monitor screen was located in the nurses' office; nevertheless, at the time of the inspectors' visit, the screen was covered with an opaque cover, thus avoiding the possibility of visual access on the part of patients entering the office.

A large number of police stations and gendarmeries do not possess dedicated premises for searches.

Under these conditions, searches are sometimes conducted in questioning rooms, toilets reserved for persons in police custody, in particular when the cells are occupied, in places of transit ("multipurpose" premises) or in a glass-faced cell and under video surveillance.

The same applies in prisons, where the conditions under which strip searches are conducted, after meeting visitors in particular, still do not guarantee the person's privacy and dignity. They may thus take place in an area separated by a simple low wall, in glass-faced booths or in cubicles lined up alongside each other and opening directly on to a corridor of passage.

Provision should also be made in prisons for waiting rooms designed with appropriate dimensions, in order to bring an end to the placement of persons in places of passage which expose them to public view (e.g., the cubicles in which new arrivals are placed and the barred "cages" that can be found around the rotunda of prison wings).

Respect for dignity and privacy needs to be protected, including in areas subject to intense surveillance. Generally speaking, the design of premises in which persons deprived of liberty pass through or stay should take care to ensure that the passage, waiting and stays of these persons take place protected from view by persons who do not belong to the service.

1.2.3 Exercising Defence Rights

For several years, defence rights have been reinforced and court control of measures of deprivation of liberty has been increasing: presence of lawyers in police custody and in disciplinary committee meetings and *de jure* control by the liberty and custody judge of decisions of hospitalisation without consent.

These changes accordingly call for appropriate architectural designs.

Respect for the confidentiality of interviews constitutes part of such measures. It is dependent upon the arrangement of certain adjoining premises and the location thereof.

Most gendarmerie facilities, and sometimes those of the police, do not possess premises dedicated to confidential interviews with lawyers and

medical examinations. Interviews and medical consultations take place in the office belonging to officer in charge of investigations, the premises reserved for searches or in the cell. This situation is not acceptable.

Medical consultations for persons placed in police custody should be carried out under confidential conditions enabling the compatibility of the police custody measure to be determined.

Interviews with lawyers should take place in a room which is insulated with regard to sound, in order to guarantee the confidentiality of the comments exchanged, devoid of video surveillance and separation devices, which place the parties to the interview further apart and, if necessary, oblige them to raise their voices.

In psychiatric hospitals, no specific place is provided for interviews between patients and their lawyers.

In most courts, there is no office near to the jails enabling persons transferred from custody and brought before the courts, to have interviews with counsels and personality investigators.

In old and cramped prisons, visiting rooms for lawyers are often premises shared with other actors – prison visitors and representatives of social bodies²¹⁴. In addition, the location and arrangement (lack of sound insulation) of these premises do not always protect the confidentiality of the interviews held in them.

In all places of deprivation of liberty in which they have occasion to assist persons staying therein, lawyers and doctors should be able to have separate premises at their disposal ensuring the confidentiality of interviews and consultations.

Finally in application of article 42 of the Prisons Act, the documents mentioning the grounds for the prisoner's committal should be compulsorily entrusted to the registry at the time of their arrival. Accordingly, as long as these provisions remain unchanged²¹⁵, it is important for prisons to place premises at prisoners' disposal, in which they can consult these documents under satisfactory conditions of confidentiality.

2. Architecture and Socialisation of Prisoners

For convicted prisoners, custodial sentences should have a meaning: they need to reconcile the protection of society, punishment of the convicted prisoner and the interests of the victim with the need to prepare the prisoner's integration and rehabilitation in order to enable them to lead a responsible life and prevent the commission of new offences²¹⁶. Moreover, rehabilitation of this kind is the sole vocation of certain types of penal institution: thus “open prisons and open wings within prisons, as well as reduced sentencing training prisons and wings for reduced sentences, involve a regime essentially oriented towards the social rehabilitation and preparation for release of convicted prisoners”²¹⁷.

Throughout the duration of placements in young offenders' institutions (CEF), minors are subject to measures of surveillance and control making it possible to organise the provision of

²¹⁴ *Annual Report for 2010, Section 3, L'exercice des droits de la défense en prison [“The Exercise of Defence Rights in Prison”]* (p.153): “Il est nécessaire de prévoir l'aménagement de locaux dédiés aux entretiens avec les avocats” [“The Need to Provide for the Organisation of Premises Dedicated to Interviews with Lawyers”].

²¹⁵ *Opinion (Avis) of 13th June 2013, Journal Officiel of 11th July 2013*

²¹⁶ *Article 1 of the preliminary part devoted to the “meaning of custodial sentences” of the Prisons Act no. 2009-1436 of 24th of November 2009.*

²¹⁷ *Cf. article D. 72-1 of the Code of Criminal Procedure.*

a reinforced educational and pedagogical follow-up programme adapted to their personality. At the end of their placement, the juvenile court judge has to take any measure making it possible to ensure the continuity of provision of educational measures for the minor with a view to their long-term rehabilitation in society²¹⁸.

Persons hospitalised without their consent may, for example, have the benefit of short temporary releases “in order to promote their cure, rehabilitation and social reintegration”²¹⁹.

Thus, the paradoxical objective of places of confinement is, while depriving persons of liberty, to simultaneously give them the means of extricating themselves from this temporary subjection and regaining their autonomy. In other terms, architecture should – while according a non-exclusive place to security imperatives, without exempting itself therefrom – enable openness to the outside for persons placed in confinement, while allowing them to develop their autonomy and engage in social relations inside the premises.

For these premises, architecture therefore has a purpose other than that of imprisonment; its intended objective, provided for by law, should be the reintegration and social rehabilitation of persons deprived of liberty. After the model of the statement made by Jean-Etienne-Dominique Esquirol, in 1822: “a lunatic asylum is an instrument of healing: in the hands of a skilful doctor, it is the most powerful therapeutic agent against mental illnesses”²²⁰.

2.1 An Architecture that is Open to the Exterior

The imperatives of reintegration and social rehabilitation impose the maintenance of dynamic relations with the outside upon places of deprivation of liberty in order to avoid reinforcing the exclusion resulting from confinement.

At the architectural level, the maintenance of relations outside of the walls depends in the first place upon the choice of location of the institution, as well as upon the existence inside it of premises likely to enable the maintenance of social ties.

2.1.1 A Location Integrated into the Fabric of the Territory

The geographical location of institutions is of vital importance in terms of social rehabilitation insofar as it enables the necessary relations with the community.

Yet, historically, mental health institutions – and long-stay prisons – were built or established far from towns with the double objective of distance and the possibility of agricultural production with a view to self-sufficiency. To the negative effects of this strategy of placing prisoners and person suffering from mental illness at a distance, are added those caused by confinement itself.

Persons deprived of liberty and their friends and relations, as well as staff and external actors, suffer as a result of the geographical location of institutions and their conditions of accessibility.

²¹⁸ Cf. article 33 of statutory instrument (ordonnance) no. 45-174 of 2nd February 1945 concerning juvenile delinquency.

²¹⁹ Article L. 3211-11-1 of the edition of the Public Health Code resulting from the Act of 27th September 2013 : “In order to promote their cure, rehabilitation and social reintegration, persons subject to psychiatric treatment in application of Chapters II and III of this Part or of [article 706-135 of the Code of Criminal Procedure in the form of full hospitalisation may have the benefit of short temporary discharge authorisations from the institution](#) [...]”

²²⁰ Cf. Jean-Etienne-Dominique Esquirol, Des établissements consacrés aux aliénés en France et des moyens de les améliorer, report presented to the French Interior Ministry in September 1818.

In the first place, this location is fundamental with regard to the maintenance of family ties, a fact which the *Contrôleur Général des Lieux de Privation de Liberté* has already had occasion to set out in his Annual Report for 2010²²¹.

The report on the state of prisons produced by the Parliamentary commission of inquiry of the French national assembly in the year 2000 summed up the situation as follows: “How can families be persuaded to continue their visits when a visit of an hour and a half demands that they make themselves available for an entire day and calls for financial resources enabling them to pay a taxi for a distance of a hundred kilometres? [...] Prisons in the countryside confirm the exclusion within the exclusion”.

Certain prisons, though of recent construction, are not catered for by the public transport network, access to them only in fact being possible by car.

The location of several remand prisons in Île-de-France poses considerable difficulties to families. Apart from the lack of means of transport between different suburban areas, the timetables of the buses connecting these institutions to stations of the Paris area rapid-transit rail network (RER) are not coordinated with visiting timetables and are very restrictive for the families²²².

The location of penal institutions is a field in which the interests of prisoners and those of their friends and families tend to coincide with those of staff. Institutions which are isolated (geographically and with regard to public transport) or located in towns considered to be “sensitive” often have high levels of staff turnover. The site’s immediate environment can also have an effect upon the quality of working conditions and therefore upon staff motivation. Special attention therefore needs to be given to this issue at the time of decisions on site locations in order to avoid establishing them, as in the case of the long-term detention centre of Tarascon (Bouches-du-Rhône), in a flood-risk zone, in close proximity to an abattoir, a waste disposal site, a sewage works, a cellulose factory and a sludge-processing company.

In other cases, the remoteness and isolation of facilities may lead to the abandonment of activities, despite the fact that the latter are nevertheless necessary for rehabilitation, and can render visits difficult on the part of voluntary actors who can no longer find sufficient resources to cover their travel costs to the premises. Occasional or regular visits by actors from civil society can also be hindered by remoteness or poor transport services to the institution, for example with regard to the organisation of a careers fair or the provision of support by a social sector professional.

Similarly, it would be desirable for these penal institutions to be located in geographical areas enabling the involvement of contract-holders and industrial or commercial partners. The close proximity of a large town and of a major road or rail network is an asset in terms of ensuring a wide range of qualified appointments to positions within institutions.

Provision should also be made for parking areas corresponding to the accommodation capacity of the institution in order to ensure that parking problems do not dissuade visitors and actors from coming to the institution using personal vehicles.

Finally, it is all the more important that the latter recommendations concerning accessibility and parking should be followed in CSL and CPA insofar as the persons accommodated are led to leave the institution on a daily basis and rarely have personal means of transport at their disposal.

²²¹ *Contrôleur général des lieux de privation de liberté* annual report, section 4: Maintenance of family ties and persons deprived of liberty (pp.161-239).

²²² *Ibid*, Section 4, 1.1 Institutions accessibility (pp.165-168).

Moreover, officers and actors go to this type of institution at irregular hours in order to meet persons deprived of liberty outside of the working hours of the latter. It is therefore appropriate to establish these institutions in close proximity to public transport networks accessible in the evening and at night.

The political will to build prisons with a capacity of several hundred places means that plots of land with a surface area in the order of about fifteen hectares need to be available. As a result these institutions have been established in peri-urban areas, due to the rarity of available land and the price of plots in close proximity to towns.

The *Contrôleur Général* recommends the construction of institutions of limited capacity (around two hundred persons)²²³, in close proximity to urban centres, distributed in a uniform manner across the territory as a whole and well-established at the local level. This choice would make it possible to avoid the formation of “deserts in the provision of facilities”, noted for example with regard to penal institutions for convicted prisoners catering for women ²²⁴ in the southern half of France.

2.1.2 Arrangement of Areas for Friends and Families

While letters and telephone make it possible to avoid the breaking of family ties when the latter have survived imprisonment, physical meetings maintain them and contribute to the rehabilitation of persons deprived of liberty. The material conditions of reception of families within penal institutions need to be such that the latter are not subjected to the effects of the imprisonment of one of their members in an excessive manner.

The design of visiting rooms needs to guarantee adequate confidentiality and privacy for persons; a separation device and sound insulation between the cubicles needs to be put in place. The arrangement of areas dedicated to children within visiting rooms needs to enable the latter to see their parents under the pleasantest possible conditions. Family life units (UVF) and family lounges should be brought into general use²²⁵.

In addition, it is important to make provision for the putting in place of such areas in remand prisons, and not solely in penal institutions for convicted prisoners. Indeed, although it is obviously important to maintain family ties in the long-term, it is equally important – and even, literally, a priority – to prevent the breaking of ties which, for its part, occurs from the moment of incarceration in remand prisons.

A few young offenders’ institutions have arranged premises, or even veritable apartments, within the institution enabling the accommodation of families (and, if necessary, of open setting tutors), when they come to the centre in order to meet their child and at the time of assessment meetings.

Apart from the savings made by parents who do not have to bear the costs of accommodation, this type of arrangement, sometimes referred to as a “family lodging”, enables the young person and their family to have the benefit of meeting under more independent conditions and emphasises the importance of the place of parents in educational supervision. It

²²³ *Annual Reports for 2008 (p. 38) and 2010 (p.30) [in French]: "The Contrôleur Général more than ever asserts its point of view, which leads it to believe that institutions of more than two hundred prisoners give rise to tensions and therefore, multiple exchanges, which are incomparably more frequent than in smaller institutions".*

²²⁴ *Annual Report for 2010, p. 167 [in French]: "Imprisoned women are moved still further away from their personal ties due to the fact that there are fewer institutions catering for them" and p. 190 "Their location raises a number of questions with regard to the maintenance of family ties and poses difficulties with regard to removal far from families, the South of France [...] being devoid of penal institutions for convicted prisoners catering for women".*

²²⁵ *Annual Report for 2010, pp.185-189 and section 4 above.*

would be appropriate to systematically create living areas of this kind. These meetings constitute a working tool for the educational team, which can have a sufficiently long period of time at its disposal to conduct sustained actions with young people and their families.

Catering for families in this manner is also perceived by the young people as a break in the supervision imposed by the young offenders' institution, which is based on collective life from dawn till dusk.

In hospital, the necessity of confining the patient for a certain period needs to be reconciled with that of maintaining the latter's contacts with the outside and preparing for their discharge. It is necessary to make several places available, within the hospital, for meetings between patients and their friends and family.

When there is only one reception room, it is indeed possible for several families to be inside it at the same time; the level of noise is often high, peace and privacy are not respected. Conversely, in one hospital visited by the inspectors, two reception rooms had been created, of which one was reserved for families with children, "more intimate and convivial".

The visiting rooms should be accessible from outside, without going through the unit. Thus, in one hospital inspected, in order to reach the entrance door to the closed unit it was necessary to go through a security entrance, which was used as a waiting room. In this security entrance, a staircase enabled visitors to have direct access to the first floor, which was reserved for families. "As in an intensive care ward, why should it be any different?" it was pointed out to the inspectors.

For hospitals that possess green areas, it would be appropriate to make provision for picnicking facilities and play facilities for the children of patients who are mothers and fathers, who would thus be able to welcome their children under pleasant conditions and engage in activities with them. This conviviality is likely to encourage willingness to accept treatment and proper progress of the course of hospitalisation. A system of hotel rooms for visitors needs to be thought up.

Spouses/family members sometimes travel long distances in order to reach the hospital, they work and are not always able to take days of leave or reduction in the number of their working hours. These rooms should be made available in hospitals, already equipped with a necessary and sufficient hotel system, which would enable families to spend time with patients in the evening. Indeed, between 5 p.m. and 9 o'clock the following morning, there are no medical or psychological consultations for patients and, generally speaking, neither are there any visits, since the latter finish at the end of the day.

Hospitals need to provide areas suitable for external actors such as associations involved in cultural, leisure and sports activities etc., which would make it possible to offer patients leisure activities other than salt dough, petanque and belote [card game], without any need for additional staff or for training the latter in activities. Patients justifiably complain of boredom. Hospitals and collective areas therefore need to be arranged in order to actively encourage cultural associations to come.

In order for psychiatric hospitals to no longer remain on the fringes of civil society, an institutionalised place needs to be given to families, associations and other actors by means of suitable premises.

2.2 Architecture in Support of Personal Autonomy

The objective of the enforcement of any sentence is aimed at the social reintegration of the person deprived of liberty, which presupposes an environment protecting their autonomy or enabling them to recover it. Access to autonomy constitutes an essential issue in psychiatric hospitals, in particular for patients suffering from chronic

and socially-invalidating pathologies; on the other hand, as far as prisons are concerned, autonomy appears to be a concern which is diametrically opposed, in most cases, to a mode of operation characterised by total subjection of the prisoner during their incarceration.

The architecture of places of deprivation of liberty should promote personal autonomy, as far as the practical facilities thereof are concerned, and in terms of modes of access to external spaces.

2.2.1 Enabling Persons to Take Practical Responsibility for Themselves

During periods in which they are temporarily deprived of their liberty, persons should not lose the habit of carrying out the day-to-day actions that they have to complete when they are free: getting up on time, cooking, washing, hanging out and ironing their linen, doing their shopping etc.

Architectural design enabling people to wash their personal linen and to prepare and share meals contributes thereto, at the same time as contributing to their physical well-being, psychological balance and autonomy.

This familiarisation with the demands of daily life, which is necessary for adults, involves a real learning process for most minors placed in CEFs, which constitutes an essential component of their education and supervision in these centres. Mastery of these simple actions, ensured in appropriate premises for adults, is in itself likely to make release easier and prevent recidivism. Moreover certain CEFs illustrate this concern by having a unit for preparation for ordinary life, a kind of studio flat where young people are able to learn the rudiments of independent daily life.

The system of “prison shops” organises the sale, distribution and payment for food products and various different items, which are available for purchase on terms that only leave a limited share of autonomy to the buyer: all the latter has to do is fill in an order form, and wait for distribution of the item, which is generally delivered to their cell, the corresponding sum of money being debited from their personal account without any action on their part. Apart from the difficulty of understanding the system and filling in the order form in writing for a portion of the prison population, which is unable (or barely able) to read and write in French, this mode of organisation gives rise to problems of operation and incomprehension, which constitute one of the recurring grounds for recriminations in prisons. The principle points of dispute are of two kinds: they arise from the fact that delivery in most cases takes place in the cell, in the absence of the purchaser, who thus cannot immediately check whether the order has been fulfilled, and from the difficulty of checking their purchases on the bank statements drawn up by the administration.

After the model of the cafeterias which exist in certain mental health institutions, penal institutions should make provision for premises – judiciously located for ease of access – enabling prisoners to go to a shop or minimarket, in order to choose and order their purchases directly, pay for them using a magnetic card type system and receive immediate delivery. This type of outlet could also enable direct access by means of an automatic pay point for certain services.

In all places of deprivation of ability where persons stay on a long-term basis, returned to autonomy or maintenance thereof therefore makes it necessary to make premises available, such as a kitchen, laundry room and shop.

Upstream from any new building and from the renovation of any existing buildings, the question of the location of the premises provided for cooking and doing the laundry and shopping, needs to be posed in relation to accommodation areas, classrooms and rooms for

various different activities and external areas. The time taken up by movements needs to be thought out, in order to enable persons to re-establish or learn a rhythm of organisation of their time and use of space appropriate to the social rules in force: getting up early enough to arrive at school on time, equipping oneself with clothes suitable for the different seasons etc.

The spaces need to be designed in a dynamic manner permitting flexibility of use, so as to enable the implementation of uses which may be different according to the subsequently defined institutional project and the development thereof.

Some prisons and hospitalisation units may opt to require inmates to spend their time in collective areas during the day and prohibit access to cells and rooms; others may, for example, choose to leave prisoners the option, for half-days, of remaining alone in their cells or going to a collective area; elsewhere, provision may be made for eating meals in a refectory, cooked in a collective room or distributed and eaten alone in cells etc. The design of premises needs to enable this variety of choices and the making of changes thereto.

Alongside premises designed to avoid the loss of, or permit the learning of, the indispensable rules of autonomous life, others need to be equipped with a view to enabling the learning of these rules.

Such is the case with regard to intensive treatment rooms in hospitals, also referred to as seclusion rooms. The design of these premises needs to take into account the fact that one of the objectives of placement in these rooms is to prepare for discharge and return to the unit of admission.

Intensive treatment rooms do not always have security entrances. Where they exist, they constitute both a security device, enabling staff who open the first door not to be immediately confronted with the patient in crisis, as well as a room making it possible to differentiate the place in which the person suffers, sleeps and receives visits from medical staff, from the place in which meals are eaten, in which there is a return towards a certain form of autonomy. Where these security entrances do not exist, patients are, de facto, obliged to eat their meals in the room, in many cases confined to the bed, due to lack of suitable tables and chairs.

One institution inspected had created “micro-units”, completely separated from other units and making it possible to cater for two patients in intensive treatment rooms and one patient in a room identical to the other rooms, with one bed, serving as a place for calming down. Between the two intensive treatment rooms and the calming-down room, a living area had been fitted out, equipped with two tables, each equipped with four chairs, a coffee table, six armchairs and a unit with a television set.

In view of the above-quoted experiment and the opinion of the professionals concerned, the creation of this type of facilities in hospitals makes it possible to provide greater space to patients placed in seclusion rooms, which contributes to reducing the time spent under this measure of restraint and encourages progressive return to a more autonomous life in the units of admission.

2.2.2 Greater Ease of Access to External Areas for Captives

Gaining access to external areas is an essential question, with regard to persons confined in treatment units and prison wings. The layout of these areas should enable easy access, as often and freely as possible, and provide material conditions making them pleasant to live in.

In Hospital

As emerges from the majority of inspections, psychiatric treatment units are in most cases closed, in the name of protection in view of risks – running away, bringing-in of alcohol and

drugs, persons entering the unit in an untimely manner etc. – without the effects and effectiveness thereof always having been fully considered. In the best of cases, patients can only leave their unit, in particular in order to walk around the hospital, at certain times of day and with the agreement of staff, and the intervention of the latter in order to open the door.

In such a context of restriction of the liberty to come and go, it is absolutely essential for each patient to be able to have an external area at their disposal within their unit which, in most cases, is also the only place where they are authorised to smoke. Yet, this is not always the case.

Thus, in one large mental health institution in the Parisian region, patients hospitalised in a unit located on the first floor cannot freely go to the large tree-lined patio, which is reserved for the unit on the ground floor. Access thereto is closed-off by bars, except at the time of meals, which are eaten in a room which is also located on the ground floor. For the rest of the time, the patients of this unit only have access to a passageway-gallery which constitutes the only external space in which it is possible to get some fresh air and have a smoke. To the feeling of suffocation and confinement is added the frustration generated by the view from the gallery of the persons hospitalised in the unit on the floor below, who can, for their part, enjoy the attractions of the patio...

Neither do units relocated outside of psychiatric hospitals, and psychiatric wards established within general hospitals always have a park, courtyard or patio; patients who are smokers, in particular, are sometimes obliged to gather together, as in a controlled hospital, on balconies covered with wire mesh.

Moreover, when they exist, these premises are not all necessarily laid out. Thus, in one child psychiatry hospitalisation unit inspected, the courtyard did not offer any shelter, the ground being of earth and grass: whenever it rained, which was often in this unit in the North-East of France, the young people remained on the threshold of the French window in order to avoid making their shoes dirty and, in reality, never really went outside.

It is important for patients to be able to have an open air area at their disposal, if they are not in a position to leave their hospitalisation unit. The courtyard or patio needs to be sufficiently large to make it possible to go for a walk and get away, providing the possibility of sitting down and sheltering from bad weather

Similarly, although courtyards need to be enclosed in order to enable free access thereto for patients receiving treatment without their consent – in particular for smoking – some are enclosed under disgraceful conditions. In one institution inspected, the courtyards of the various different hospitalisation pavilions were surrounded by and surmounted with wire mesh, in response to a demand to prevent running away, made by the director of the regional hospitalisation agency²²⁶. This arrangement, implemented in spite of the opposition of the majority of staff, consisting of green wire mesh, without trees and exposed to public view, gave a real impression of “cages”.

Before any measure is taken, of a security-enforcement character which may conflict with medical treatment and fundamental rights, it appears necessary that the representatives of users, families and staff, as well as the hospital ethics committee²²⁷, which should exist, should be informed in order to give an opinion and even take part in the discussions.

²²⁶ At 1st April 2010 regional hospitalisation agencies (ARH / agences régionales de l'hospitalisation) were replaced by regional health agencies (ARS) put in place by Act no. 2009-879 of 21st of July 2009, referred to as the "Hospital, patients, health and territories" Act.

²²⁷ Ethics committees were created in application of article L.6111-1 of the Public Health Code, which provides that "Health institutions undertake internal reflection concerning the ethical questions raised by reception and medical

In Prison

In prisons, and in the most recently constructed prisons in particular, the layout of exercise yards is far from bringing attractive due to the priority given to security: surrounded by an enclosure of concrete walls or rigid wire mesh bristling with concertina wire, the yards are surmounted with anti-helicopter ropes and can only be entered by means of a secure access route with security entrances...

Furthermore, the majority of exercise yards are characterised by the dearth of facilities enabling a minimum of comfort such as benches, tables, bathroom facilities and shelters.

It is striking to note the low rate of use of exercise yards in view of the number of prisoners entitled to go to them. Although probably not the only reason, the layout of the space in no way lessens the fear that these yards provoke my considerable number of people, nor the apprehensiveness of staff called there to take action in case of need. Conversely, other prisoners consider these areas to be their territory and adopt behaviour dissuading any third party from going there. The prisons administration appears to understand this question to the point that surveillance is henceforth increasingly conducted by remote means, and no longer from inside the exercise yards, by means of video surveillance devices, of which one of the objectives consists of collecting elements of proof at the time of assaults which take place there.

Apart from the arrangements necessary to give these places a minimum of attractiveness, which requires covered parts and areas covered in vegetation, exercise areas should be rethought so that they can no longer be deemed equivalent to veritable places of segregation.

Exercise yards, as they still understood in certain old institutions, could be used as reference in this respect. In these places, areas devoted to exercise are also axes of passage, used equally by prisoners, staff and external actors, in order to go to their respective activities. Any movement within the institution therefore involves direct contact with the persons present there. Although security obviously remains a concern in these areas, it is not for all that as omnipresent and exclusive a concern as in the yards described above.

In this setup, the exercise yards are in general located between the administrative area of the institution and the various different prison sectors, and the accommodation buildings in particular.

The possibilities of coming and going for exercise are organised in a more fluid manner: indeed, movements between the cell and the yard take place more frequently – with the arrangement of intermediate spaces – than in the majority of other institutions, in which exercise conforms to a single movement of going down and coming back up. The latter constitutes another factor dissuading prisoners from going to exercise yards, since everyone in prison knows that having to be recalled, when one is in the yard, leads to results which are very much a matter of chance...

With regard to access to the exterior, it would therefore be appropriate to think about changing over from a “yard approach” to a “park approach”, as has already been done in several long-term detention centres. Within this approach, a central square serves as a link between the various different accommodation wings, like a small public garden whose social function is to be a special place of exchanges between prisoners, actors and staff, the latter organising surveillance by community policing.

Crossing the “square-park” provides the prisoners present with the possibility of exchanges, and even of calling out to the persons that they encounter. Persons are therefore no longer excluded in a space enclosed for the purposes of security. Prison officers thus regain their rightful place, their role not being limited to positioning themselves at points of access, but also consisting of moving around. There is no longer any need for video surveillance, with the exception of any blind spots that may exist.

In institutions that have a “square-park” of this kind – such as the long-stay prison of Poissy for example – no increase in the number of incidents has been noted, whereas the level of presence of prisoners is much higher. According to the information collected by staff at the time of inspections of these institutions, incidents in “square-parks” are rarer and less frequent than in “isolated yards”.

In addition, this type of arrangement is likely to bring users closer to the persons in charge, who thus have additional and direct information at their disposal with regard to the overall atmosphere in the prison.

When exercise areas are designed with the objective of promoting personal autonomy and socialisation, persons deprived of liberty show greater respect for them. They make these places their own, in particular by arranging them to their satisfaction in order to extend their living space.

Respect for these plots, when they are cultivated, therefore contributes to an environment which is both calmer and healthier, thanks to the absence of rubbish thrown from windows and maintenance carried out on their own initiative by persons who want to maintain their living space in good condition.

It would be appropriate to make provision for sufficiently large areas to enable prisoners to engage in any vegetable gardening, horticultural or sports activity of their choice.

2.3 Architecture Promoting Social Rehabilitation

Under the current system of management of confinement, persons deprived of liberty spend a large amount of time in cells or rooms due, in particular, to insufficient availability of activities. In addition, they are de facto deprived of relations that they might have with the outside: relations with persons of the opposite sex, integration within large groups of people and regular exchanges with professionals, rather than only with other captives. The architecture of these places thus supports this management and organises places of deprivation of liberty into social spaces of such a special kind that the nature of the social relations established there renders reintegration into the community difficult.

2.3.1 Areas for Collective Meetings

Unless they are to suffer from lack of privacy in the place in which they are to live in the long-term, persons subject to collective life need time for, conviviality and spaces promoting exchanges and encounters. In view of the specificity of each type of place of deprivation of liberty, these concerns take different forms which presuppose special arrangements of premises.

a) Thus, in most mental health institutions, a “cafeteria” or “therapeutic bar” has been set up which has proven to be one of the essential places for patients, enabling them to leave their unit, have coffee or a drink, bump into other people and meet friends and family, make a few purchases etc. It is essential to arrange these premises to make them attractive: the cafeteria needs to be established in a sufficiently large room with glass surfaces overlooking green areas of the hospital park; the furniture needs to make it possible to comfortably welcome families; insofar as possible, priority should be given to the possibility of sitting on an open terrace.

b) Contrary to young offenders' institutions and psychiatry treatment units, prisons possess very few rooms for collective use and when they exist, they are often of dimensions which do not make it possible for large numbers of people to gather together.

Nevertheless, it is important to recall that “the role of placement in individual cells does not constitute an obstacle to prisoners gathering together during the day for work, physical and sports activities, education, professional training and religious, cultural and leisure activities”²²⁸, quite the contrary: the creation of premises for collective use, likely to constitute places for conviviality, makes it possible to offset the peace and quiet that each prisoner is moreover entitled to expect.

In addition, prisoners should be able to gather together in common rooms, not only for exchanges but, more broadly, in order (once again) to learn to live in a community and put up with the imposed presence of third parties.

For example, meals are not currently eaten in common in prisons, which are based upon the principle of service at the cell door and consumption inside the latter.

However, there are a few notable exceptions in long-term detention centres, in which persons serving long sentences can have the benefit of a detention regime based upon autonomy within accommodation units, each of which are composed of about ten cells.

In one institution inspected, each of the “wings” was open to a vast, living area, composed of a fully-equipped kitchen (cooker, electric hotplates, refrigerators, cupboards, sink, washing machine etc.) in which the production made in the central kitchen was deposited, the area also including a dining room and the lounge where prisoners could read, play cards, watch television etc.

This type of arrangement should be extended to other institutions, in particular to those in which differentiated prison regimes have been put in place, which distinguish so-called trust sectors and floors.

In the majority of institutions inspected, it emerged that in reality the consequences of the trust regime were minimal in prisoners' lives, apart from different (later) times of closing of cells: the dimensions of the facilities are in general not in proportion to the number of occupants in the sector and the arrangements in reality consist of alterations to cells (often by means of knocking down an intermediate wall) into rooms devoted to various different purposes in which cooking equipment (sometimes without any table or chairs), household appliances for the cleaning of linen and Ping-Pong tables etc. are to be found, usually in very poor condition.

In order to fulfil these demands, the architecture of penal institutions needs to make provision, in each wing of long-term detention centres, for a common relaxation and activity room, a “centre”, with a part equipped with multimedia and IT equipment and another arranged in order to enable cooking and washing of linen.

2.3.2 Premises Facilitating Exchanges with Professionals

Premises reserved for professionals and actors within places of confinement: activity rooms and offices.

a) Access to activities, culture and information in the first place requires the existence of a specially-designed premises for this purpose. The same rooms are too often called upon to be used for various different activities without distinction. For example, premises devoted to

²²⁸ Cf. article D. 95 of the Code of Criminal Procedure.

teaching or religious worship²²⁹ need to be distinguished as such. Insofar as possible – taking constraints of surface area in particular into account – it would be appropriate to differentiate these areas according to the activity assigned to them.

In this regard, the design of multipurpose rooms should be ruled out; certain activities then risk being carried out to the detriment of others, due to lack of availability. The organisation of activities and movements is thereby affected.

In view of the considerable lengths of prisoners' stays, premises need to be everywhere planned for the organisation of collective and recreational activities. Areas are to be planned of appropriate dimensions in relation to the public likely to be catered for in them, in particular in the prison environment, in which the dimensions of cinemas/theatres often appear too small. These premises also need to enable artistic creation (with sound insulation and a water tap if necessary) and access to culture (with equipment enabling the showing of films for example).

Unlike prisons, hospitalisation units and young offenders' institutions often do not have a library. This is sometimes a deliberate choice: thus, in one CEF located in an urban area, premises have been designed that correspond to the institutional project which, rather than organising supervision within the institution, gives priority to young people going outside with a view to re-socialisation. The absence of a library is always harmful, insofar as access to an outside media library is always subject to the availability of staff in order to accompany persons when they are authorised to go out, which is not always the case.

In all places of deprivation of liberty, libraries appear to provide the most appropriate framework for being used as documentation rooms where everybody should be able to find the information they require (of legal nature in particular, corresponding to the constraints to which they are subject) and in which access to the Internet should be possible.

Conversely, in certain institutions visited by the inspectors, the library was also used as a documentation and information centre (CDI) or a "multimedia resource centre".

Similarly, libraries are conducive to the organisation of meetings between persons within the framework of the right to collective expression, which needs to be everywhere asserted as a necessity in collective life.

The inspectors' visits also make it possible to ascertain that most penal institutions have an external sports ground, of which the levels of use are however far from meeting the demand for participation.

Absence of staff (or their assignment to other duties) and use of the sports ground for purposes other than sport (as an exercise area for new arrivals for example) are the explanations given. In the largest institutions (prisons with sections incorporating different kinds of prison regime), the sports ground is located in an area strictly separated from the various different accommodation wings. Access thereto is therefore not straightforward: on the one hand, it means leaving one's wing, and therefore involves the vagaries of internal movements; on the other hand, the sports ground is not only shared by the various different wings (and even, within the same wing, between different sectors and floors), but also, between persons of the same sector in case of high levels of demand for the same activity (football for example). This results in low levels of individual use of the sports ground. Moreover, prisoners often find themselves obliged to choose between going for a walk or taking part in a sports session, both of them being scheduled at the same time. Apart from the fact that this choice results in further increasing the time spent inside the cell, it makes it necessary for the exercise yard to be shared between walkers and persons playing sport, which is sometimes difficult.

²²⁹ Cf. *Opinion of the CGLPL concerning access to religious worship in places of deprivation of liberty*, 24th March 2011, published in the *Journal Officiel* on 17th April.

In order to get around these various different obstacles in the way of the development of sports activities in prison, it would be appropriate to everywhere plan access to an independent sports area from exercise areas, enabling the practice of physical exercise and collective sports. Only organised sports activities and events organised with external teams would still use the centre's sports ground.

More generally, in view of the majority of young people composing their population, prisons and young offenders' institutions should moreover include premises promoting the practice of physical and sports activities. The available facilities should cover both individual (weight training in prison) and collective needs, in covered (gymnasium, multipurpose room etc.) and open air premises.

b) The dimensions of the structures, the design of the buildings and the resulting positioning of staff have a considerable effect upon the operation of services.

Although psychiatric treatment units and young offenders' institutions are characterised by supervision in close relation with the person, the same does not apply in prisons – with the probable exception of those of dimensions of less than 100 places – in which staff and actors find themselves at a distance with regard to the day-to-day life of prisoners, this distance sometimes even meaning that the latter never go to the accommodation wings.

In certain institutions, individual interview rooms exist in the prison but are never used, in particular by the CPIP, or even by managerial staff.

Loss of time, connected in particular to the numerous hold-ups of movement during the day due to the beginning and end of exercise periods, constitutes the grounds most commonly mentioned in order to justify interviews being held outside of the accommodation sector, without taking the fact into account that, for the same reasons and at the same times, prisoners have the same difficulties in leaving the prison area... On the other hand, the slowness of movements, the waiting times at the numerous intermediate bars and the various different locations of people to be seen in different wings are legitimate arguments. Nevertheless, the distance generated between staff and prisoners deprives the latter of an institutional presence in (or even control of) their daily environment.

In other institutions, in view of the number of actors²³⁰ as compared with the number of offices, the latter are sometimes occupied by other persons and therefore unavailable.

For this reason, the wings should have a sufficient number of interview premises and make provision for waiting rooms accordingly. These offices should be easily accessible (both by themselves and by persons deprived of liberty and their families, with the objective of optimisation of working time), of appropriate size for their intended use and ensure the confidentiality of exchanges.

Provision should also be made for meeting rooms promoting encounters between the various different actors in order that supervision of the persons concerned can be really multidisciplinary and concerted, including in partnership with them. It should also be possible for institutional meetings to be held there, in particular in order to enable prisoners to take part.

²³⁰ Youth workers, doctors, teachers from the national education system, prison rehabilitation and probation counsellors (CPIP), members of legal information and advice access points (PAD), lawyers, staff of welfare bodies, representatives of the Défenseur des droits ombudsman, chaplains, prison visitors etc.

c) These activity rooms and offices should exist both within the punishment wing (QD) and the solitary confinement wing (QI).

In prisons, QIs and QDs are often located in the same building and on the same floor. They are managed by the same staff, and are insufficiently differentiated (see also the examination of the premises thereof, cf. supra § 1.1.4), despite the fact that, as the Code of Criminal Procedure recalls, solitary confinement is a measure of protection and security, and does not in any case constitute a disciplinary measure²³¹. Prisoners placed in solitary confinement nevertheless appear to be “punished”, in particular in terms of activities, whereas they are entitled to the latter under certain conditions²³².

In addition, these wings are often separated from the rest of the prison, for example located on the final floor of the institution.

This removal from the rest of the prison reinforces the feeling of exclusion and renders the participation of persons placed in solitary confinement in activities more difficult, especially since there are no or few activity rooms within these wings.

In most cases the only activity room is a sports room (equipped with weight training apparatuses). QI are not always equipped with libraries. Thus, in the QI of one long-stay prison wing, the library is no more than a cupboard containing a few books and magazines established in the laundry room. Similarly, solitary confinement wings never have premises reserved for working, training or education and rarely have a common room which, moreover, is sufficiently large to enable several persons to gather together if necessary. For this reason, in practice placement in solitary confinement also very often leads to deprivation of all activities and social life.

It would therefore be appropriate to rethink the positioning of solitary confinements wings and make provision for a minimum of activity rooms within each solitary confinement wing.

In practice, doctors who go to solitary confinement and punishment wings, have the cell doors opened – but rarely the bars of the security entrance of punishment cells – and, in the best of cases, limit themselves to asking prisoners how they are. In some cases, they also hold their consultations in the wing’s hearings room.

In order to enable doctors to exercise their duties under normal conditions²³³, examination rooms should be placed at their disposal within QDs and QIs alike.

Areas for Meetings between Professionals

Prisons should have places of exchange in their various different areas. Routes of access to institutions, intersections and meeting rooms should be carefully designed in order to facilitate mutual acquaintance between the various different actors and informal exchanges which make multidisciplinary work easier and upon which collective dynamism depends.

²³¹ Cf. article R.57-7-62 of the Code of Criminal Procedure.

²³² Article R.57-7-62 of the Code of Criminal Procedure provides that prisoners placed in solitary confinement cannot take part in exercise and collective activities except by authorisation. In other words, on the one hand, they can continue to have the benefit of activities on their own, on the other hand, they may take part in collective activities by decision of the head of the institution. Finally, the same text provides that “the head of the institution organises, in so far as possible and according to the prisoner’s personality, common activities for persons placed in solitary confinement”.

²³³ In principle, each prisoner placed in solitary confinement or in the punishment wing has to be examined at least twice a week by a doctor and also as often as the latter considers useful, in application of the provisions of R.57-7-63, R.57-8-1 and R.57-7-31 of the Code of Criminal Procedure.

Yet, in new prisons in particular, the distance between the various different wings renders meetings difficult between the staff and the actors – as well as between the professionals of the institution – who only come across each other in areas where it is inconvenient (and little advisable) to stop: main entrance, central information post (PCI) and information and control post (PIC).

As Grégory Salle²³⁴ points out, it is interesting to examine the statements made by professionals having worked in these institutions of a different design: between traditional buildings with a nave-style model and more recent constructions organised into wings, they show a very clear preference for the former, which have the principal characteristic of situating living units near to areas of passage and of making the central intersection “not only a nerve centre, but a kind of place of sociability”. The author stresses the function assigned to the central intersection as “a place of transit (prisoners pass through them often, whether accompanied or not, in order to go to the medical centre for example) and mixing of different people (one can encounter lawyers, prison officers and rehabilitation and probation counsellors etc.), and even as a place of sociability or at least where people across each other’s paths – admittedly in a transitory and superficial way, but in a repeated manner which breaks the routine”.

Finally, in order to avoid the situation ascertained in one remand prison, in which the classrooms, located on the third and fourth floor, were deserted by the prison population, it is important for the activity rooms, interview offices and meeting rooms mentioned above to be able to be located on the same floor, if possible on the ground floor. These premises need to be easily accessible while protecting, if necessary, the anonymity of the persons who go there and the confidentiality of what takes place. Treatment areas need to ensure a certain discretion for the persons who go to them.

.By way of illustration, provision needs to be made for convivial rooms enabling the implementation of health education actions (workshops on the treatment, support, prevention and study of addictions for example) and support groups (concerning traffic offences, marital violence or offences of a sexual nature for example) in premises established within health units, without however being directly visible from areas of passage.

Grouping these rooms together enables informal and direct exchanges between professionals: thus, in one long-stay prison, the office of the prison head is located next to a health unit, which for example makes it possible to resolve questions of emergency hospitalisation and removal from prison for treatment as quickly as possible.

The location of premises intended for senior and middle-ranking of managerial staff at the heart of the prison buildings enables better knowledge of the persons to be taken care of and makes their supervision easier. Professionals from the welfare sector²³⁵, who engage in occasional actions and have interview premises at their disposal located in close proximity to those of the SPIP, are thus enabled to work in cooperation with other professionals rather than on their own. This provides an opportunity for informal exchanges of information which, otherwise, would not necessarily be passed on. Comparison of the opinions of sports instructors, warders, CPIPs, teachers, tutors and doctors can lead to more individualised and personalised handling of prisoners.

Nevertheless this accessibility should not for all that condemn persons who go there to visibility, which could be prejudicial to them.

Indeed, numerous persons accommodated in CEFs and prisons require somatic treatment or psychological support, in particular with regard to the offence committed. These

²³⁴ Grégory Salle, “De la prison dans la ville à la prison-ville” *Métamorphoses et contradictions d'une assimilation*, *Politix*, 2012/1 no. 97, p. 75-98. DOI: 10.3917/pox.097.0075.

²³⁵ National employment agency, family allowance social security office, primary national health insurance office etc.

institutions therefore need to provide the practical possibility of suitable healthcare, thanks to a sufficient number of consultation rooms, equipped in accordance with needs.

Deprivation of liberty needs in particular to represent an opportunity, for certain socially excluded persons, to renew their contact with the health care system: hence the importance of granting a central place to the health unit, which needs to be easily accessible to all. Provision for these places of exchange also needs to be made inside hospitals.

It is regrettable that emergency departments cater for both patients who come due to psychiatric disorders and patients present for reasons of a somatic order, without being able to separate them. Moreover, in the absence of specific premises catering for them, psychiatry professionals have to go to the somatic emergency department in order to examine these patients.

The creation, in several institutions, of reception and crisis centres equipped with a few beds, serving as a place for planning any admission that may be necessary, testifies to the solidarity of medical workers who have been able to pool the necessary resources. These places of healthcare have shown that hospitalisations without consent can thus be avoided.

The Minister of Health needs to encourage the development, within general hospitals catering for patients showing psychiatric disorders in their emergency departments, of premises dedicated to the reception and care of psychiatric emergencies wherever these would be better-equipped for both assessing the state of health of arrivals and carrying out the procedures involved in the implementation of treatment without consent, and full hospitalisation in particular.

2.3.3 *Layouts that Take Account of Differences*

Mixing of the Sexes

Mixing of sexes is put in place in prisons for minors (EPM)²³⁶ – as far as accommodation is concerned – in child psychiatric units and in certain young offenders' institutions (CEF)²³⁷. It enables better handling of the populations catered for.

Yet, conversely, in prisons “men and women are incarcerated in separate institutions or separate wings of the same institution. In the latter case, all measures need to be taken to ensure that no communication is possible between them, with the exception of activities organised on the basis of article 28²³⁸ of the Prisons Act”. Furthermore, “female prisoners are only supervised by persons of their own sex. However, the management may include male staff²³⁹”.

²³⁶ *Prisons for minors are places of deprivation of liberty reserved for young people between 13 and 18 years of age created by the Act laying down the basic principles for government action (loi d'orientation et de programmation) in the field of Justice of 9th September 2002 referred to as the “Perben I” Act.*

²³⁷ *In accordance with article 33 of the aforementioned statutory instrument (ordonnance) of 2nd February 1945 “young offenders' institutions are public institutions or private institutions authorised under the conditions provided for by decree of the Council of State, in which minors are placed in application of judicial supervision or probation orders or external placements or following release on parole”. They were created by the Act laying down the basic principles for government action in the field of Justice of 9th September 2002.*

²³⁸ *This article provides that “subject to the maintenance of proper order and security in institutions and by way of exception, common activities may be organised for both sexes”.*

²³⁹ *Cf. Article 1 of the model prison rules and regulations, appended to article R.57-6-18 of the Code of Criminal Procedure resulting from decree no.2013-368 of 30th April 2013 concerning model prison rules and regulations.*

Similarly, with regard to minors, although “female minor prisoners are accommodated in units provided for this purpose under the supervision of staff of their own sex”, “activities organised in specialised penal institutions for minors can cater for prisoners of both sexes”²⁴⁰.

In practice, the reasons often put forward in order to justify this separation are connected with the risk that mixing of the sexes could represent for women captives and with the lack of female staff.

It is nevertheless important for the prisons administration to comply with legal provisions: thus, totally strict separation of men’s and women’s wings in prisons is not justified except as far as accommodation is concerned.

Institutions should arrange areas for common activities, in particular work and training, teaching and cultural activities.

In psychiatric hospitals, mixing of the sexes has henceforth been brought into general use in full-time hospitalisation units, the assignment of persons of the opposite sex to the same room is alone ruled out. This practice, which arises from the will to provide patients with a relational environment in accordance with normal practices in society, is likely to reduce their social exclusion as a result of confinement. Nevertheless, it is a source of relational difficulties when not backed up in terms of the organisation of space when, in addition, sexual relations between patients are often prohibited by the rules and regulations or living rules of the units. Female patients sometimes also raise cases of rape and even report such offences to the prosecuting authorities.

For all that, the solution to the possible problems inherent in mixing of the sexes in the units of psychiatric hospitals should not lie in the separation of women and men into separate wings or floors, but in leaving the possibility of controlling the locking of their rooms to the occupants. The architecture of places of confinement needs to include the mixing of sexes by making provision for arrangements which render the spaces functional and harmonious.

Thus, in one CEF inspected, mixing of the sexes was not a part of the initial project, which was intended to cater for “twelve boys between 15 and 17 years of age”. The initial educational project was finally changed to enable the accommodation of girls, since theatre activities, which the CEF used as an educational aid, lent themselves well to the mixing of the sexes. At the educational level, technical solutions have been found enabling institutions to cater for both girls and boys. The CEF had twelve rooms: seven for the boys and five for the girls at the time of the inspection. The number of rooms respectively reserved to girls and boys could be varied according to the population catered for, since the passageway door separating the girls’ accommodation area from that of the boys was movable.

Thinking about Ageing and Disablement

The population of places of deprivation of liberty is much younger than the general population, with the exception of mental health institutions.

The fact remains that non-negligible fluxes in terms of volume, and above all increasing over time (with a probable exception as far as the detention of illegal immigrants is concerned and in CEFs by their very construction), are made up of persons of more than 60 years of age and persons whose state of health requires their special needs to be taken into account in their accommodation.

²⁴⁰ Cf. article R. 57-9-10 of the Code of Criminal Procedure.

No police custody facilities inspected have special facilities for this purpose, nor do detention centres for illegal immigrants. In prison, cells for “persons with reduced mobility” have often been designed, but often with makeshift means and few of them are really satisfactory²⁴¹. In addition, movements often involve the use of stairs – in the absence of the possibility of using goods lifts – except when such persons are assigned to the ground floor, which is sometimes that of the so-called closed regime²⁴².

The question requires cumbersome arrangements, which can only be designed at the time of elaboration of construction plans. Special attention is needed with regard to access to the health unit in particular.

Protection of Children

As rule, adults and minors are separated within prisons: minors are accommodated “in specialised prisons for minors and children’s wings of remand prisons and institutions for convicted prisoners” of which the list is fixed by order of the Ministry of Justice²⁴³.

On the one hand, the very concept of “children’s wings” within prisons catering for adults is not without raising difficulties. Very often the need to provide specific premises catering for minor prisoners was not taken into account when remand prisons were built.

It is common for the so-called minors’ wing to consist of no more than a few cells, often located on the ground floor in order to separate them to a certain extent from the rest of the prison.

The separation of these cells – or even wings – from the other parts of remand prisons is far from being perfect; many facilities are shared (for example the health unit) and it is difficult to avoid contact between adults and minors at the time of movements within prisons, even in very recent buildings.

Accordingly, the creation and arrangement of accommodation wings for minors in institutions principally housing adults needs to be reviewed.

On the other hand, although this separation is not strictly applied for boys, it is not applied at all in the case of girls. Minors’ wings being exclusively occupied by boys, girls in most cases find themselves accommodated in wings reserved for adult women, without any other arrangement in view of their age. Apart from the fact that they are thus discriminated against as compared with boys, they are sometimes subjected to situations which are harmful for them.

The incarceration of girls in women’s wings is contrary to the law: article R.57-9-10 of the Code of Criminal Procedure provides that “female minor prisoners are accommodated in units provided for this purpose under the supervision of staff of their sex”. It is to be prohibited.

Finally, in psychiatric hospitals, the inspectors too often ascertain the presence of minors and even children of less than 15 years of age in units for adults. These measures are taken for reasons of management of beds in case of lack of available space as well as for disciplinary rather than therapeutic reasons.

Specific units should be built or arranged to cater for them insofar as needed.

²⁴¹ On this point see the various different inspection reports of the *Contrôle Général* and the *Annual Report for 2012*, p. 65.

²⁴² Cf. section 4 above.

²⁴³ Cf. article R. 57-9-9 of the *Code of Criminal Procedure*.

More generally, in all places of deprivation of liberty, units could exist which are adjustable, progressive and adaptable to the requirements of the minors catered for and to the measures that they necessitate.

2.3.4 Concern for the Human Dimension, Irreconcilable with the Concept of Prison

The majority of institutions built in recent years are prisons with sections incorporating different kinds of prison regime. This type of institution brings together within the same enclosure various different wings with different prison regimes – one (or several) remand prison(s) and a long-term detention centre, or even a long-stay prison, a wing for reduced sentences, an open wing, a wing for short sentences – or accommodating categories of persons who are strictly prohibited from communicating with each other – women/men, adults/minors.

A prison is designed with several accommodation areas, partitioned from each other and organised according to different prison regimes, with shared infrastructures, which are in principle accessible from each of these different wings: health units, visiting premises, workshops, sports ground, gymnasium, classrooms and training premises.

The first consequence of this architectural choice is to produce institutions of very large dimensions – with uniform application of general security measures in spite of the simultaneous presence of different prison populations – and to draw the prison towards the regime corresponding to the highest or most widespread level of security, in general that applied in remand prisons, as already noted²⁴⁴. This regime is quite clearly inappropriate to partial release which presupposes prisoners frequently going out and coming back in.

It also involves major difficulties of operation.

The segmentation of spaces has led to the creation of many obstacles and made long access routes inevitable, with large numbers of doors and bars – seventeen, in one institution inspected, between the main entrance and the door of the cell! as well as interminable waiting times in real bottlenecks caused by a remote-controlled electrical opening system which makes the opening of one door an obstacle to the simultaneous opening of another.

Apart from the difficulty of getting to them, the shared facilities – activity rooms in particular – also raise the problem of the insufficient number of them to be shared between professionals and actors, and of distinguishing them according to their use.

These inadequacies of operation appear linked to the nature and size of institutions to such an extent that the construction of prisons, of the kind completed in recent years, therefore needs to be banned.

The sole means of remedying this situation would consist of making provision for as many collective facilities as there are categories of prisoners.

Yet, this solution is unrealistic, since this would mean considerably increasing the area of land occupied by an institution – and therefore greatly increasing construction costs – and would presuppose a vast increase in the number of actors involved in its organisation. These implications contradict the objective of the economy of scale which determined the choice of this type of institution.

²⁴⁴ *Annual Report of the Contrôle Général for 2012, p. 63.*

However, abandonment of the concept of institutions with sections incorporating different kinds of prison regime does not stand in the way of the existence of several different wings, in particular in a departmental remand prison comprising a women's wing, in addition to the main wing reserved for adult men. As already mentioned, certain premises could then be designed for the organisation of common activities for both sexes, shared between the two wings.

3. Conclusion

Although the architectural aspect of places of deprivation of liberty comes under the authority of the building contractor, the client first has to define their operational requirements in order to correspond with the intended use of the premises in accordance with the law.

These requirements need to comply with general prescriptions concerning the principal characteristics and components of the various premises. The purpose of this chapter was to recommend a certain number of these norms able to serve as a basis of reference for the public authorities in the elaboration of specifications.

However, the sole existence of a programme implementing general prescriptions cannot constitute a guarantee of the success of a project.

Indeed, it appears necessary to define an individual programme for each institution, since the specific conditions of each situation need to be taken into account in order for each site to properly correspond to its particular objectives.

In addition, it would be appropriate for those who will be spending their time in the planned institution and organising the operation thereof (management and employees) or their representatives – professional organisations, associations etc. – to be invited to take part in the reflection leading to its design followed by its construction.

The *Contrôleur Général* therefore sets out this double recommendation that projects to be completed in the future need to avoid repeating the design shortcomings of places of deprivation of liberty, which are prejudicial to the fundamental rights of the person and constitute an obstacle to the objectives of re-socialisation and rehabilitation which need to be implemented in these places.

Section 6

“Fundamental Rights put to the test by Mental Health”

Numerous studies and reports show that the current period appears to be marked by a return to viewing patients essentially in terms of the danger that they may present. Yet, since the 19th century at least, criminal law and psychiatry have formed a sometimes infernal couple, successively or simultaneously sharing the management of dangerousness. Sometimes the balance has tipped in favour of treatment and sometimes on the side of repression. But never as today in a new combination, which could be described as fearsome, of treatment and constraint, of treatment and confinement.

Although the 1970s witnessed the progressive disappearance of exclusive reliance on asylums, promoted by the anti-authoritarian social movements of the time (Basaglia, Guattari and anti-psychiatry), one can only note that today the psychiatric and criminal approaches are often combined in order to deal with dangerousness.

Sexual offenders, recidivist of all kinds, convicted prisoners – sometimes serving long sentences – in spite of the existence of mental disorders, to each category its type of confinement. New institutions have been created, ever more specialised but evermore closed (young offenders’ institutions, specially-equipped hospitalisation units, secure socio-medical-jurisprudence centres etc.). In this context, and beyond their possible dangerousness (a notion whose definition is not without posing difficulties²⁴⁵), persons deprived of liberty suffering from mental disorders often find themselves placed in a very special situation.

Apart from the ideological context, major institutions stress the worrying rise of psychiatric pathologies: thus the WHO notes that, amongst the ten pathologies giving most cause for concern at the dawn of the 21st century, five are mental in nature²⁴⁶.

Places of deprivation of liberty are no exception to this reality.

Indeed, at the time of their inspections of closed institutions, not only in prisons but also in detention centres for illegal immigrants (CRA), young offenders’ institutions (CEF) and police custody facilities, the members of the *Contrôle Général* were struck by the number of persons deprived of liberty appearing to be suffering from psychic disorders. This empirical observation is confirmed by the arguments brought up by the staff of these institutions, all of whom mention an increase in mental disorders among the persons for whom they are responsible.

Behavioural disorders, delirious assertions, hallucinations, aggravated assault, commission of suicidal acts etc. mental illness is manifested in a wide range of different symptoms. The reasons leading to the presence and maintenance of these persons in institutions which are *a priori* little-suited to their condition and the way in which healthcare could be provided for them in the latter did not always appear to be pertinent. The case of persons who are doubly weakened, by

²⁴⁵ Cf. *Annual Report of the Contrôle Général for 2011*, p. 63 et seq.

²⁴⁶ *Depression, schizophrenia, bipolar disorder, addictions and obsessive behavioural disorders.*

mental disorders in addition to deprivation of liberty, raises many questions: are their rights vitiated by some weakness?

Does the application of full liability to the acts of persons whose state means that they are unable to take responsibility not seriously prejudice fundamental rights?

The *Contrôle Général* has looked into this question overall for all of the populations catered for in places of deprivation of liberty as a whole.

In the first place, it was appropriate to examine the difficulties of identification of mental illness, a phenomenon which remains poorly understood, which affect the persons themselves, often helpless in the face of their suffering as well as institutions, which are sometimes deaf to requests, and finally gaps in the measures put in place in places catering for them.

In the second part, the obstacles to suitable care will be questioned, for the most part in prisons, young offenders' institutions and psychiatric treatment institutions themselves.

1. Framework and Limits of Psychiatric Care as Defined by the European Court of Human Rights

The extensive case law of the European Court of Human Rights (ECtHR) has come to determine the framework and limits with which any psychiatric care has to comply.

The ECtHR considers that the deprivation of liberty of persons suffering from psychiatric disorders can be analysed from the point of view of potential violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which prohibits inhuman and degrading treatment. It considers that Member States have to make sure that any prisoner is detained under conditions compatible with respect for human dignity²⁴⁷.

It has made several different rulings, and has condemned France on several different occasions, in particular at the time of suicides of prisoners. With regard to one person suffering from psychotic disorders who, three days after a first suicide attempt, had a sanction imposed upon them of forty-five days in a punishment cell by the disciplinary committee, the Court recalled to France that the vulnerability of the mentally ill requires special protection appropriate to the risks of suicide²⁴⁸.

Another case led the Court to assert that the fact of maintaining a person in confinement, suffering from a schizophrenic type of chronic psychosis, without appropriate medical supervision, constituted and inhuman and degrading treatment²⁴⁹.

In another instance, it recalled the special duty of vigilance incumbent upon States in order to prevent the suicide of a vulnerable prisoner²⁵⁰.

Special attention is also given to the feelings of vulnerable persons, which the Court associates with prisoners suffering from psychiatric disorders, in a captive environment. Thus, the

²⁴⁷ *Soering vs. United Kingdom*, 7th July 1989 and *Kudla vs. Poland* 26th October 2000.

²⁴⁸ *Renolde vs. France*, 16th October 2008.

²⁴⁹ *Rivière vs. France*, 17th July 2006.

²⁵⁰ *Ketreb vs. France*, 19th July 2012.

Court places importance on determining whether the feelings of distress caused to such persons due to their psychic condition “*exceed the inevitable level of suffering inherent to imprisonment*”²⁵¹ ».

In addition, the Court appears to have recently started to condemn the increasing penalisation of psychiatric disorders, considering that alternation of treatment, in prison and in specialised institutions, and imprisonment, manifestly constitutes an obstacle to the patient’s state of health becoming stable and violates article 3 of the Convention²⁵².

Three criteria have therefore been progressively established by the judge in Strasbourg: vulnerability, adequate and appropriate care and the existence of intensity of suffering beyond the inevitable level inherent to confinement.

Finally, should be emphasised that the Court exerts its control over places of deprivation of liberty as a whole. Thus, it found that article 3 had been violated, considering in particular that the maintenance of the applicant in police custody without appropriate psychiatric treatment had harmed the letters dignity, in spite of the absence of deliberate negligence on the part of the police.²⁵³

By means of four rulings in 2002, confirmed by a decision of 27th October 2005 and another of 18th November 2010²⁵⁴, the ECtHR condemned France in view of the excessive time taken by administrative courts to rule on the lawfulness of psychiatric confinement and applications for immediate discharge: the Court, finding that the “*speedily*” of article 5 § 4 of the Convention and not the “*reasonable time*” of article 6 § 1 of the Convention provided the applicable norm of reference for the time required for the completion of expert opinion reports ordered by the judge.

2. The Difficulties of Detection and Identification

2.1 Difficulties Arising from Lack of Assessment

The *Contrôle Général* notes that knowledge enabling action remains uncertain and that initiatives have not been undertaken by the authorities in order to collect precise information with regard to the characteristics of the various different psychic disorders encountered in places of deprivation of liberty.

As far as prisons are concerned, there is currently only one far-reaching epidemiological study, undertaken in 2004 for the central health administration (*Direction générale de la santé*) and the prisons administration Department²⁵⁵. In particular it highlighted that eight men out of ten and seven women out of ten showed at least one psychiatric disorder, with the vast majority showing a combination of several such disorders; these are for the most part depressive disorders (40%), schizophrenic disorders (8%) and chronic psychoses (8%). The same study mentions “heavy personal, family and psychological previous history” of the persons

²⁵¹ *Raffray vs. France* (21/12/2010).

²⁵² *G. vs. France*, 23rd February 2012.

²⁵³ *M.S vs. United Kingdom*, 3rd May 2012 and *Rupa vs. Romania* 16th December 2008.

²⁵⁴ ECtHR., 18th June 2002, *Delbec vs. France*, no. 43125/98; 27th June 2002, *D.M. vs. France*, no. 41376/98; 27th June 2002, *L.R. vs. France*, no. 33395/96 and 5th November 2002, *Laidin vs. France*, n 43191/98.

ECtHR, 27th October 2005, *Mathieu vs. France*, no. 68673/01.

ECtHR, 18th November 2010, *loc. cit.*

²⁵⁵ This study conducted by the Cemka Eval group comprised three stages: prevalence study involving 23 institutions and 1000 prisoners, a “longitudinal” enquiry concerning the follow-up of 300 “persons serving their first imprisonment, incarcerated in four institutions and a retrospective study concerning the situation of 100” persons serving long sentences. The results mentioned here for the most part concern the prevalence study.

concerned: more than a third of the men declared having already had medical consultations (psychiatrist, psychologist or general practitioner) for reasons of a psychiatric order before imprisonment; 16% had undergone hospitalisation on psychiatric grounds²⁵⁶ with a substantial majority of the latter already having been subject to regular medical follow-up before their imprisonment. In total, taking anxiety-related disorders, mood-related disorders and dependency on drugs and alcohol, almost 80% of prisoners present a state of “psychic distress” according to this enquiry.

Clearly many different causes contribute to levels of this magnitude. The disappearance of psychiatric hospitalisation beds (cf. below) is often blamed, but no causal link has been established. On the other hand, it is certain that the character attached to the criminal population, on the one hand, and the operation of judicial institutions, on the other, are important factors. In particular, the maintenance of the punishable character of offences committed when the person was affected by a psychic disorder “having altered their judgement” at the time of the acts, under the Penal Code (*code pénal*) since 1994 (article 122-1), has not only increased the number of persons convicted despite their having been affected by mental disorders, but has also increased the length of sentences, since it has been shown that in such scenarios judges are inclined to greater severity²⁵⁷.

With regard to CEFs, a summary report issued by the French Senate at 12th July 2011 concerning the confinement of young offenders, notes, without providing details of the origin of this assertion, that “the majority of minors catered for in CEFs present more or less significant behavioural disorders, which in some cases require psychiatric treatment”. Neither did the Ministry of Justice provide any information with regard to the studies on which it based its decision in 2007 to equip certain CEFs with additional means enabling them to improve their handling of the “mental health” aspect. At the present time, the proportion of minors suffering from psychiatric disorders in CEFs still does not appear to have been studied in detail. However, the whole of the educational teams encountered by the inspectors, all CEFs included – the inspectors have visited forty-four of the latter – principally mention behavioural disorders resulting from educational shortcomings and emotional deprivation, without necessarily making them to duly-identified psychiatric disorders.

Neither does it appear that precise figures have been published **with regard to CRAs**. Nonetheless, cases have been brought to the *Contrôleur Général*'s attention, both directly and through the letters that he receives, involving the situation of persons whose behaviour or state manifestly required psychiatric action, if only for the establishment of a diagnosis. Generally speaking, although it is acknowledged that living conditions have an influence on a person's psychic state, it would not be surprising for some of those who have experienced traumas of all kinds in countries they have left, often leaving part of their family behind, to be suffering from psychological disorders; neither would it be surprising for the uprooting, isolation and social precarity, with which these persons are confronted on our territory, to give rise to or worsen such disorders.

2.2 Difficulties Attributable to the Person

2.2.1 Absence of Requests before Confinement

²⁵⁶ For women, the proportion of consultations for psychiatric reasons before imprisonment amounts to 40%; a quarter of women interviewed had been hospitalised before the incarceration on psychiatric grounds. A quarter of them had been diagnosed with a psychotic disorder at the time of the inquiry.

²⁵⁷ See the preparatory studies for the Bill submitted by Mr Jean-René LECERF to the Senate and adopted by the latter assembly on 25th of January 2011, on the report of Mr Jean-Pierre MICHEL (text no. 51, French Senate, 2010-2011).

Persons deprived of liberty by the authorities often come from vulnerable populations. This assertion is equally true for persons suffering from mental illness admitted to psychiatric hospitals without their consent as for persons placed in other places of deprivation of liberty: prisoners, minors entrusted to young offenders' institutions and foreigners whose residence papers are not in order placed in detention centres for illegal immigrants share the common characteristic of life stories composed of want, disruption and sufferings. The poverty which often comes on top of this only worsens their difficulties.

These chaotic life stories can cause behavioural disorders which are manifested in many different ways, from the noisiest to the most discreet, which are not necessarily the mark of a mental pathology.

However, when psychological or psychiatric disorders existed before confinement, they had not necessarily be identified as such, since the problems of all orders (unemployment, debt, accommodation etc.) with which these families are confronted can be an obstacle to their realisation of the existence of difficulties of this nature or, at the very least, prevent them from seeming to be a priority. Fear of psychiatry – which is widespread among the populations here in question – guilt, when the parents of a minor are involved, and the difficulty of thinking of oneself as suffering from a mental disorder constitute so many obstacles to requests for psychiatric consultations being made at the initiative of the person concerned.

These difficulties are, of course, amplified with regard to populations of foreign origin, living more or less in hiding and which, in addition, come up against the problem of culture and language.

Waiting times in order to obtain appointments in mental health centres (CMP) and the cost of private consultations are among the numerous stumbling blocks and access to treatment for certain populations remains an “obstacle course”²⁵⁸.

2.2.2 *Inaudible Requests during Confinement*

In prison, prisoners are no less reticent than the populations from which they originate. On the contrary, in this masculine universe in which a certain type of manliness constitutes the value *par excellence*, many cannot resolve to request a psychological consultation at their own initiative, which is considered to be an admission of weakness. Others, who feel the need to do so but often fear stigmatisation, hesitate before taking steps of this kind.

It is not uncommon for persons who request psychiatric care to be stigmatised as weak, or even suspected of being sexual offenders which, in any case, makes them a target for condemnation.

Thus, in one institution in the South of France numerous patients explained to the inspectors that they were tormented with fear at the idea of having to cross the whole of the prison in order to go to a consultation provided by the regional mental health department for prisons (SMPR), it is indeed difficult to make a request for treatment. This fear is very widespread, whatever the size of the institution, insofar as the confidentiality of medical consultations, of whatever nature, is not always protected²⁵⁹.

²⁵⁸ Report to the Prime Minister by Senator Aline Archambaud, “L'accès au soin des plus démunis”, Paris, September 2013, 156 p.

²⁵⁹ This depends upon the size of institutions and their organisation: a fact of which everybody who goes to the health unit on the day of consultations with the psychiatrist, the doctor treating addictions or any other specialist, is aware and able to ascertain.

The psychiatrists themselves are sometimes reluctant. In the first place, it has to be said that it stands to reason that the day-to-day operation of the prison, the treating of prisoners like children on which it is based and the frustration to which it gives rise, may lead to the expression of anger, opposition and, when all is said and done, suffering, among perfectly “normal” individuals. The psychiatrist’s skill is then meaningless unless the latter agrees to take this suffering into account. A response to this question comes up against three schools of thought: indeed certain psychiatrists, such as one who gives consultations in a small remand prison of the West of France, consider that they are not there in order to cover the consequences of problems of operation of the prison. In the name of the impossibility of treating all persons in a state of suffering, including outside, this psychiatrist limits himself to treating clear cases of psychiatric pathologies.

The issue therefore remains of provision of psychiatric care for behavioural disorders, which give rise to many difficulties in daily life in prison, for patients, fellow prisoners, warders and rehabilitation and probation personnel alike.

They are traditionally linked to personality disorders, referred to as psychopathic in France and sociopathic or antisocial personality disorders in Anglo-Saxon countries. The vast majority of psychiatrists consider that personality disorders should not be treated²⁶⁰ and limit themselves to treating traditional psychiatric illnesses. People suffering from a personality disorders are often declared “undesirable” in psychiatric departments and are therefore not freely admitted for treatment.

It is not uncommon for the psychiatrist, as well as for the head of other worlds, to demand that requests for consultations be made in writing. This is entirely understandable as far as requests for psychotherapy are concerned, for patients presenting problems of addiction or in the case of sexual offenders.

However, the inspectors have ascertained that truly mentally-ill persons remain locked in their cells, left to themselves, without any action on the part of medical staff whatsoever because “the patient had not made an application”.

Findings of this kind were made, in particular, in two prisons in which two psychotic mentally-ill persons lived as recluses, surrounded by filth, the assistant helper²⁶¹ refusing to clean their cell. If such a person is prey to madness or hallucinations it is clearly obvious that they will be entirely incapable of writing a letter in order to request a psychiatric consultation. Situations of this kind can go on until a general practitioner goes to the cell in order to meet the person and draft a medical certificate making it possible to initiate psychiatric hospitalisation.

In CEFs, it is difficult to expect adolescents, anxious to proclaim their autonomy, to go and confide in a psychologist or psychiatrist on their own initiative.

It is often the person’s actions and the disturbances resulting therefrom, which cause adults to raise questions; although it is still necessary for the latter to be aware of adolescent symptoms, since disorders are not manifested among adolescents in the same way as among adults.

For to this reason, in certain institutions, psychologists consider it essential that they should be “freely” present at certain key moments of collective life (meals, television and other

²⁶⁰ *Psychopathic and hysterical personalities by way of example.*

²⁶¹ *An assistant helper (auxiliaire) is a prisoner who carries out work within the prison; they may, in particular, be in charge of cleaning passageways and other common areas; the cleaning of cells is not incumbent upon them, each prisoner, in principle, being responsible for cleaning their own.*

moments of conviviality) in order to hear requests that may be expressed in an indirect manner. Such is not everywhere the case.

2.2.3 A Request Sometimes Viewed with Suspicion

Requests for psychiatric treatment, especially in prison, often come up against the suspicion of being used for the prisoner's own ends, and sometimes justifiably so: in a certain number of institutions inspected, the actors mentioned "requests" of a type useful for a particular purpose, above all intended to fulfil the requirements of a ruling by a court (compulsory treatment or orders for medical treatment²⁶²) or by the judge responsible for the enforcement of sentences (who can make this a precondition for any reduced sentencing).

Thus, in one remand prison, the teams informed the inspectors that a large proportion (estimated by the team at 20%) of requests for treatment by prisoners were made with the sole purpose of obtaining treatment certificates aimed at additional remission. This gives rise to many consultations which are not followed-up, which are time-consuming, to the detriment of treatment needed by other patients; in a context of staff shortages, a situation of this kind is sometimes difficult for medical workers to endure.

However, the situation is not fundamentally different from that encountered outside, where patients are not always willing to accept treatment for alcoholism or to look into the reasons for their own violence. It is incumbent upon medical workers to ensure such compulsory encounters lead to proper treatment in the course of time.

The same phenomenon of suspicion is encountered **in CRAs** in so far as a medical certificate of incompatibility can lead to release.

The staff of associations working in CRAs informed the inspectors that their reports were also vitiated by suspicions of bias. They are criticised for trying to secure the release of prisoners from the institution rather than simply initiating listening or treatment.

2.3 Difficulties Attributable to Institutions

There are great number of difficulties, which prevent or limit the possibilities of identifying psychiatric disorders among persons deprived of liberty:

- judicial procedures, which fill and control places of deprivation of liberty, impose orders upon persons which are based more upon acts than upon their psychic state, in the absence of prior collection of evidence concerning their personality;
- communication is poor between the institutions contributing to diagnosis and treatment, due to the absence of bodies enabling real coordination of treatment programmes;
- the training of staff working in places of deprivation of liberty does not prepare them or inadequately prepares them for handling persons suffering from psychiatric disorders.

2.3.1 Lack of Information concerning Personality

At the stage of criminal trial of adults, apart from criminal proceedings for which they are compulsory, expert psychiatric opinions have to be ordered in two cases:

²⁶² When a court pronounces an order for medical treatment, convicted prisoners can commence courses of treatment while serving prison sentences.

- when proceedings are initiated for one of the offences mentioned under article 706-47 of the Code of Criminal Procedure (CPP); which for the most part concerns sexual offences²⁶³;
- when the person is subject to the court protection order²⁶⁴.

As far as the **trial of minors** is concerned, the judge is bound to collect evidence on their personality²⁶⁵. For this purpose, judges in theory have a large range of different means at their disposal, and yet difficulties are encountered in the production of expert opinions (whether ordered in a civil or criminal framework²⁶⁶ since in both cases they have to be included in a single personality file). Due to the shortage of psychiatrists in addition to the workloads of the chambers of juvenile court judges, it proves difficult to obtain reliable in-depth analyses concerning the functioning of individuals and/or families, from a psychological point of view.

All of the judges encountered at the time of inspections unanimously agree in stressing the difficulty of obtaining psychiatric expert opinions of good quality within reasonable lengths of time.

They have other methods at their disposal in order to obtain information on personality (psychological expert opinion, social inquiry reports and character reports²⁶⁷). However, the “legal machine” appears subject to – “real-time processing” – and “performance” constraints of time, which lead to dispensing with investigations of this kind, in most cases contenting itself with the examination of criminal records and, sometimes, with a superficial “rapid investigation”.

Severe pathologies can thus pass unnoticed because the criminal act itself does not attract special attention (damage to property, violation of the law on drugs etc.). The commonplace nature of offences combined with the rapidity of the legal process does not enable the detection of strange behaviour, or questioning of defendants with regard to their previous psychiatric history. Thus, out of sixteen men hospitalised in a Regional Mental Health Department for Prisons (SMPR cf. *infra* §2.1) in the Nord-Pas-de-Calais region, two had been subject to immediate summary trials (i.e. for simple criminal cases in which no further investigations are required). Shortly after their imprisonment, disorders justifying their admission to the SMPR were noticed, one of them subsequently being subject to a decision for admission to psychiatric treatment under article D .398 of the CPP.

²⁶³ Article 706-47-1 of the Code of Criminal Procedure provides in particular that "... Persons charged with one of the offences mentioned under article 706-47 of this code shall be subject, before any ruling on the substance of the case, to a medical expert opinion. The expert is asked for an opinion on the appropriateness of a treatment order. This expert opinion can be ordered as from the investigation stage by the Public prosecutor. The expert opinion is passed on to the prisons administration in case of pronouncement of a custodial sentence, in order to facilitate medical and psychological follow-up in prison as provided for under article 717-1".

²⁶⁴ Article 706-115 of the Code of Criminal Procedure provides that: "Before any ruling on the substance of the case, charged persons (who are subject to legal protection measures) shall be subject to a medical expert opinion in order to assess their criminal responsibility at the time of the events".

²⁶⁵ Article 8 of the statutory instrument (ordonnance) of 2nd February 1945 obliges "the juvenile court judge" to conduct "all useful formalities and investigations in order to establish the truth and knowledge of the minor's personality as well as the appropriate means for the latter's re-education".

²⁶⁶ As far as educational assistance is concerned, juvenile court judges may order any useful measure likely to enable them to establish the existence of a danger for the minor; in this capacity, they may, order a psychological or psychiatric examination of the minor (and also of the parents, though without this being binding upon the latter). In criminal affairs, an expert opinion concerning persons indicted or charged is always possible. When a minor is involved, the judge can order a legal educational investigation measure; jointly exercised by a social worker, a youth education worker and a psychologist, the measure is essentially intended to assess the minor's place in the family system while also making it possible to shed light upon disorders of a psychological order.

²⁶⁷ Although these measures cannot establish the existence of a psychiatric disorder, they at least have the merit of drawing attention to the possibility thereof; they make it possible for an expert opinion to be subsequently ordered if necessary.

The same applies to the presence of socially marginalised persons, when their inability to fit in is solely attributed to their social exclusion. In particular, young homeless persons may be brought to trial for petty thefts or fights in public places without psychotic disorders being detected.

This was the case of one young man of twenty-four years of age encountered in a prison by the inspectors, sentenced to short terms of imprisonment on twenty different occasions for deliberately leaving restaurants without paying for food, before an expert opinion, called for at the time of a rapid investigation prior to a judgement, enabled the diagnosis of a psychosis.

The offence itself is a manifestation of action which may be a sign of the activation of disorders that may not appear as such at the time of handling of the case by a court. This is the case of one man, convicted of numerous thefts linked to a manic episode. Another, sentenced to two months and one hundred days' imprisonment and a fine for several instances of driving without a licence and in a state of profound confusion at the beginning of his incarceration (he asked the prison officers several times a day to let him "take the lift to the fifth floor" and was surprised at not seeing his car in the car park) before a more in-depth medical examination enabled the diagnosis of dementia.

Finally, when an expert opinion has effectively been ordered and the person indicted has been placed on remand, the time required for the completion of the expert opinion may render the stay in prison particularly difficult. It is not rare for the psychiatrist to be led to call for committal to psychiatric treatment at the request of a representative of the State (ASPDRE) in order to avoid deterioration of their health and their exposure to an unsuitable environment for their condition.

2.3.2 Lack of Communication

Contrary to the prescriptions of article 717-1 of the CPP, the inspectors have ascertained that in the rare cases in which an expert opinion is ordered by the court, the medical staff of penal institutions do not always have the expert's report in their possession.

In the absence of an expert opinion, the passing on of information in most cases depends upon the quality of relations that the departments have been able to establish.

Disorders which appear to be minor in terms of the manner in which they are manifested, may only be addressed with the general practitioner, without the information ever leaving the latter's surgery.

If the person has already received treatment on a voluntary basis in a CMP or in hospital, there is fortunately no mechanism enabling previous history of this kind to be systematically passed on. The passing on of information therefore depends in the first place upon the persons concerned themselves. Some of them will have no hesitation in mentioning difficulties which they hope will play in their favour (leniency in punishment, flexibility of supervision, or even release from the place of confinement). On the other hand, through a sense of propriety or for other reasons, in particular linked to their pathology, other persons prefer to remain silent about difficulties of which they are not necessarily aware of any connection with their criminal acts.

Friends and family, who could be a useful source of information, are rarely considered as real partners, especially as far as prisons and CRAs are concerned.

Finally, in most cases the passing on of information depends upon the goodwill of a social-healthcare actor whose duties have enabled them by chance to discover indications of

previous history. Specific information about this previous history requires the patient to request disclosure of their medical record; this simple formality presupposes that persons deprived of liberty, and all the more so persons suffering from mental disorders, be considered to be actors in their own healthcare, which is far from constituting the most widespread view²⁶⁸. Although the passing on of information of this kind is common for numerous somatic disorders, it appears more hesitant in the case of mental pathologies.

The sharing of information is easier in CEFs. It does not present any major difficulties if the judicial youth protection service (PJJ) has taken action in the past; yet the inspectors have often seen, in young persons' files, reports of uneven quality, drafted in urgency, attempting to assess all of the aspects (personal, family, social etc.) of an overall situation without the psychological side being clearly highlighted, and even without a psychological report necessarily being appended.

If the young person has had the benefit of previous psychiatric treatment within a hospital framework, it is by no means certain that medical staff will agree to share information covered by medical secrecy at the time of assessment meetings which they may be called to attend²⁶⁹.

2.3.3 Lack of Training

Mental illness is usually seen as something to be feared; it introduces difficulties into relations and sometimes even breaks them. Staff need to be trained in order to understand the issues at stake for patients, and better adapt their response to the context, thus avoiding additional suffering due to ignorance. Yet, the staff of places of deprivation of liberty are little or poorly prepared for these situations.

The training of warders is for the most part focused on security, and in no way prepares them for being confronted with mental illness. Suicide-prevention alone is a subject of training in the form of detection of suicidal crises; however, although combined efforts are made in the latter regard, the questions of dealing with depressive persons are not addressed. More generally, the training of warders ill-equips them for the understanding of mental illness and for the implementation of modes of operation appropriate²⁷⁰ to the pathology. Often, their only resource is constituted by their own initiatives, which are sometimes rich but need to be raised to the status of professional practices and assessed.

In CEFs of the authorised associations sector visited by the inspectors, the teams are at best composed of assistant educational tutors and sports tutors whose inadequate qualifications in no way guarantee their ability to identify mental disorders – or, in most cases, of unqualified persons “serving as” tutors, who are still less in a position to detect such problems.

Within CRAs, the inspectors noted the total absence of preparation of police officials for facing persons affected by mental disorders, a confrontation which is made all the more complex by the presence of language problems and cultural differences. In one CRA in the Parisian region, inspectors received testimony from medical staff who indicated the value that training in cultures and civilisations would have. In addition, in view of the tension experienced by foreigners whose

²⁶⁸ Cf. also the below section on the rights of patients in mental health institutions.

²⁶⁹ Social work calls upon the notion of “shared secrecy” enabling the whole of the questions necessary for understanding a person’s situation and treatment to be mentioned, however the notion has no legal equivalent; except for health professionals (3rd and 4th paragraphs of article L.1110-4 of the Public Health Code).

²⁷⁰ As far as prison officers are concerned, it is obviously not a question of providing treatment for the pathology but of designing modes of supervision which take the latter into account and avoid worsening it.

detention marks the failure of plans to establish themselves in France, it is to be deplored that the administration has not put suicide prevention awareness raising initiatives in place.

As far as psychiatric hospitals are concerned, pointing to lack of preparation of staff for the handling of patients is of course out of the question: it constitutes the very centre of their training.

Nevertheless, the inspectors noted that the discontinuation of nursing diplomas (*diplôme d'infirmier*) in the psychiatric sector has weakened professional practices²⁷¹. Medical staff, for their part, consider themselves inadequately prepared for being faced with problems of criminality and with those of migrant populations. The level of supervision is limited; being encroached upon by administrative tasks, a large number of health professionals in senior and middle management informed the inspectors of their regret at being unable to organise training in closer proximity to the real situation “on the ground” and too often acting to organise replacements.

Finally, the interviews conducted with medical teams sometimes brought to light lack of assessment meetings, time and space for the analysis of their practices and frequent absence of supervision.

2.4 Little or Poorly-Adapted Identification Procedures

2.4.1 In Police Custody

At the police custody stage, medical examinations are in most cases limited to the somatic aspect, whether they be conducted at the request of the person concerned or ordered by a senior law enforcement officer (OPJ).

Although the Act of 14th April 2011 explicitly calls upon doctors to “ascertain all useful elements”, the latter in most cases limit themselves to a so-called “compatibility” examination. The information recorded in police custody registers shows that these examinations rarely take longer than about ten minutes, or even much less. They are routinely conducted in premises devoid of any specific facilities and often involve problems of confidentiality. It is not claimed that conditions of this kind encourage the person in police custody to confide information about any psychological disorders, assuming that they are in a state to be able to do so; indeed a large number of persons are examined while in a state of drunkenness²⁷².

However the inspectors noted that OPJs and judges do not hesitate to order psychiatric examinations *ex officio* in case of manifest behavioural disorders. An approach of this kind corresponds to obvious and noisy signs (manifestly incoherent and even delirious assertions, agitation, violence etc.), the development of more insidious disorders may be overlooked. It is impossible to remain silent with regard to the fact that, in certain police stations, agitation simply leads to the “protection” of the person concerned, by placing a motorcycle helmet on the latter’s head. The CGLPL’s inspections make it possible to estimate that 30% of police stations are equipped in this manner. Their frequency of use cannot be assessed since this type of protection is not regulated or subject to any traceability.

²⁷¹ Qualified State-registered nurses (infirmiers diplômés d’Etat / IDE) receive a purely theoretical awareness of psychiatry, except for those who choose to undergo professional training in a psychiatric environment. It would be useful for IDEs working in psychiatry positions to have followed specific psychiatry modules and for them to be able to have the benefit of additional training, organised in the institutions.

²⁷² When a person suspected of having committed an offence is in a state of drunkenness, they are first placed in a sobering-up room on the basis of article L.3341-1 of the Public Health Code. They are only notified of their rights in police custody after having recovered their judgement. In the meantime, in many cases the OPJ has called for a doctor in order to obtain a certificate of non-hospitalisation. This practice comes under a circular of the Ministry of Public Health of 16th July 1973 and is not of a compulsory nature.

When they are specifically ordered, psychiatric examinations in most cases take place in the police custody facilities. They are not necessarily any easier when they take place after a long waiting period on the premises of a hospital or medical jurisprudence unit far from the place of police custody²⁷³. Examinations sometimes lead to an ASPDRE, which in no way prevents subsequent continuation of the investigation and proceedings, without the psychiatrist always having been asked the question of alteration or absence of the person's faculty of judgement at the time of the acts.

In some cases psychiatric examinations conducted under these conditions enable fast-track sentencing of persons charged with acts which, by their very nature, should have called for more detailed character investigations, conducted under less questionable conditions with regard to defence rights²⁷⁴.

2.4.2 In Prison

On their arrival in prison, prisoners undergo a medical examination conducted within forty-eight hours by a nurse and then by a doctor of the health unit. Although it is accompanied with an anamnesis interview and also tends to involve identification of suicide risks, this first examination is for the most part focused on the health of the person concerned, in the somatic sense of the term: the existence of pathologies and treatments, examinations planned or to be scheduled, updating of vaccinations, various different tests, assessment of alcohol and tobacco consumption etc.

Institutions are rare in which, as in one remand prison in the East of France, all new arrivals are seen by a psychiatric nurse who systematically proposes a meeting with a psychiatrist. On the basis of the established fact that a large number of prisoners show anxiety-related disorders, in this institution the idea is to take advantage of incarceration in order to attempt to establish a diagnosis and, if necessary, obtain the person concerned's agreement to in-depth psychological or psychiatric treatment. This type of procedure remains an exception.

After the end of the arrival period, in the course of which prisoners are, as a matter of principle and for several days, to more intense surveillance in order to prevent any suicide attempts, two types of behaviours lead to a reaction on the part of the prisons system²⁷⁵: the first of these – suicide attempts – because they render it subject to suspicions of fault, the second – agitation and violence – because they affect its balance²⁷⁶. Whether attributable to lack of time or to the concern to respond to “prison demand”, the inspectors, who regularly accompany nurses in the distribution of medicines, note that the first response to such behaviours is often the provision of drugs which silence the symptom, even if a nurse can always initially see a patient as a matter of urgency.

To this, certain institutions add placement in an emergency protection cell, decided upon by the prisons administration, which prevents the act being repeated (furniture produced a minimum, sheets and pyjamas made of tear-proof paper), while leaving the original problem entirely unaddressed.

²⁷³ The inspectors noted that in certain cases, in order to avoid this waiting time, an appointment was organised with the psychiatrist.

²⁷⁴ An expert opinion whose fundamental aim is to determine the compatibility of the person's state with the police custody measure is not necessarily enough to enlighten the court with regard to the personality of the person concerned and the latter's judgement at the time of the events.

²⁷⁵ There is no question of denying the empathy shown by staff on a personal basis.

²⁷⁶ This point will be addressed in more detail in the second part.

The reporting of instances of suffering above all occurs in small institutions with attentive and kindly staff, working in a certain proximity with the prisoners.

Indeed, the inspectors have regularly noted prison officers alerting the nurse to a prisoner's distress ("he's in a bad way"; "he doesn't have visits any more"; "he's had some bad news" etc.). Suffering is not a sign of mental pathology but, insofar as consultations are not limited to the prescription of medicines and provide an opportunity for real listening, they can stem a process, enable a diagnosis (depression or other anxiety-related disorder) or referral to a social worker, psychologist, psychiatric nurse or even to a psychiatrist. It is much more difficult to show this kind of consideration when prison officers have to run from one end of a passageway to the other, without being unable to stop in a cell, which is the usual case.

Thus, as already stated, lack of specialised staff constitutes a patent obstacle to both detection and treatment. Apart from SMPRs, which possess specialised full-time staff but are, in principle, dedicated to the treatment of the prisoners of an entire region, small prisons, for their part, only have a few freelance consultations by psychiatrists at their disposal, which are variable in different places. In practice, in the majority of institutions, any request for an interview with a psychologist or psychiatrist is subject to a waiting time, which will correspondingly delay the identification of any pathology. The response is often faster when the request is made by prison staff.

The presence of medical staff in prison is also an important question, which applies in widely differing manners according to different places, and more specifically depending on persons and schools of thought. In the case of SMPRs, the attitude taken with regard to this subject is dictated by the head of the department; within health units, the situation depends upon the psychiatrist's position and the time which the latter devotes to the institution. The inspectors have seen diametrically opposed situations with regard to this subject; they consider that ignorance of conditions of imprisonment on the part of medical staff constitutes a major problem of detection. How can seriously ill persons who remain silent and withdraw into themselves be detected? Prison officers are not alone in noticing problematic withdrawal (refusal of exercise, loss of appetite etc.) but do not always know how to detect the pathological dimension and, depending upon their relations with the medical unit, do not always feel that they are authorised to report such matters.

2.4.3 In CEFs

Young person's files often report chaotic life stories²⁷⁷; the difficulties of the parents in facing exclusion and their own problems, the discredit affecting them rebounds upon the children, who often live keeping themselves to themselves, in forms of segregation. The resulting disorders are manifested in many different ways: inability to tolerate frustration, defiance of authority, absence of limits, acts of violence aimed at other people and self-harm. Before the placement, these disorders may be manifested in the same behaviours, as well as in homelessness and dropping out of school.

Although these behavioural difficulties do not fall within the field of psychiatry, they can conceal the beginnings of real associated pathologies. These various different signals put out by minors in distress require specialist attention, at least in order to enable a serious diagnosis to be made and above all for treatment to be proposed.

²⁷⁷ *Material and cultural poverty, psychological fragility of parents, difficulty of establishing a stable framework, violence, alcohol, solitude, breakups, real or symbolic absence of the father, in some cases emotional abandonment and repeated failure of previous placements.*

In the majority of CEFs inspected, a meeting with a psychologist is often proposed on arrival; it is sometimes made compulsory; it can of course develop into treatment. In any case, for institutions which do not have the benefit of other permanent specialised staff, it constitutes the principal means of identifying disorders of a mental nature.

In practice, it transpires that CEFs, including those with additional means at their disposal in mental health matters, operate under very varied conditions. These means vary in number – in one institution, a full-time psychologist, a part-time psychiatrist and a half full-time equivalent (FTE) nurse, in another a full-time psychologist and an FTE nurse, without any freelance consultations by a psychiatrist - and in terms of qualification (the psychiatrist not always being a child psychiatrist). Resources prove to be equally a matter of chance in the long-term since in practice, absences are not replaced.

In the absence of real medical “diagnosis”, the description of disorders is therefore based, at least initially, on the assessment made by the educational team of the institution, faced with behaviour on the part of the minor in the community within the institution, on a daily basis and in the long-term.

2.4.4 In CRAs

The identification of disorders on arrival is entrusted to a medical staff member specialised in somatic medicine. The agreements binding CRAs to hospitals rarely address the question of psychiatric pathologies; consultations by psychiatrists are rare and, when provision is made for them, very limited (the CRAs which are best provided for in this respect are those of the Parisian region, which generally speaking have the benefit of a psychiatrist for a half-day per week).

CRAs which have the benefit of the presence of a psychologist are also very rare.

One CRA in the Parisian region constitutes an exception in this respect; it has the benefit of the presence of a clinical psychologist attached an UMJ, one morning per week. She caters for detainees having requested to see her or having been reported by the doctor or the police officials; at the end of the interview, she can send those who appear to present a serious pathology to the psychiatric sector of the administratively attached hospital.

All in all, psychiatric consultations are in the majority of cases organised by the nurse of the CRA, in case of need and often as a matter of urgency, in cooperation with a “liaison officer” in the nearest psychiatric hospital. This presupposes particularly discerning observation on the part of the nurse, which is not necessarily provided by the latter’s training alone.

This system, which does not take into account the qualifications necessary (cf. § 1.3.3) for the detection of psychiatric disorders among people from very different cultural backgrounds, who have sometimes been faced with extreme situations (civil war, assault etc.), overlooks an essential question in this respect: language. Contrary to the situation in previous decades, the majority of persons of foreign nationality currently living without residence papers on French territory are not French speakers. And interpreter is therefore an essential intermediary.

3 Obstacles to Appropriate Treatment

Prison holds a special position among places of deprivation of liberty; it appears necessary to set out the specific rules of operation thereof (see box) before highlighting the elements that

constitute obstacles to the provision of appropriate care. The case of CEFs will then be examined and, in more detail, that of psychiatric hospitals.

3.1 The Prison Situation

The specific system of provision of treatment for imprisoned persons

The decree of 14th March 1986 issued in application of the Act on the division of psychiatric treatment into different sectors no. 85-1468 31st December 1985, created three types of psychiatric sectors:

- general psychiatry sectors for adults;
- child-juvenile psychiatry sectors for children between 0 and 16 years of age;
- prison psychiatry sectors.

The order (*arrêté*) of 14th October 1986 sets out that Regional Mental Health Departments for Prisons (SMPR) are administratively attached to a psychiatry sector in the prison environment and defines their duties.²⁷⁸

The order (*arrêté*) of 10th May 1995 establishes the list of prisons coming under the authority of each of the twenty-six SMPRs.

There are four different scenarios:

The patient agrees to treatment and can be catered for in the “beds” of the SMPR of the institution in which they are imprisoned, or in those of the SMPR to which the institution is administratively attached. In the latter case, the psychiatrist has to make contact with the psychiatrist in charge of the SMPR in order to see whether the prescription of this transfer is well-founded and whether a bed is free. If agreement is obtained, it will involve a prison transfer carried out by the two prison managements concerned;

The Act no. 2002-1138 of 9th September 2002 created specially-equipped hospitalisation units (UHSA) to cater for prisoners suffering from mental disorders. They cater for persons with or without their consent, that is to say freely admitted or committed for psychiatric treatment by decision of a representative of the State, within the framework of article D. 398 of the Code of Criminal Procedure (CPP) and in application of the provisions of the Public Health Code (art. L. 3214-1 et seq.). The programme provides for the creation 440 beds within nine UHSAs.

The latter are currently six in number: Lyon, Toulouse, Nancy, Villejuif, Orléans and Lille. Those of Rennes, Marseille and Bordeaux should be in operation in 2014.

If patients are imprisoned within an institution corresponding to the area of authority one of the UHSAs, they will be referred and treated under the best conditions with a

²⁷⁸Twenty-six SMPRs were progressively put in place:

- four in Ile-de-France: at the MA of Paris-la Santé, at the MA of Bois d'Arcy (78), at the MA of Fleury-Mérogis (91) and at the CP of Fresnes (94);
- nineteen in the regions: Amiens (80), Bordeaux (33), Caen (14), Châlons-en-Champagne (51), Châteauroux (36), Dijon (21), Grenoble (38), Lille (59), Lyon(69), Marseille (13), Nice (06), Metz (57), Nantes (44), Perpignan (66), Poitiers (86), Rouen (76), Rennes (35), Strasbourg(67) and Toulouse (31);
- three in French overseas departments: Guadeloupe, Martinique and La Réunion.

multidisciplinary team in spacious and suitable premises, as the inspectors were able to ascertain in the UHSAs visited.

In the absence of an UHSA, the patient will, in principle, be referred (cases of refusal arise) to the administratively-attached psychiatric hospital under the terms of article D. 398 of the CPP by decision of a representative of the State.

If the patient presents a state of dangerousness such that they cannot be admitted to an UHSA or to the administratively attached hospital department, the psychiatrist of the hospital will apply for their admission to one of the ten units for difficult psychiatric patients (UMD) catering for this type of patient. The UMDs are located at Albi ([French department no.] 81), Bron (69), Cadillac (33), Châlons-en-Champagne (51) Eygurande (19), Montfavet (84), Plouguernevel (22), Sarreguemines (57), Sotteville-lès-Rouen (76) and Villejuif (94).

Admission to UMDs follows a relatively long procedure, except in the case of certain UMDs which accept patients in emergency situations.

3.1.1 Inequalities in the Provision of Psychiatric Treatment to Prisoners

Depending and whether they are assigned to one of the twenty-six prisons endowed with an SMPR, or to another – in which case the psychiatric sector in which the institution is located takes care of psychiatric treatment – prisoners will be subject to major differences with regard to provision of treatment.

Indeed, in SMPRs, a multidisciplinary team, placed under the responsibility of the hospital doctor in charge of the department, takes care of the duties of detection of mental disorders and psychological and psychiatric care, and prepares for the patient's discharge.

In penal institutions which lack an SMPR – whether with regard to remand prisons, long-term detention centres or long-stay prisons – the head of department of the psychiatry sector in which the penal institution is located signs personnel according to the staff at their disposal. The inspectors ascertained, in the course of their various visits, that a sector devoid of doctors could not properly take care of the provision of psychiatric treatment for the penal institution within its jurisdiction.

In addition, the inspectors noticed that prisoners having the benefit of treatment in remand prisons were often former patients of the sector. Conversely, in long-term detention centres and long-stay prisons, the doctor in charge of the sector generally appeared less motivated to undertake follow-up measures concerning unknown persons whom they know they are unlikely to see again after their release.

By way of example, the inspectors had occasion to note difficulties in the provision of treatment for prisoners in one specialised long-term detention centre for sexual offenders, due to difficulties of various kinds, on the one hand, distance (64 km), on the other, lack of hospital doctors and, finally, the fact that because they were sent to the institution from all over France, the prisoners were unknown within the sector and unlikely to remain there after their release.

3.1.2 Conditions of Confinement that Worsen the Symptoms

The growth of the prison population weighs heavily upon the attention that can be devoted to its members and renders even more unbearable the presence of persons whose disorders confuse and complicate the tasks of staff.

Overcrowding, the lack of privacy to which it gives rise and, conversely, the loneliness which it sometimes generates, constitute so many obstacles to provision of suitable treatment.

It is particularly difficult for fellow prisoners to share life with a mentally ill person. In a context of total lack of privacy (everything is shared in the same space, food, sleep, television, toilets etc.), being faced with a situation of this kind often gives rise to anxiety, which can develop into rejection, hostility and eventually aggressiveness or even suffering that could harm fellow prisoners. One very young man (aged 21) was thus called upon to accept an older fellow prisoner in his cell who had been released from an SMPR. He agreed, out of concern not to reject him, but also because he hoped that his acceptance would be acknowledged in some way. Yet, living together is hard, he has scarcely any exchanges with his fellow prisoner, who is entrenched in silence, the latter also having dubious personal hygiene (at the time of the inspection, efforts to keep the cell clean were greatly prejudiced by the smell of the mentally-ill person's bedding). To say that the days are long for this young man is certainly an understatement.

The inspectors have often noted the very great solitude of these mentally-ill persons, amongst whom the situation of foreigners should be emphasised.

Indeed, pathologies that are often of a severe nature have been ascertained, taken in life paths marked by failure and post-traumatic distress. Yet, these persons do not have the benefit of the attention that they need: their exchanges are limited due to difficulties of understanding of the language, their environment is poor, they have less access to employment and lack material resources. The absence of translators at the time of interviews with prison rehabilitation and probation counsellors (CPIP) and therapists hinders the assistance which could be provided to them, it being impossible (and even improper) for certain interviews to be translated by fellow prisoners. All of these factors contribute to considerably worsening their condition.

As has already been stated, the desire to clearly separate places of enforcement of punishment and places of treatment sometimes means that doctors remain far away from detention areas (apart from punishment wings where their expertise is called for). Yet, certain patients do not make requests for medical attention, due to their pathology, because of fear of being stigmatised, or, in certain cases, because of fear of crossing through the prison.

It would probably be useful for prison passageways to be considered to be places in which medicine holds its full place, even beyond the distribution of drugs, with a similar approach, for example, as the presence of nurses from the sector of the patient's domicile at the time of actions.

Finally, it is not rare for prisoners suffering from psychic disorders to commit acts of violence, due to their pathology. A person who believes to see that his fellow prisoner is "a devil", or who hears threatening voices and attributes them to persecution on the part of staff, or who imagines that his fellow prisoner is making his possessions disappear, may very well commit acts in order to stop situations that they can no longer bear.

Staff can also be exposed assaults which are very difficult to endure because they are entirely irrational and unpredictable. The inspectors have often heard accounts of these assaults ("I opened the door, said hello and was hit by a blow") which appear all the more intolerable insofar as they bear no relation to the behaviour of the victim, who therefore lack any elements for analysis and control of these events.

Although imprisonment of psychically-ill persons worsens their condition due to the unsuitability of the prison response, it is equally manifest that these people are more exposed to violence than others due to their disorders. Thus, one man no longer washes, provokes the anger of those with whom he shares a cell. Regularly scolded and mocked, salt is poured into his drugs

3.1.3 The Primacy of Discipline

Being faced with a mentally ill person is far from being simple, but it is all the more complicated in the universe where order and respect for discipline are the pre-eminent principles.

In the face of disturbances caused by the behaviour of mentally-ill persons, prisons implement their own procedures; they usually react by recalling the person to order, insofar as the sick person's agitation – screams, insults, threats, aggressiveness, assault – is often accompanied by a general refusal to comply with orders and a certain facility in passing from thought to deed. Concerned to restore order, the administration often contents itself with a disciplinary procedure in cases where a psychologist or psychiatrist should perhaps have been consulted.

Major anxiety crises and certain delusional episodes can thus create explosive situations and give rise to hostility on the part of staff, who experience them as a form of provocation and react in terms of punishment. This was the case of one woman subject to major anxiety-related episodes, constantly seeking attention and demanding it in the form of repeated screams and calls, which inevitably lead to her being recalled to calm by the female prison officers, exasperated by her demands, which disrupt prison life and their departments. In a reaction, the prisoner, incapable of ceasing her calls, hurls insults, breaks her furniture and scarifies her body. Placements in the punishment wing are therefore frequent and the inspectors were present when this woman of slight build was forcibly brought under control by staff dressed in riot gear.

The Code of Criminal Procedure does not make any provision for systematic visits by psychiatrists to punishment wings (QD) and practices differ widely when a consultation of this kind is necessary.

In certain institutions, persons are taken to the treatment premises, making it necessary to bring the prison “to a standstill”; in others, the psychiatrists have an office within the QD, in order to take care of following-up their patients and those persons whose state has been reported to them by the doctor of the health unit or by the warders. Finally, in certain institutions practices exist involving the issuing of certificates of incompatibility with disciplinary measures, sometimes without even seeing the patient.

At another stage, at the time of the sentence board meeting, it was noted that a prisoner having been subject to an ASPDRE placement had had forty days of remission credits withdrawn for various offences committed in prison and linked to their illness (setting fire to a cell, assault on staff).

Indeed, and the time of sentence board meetings, the question of soundness of judgement, and the possibility of diminished responsibility, is not raised. On the contrary, new offences can lead, in addition to disciplinary proceedings, to prosecution. Thus, one woman sentenced at the time of a delusional episode, for whom imprisonment was unbearable, was prosecuted and newly convicted for acts involving insults and threats towards members of staff: her sentence was therefore lengthened, due to this new conviction and the corresponding withdrawal of remission credits.

3.1.4 Professional Attitude and Cultures that may lead to Misunderstandings

In some cases the very attitude of staff can contribute to explaining certain instances of mentally-ill persons passing from thought to the commission of deeds; indeed, for certain pathologies, the dimension of surveillance confirms paranoid interpretations and may provoke “counter-attacks”. Thus, one man, placed in solitary confinement due to his attitude towards staff whom he suspected of “listening in on him by radio”, and whose conditions of imprisonment (almost total solitary confinement, absence of activity, exercise in a tiny and poorly-lit yard) could only reinforce the feeling of being a victim of ill-will.

The unsuitability of certain modes of response, such as the placing in the punishment wing of the anxious woman whose case is mentioned above, could be combated by better training of officers, as has already been emphasised (c.f. §1.3.3), as well as through better cooperation with the medical staff of health units.

Indeed, the difficulty of provision of treatment for mentally-ill prisoners is such that prison staff seek out the support of medical staff in order to establish more suitable professional practices, yet medical staff are not always able to adequately fulfil their expectations:

- due to their professional position, they consider themselves to be there for the treatment of a patient and not to deal with the latter’s environment;
- this divide is reinforced by that based upon the treatment/punishment separation; the staff of the prisons administration (including CPIPs) rarely being viewed under the “rehabilitation” aspect of their duties;
- the dimension of professional secrecy renders the passing on of certain pieces of information complicated.

The total absence of supervision or spaces for analysis and reflection about the professional practices of prison staff reinforces the demands made upon medical staff still further; while the absence of response creates major frustration and incomprehension. This situation can make relations between the two institutions very tense, to the detriment of the patients themselves.

The prisons administration’s expectations can prove out of all proportion in view of what it is possible to do for a patient. Because a situation of imprisonment imposes relentless confrontation with the suffering and unbearable context to which it gives rise, great expectations placed upon the psychiatrist: relieving the symptom, curing the patient and explaining how to deal with them.

Conversely, dialogue conducted between the psychiatrist and other prison actors sometimes makes it possible to imagine constructive solutions: thus assignment of a few patients to a workshop can provide them with a framework and constitute a beneficial opening²⁷⁹.

3.2 CEFs

The obligation imposed upon young offenders’ institutions to cater for young persons when a judge has decided upon their committal, sometimes obliges these institutions to admit minors presenting psychiatric disorders, which can disrupt their operation as a whole.

The recurrent ascertainment of the lack of qualifications and experience of the staff in CEFs confirms the unsuitability of these institutions when mentally-ill minors, and “borderline” cases in particular, are entrusted to them. Moreover, without the patient construction of a partnership with the local healthcare network, specialised institutions often reject them, due to:

²⁷⁹ This presupposes workshop managers being capable of creating a group dynamic in relation to persons who are not very “profitable”.

- the low level of human resources in CMPs and the lack of availability of public mental health institutions, when such institutions exist nearby; since they already encounter difficulties in providing care for the patients in the sector (obtaining a first meeting with a child psychiatrist often takes six months), it is difficult for CMPs to accept these extra patients domiciled “outside of the sector” and they are little inclined to begin provision of treatment for limited periods²⁸⁰;
- differences of assessment of psychological disorders between the educational and psychiatric worlds; indeed, for certain health professionals who are partisans of “orthodox” psychiatry, behavioural disorders do not come within the field of psychiatric nosology.

Yet, the manifestations of mental disorders among adolescents are often violent and disruptive for those around them and require rapid treatment. Adolescence is an age at which serious pathologies can come to light and disorders can “fester”; although less serious, they go on to compromise the young person’s development and future integration.

This absence of response to manifestations of maladjustment and suffering among minors is all the more difficult for tutors insofar as they are powerless and disarmed. Minors who are going through a real crisis phase can place strain upon the balance of groups and the daily operation of institutions.

In order to remedy this problem the Minister of Justice therefore decided, in June 2007, to create an experimental CEF programme provided with additional human resources intended, in principle, to provide improved handling of the “mental health” aspect. In 2013, these resources, confirmed by a note issued by the director of the judicial youth protection service (DPJJ) on 17th July 2012, concerned fourteen CEFs corresponded to “an additional allocation of a maximum of 2.5 FTE in additional mental health staff: psychiatrists, psychologists and nurses as well as special needs tutors” without ever decreeing a model of the composition of these reinforcements.

However, whatever the additional staff of which they have the benefit, these “arrangements” carry the risk of spreading confusion among youth court judges; one must note that these CEFs are not healthcare institutions in any way whatsoever. At the most, they may make it easier - therein their advantage lies - to negotiate the provision of outside therapeutic treatment in a child/youth mental health centre (CMP) or in a public mental health institution.

Indeed, the provision of specific treatment needs to be based upon a high level of involvement on the part of the teams of professionals (those of the CEF, as well as those of the mental health institutions), which is only feasible on the basis of the patient building of partnerships and, if possible, the establishment thereof on a formal basis.

In the absence of common goodwill from the various different parties and adequate qualifications on the part of the team, many minors in distress, accustomed to causing the failure of their placements, will not have the benefit of the provision of suitable treatment.

Moreover, the inspectors have had occasion to note that certain CEFs devoid of these “specialised” reinforcements have managed to establish regular cooperation with the local psychiatric care institutions. These good practices, which are not necessarily established within the framework of two-party agreements, are the result of real perseverance, and even of the strength of conviction and/or negotiating skills of the management of these institutions.

²⁸⁰ Stays in CEFs are in most cases limited to a few months.

It also needs to be specified that when the psychologists of institutions conduct therapy with a young person, either alone or at the same time as the provision of treatment by the sector, the former are placed in a delicate situation, due to their legal “authority”. In theory, their position leads them to share their information with the team and, in any case, report to the judge. Certain managerial staff of the PJJ, as well as certain judges, consider it their duty to defend this position in an intransigent manner, demanding the whole of the information. Nevertheless, in practice therapy requires trust and confidentiality. In this context, it is not always easy for psychologists to assert their choices, to clearly inform the young person thereof and, indeed, to win the latter’s trust.

3.3 Psychiatric Treatment Institutions

In the space of 60 years, the number of beds in psychiatric hospitals fell from 130,000 to 57,000 in France²⁸¹. In 1950, the average length of stay was almost one year (300 days on average), as compared with less than a month today (28 days)²⁸².

In 2007 and 2008, about 69,000 people were hospitalised without their consent at least once in the course of the year. This represents 23% of persons who were provided treatment in full hospitalisation and 18% of days of full psychiatric hospitalisation in 2008.²⁸³ According to a study quoted in the report made in the name of the Law Commission of the French National Assembly, the number of hospitalisations without consent greatly increased between 2006 and 2011, growing, in the case of those pronounced at the request of a third party, from 43,957 to 63,345 (+44%) and, in the case of those enforced at the request of a representative of the State, from 10,578 to 14,967 (+41.5%) for the same period.

48% of committals for psychiatric treatment at the request of a third party (ASPDT) are pronounced according to the emergency procedure. As far as committals for psychiatric treatment at the request of a representative of the State (ASPDRE) are concerned, the proportion of measures ordered following a provisional measure on the part of the mayor or, in Paris, on the part of the prefect of police, amounts to 68%.

The number of ASPDTs underwent constant increase until 2003.

Of the average length of stay in psychiatric facilities decreased from eighty-six days in 1989 to forty-five days in 2000. For 2009, the average length was forty-nine days in ASPDT and eighty-two days in ASPDRE, while the median was nineteen days in ASPDT and twenty-eight days in ASPDRE.

In order to be in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, the “detention” of an “insane person” has to comply with the criteria set out in the ruling of the Court of Strasbourg *Winterwerp vs./the Netherlands* (24/10/1979), that is to say:

- it needs to be established in a pertinent manner, by means of an objective expert medical opinion, that the patient is suffering from a real mental disorder;
- the disorder has to be of a character and intensity justifying confinement;
- the confinement cannot legitimately continue unless disorders of this kind remain.

²⁸¹ The number of public beds, which alone are in a position to cater for patients without their consent (except for a few exceptions), decreased from 90,000 to 40,000 (cf. *Cour des comptes, L'organisation des soins psychiatriques: les effets du plan “psychiatrie et santé mentale (2005-2010)”*, Paris, La Documentation française, 2012, 212 p.).

²⁸² Source Préfecture de police de Paris 2012.

²⁸³ Report of Mr Denys Robiliard no. 1284 on the Bill concerning psychiatric treatment without consent. French National Assembly, 17 July 2013.

Before describing the legislative framework governing committals to hospitalisation without consent and addressing the issue of respect for fundamental rights, certain difficulties located at the stage of the prevention and detection of mental disorders need to be mentioned.

3.3.1 Difficulties with Regard to Prevention, Upstream from Hospitalisation

A major difficulty has often been brought to the inspectors' attention concerning the inadequacy of human resources devoted to institutions outside of hospitals, and to CMPs in particular, whose primary vocation is detection and outpatient treatment.

The findings made in full-time hospitalisation units have enabled the inspectors to note a number of factors confirming this analysis. Indeed, excessively long waiting times are often mentioned (in the order of two to three months, or even more, for a first meeting); this situation has repercussions upon the health of patients and can lead to crisis situations calling for the use of committals to hospitalisation without consent.

Full-time hospitalisation, which is moreover imposed without consent, thus appears as a “queue shortcut”, enabling immediate access to psychiatric treatment, but at the price of restriction of the person's liberties.

Difficulties of organisation often come on top of these human resources difficulties; thus, many CMPs, particularly in the provinces, choose to open between 9:00 a.m. and 12:00 p.m. and between 2:00 and 4:00 p.m., which makes them little accessible to patients.

In addition, as previously mentioned, the number of full-time hospitalisation beds has decreased considerably in the course of recent decades, while demand has simultaneously increased for a least two reasons: on the one hand, the inclusion of a more “social” domain within the field of psychiatry, with which the latter was not previously concerned (mild depressions, addictions, victimology etc.), and on the other hand, the difficulty of access to private medical consultations for persons in socially-unstable situations due to the cost thereof.

Thus, in one large urban area in the South-West of France, since the beginning of the year 2013, the referral service under the authority of the psychiatric hospital has had to refuse admission of emergency cases originating from the SAMU Emergency Medical Services and the Centre 15 urgent medical aid service call centre on six occasions at night, due to lack of hospitalisation beds (this closure of admission obviously does not apply to cases of hospitalisation without consent).

Finally, it is essential for discharge from hospital to be accompanied with immediate provision of treatment for the patient by the sector, yet this is not always the case; thus one psychiatrist, in view of the excessively long waiting times affecting the provision of treatment to patients discharged from their unit of admission, had decided to cater for them in the emergency department in order to avoid interruption of their treatment.

This situation is accompanied with reduction in the number of home visits – which professionals connect to lack of resources – which nevertheless enable assessment of the state of patients and the provision of support to those around them, which is likely to be an effective means of preventing relapses.

3.3.2 The New Legislative Framework

The Constitutional Court has made far-reaching changes to the conditions of control of hospitalisation without consent. Two preliminary rulings on questions of constitutionality have radically changed the applicable regime and the guarantees provided to patients. The

consequences thereof were drawn by the legislature by means of two Acts of 5th July 2011 and 27th September 2013.

The new system put in place has been attentively examined by the inspectors in order to make sure that it enables increased respect for the rights of persons hospitalised without their consent. Although the presence of the liberty and custody judge in the examination of placements without consent has undeniably led to positive change with regard to respect for fundamental rights, one can only note that the application thereof is not always in accordance with the spirit of the law.

The Act of 5th July 2011 provides that persons subject to psychiatric treatment without consent shall be informed “as quickly as possible and in a manner appropriate to their state, of the committal decision” and of each of the decisions of maintenance in treatment. It also provides for the recording of the patient’s observations. Two years after the coming into force of the Act, these provisions are applied in very different manners.

Moreover, the Act, which separates the obligation to receive treatment and the practical details thereof, introduces systematic control on the part of the ordinary courts, the constitutional guardian of individual liberties. The Act of 27th September 2013²⁸⁴ in particular reduced the deadlines for action on the part of judges and the organisation of hearings²⁸⁵.

3.3.3 *The Action of the Liberty and Custody Judge (JLD)*

The Act of 5th July 2011 introduced the examination of placements by the liberty and custody judge within fifteen days of the initial placement, reduced to twelve days by the Act of 27th September 2013, and every six months in case of continuation of the measure of hospitalisation without consent. For the first year of application of these provisions (2012), more than 36,000 systematic verification rulings were made by JLDs.

The inspectors’ findings show that the application of these provisions is not without presenting difficulties.

In the first place, although action on the part of the judge undeniably constitutes a step forward, it comes up against the image of the judges, their designation as (liberty “and custody” judges), and the place and conditions under which they act.

Indeed, the majority of patients have a **repressive idea** of judges and of the legal system which, in many cases, causes them to live in fear of the hearing (“what have they got against me?”).

The ideas of medical staff, for their part, are not always any clearer, since they often ignore the judge’s role as far as its dimension of protection of the rights of the person is concerned. For their part, doctors sometimes have difficulty in accepting what they may consider to be illegitimate control of their practices.

These misgivings have been brought to the inspectors’ attention on numerous occasions; they sometimes lead to the development of avoidance strategies, which limit the benefits expected from the Act: indeed, the inspectors have ascertained that, in certain hospitals, medical certificates testifying to the inadvisability of hearing the patient are issued systematically.

²⁸⁴ Rendered necessary by a priority preliminary ruling on constitutionality (QPC) declaring certain provisions, in particular concerning the regime of admission to units for difficult psychiatric patients, to be contrary to the Constitution.

²⁸⁵ Cf. Sections 1 and 2 above.

The place of the hearing also constitutes a major issue: for symbolic reasons, numerous courts have deemed the court of first instance to be the only useful place of justice. This position has led numerous mental health institutions to put systems in place for the accompaniment of patients to court, under difficult conditions of transport, both for the patients and for the persons escorting them²⁸⁶.

Certain courts have tried to put protected routes of access in place: ambulances then have a parking space separated from those of police vehicles; patients use a specific access route, making it possible to avoid their meeting other persons brought before the courts, and have their situation examined in a different courtroom from that used by the JLD for rulings in criminal cases; however, this room is located on the same floor and sometimes the simultaneous presence of police escorts can be a source of tensions.

However, in other places, patients and medical staff use the same routes of access as persons appearing before the JLD within a criminal framework and have to wait in rooms little suited to their difficulties.

It thus rapidly emerged that the holding of audiences outside of the ordinary bench of the court, in the hospital, was the only means likely to guarantee access to the judge under calmer conditions. It is still necessary for the rooms in which these hearings are held to meet the conditions of impartial justice: that premises are available for lawyers enabling them to conduct interviews with their client-patients, that the judges can fulfil their duties in complete independence without being under pressure from the medical teams, and that the public nature of hearings be ensured.

The Act of 27th of September 2013 definitively settled this issue (in its principal aspects) by making trips to the court a secondary alternative. It also made use of videoconferencing a secondary alternative.

Indeed, the fixing of hearings at the hospital is not enough to resolve all difficulties: the inspectors have had occasion to be present at hearings held in hospital by means of videoconferencing. They were thus able to ascertain the extent to which judges, the hospital administration and, less unanimously, medical staff were pleased with a method which saved time for all involved, whereas the patients, whose agreement to videoconferencing had been obtained by hospital staff with an interest in videoconferencing, said to the inspectors: “I would have preferred to see the judge”, “I gave in” and again, in the case of one partially-sighted woman encountered in a hospital in the Parisian region: “I couldn’t see the judge on the screen”²⁸⁷.

It also needs to be pointed out that no reliable notification system has been elaborated, making it possible to inform the patient of the role of the JLD sufficiently in advance of the latter’s action.

The notice to appear in court itself, which is sent late in view of the deadlines, is not handed over to the patient in accordance with a reliable and traceable method, enabling effective notification to be guaranteed, particularly as far as the right to be assisted by a lawyer is concerned.

Defence also constitutes a major issue. To an even greater extent than for minors and foreigners, the defence of persons committed for psychiatric treatment without consent can be described as being in its embryonic stages; it is still too often based upon lawyers working in criminal consultations, whereas it ought to require specialised training. Lawyers rarely go to the hospitals and they meet their clients for the first time immediately before the hearing; when the

²⁸⁶ *The assignment of medical staff to transport duties also affects the patients as a whole.*

²⁸⁷ *These realities confirm the contents of the Opinion of the Contrôleur Général issued on videoconferencing (Journal Officiel of 9th November 2011).*

latter is not held by means of videoconferencing, while their discussions with the client are rapid, often held in a corridor, and sometimes in the presence of medical staff. They do not have, or do not take, the time required for collecting opinions and documents likely to go against the evidence appearing in the file. At hearings, the inspectors have had occasion to note that they frequently limit themselves to the actions strictly necessary in order to ensure the lawfulness of the proceedings. Several lawyers have said to the inspectors that their conditions of remuneration were far from being without bearing on these difficulties²⁸⁸.

3.3.4 Persons Excluded from Protection

The closed pavilions of psychiatric hospitals not only cater for patients placed without consent; freely admitted patients are also to be found in them. Some of the – for example, suffering from severe depression – are there by choice and, aware of their fragility, agree to their liberty being temporarily limited. It is to be regretted that this agreement is not made formal (as it would be in any somatic treatment department), but their free will is not in question.

On the other hand, other chronic – autistic, deficient or mentally ill – patients are also “freely admitted for treatment” when they are manifestly not in a state to give their enlightened consent. Not only are these patients catered for in closed units, but they are regularly placed in seclusion rooms; which we will return to below (c.f. §2.3.7.2). Their situation is all the more paradoxical in that they are often placed under a regime of legal protection – under guardianship or trusteeship – due to a legally recognised state of incapacity; while nevertheless being excluded from the protection of the JLD.

In his Annual Report for 2012, the *Contrôleur Général* had already noted that these court-appointed administrators – guardians and curators – were absent from the hospitals. In most cases limiting their action to questions of a practical order (management of the protected adult’s money), it is only with difficulty that they can fulfil the duty of notification²⁸⁹ which is incumbent upon them, in the face of persons who are heavily deficient, thus leaving them doubly excluded.

Finally, it should be recalled that adults placed under guardianship cannot appoint a trusted person as a legal representative; at the most the guardianship judge can confirm the appointment of a previously designated person, a situation which the inspectors have not encountered. Finally, these persons are therefore triply excluded from the systems of protection.

Their interests can scarcely be defended by anybody other than their families. At the latter are not necessarily in a favourable position to do so, they do not always have useful legal information at their disposal and, in the face of the medical world, are even more powerless than they are dependent: in case of disagreement, they will have great difficulty in finding another institution to cater for the patient²⁹⁰.

²⁸⁸ The amount of the State's contribution to the remuneration of lawyers acting within the framework of hospitalisation without consent was provided for by decree no. 2012-350 of 12th of March 2012 amending article 90 of the decree of 19th December 1991. The rate fixed is that which had already been established for optional proceedings brought before the JLD for this procedure, i.e. for units of value (1 U.V. being equivalent to 22.84 euros). By way of comparison, assistance for victims before criminal courts amounts to 8 UV, i.e. 196.32 euros and two UV, i.e. 49.08 euros before the court of summary jurisdiction. It is 34 units of value, i.e. 834.36 euros for divorce lawsuits.

²⁸⁹ Article 457-1 of the Civil Code provides that: “Wards receive from the person in charge of their protection, according to modes appropriate to their condition and without prejudice to information that third parties are bound to provide to them pursuant to the law, all information on their personal situation, the acts involved, their usefulness, their degree of urgency, their effects and the consequences of any refusal on their part”.

²⁹⁰ Cf. also section 9 below on the rights of patients in mental health institutions.

3.3.5 The Arrival Process and Notification of the Rights of Patients Committed without Consent

Patients committed for treatment without consent in general pass through the emergency services; they are then subject to a path of measures which, since it deprives them of certain rights, at the same time involves provision of information with regard to certain specific rights attached to their status, and in particular that of being informed of and challenging the placement decision²⁹¹.

They also have the possibility of asserting their opinion with regard to planned rulings and treatment²⁹². They are obviously not excluded from the rights of which patients as a whole have the benefit, such as possibility of appointing a trusted person as a legal representative²⁹³.

The application of these measures varies very widely. Nevertheless, in a document issued in 2005, the *Haute Autorité de Santé* [French independent scientific public authority contributing to regulation of the quality of the health system] had attempted to establish standardisation, which remains to be implemented, as shown by the findings made at the time of inspections.²⁹⁴

Various Different Admission Procedures, which leave Room for Improvement

As the inspectors have had occasion to note at the time of their visits, patients committed to psychiatric treatment at the demand of a third party generally arrive directly in their sector pavilion. The same does not apply to committal for psychiatric treatment by decision of a representative of the State: in this case, the patient is committed by the intermediary of the admissions office. Prior to this, however, the patient has passed through the emergency department of the general hospital, having been taken there by the police or the Fire Brigade. Depending on the place, it has been noted that these departments may sometimes be equipped with seclusion rooms or premises making it possible to separate these persons, who are often in crisis, from other patients, until a diagnosis is made and the administrative procedures have been completed.

Placement in these rooms is made by prescription of the emergency department doctor. Means of physical restraint are often used, not necessarily with sedation. The door of the rooms often remains open. The in length of stay in them is variable. There are no registers enabling occupation of these rooms to be traced.

²⁹¹ Article L. 3211-3 of the CSP provides in particular that: "... Moreover, any person subject to psychiatric treatment in application of Chapters II and III of this Part or of article 706-135 of the Code of Criminal Procedure is informed:

a) As quickly as possible and in a manner appropriate to their state, of committal decisions and of each of the decisions mentioned in the second paragraph of this article, as well as of the grounds thereof;

b) At the time of committal or as soon as their state permits, and subsequently, at their request and after each of the rulings mentioned under the same second paragraph, of their legal situation, their rights, the means of remedy open and the guarantees provided to them in application of article L.3211-12-1...."

²⁹² The same article L.3211-3 provides that: "... Before each ruling pronouncing the continuation of treatment... or defining the form of provision thereof... persons subject to psychiatric treatment are, insofar as their condition permits, informed of the planned ruling and placed in a position to assert their observations, by any means and in any manner suitable for their state... The person's opinion with regard to the methods of treatment shall be sought and taken into consideration insofar as possible..."

²⁹³ Article 1111-6 of the CSP provides that "Any adult person may appoint a trusted legal representative, who may be a parent, close relation or general practitioner, who will be consulted in case that they themselves are not in a state to express their wishes and receive the information necessary for this purpose. This appointment is made in writing. It is revocable at any time. If the patient so wishes, the trusted legal representative accompanies them in accomplishing formalities and takes part in medical interviews in order to help them to make decisions...". On this point also cf. section 9.

²⁹⁴ Recommandations pour la pratique clinique Modalités de prise de décision concernant l'indication en urgence d'une hospitalisation sans consentement d'une personne présentant des troubles mentaux, April 2005, Haute Autorité de santé - document drafted by the Agence nationale d'accréditation et d'évaluation en Santé and validated by its Scientific Committee in November 2004.

This is the moment when provision of information to the patient comes into play, for the first time, with regard to their legal status; a stage which is complex because of the person's clinical state and understanding of what is happening to them. In the case of non-French-speaking patients, translation is an added difficulty: hospitals in which language resources have been formed are rare, such as one hospital which has a list at its disposal of thirty-five agents able to provide interpretation in eleven languages, including sign language.

The doctor who decided upon the hospitalisation will, if necessary, have told the patient of their rights and means of remedy, but this notification is not the result of any formalised protocol.

The presence of psychiatric professionals in emergency departments varies greatly depending upon a demographic criterion. In teaching hospitals (CHU), the University-hospital psychiatric centre often has a psychiatric consultation and medical psychology unit. The latter centre organises the participation of psychiatric staff in the emergency medical department and psychiatric liaison with the other departments of the CHU. However, in the absence of a university-hospital centre, the involvement of psychiatric staff depends upon the nurses of the psychiatric hospital alone, who are present in timeslots which do not cover the whole of the emergency department's cycle of working hours.

Whether the patient is in the emergency department or has already entered the psychiatric treatment unit, it is at the time of this admission that the first measures prejudicial to the rights of the person occur: withdrawal of personal effects of value, mobile telephones, cigarettes and lighters, putting on of pyjamas. All of these measures have honourable motives: avoiding theft and fire, making patients aware that they have entered a place of treatment.

There are also other questions: how to notify or have their family notified and inform them of visiting times and conditions? In general, the reception and admission departments fulfil this role; they are also intended to provide an interface between the hospital and persons around the patient's – family, social workers etc. When persons in crisis arrive, they are catered for within the unit of admission, by medical staff who assess their immediate needs – thirst, hunger, cold, tiredness – and take the concerns of the family into account, who may in some cases accompany the patient.

Notification and Provision of Information concerning Means of Remedy

At the time of their arrival in a treatment unit, and whatever their status, patients are seen by a nurse or health staff manager, who explains the operation of the unit to them and gives them general information concerning that of the institution. In principle, the booklet for new arrivals and the rules and regulations are handed over to them.

Notification of decisions of committal to treatment without consent and provision of information concerning means of remedy and the rights of patients hospitalised without consent more generally, takes place according to widely differing practices, which are rarely formalised.

Committal decisions are in most cases passed on to the patient by a health manager or member of medical staff, who are not necessarily aware of the implications of the status, far less of the means of remedy. They sometimes refer the patient to a lawyer, or to the information contained in the new arrivals booklet. However, lawyers are absent from hospitals and the inspectors have noted on several occasions that the information contained in new arrivals booklets is sometimes incomplete, obsolete or even erroneous. Assuming that the patient is in a state to read the decision handed over to them, the compulsory information that it contains concerning means of remedy is hardly intelligible for persons in difficulty, and unaccustomed to legal language.

The inspectors have seen institutions in which persons received the same decision twice (one sent by the administrative authority, the other handed over by the institution) whereas, in another, decisions made by the director (ASPDT) were not subject to any notification.

Finally, because of the complexity of the administrative channels and the absence of definition of specific procedures for this purpose, institutions are not always in a position to provide proof that patients have indeed been notified of these decisions.

The problems are identical as far as the notification of decisions made by the JLD is concerned.

Noting of the Patient's Observations and Appointment of a Trusted Legal Representative

As mentioned above, article L 3211-3 of the Public Health Code provides that persons subject to psychiatric treatment without consent shall be placed in a position to submit their observations before each ruling pronouncing the continuation of treatment or defining the form of provision thereof and specifies that their opinion shall be noted and, insofar as possible, taken into consideration as far as the practical details of treatment are concerned.

In theory, these observations should be expressly recorded by psychiatrists at the time of informing their patients of decisions that they intend to take, as far as patients subject to treatment without consent are concerned.

In practice, this notification does not appear to always give rise a specific interview, and is rarely distinguished from the exchanges that doctors have with all patients concerning their treatment. In the institutions inspected by the *Contrôle Général*, this notification is never formalised²⁹⁵.

Finally, since the Act of 4th March 2002 concerning the rights of patients and the quality of the health system, any person hospitalised (for somatic or psychiatric treatment, whether freely or without consent) has the right to appoint a trusted person as a legal representative, in a position to help them take decisions concerning the treatment; with the patient's agreement, they can be present at medical interviews²⁹⁶.

In this regard, once again, the inspectors noted that although this option was indeed proposed to hospitalised persons, they are rarely specifically informed of the objectives of this appointment so that, in practice, the appointed person is very often confused with the person to be informed in case of emergency.

3.3.6 Restrictions to Freedom and Use of Restraint: treatment or breach of rights?

Whereas the inspectors noted that hospital staff were very receptive to questions relating to fundamental rights of patients and to the risks of their being neglected, it remains nonetheless the case that psychiatric hospitals, as with all closed institutions, are not free from abuse of power in its diverse forms.

²⁹⁵ This point may be subject to control on the part of the JLD.

²⁹⁶ Article 1111-6 of the CSP provides that: "Any adult person may appoint a trusted legal representative, who may be a parent, close relation or general practitioner, who will be consulted in case that they themselves are not in a state to express their wishes and receive the information necessary for this purpose. This appointment is made in writing. It is revocable at any time. If the patient so wishes, the trusted legal representative accompanies them in accomplishing formalities and takes part in medical interviews in order to help them to make decisions. At the time of any hospitalisation in a health institution, the appointment of a trusted legal representative is proposed to the patient under the conditions provided for under the above paragraph. This appointment is valid for the duration of the hospitalisation, unless the patient provides otherwise. The provisions of this article do not apply when a guardianship measure is ordered. However, the judge responsible for guardianship orders may, in this scenario, either confirm the trusted legal representative's previously appointed role, or revoke their appointment".

It will be recalled that the law (article 3211-3 of the Public Health Code) provides that “restrictions to the exercise of individual liberties (of persons hospitalised for psychiatric problems without their consent) should be appropriate, necessary and proportionate to their mental state and to the treatment required” and that “in all circumstances personal dignity should be respected and rehabilitation sought”. This point will be examined in relation to the “health care contract”.

It will be observed that society in general cares little about these places where the sick are gathered together, or the patients themselves who are rather frightening and whose distancing is reassuring.

The healthcare contract

Apart from medicinal treatment, patients’ daily life is governed by a “healthcare contract” (it should be presumed that this concept, which presupposes free arbitration and equality between the parties, is appropriate) which defines all of the therapeutic provisions to be made to meet patients’ needs and which develop according to their condition. These provisions are sometimes negotiated between patient and doctor and sometimes imposed by the latter. This healthcare contract lays out the daily life of the patient: their clothing, rest times, sleeping times, when they can go out, mealtimes and under what terms and conditions (individually or in common). Citing a whole framework of healthcare which might serve to give medical justification to that which has none

Thus, the inspectors have seen patients left in their pyjamas throughout the day and regularly deprived of their mobile phones or even any access to a telephone for periods which are identical for all, systematically set whilst these restrictions should be strictly related to the protocol of care set up for each patient on the basis of their individual clinical condition.

The content of this health care contract appears sometimes even more arbitrary when, in a neighbouring unit, very different provisions may be made for comparable pathologies.

The therapeutic dimension being presumed to exist in hospital treatment, patients are often stripped of their rights and liberties in the face of these restrictive practices that professional healthcare providers justify by the requirements of healthcare. They are even more vulnerable where, because of their illness, they do not have the means to oppose them and families (sometimes kept apart because of supposed toxicity) dare not question medical decisions further.

A lack of activities will also be found in most hospitals, with patients wandering around with nothing to do. What is true for freely admitted patients is even more so for those receiving treatment without consent: not being allowed to leave without being accompanied, they are less often able to take part than others in activities taking place in workshops which are far from their healthcare units. Being subject to administrative authorisations in relation to leaving the hospital it is difficult for them to take part in organised outings.²⁹⁷

Finally, mention should be made of the prohibition, which is sometimes formalised in rules and regulations, of sexual relationships. Whereas it is legitimate to protect patients from abuse that they may suffer (or cause) and whereas it appears necessary to ensure that the enlightened consent of the persons concerned is involved, it is not right that they should be prevented, whatever the context and in particular for long-term patients, from having any sexual life, this being a component of human life. An autistic patient wished to discuss his suffering with an inspector, caused by the deprivation of sexual relationships, which increased his feeling of exclusion resulting from his illness. However it is possible to envisage other approaches, as in

²⁹⁷ Cf. section 1 above.

another institution, where the inspectors noted that a joint room had been allocated to two patients who had expressed the wish to live together.

The Use of Seclusion and Physical Restraint

Amongst measures which restrict liberty, placement in seclusion rooms, otherwise known as intensive treatment rooms, and placement under physical restraint are the most obvious breaches of freedoms.

The fact is not here in question that some patients, who are particularly disturbed and a danger to themselves and to others, might necessarily require seclusion or even physical restraint. Nevertheless the fact remains that such decisions should meet specific criteria and predetermined conditions, which is not always the case.

Firstly the *Contrôle Générale* might be permitted to question the terminology²⁹⁸: the inspectors have often sought in vain to find justification for the term “intensive treatment” room. There is no technological equipment in these places and no more specialised action than would ordinarily be the case, with the exception of increased surveillance, although not in all cases. Although seclusion rooms are imposing areas this is, above all, because they are completely lacking in any decoration, furniture²⁹⁹ and sometimes facilities (in this case a bucket is left for patients); these rooms are not always equipped with a call button or clock enabling patients to get their bearings as far as time is concerned³⁰⁰. Patients may be shackled, have a hand and foot attached to their beds; the simplest of daily activities - eating, urinating - place them in a humiliating situation.

In some cases, particularly at night, such placements are decided upon by nurses alone, having been given *carte blanche* by a psychiatrist, as shown on the patient's chart by the note “To be placed in seclusion if necessary”.

It also appeared that the distinction was sometimes rather subtle between treatment and punishment. Thus in one hospital in the Paris region a patient was placed in seclusion and restrained, after a fire had been started in her room. It is reasonable to ask whether other means might not have been sufficient to stop such activity, which was clearly dangerous and as such unacceptable, from being repeated.

It was also reported to the inspectors that a patient who had repeatedly requested to go to the patio, which was completely surrounded by railings, outside of opening times, in order to smoke a cigarette at about 9:30 p.m., was placed in a seclusion room with an injection of an anti-psychotic drug in order to “calm his aggressiveness”.

This “intensive treatment” may also be marked by particularly security-oriented organisation, as in one hospital in the Centre of France, which had a specific unit: eight “intensive treatment” rooms situated alongside an interior rectangular courtyard. Each had two entry doors: the first was in the internal corridor and the second opened directly onto the courtyard, opposite the office of the medical staff. In spite of the presence of one-way windows, from the healthcare office the medical staff could see the interior of the rooms all night long, which were lit by a subdued light. The beds, which are bolted to the floor, are equipped with permanently-installed instruments of physical restraint. A camera and microphone are installed on the ceiling of each room and connected to sound and video monitors situated in the treatment room. The observation time is usually 48 hours at the time of admission; it is systematically

²⁹⁸ *It seems that this terminology raises questions of a more transcendental order: the inspectors noted that in one institution, the carers insisted on speaking of the “seclusion room” with inspectors whereas, with a psychiatrist who required them to do so, they spoke of the “intensive treatment room”.*

²⁹⁹ *Except for a bed and sometimes a “pouffe”*

³⁰⁰ *In one institution, the clock was situated at the head of the bed so that the patient, who was physically restrained, could not see the time.*

increased to 96 hours for detainee patients. It is at least 24 hours in length when a psychiatrist decides upon a placement in the course of hospitalisation.

The inspectors also observed that persons freely admitted for treatment could be placed in a seclusion room without giving their prior consent within the framework of a healthcare contract, and without their status being subsequently modified.

Generally this situation concerns patients who are in an acute phase whose behaviour might necessitate short term seclusion. The situation is more delicate for other patients, such as the autistic and chronically mentally deficient mentioned above, who are sometimes placed in seclusion rooms for weeks, months and even years: the inspectors came across one resident of a specialist care home (MAS / *maison d'accueil spécialisée*), who had been in a seclusion room for seven years.

In awareness of the issues, a certain number of institutions have elaborated protocols, whether for the purposes of undertaking reflection at the time of the analysis of professional practices or for certification procedures. However, in others, placement in seclusion rooms and the use of physical restraint is not traceable, in spite of long, repeated stays.

A sensitive issue in relation to the use of physical restraint is the continued use of massive doses of drugs, even when the crisis is over and the physical restraint has been brought to an end. Through excessive application of the precautionary principle, large doses of neuroleptic drugs continue to be administered, causing patients to suffer major secondary effects.

Without wishing to take the place of doctors, the *Contrôle Général* notes that the practice of use of chemical restraint varies widely between institutions: in certain mental health institutions coming under ordinary law, patients are so sedated that it is difficult have any exchange with them, whereas in others, including units for difficult psychiatric patients (UMD), it is entirely possible to engage in discussion with them.

Following its periodic inspection in France in 2010, the CPT noted in its report: *“The CPT recommends that the French authorities ensure that MCI³⁰¹ protocols and the use of physical restraint are reviewed in psychiatric institutions inspected, as well as in all other institutions/ psychiatric departments using MCI and instruments of physical restraint, in the light of the above considerations. On this occasion, the review of protocols should give rise to the elaboration of written instructions concerning the procedures to be followed, the forms to be completed and the information to be given in them. Additionally, it would be desirable for particular attention to be given to compliance with the precepts set out above in the context of the next round of certification of psychiatric institutions and departments.*

Insufficient Action by Mediation and Control Bodies

In many cases it has been observed that **Committees for relations with users of health institutions and quality of healthcare³⁰²** (CRUQPEC), experience problems in fulfilling the role assigned to them by law: monitoring respect for users rights and issuing opinions and proposals on

³⁰¹ Placement in seclusion rooms.

³⁰² Under the terms of article L1112-3 of the Public Health Code, the commission on relations with users and the quality of treatment, monitors respect for users' rights and contributes to improving the quality of reception of those who are ill and their close relations and treatment. It facilitates formalities for these persons and ensures that they can, as appropriate, speak of their problems to institution managers, hear explanations from them and be informed of follow-ups to their requests. It is consulted on policies in use in institutions in relation to reception and treatment and makes proposals in this area and is informed of all complaints and claims made by users in institutions and the follow-up to them. To this end they may have access to medical data relating to these complaints and claims subject to obtaining prior written agreement from the persons concerned or from their beneficiaries if they are deceased. The members of the commission are bound by rules of confidentiality.

the policies conducted in institutions with regard to reception and provision of treatment.

In practice, CRUQPECs essentially act in relation to claims concerning various pieces of equipment (loss of items etc.). They appear to have serious difficulties in addressing the most restrictive aspects of the daily life of patients and even more in dealing with claims relating to difficulties in relations with doctors.

Indeed, their composition³⁰³ does not provide them with the conditions of freedom of speech: CRUQPECs are chaired by the director of the hospital or by a person delegated by the latter and comprise at least two mediators appointed by the director of the institution and two users' representatives appointed by the ARS. With the exception of the publicly-owned hospitals of Paris, they can include a representative of the institution's medical committee, a nurse who is a member of the nursing care committee, a staff representative and a representative of the supervisory board. Under these conditions, the difficulty for users' representatives of calling into question any practices which they consider to constitute infringements of rights, can easily be imagined.

The discretion, not to say timidity, of this body sometimes results in an increase in disputes with patients in the courts, whereas its role, when properly fulfilled, should have a reconciliatory effect.

In order to actually defend the rights of users and be a source of proposals it would therefore appear desirable for it to offer greater guarantees of independence in its composition.

The Act of 5th July 2011 changed the external inspection body through the creation of **Departmental committees for psychiatric treatment (CDSP)**³⁰⁴.

CDSPs comprise two psychiatrists (one appointed by the state prosecutor at Court of Appeal and the other by the prefect), a law officer (appointed by the president of the Court of Appeal), two user representatives and a general practitioner (appointed by the prefect). Their action, which varies greatly between departments, depends largely on the personal commitment of its members.

As under the Act of 1990, it must be admitted that administrative committees, which have important areas of jurisdiction, are not always in a position enabling them to carry out their role³⁰⁵. The administrative authority responsible for establishing them does not always show any great readiness to do so. Moreover, where they exist they have to make do very modestly with a small administration, which can only supply reports and minutes of inspections after considerable delay. Once again, where they are in existence and operation, they can constitute an important means of remedy patients.

The Ministry of Health called them together on 13th December 2011 (as requested by the *Contrôle Général*) and the route map given to them at that time stresses the need to pay particular

³⁰³ *The composition of CRUQPEC is set out by article R 1112-81 of the Public Health Code: chaired by the legal representative of the institution (or by a person appointed by them), it comprises at least two mediators appointed by them and two user representatives appointed by the director-general of the regional health agency. In public health institutions other than the Publicly-Owned hospitals of Paris, they may, in addition, comprise the Chair of the institution's medical committee (or a representative), a nurse who is a member of the nursing care commission, a staff representative (a member of the institution's technical committee) and a representative of the supervisory board chosen from amongst the representatives of local authorities and qualified persons.*

³⁰⁴ *They replace the departmental committees for psychiatric hospitalisation.*

³⁰⁵ *Article L 3223-1 of the Public Health Code relates to CDSP work: it has been revised to strengthen inspections carried out by the former departmental committees for psychiatric hospitalisation in relation to the most sensitive situations, that is to say those of persons who are treated without their consent on the basis of a medical-administrative decision in the absence of a formal application made by a third party, and those of persons for whom treatment without consent at the request of a third party or of the authorities continues for longer than one year.*

attention to the situation of patients undergoing treatment programmes (in particular where partial hospitalisation phases are involved) and to patients committed to treatment at the request of a third party for whom discharge from treatment has been refused by a doctor.

Article L. 3223-1 sixth paragraph of the Public Health Code provides that these committees are to send annual reports on their work to various authorities including the *Contrôle Général des Lieux de Privation de Liberté*³⁰⁶. The *Contrôleur Général* has received nineteen such reports since 1st August 2011, the date at which this obligation came into force.

3.3.7 Difficulty of Access to Somatic Treatment

It is paradoxical to note that hospitalised psychiatric patients, particularly in the case of independent hospitals, encounter difficulties in receiving treatment from general practitioners and gaining access to specialist examinations.

The reasons for this current reality are partly historical in origin: general practitioners made a late appearance in psychiatry, in which it was long considered that “everything comes within the field of psychiatry”.

In theory, patients committed for treatment without their consent undergo a physical examination upon arrival. In practice, due to the assumption that an examination has been carried out in the emergency department (which is not always the case), the hospital does not always examine the patient. In a number of hospital services in the Centre of France, it was found that, due to lack of a sufficient number of general practitioners, physical examinations and somatic healthcare for patients placed in seclusion rooms or under physical constraint were not always organised. It was also noted, particularly in one Paris hospital, that the physical examination upon admission was sometimes entrusted to a psychiatry intern.

After admission, situations vary widely, from the daily presence of a general practitioner to visits only upon request.

The disparities are no fewer in matters of specialist health care: some mental health institutions have, for example, dental surgeries on the premises (left over from the “self-contained asylum” period); UMDs, which are for the most part relatively recent, are thus equipped whereas, in many institutions inspected, lack of dental care was plainly evident, linked to the difficulty of accompanying patients committed for treatment without consent to external consultations.

Institutions which are part of a general hospital have the benefit of the latter’s technical centre (this is the case with regard to UHSAs in particular) whereas, for other institutions, the simplest medical examination requires transport, which can only be organised with difficulty in a situation of shortage of staff.

3.3.8 Unsuitable Places for Certain Patients

The Inspectorate has received a number of testimonies from patients, telling of their concern, and sometimes fear, of living on a daily basis in such close proximity with patients affected by such severe pathologies. Thus, in a large psychiatric hospital in the north of Paris, adolescents confided their fear of living daily with autistic patients whose behaviour was frequently violent;

³⁰⁶ Article L3223-1 of the Public Health Code provides that the CDSP shall send a report on its work every year to the Liberty and Custody Judge having competence in its area of jurisdiction, to the representative of the State in the department and, in Paris, to the prefect of police, to the Director-general of the regional agency for health, to the Public Prosecutor and to the *Contrôleur Général des Lieux de Privation de Liberté*.

others, with serious depression, mentioned the difficulties of living in close proximity with agitated patients or those with serious developmental problems.

More than the co-existence of pathologies – which is an unavoidable consequence of the sector organization of the psychiatric system, when lack of facilities or ideology place obstacles in the way of the opening of multiple units – the real issue is the hospital's adaptation to certain patients who have to live in an institution on a long-term basis.

The *Contrôle Général* was notified of the particularly worrying situation of an autistic man of 42 years of age who had never been catered for in a manner appropriate to his pathology, endlessly making visits backwards and forwards between hospitals and the UMD over a period of about twenty years. The absence in the improvement of his health and, even more, so the worsening of his state, over the last three years in which he has been placed in the same UMD, highlights the absence of procedures appropriate to certain pathologies, which is regularly ascertained and for which solutions sometimes need be sought in other European countries, such as Belgium.

Other patients of advanced years with stabilised chronic pathologies are maintained in units of psychiatric hospitals, whereas their condition requires medical and social welfare facilities that are properly adapted to their form of dependence. The consistent lack of places in such institutions leads to patients being kept in situations which are clearly unsuitable, which often leads to a form of institutional mistreatment.

Finally, and most importantly, the same form of mistreatment is imposed upon adolescents, and sometimes upon very young children, who are hospitalised with adults and even with very old people. Due to the lack of a sufficient number of child psychiatry beds and the impossibility of admitting 16 to 18-year-olds to them, some of the latter, and often the most disruptive amongst them, are transferred to adult departments. Being faced with the other patients on a daily basis - a mirror in which they can see, fear and despair of their future - is necessarily painful. Due to its lack of educational, sporting and leisure activities, this environment is particularly inappropriate³⁰⁷.

3.3.9 The special position of hospitalised detainees

Detainees suffering from mental problems are, in principle, catered for within specially-equipped hospitalisation units (UHSA) balancing access to healthcare with security requirements.

The inspectors have noted that these units, which are recent and modern in design (with real architectural value) provide satisfactory conditions of accommodation and treatment, which are respectful towards patients. The close collaboration between hospital and prison staff appears to be of higher quality and greater composure than in some prisons; in the UHSAs visited it was a question of “finding out about cultures” and “very valuable partnerships”, although each profession is concerned to protect the scope of its own duties.

The hospital staff, who have often volunteered to work with this kind of population, have gained awareness of the problems specific to catering for detainees; on the other hand, the close working proximity between medical and prison staff has made the latter aware of the need to give priority to healthcare.

³⁰⁷Article L1110-6 of the Public Health Code provides that children of school age have the right to appropriate education "in so far as hospitalisation conditions allow".

The inspectors were able to speak with greater ease with patients in these units, who were less sedated than in some hospitals.

However, the building programme is currently in progress; the number of places is currently insufficient to cater for all detainees suffering from mental disorders (UHSAs cater for both freely-admitted patients and patients committed without consent; in the UHSAs inspected, the proportion of freely-admitted patients varied from 30 to 50%).

When the 440 planned beds are in operation, admissions to local hospitals will continue to arise for emergency reasons, if not due to lack of places in UHSAs.

The inspectors had occasion to observe that detainees, all of whom are admitted under the ASPDRE procedure, whatever their clinical condition, are often unwelcome in the hospital environment, where they give rise to fears: apprehensiveness of special dangerousness, fear of escape.

They are frequently denied exercise and use of common areas (cafeterias, libraries etc.), even accompanied by nurses (the latter asserting that they are not “warders”) and even deprived of therapeutic activities.

Paradoxically, in hospital these patients do not have any of the rights that they would have in detention: no telephone, no visits and no exercise³⁰⁸.

The case of one detainee was brought to attention of the *Contrôle Général*, who was permanently shut up in his room, his spectacles taken away, and only allowed paper and pen in the presence of medical staff.

And above all, the inspectors noted that the practice was very widespread of placing detainee patients in seclusion rooms, sometimes also under physical restraint, not for the purposes of the clinical observation phase, the value of which can be understood, but as a “precautionary” measure throughout the length of their stay.

For this reason, and in spite of the seriousness of their pathologies, their stays are often very short (not enabling their condition to be stabilised) or they ask to be sent back to the penal institution, being unable to bear the conditions in which they find themselves. In practice, such requests are readily accepted once the crisis has passed, a situation which is generally satisfactory for the hospital, although not for the health unit and the prison administration, whose assessment of the situation is thereby somewhat discredited³⁰⁹.

4 Recommendations

4.1 Overall Recommendations

1) Better knowledge of the extent of psychiatric disorders in places of confinement

Ascertaining the absence or dated nature of studies on this issue, the *Contrôleur Général* recommends the launching of longitudinal epidemiological enquiries into psychiatric disorders in places of deprivation of liberty, including psychiatric hospitals.

2) Better training of staff in charge of action in closed environments

³⁰⁸ This is also often the case when a detainee is hospitalised for somatic treatment.

³⁰⁹ In this area, please see the Opinion of the *Contrôleur Général* of 15th February 2011 concerning certain methods of hospitalisation by court order, and in particular section §7 (Journal Officiel of 20th March 2011).

Ascertaining the inadequacy and disparity of their training, the *Contrôleur Général* considers that staff working in closed environments need to receive training on mental and psychiatric disorders, enabling them to identify such disorders and adapt their professional practices, as provided for in the methodological guide concerning provision of healthcare to persons placed in custody published by the interministerial circular 30th October 2012.

Assistance in the analysis of professional practices needs to be provided to staff working in closed environments.

4.2 Recommendations concerning Categories of Institutions

3) Organised access to psychiatric treatment in CRAs

Ascertaining the weakness and disparities of the presence of psychiatric healthcare in detention centres for illegal immigrants, the *Contrôleur Général* recommends that agreements between CRAs and hospitals should include provisions concerning psychiatric treatment. The latter need to designate an administratively attached psychiatric hospital and appoint a consulting doctor. The provision of hospital or independent psychiatric consultations within CRA's should be systematic.

4) Integrating CEFs into an organised treatment network

Ascertaining that CEFs, even with additional specialised mental health professionals, cannot be considered treatment institutions, the *Contrôle Général* recommends the systematic signature of three-party agreements (PJJ – associations – inter-sectorial child and adolescent psychiatry) organising a real healthcare network enabling accommodation in CEFs to be combined with therapeutic treatment. This treatment needs to be accessible to adolescents presenting clear cases of psychiatric disorders as well as to those who, due to the mental suffering, require close support. The access to treatment guaranteed to them by the Convention on the Rights of the Child needs to be effective.

4.3 Recommendations concerning Prisons

5) Reinforcing levels of medical staff

Ascertaining the difficulty of dealing with personality disorders in the prison environment, the *Contrôleur Général* recommends the creation or the reinforcement of the number of positions for nurses and psychologists within health units.

6) Creating places of exchange between warders and medical staff

The *Contrôleur Général* frequently ascertains lack of communication between warders and medical staff, which can lead to real gaps in the detection and provision of treatment for the suffering of prisoners.

He recommends the creation of time for joint reflection and exchange between prison officers and medical staff, with regard to their respective professional practices, in compliance with medical secrecy.

7) Asserting the importance of knowledge of prisons among doctors

The need to conduct consultations in places devoted to treatment is in itself likely to properly identify the therapeutic field, however this should not mean that doctors are kept far removed from the very specific place of accommodation constituted by the prison, of

which a knowledge appears useful to understanding the prisoner's situation. In particular, when cases are reported and it appears that the prisoner does not make a request for a consultation, it is necessary for doctors to be able to go to see them to assess the situation.

4.4 Recommendations concerning Mental Health Institutions

8) Consolidating the resources of psychiatric sectors

Ascertaining a constant reduction of human resources in psychiatric sectors and the effects of the latter upon the provision of care for patients, the *Contrôleur Général* recommends that the authorities should assess the medical staff required for proper operation of the various different facilities (CMP, units of admission, longer-term treatment units etc.).

For his part, the *Contrôleur Général* considers that it is necessary to consolidate the human and logistical resources of facilities outside hospitals, and CMPs in particular, in order to ensure that they are in a position to organise regular follow-up of patients upstream and/or downstream from hospitalisation, regular psychological and social welfare support of this kind making it possible to avoid numerous committals to hospitalisation without consent.

As his findings stand, the *Contrôleur Général* also considers it necessary to consolidate the resources of units of admission, in particular through the recruitment of nurses and psychologists.

9) Granting patients the legal status corresponding to their condition

Ascertaining that a large number of patients manifestly unable to give their enlightened consent are freely admitted for treatment, the *Contrôleur Général* recommends the implementation of procedures making it possible for them to have the benefit of a suitable legal status for their condition, offering the benefit of the guarantees provided for by law.

The same applies when a person, freely admitted for treatment and placed in a seclusion room for more than twelve hours, does not expressly give their consent to remain in treatment under the same status.

The Public prosecutor at the court of first instance needs to be informed thereof.

10) Establishing Protocols and Traceability for Placements under Physical Restraint and in Seclusion

After the model of the recommendation made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the *Contrôleur Général* once again recommends that, in psychiatric hospitals, the use of physical restraint upon patients (manual control, instruments of physical restraint, seclusion etc.) needs to be recorded in a register specifically established for this purpose, as well as in the patient's medical file. The pieces of information to be recorded need to include the time of commencement and ending of the measure, the circumstances of the case, the reasons justifying the use of the measure and the name of the doctor having prescribed or authorised it within a reasonable deadline. In addition, these patients need to be subject to increased medical follow-up. This register needs to be subject to inspection by the departmental committee for psychiatric treatment.

11) Improving measures enabling access to their rights for patients committed to treatment without consent

Ascertaining the great heterogeneousness of the methods of notification of their rights to patients placed without consent, the *Contrôleur Général* recommends that the Ministry of Health should draw up a model document explaining the various different types of hospitalisation without consent and the means of remedy open to patients, in simple terms, with each hospital being responsible for supplementing and adapting it to specific local conditions by adding, in particular, the addresses of the competent authorities.

It would also be appropriate for each institution to elaborate a protocol and make sure that administrative placement decisions, notices to appear in court and rulings by the liberty and custody judge and all documents concerning their rights are effectively handed over to patients.

Institutions need to formalise the collection of patients' observations, provided for under article L. 3211-3 of the CSP.

They need to implement the legal provisions concerning the patient's right to designate a trusted legal representative and give the latter their full place as provided for under the law.

12) Reinforcing the role of consultation bodies for the assessment of constraints imposed upon patients

The *Contrôleur Général* recommends a change in the composition of Committees for relations with users of health institutions and quality of health care (CRUQPEC). The systematic appointment of associations of users, families of patients and legal professionals would give them greater autonomy. Consultation of the CRUQPECs needs to be compulsory with regard to the rules and regulations of units and seclusion room facilities.

13) Providing departmental committees for psychiatric treatment with adequate resources for the fulfilment of their role

It is incumbent upon the Ministry of Health and the regional health agencies bracket (ARS) to provide these bodies with sufficient resources to enable them to completely fulfil their role. In introducing control by the ordinary courts of placement decisions of patients hospitalised without consent, the Legislature did not intend to put an end to these local bodies, quite the contrary. They are useful for gaining an understanding of the situations of the patients who can refer cases to them, as well as their friends and family, while recourse to the courts is only accessible to them with difficulty.

In addition, the Ministry of Health, after the model of the meeting which it organised in December 2011, needs to prompt the ARS to organise regular meetings of these bodies on their territories. Finally, the ARS which take care of secretarial work need to be reminded they have to send their annual report to the competent liberty and custody judge in their jurisdiction, to the representative of the State in the French department and, in Paris, to the Prefect of Police, to the Director General of the Regional Health Agency, to the Public Prosecutor at the Court of First Instance and to the *Contrôleur Général des Lieux de Privation de Liberté*.

14) Training specialised lawyers in order to assist patients committed for treatment without consent

The *Contrôleur Général* recommends that specific training should be given to lawyers assisting or representing psychiatric patients committed to institutions without their consent.

An increase in the allowances paid to these lawyers is also indispensable in order to ensure the provision of high-quality justice, there being no justification for their current remuneration being lower than that for other lawsuits.

15) Taking better account of the needs of young patients

Ascertaining that minors are sometimes hospitalised with adult patients, the *Contrôleur Général* recommends the creation of a sufficient number of child psychiatry beds, throughout the territory as a whole.

He recalls that children, according to the meaning of the Convention on the Rights of the Child (that is to say under 18 years of age), should not be hospitalised with adults.

16) The rights of hospitalised prisoners

The *Contrôleur Général* recalls that the status of patient should take priority over that of prisoner throughout stays in hospital. Without overlooking security constraints, patients from prisons should receive equivalent treatment to that received by other patients. They need to retain the rights of which they have the benefit in prison: visiting rights, exercise, access to the telephone etc.

Placement in seclusion rooms and placement under physical restraint should not be systematic; they need to be examined on a case-by-case basis and correspond to a therapeutic necessity, validated by medical decision.

Section 7

“Dear Contrôleur Général...”

Letters Received

1. The Bitter Experiences of a Recidivist

“Dear Sir,

(...) In relation to conditions of detention, what I am denouncing has been going on for so long (some of the points were even cited in the 1873 Comte Haussonville report) that I have very little confidence that any action is likely to be taken, above all these days, given the economic crisis.

Because that's what it's actually all about. Justice has always been the poor relative of the ministries... and prison budgets are well below the real costs of renovating and humanising prisons.

Lack of budget, therefore, and a lack of will on the part of government to trouble its electorate, which they know has very little interest in the conditions of life in prison, but above all because they are always ready to oppose any measure or cost aiming to improve the daily life of prisoners. For many people there is only one law that counts in relation to detention: iron law.

On that basis it really doesn't matter that cells are no longer in line with the role assigned to them by Republican values. Worse, keeping people in these places adds yet more serious and heinous punishment to the sentence that they are already suffering. It hardly matters that these cells flout the laws of humanity and human dignity in their most basic form.

What crime could deserve such a cell? Is it this iron law that requires WCs to be in full view of all? That cells must be cold, dull, sinister; as horrendous as a tomb? Cells are the most important place in prisons because prisoners spend most of their time there.

In this cell where I am now, everything is redolent of despair, dereliction and self abnegation. Where can you draw strength or courage from in this cave? How can you imagine a better tomorrow? What is the impact on morale when everything is just depletion, decay and unhappiness? Is it the right environment to encourage a moral recovery in prisoners?

During my various sentences, pretty much everywhere in France, I have been in dreadful cells, not solely in terms of their squalor, but because it was as if they were impregnated with all of the human misery which has filed through them.

As for me, I know that these long years lived in these dungeons have left with me a feeling of sadness, melancholy and the impression that part of me has been filled with darkness.

Let's say that the construction of prisons is thought through in the finest details by prison design specialists. Then it must be by design that these dreadful cells have been built, where daylight hardly penetrates and the eye falls on nothing restful.

How many times, in full summer, when the sun is out and the skies clear blue have I suddenly remembered the black prison tomb and the feeling of being nothing.

I'm just touching on the physical side here and in particular that of the cells. I'm not going to mention the rest (in particular the condition of showers etc.) If I had to bear witness to the abuse

of power and other breaches of the law that I have experienced during my (X) years in prison, it would be a full-time job.

I'm going to be tried before the T. Court of Appeal in...2013, having been sentenced to (X) years in my absence. I might reasonably expect that the length of sentence will be reduced. First, I shall show them that I did not even know the date of my hearing and that I never intended to escape justice and therefore avoid my responsibilities.

I have been working for 18 months. I have been housed in a place which is working with the Justice Department. I am surrounded by the accounts of a number of people working within various domains (social services, educational, psychological etc.), all of whom attest to a real change in me. My employer has sent me my employment contract, payslips and evidence of my good conduct.

(...) As for me, I have finally found some happiness. It has now been two years that I have not been back in prison, since 1990. It is the first time, between two sentences, that I have remained so long outside prison.”

2. The Misadventures of a “Short Sentence”

“Dear Sir,

(...) I was in a punishment cell for ... days including X days of suspended sentence after a disciplinary hearing on Y, for the fourth and last time for a so-called incident. I was hit by a warder on ... 2013, when I slipped, in my socks, on a floor cloth and he hit my fingers when closing the cell door and slapped me on ... holding the door with the right hand. I only complained nineteen days later, thinking that everything would be sorted out. ...

Forty eight hours afterwards I received their report [of the incident] which was given to me on Z ... to protect themselves. In fact what happens in prison stays in prison and they make me pay in their own way, and have complete power over prisoners. Within eight days I was brought before the disciplinary court [disciplinary committee] X times and sentenced to Y days in the punishment cell even though in the first month, the section B major told me: “Mr D, if all the prisoners were like you life would be easy, a real retirement home”. It's now three months that I've been here, for a period of four months... and when I was sentenced on ... 2012, the President told me: “Mr D, I'm going to give you four months but you won't go to prison and we will reduce the sentence which will be arranged by the prison service for rehabilitation and probation [SPIP - *Service pénitentiaire d'insertion et de probation*]”. During ... 2013, the SPIP agreed that I would do 130 hours of community service rather than imprison me (...)

Well it was just one warder who didn't like me from the start, calling me a “sissy” and an “...hole”, if I hear him say it once I heard it 20 times ..., when he came to beat my bars, picking his nose and then rubbing it on my T-shirt, he even stole my tobacco from the cell. I have no proof, being alone in my cell, my previous cellmate being in isolation, it could only have been him, the warder for my wing. And then I was transferred to cell No. ..., with X, a 49-year-old illiterate who did not even know how to write his name.

I asked him how he managed when I wasn't there, not having any tobacco, I shared mine with him. He told me that he asked a warder for a cigarette who told him “I don't smoke but wait five minutes” and five minutes afterwards he brought him half a box of *Marlboro* rolling tobacco, two packets of *Pall Mall* rolling tobacco, one third full and the other just opened, and two packets of rolling paper, one full and the other just opened. They only gave me three days of additional remission in spite of my going regularly to the SMPR [Regional Mental Health Department for Prisons - *Service médico-psychologique régional*]. I can't work: too short a sentence; and as for training,

that has been almost impossible because of my behaviour, and I have no idea how they thought that up... Especially as I had passed the tests without response. I can only go to see an ENT specialist in ... 2014, when I will have been out of prison for a long time. They put me in with a 49-year-old drug addict, the illiterate one; he had 20 cm long track marks from shooting up. As I am diabetic, I was afraid that he would use my insulin syringe. Which is something he did on the outside.

On ... 2013, I went before the disciplinary board, four days after instead of two working days. In four days, they put me in four different cells after having me hit from behind by my new cellmate, C. He hit my face against the cell cupboard resulting in three stitches and it was me again who had to change cells. I went before the disciplinary board on ... 2013 and was given Y days suspended sentence. The next day, I was choked by another cellmate. I was sleeping on the floor in a two-person cell and this strangler, G. hit me hard in the face; my nose was dripping with blood, he had broken it and I had a black eye. The previous day he'd given me 100 mg of N. [medicine] having me believe that it was an E. generic, a muscle relaxant, and I was all over the place and could hardly stand up. And so on ... 2013, I refused to enter my cell where the occupant was hostile to me before I moved in. The next day would be my twelfth cell in three months, and I have lost more than a quarter of my belongings. I sent the medical certificate to the court of first instance of V. prosecutor on ... 2013 by registered letter and have still not received a reply. I also sent one to my sister so that she could make photocopies, as it will be much quicker than doing it here (...)"

3. External Procedures

"Dear Sir,

I should like to share with you here some of the difficulties that I encountered between the R. remand prison and the M. detention centre.

The facts are straightforward.

1/ At the R. prison visitors' room, a friend brought me various items and objects excluding a pair of shoes which were returned to him at the end of the visit for not being compliant, the rest was handed over to me in part. In part, because my washing necessities (without alcohol!), that complied [with the Code of Criminal Procedure], were missing, as well as stamps and, upon my request, a fountain pen plus cartridges worth €47.64. In spite of a number of reminders and a lot of difficulty in recovering all of my package, when I was transferred to the M. detention centre, the director of the R. remand prison upheld that he had not retained these items, even though my friend M.Y. confirmed with the certificate of conformity [with the Code of Criminal Procedure], providing the invoice in evidence, that he had handed over these items (corroborated by a warder at the Remand Prison!).

I thus decided to file a complaint with the court of first instance of R. against X for theft, misappropriation and embezzlement.

Following my transfer to the M. detention centre, I asked my friend and my daughter again to send me stamps, a writing pad, a fountain pen and pens (*Pilot*TM), being necessities for correspondence that are not prohibited by internal regulations and above all that cannot be bought in prison as they are not in the catalogue [of the private company which manages the prison shop], the famous Y. [name of company] catalogue! where it is impossible to buy "real" magazines (*Nouvel Obs*, *Express*, *Marianne*, *le Canard Enchaîné* etc.) even in the external prison shop! preferring pornographic-type magazines to the latter...

In spite of my requests to management, they blocked three pens! during searches! Is that not an abuse of power? Even though drugs, telephones and alcohol etc. enter with no problem at all every week. I am astounded!

I therefore decided, for lack of another option, to complain to the court... In the same way, I appealed, upon advice [from a public institution] for access to my electronic liaison register [CEL - *Cabier électronique de liaison*] and to the computerised prisoner management system [GIDE - (*logiciel de*) *Gestion informatisée des détenus*] to consult the information relating to myself. I am still waiting for a reply!

Since my imprisonment, I have written (a great deal? too much?) to work, to participate in training and socio-cultural activities, in short, everything possible, to make voluntary contributions [to civil parties] without reply.

Excluding the R. Remand Prison where, one hour after having received your letter, I was seen by the director who explained that my classification as an auxiliary³¹⁰ had been postponed! They don't like us writing to you, nor to the various authorities and the media (I am also studying for a law degree via [the association] Auxilia). For informational purposes I attach a comparison of prices applied [in prison shops] between [private company], the R. Remand Prison and the F. Remand Prison ... SHAMEFUL!"

4. Prison Overcrowding (continued) and Pressure

"Dear Sir,

I am sending you this letter to notify you of the attitude of my block manager.

It is now 30 months that I have been imprisoned in the L. Remand Prison, 28 months of which have been spent in the prison shop service. I have always had a polite and respectful attitude to prison staff and to the civilian staff in the prison shop service.

For the past three weeks, I have been in a 9 m² cell with two other cellmates. I waited two weeks before writing to my block manager explaining that this situation could not continue as three people in a small cell was unbearable. I could only discuss this subject with him on the quiet and his reply was "this is not a hotel". I wrote to [management] explaining that this was not a reasonable reply from a block manager; I have received no response. Today, whilst in discussion with him, I was even told that I was "well-off in a threesome"!!! What shocked is that I had the impression that I was, excuse my language, considered as a piece of s..., by this person's attitude towards me.

I am [over 40 years old] and I have not been educated to show contempt for people through the abuse of authority.

I am aware of the overcrowding in French prisons, but here it's a "sink or swim" system whether by systematic searches that I have suffered since the start of my detention, with threats of suspension of visits if I do not submit to these searches or threats of reclassification if I demand my rights to a single cell, access to a telephone etc., etc.

I hope that this letter will have been of interest to you and that measures will be taken in order for this human being to carry out his sentence in dignity."

5. Conditions of External Hospitalisation (continued)

³¹⁰ Working as an assistant in the general service

“Dear Sir,

I am imprisoned at T. At the start of 2012, I underwent (...) surgery at the M.D. hospital which went very well.

One year after this operation an illness occurred, and to use medical terms, it was a (...) fistula or fissure. It is a condition which is very difficult to cure, and I had to undergo a number of operations before making a full recovery; but at what price!!

At S. Hospital, before going into the operating theatre it is obligatory to shower with Bétadine™. After this shower, the police immediately put me back in handcuffs and shackles (the cleanliness of which is highly questionable and even more so as everything needs to be sterile in an operating theatre).

It was only after the anaesthetic that the handcuffs and shackles were taken off and immediately after the operation they were put back on as they were already on in the recovery room. This procedure applies to all prisoners who undergo surgery. Doctor B., a doctor in the [prison] medical consultation and outpatient treatment unit [UCSA - *Unité de consultations et de soins ambulatoires*], is fully aware of the danger and absurdity of this situation for the health of prison patients; unfortunately he can do nothing more than to record the facts.

This has to stop! The purpose of this letter is not to castigate the hospital or with a view to filing a complaint but to notify you of the behaviour of police escorts.

I shall need to have a biopsy, in 20../20.. I beat ... cancer with chemotherapy and small operations, but alas according to diagnosis by the UCSA medical unit I have had a relapse (...).

Under these conditions, Mr Delarue, I do not want to risk suffering more than necessary and risk nosocomial complications, and therefore I do not wish to be operated on in the S. Hospital as the latest experience that I have told you about brought me great suffering.

I therefore write to you quite legitimately and with the hope that you support this initiative and I even hope that you might intervene so that my medical examinations and possible operations are carried out at the M.D. hospital, where there is an Interregional Secure Hospital Unit [UHSI - *Unité hospitalière sécurisée interrégionale*] (...) equipped to provide care to prisoners in humane conditions.

Perhaps there is a legal decree specifying that prisoners having finished their unconditional imprisonment might claim exceptional permission to go to hospital for major care. Unfortunately, the illness that I have may very quickly become life-threatening and healthcare and the absence of all associated worries as set out in this letter play a major part in the healing process.”

6. Letter to a Mother

“Dear Mother,

Just imagine, it's me that's worried, it's now two weeks that I have had no news. What's more, I'm not getting on very well at all, because, not wishing to paint all prison officers with the same brush, a small minority of some of the prison officers say to us “You are b...breakers”,” You are a pain in the a...”, But if we say the same thing to them, they suspended my work for two weeks with a prohibition on living with the prison population, I have to exercise alone for just one hour a day, suspension of television for 14 days when it has been paid for, well I found this punishment unjust and I've been on hunger strike since ... 2013. Someone explained to me that if

I wanted things to get better, even though I'd been working in the same job for a year without any problems and everything was going smoothly, I should ask for somebody to intervene, to notify the N. Interregional Department. Tell them the story, that at the start of my sentence I threw my plate [meal] on the floor because at that time I was being attacked by a prisoner in a cell and that I had been unjustly punished; because I threw the plate on the floor and just for that they accused me of “attacking a prison officer”. (...)

Well there we are, mother (...) Because of them I started a hunger strike; they've done all they can to push me towards suicide and mess up my life for four years.

With all my love. Say hello to E. and my sisters etc.

Kisses.

Oh, I forgot to say that although I have money they don't even give me what I buy because with the prison shop coupon you have to hand over a blocking slip [money in a nominative account] which mysteriously disappears. That happens a lot too. Kisses.”

7. Administrative Human Resources and the Exercise of Fundamental Rights in Detention Centres for Illegal Immigrants

“(…) I should like to bring to your attention the information that I have explaining the problems that the department has in organising visits [from friends and relations of foreign prisoners].

Whilst physical conditions enable six prisoners to have visitors simultaneously, lack of human resources means that this is not possible.

In fact, staffing is currently too low to ensure that external visitors can be received under satisfactory conditions and effective surveillance carried out. Although the number of staff originally intended to carry out this essential work and provided for by law is five officers, this is more and more regularly reduced to 2 members of staff as was the case last Thursday ... Which is why the visiting process has slowed down and a longer waiting time for visitors has been created.

Moreover, the large number of visitors and consular hearings on certain days is such as to create problems in related surveillance, problems which create a worsening in the flow in these two working areas. (...)

Reminders were made of the instructions for avoiding interruptions or slowing of visits at a departmental meeting and a much calmer situation both for police and for prisoners should come about with the prison staff reinforcements to be allocated in mid-December.”

Section 8

Reviewing the Question of Secularism in Prisons

In one of the young offenders' institutions, a report on which was sent to ministers in 2013, some young offenders, at a given time, stated their wish to be able to eat foodstuffs which complied with their religious beliefs. At first, this was agreed to. But when the judicial youth protection service of the Ministry of Justice was consulted, they claimed that this was an infringement of the principle of secularity and the experiment was cut short.

1. We therefore need to review this question, which relates not only to young offenders' institutions but to other places of deprivation of liberty. Moreover, it has also been referred to in a recent judgement by the administrative court³¹¹ in relation to this question in a prison.

Indeed, we need to review this question because in an opinion of 24th March 2011 relating to religious practices in prisons³¹², the *Contrôle General* has already adopted a position on this point. The administration's stance, which might be described as hesitant, does not in fact help in clarifying discussion where the solution derives from the principles of applicable law.

It is true that this solution would undoubtedly appear less complicated if it were not principally a question of a belief whose public manifestation seems to worry public opinion, and consequently certainly ties the hands of public officials. For the latter, we should recall some of the elements which should influence necessary decision-making.

1. What are the Principles to be Applied?

Firstly it should be recalled that the question of requirements regarding foodstuffs does not relate only to one religion; and that of course the question of foodstuffs is not the only one that may be asked in relation to religious requirements. There are many others.

We should also remember – this was where the above-mentioned opinion started - that neither the principle of secularism nor of freedom of thought stops at the gates of a prison, for example young offenders' institutions, even if this freedom of thought for children may be expressed under special conditions. Applying these principles should be the essential starting point accepted by all.

These principles however need to be reconciled with the circumstances which moderate the scope of each of them.

Secularism, set out in article 1 of the Constitution, needs to be balanced in the public services, which are by nature closed, with the right which those who are imprisoned have to practise their religion. In exception to the principles of the Act of 9th December 1905, which this legal text itself provided for, the State therefore finances the “chaplaincy services... to ensure free exercise of religion³¹³” in these places since, evidently, religious authorities, of which religions are an expression, were in a position to require it and to organise such services: such is the case in many

³¹¹ Grenoble administrative court, 7th November 2013, M.K., no. 1302502, Mrs Bril, public report.

³¹² Journal Officiel of 17th April 2011. See, in particular, §7 of this opinion.

³¹³ Paragraph 2 of article 2 of the 1905 Act

prisons and hospitals but not, until now, in young offenders' educational institutions, due to a lack of demand.

Freedom of conscience, as arises from the Constitutional Council's reading of article 10 of the Declaration of the Rights of Man and of the Citizen of 1789 and the fifth paragraph of the Preamble to the 1946 Constitution³¹⁴, and the freedom of thought as set out in article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms should be reconciled with the other constitutional and legislative needs in particular drawn from “public safety, ... for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”³¹⁵. Naturally, in a place of deprivation of liberty, one can easily imagine that these needs are greater than in an ordinary public place.

We need to add two specifications

It is not for the administration to define what is actually religious and what is not a matter of religion. In spite of itself it would be taking on a religious role which is not appropriate and would be disregarding its own law. But it must challenge religious practices, whatever they are, within the framework of the requirements of secularity, freedom of thought and the requirements of public service and public order. In particular, public services must protect their neutrality with respect to all religions - subject to this being within the meaning of the 1905 Act - as it must with any absence of religion.

As a corollary, belief or absence of faith is not solely limited to intimate private existence. It is not just for the home. If such were the case, no bell-chiming and no public procession or agnostic ceremony (there are not many) would be possible. Case law settled these questions in the years following the 1905 Act. But if the public highway is too crowded, for example, a procession or ceremony may not be authorised.

In the light of these preliminary remarks, it must be concluded that:

Expression of religious belief cannot be prohibited just because on the sole basis of a place of deprivation of liberty;

It needs to find a way of expressing itself under conditions which reconcile the needs of the public services, in particular in terms of security, health and respect of the rights of others;

Food requirements are as much a part of a religion as certain objects (books, rosaries etc.³¹⁶) or presence at services, insofar as they are also reconcilable with the workings of the public service, in particular in relation to the right to keep them (objects) or to serve them (foods). This logic also serves for implementing, in all “long-term” prisons, special measures for Ramadan (including in young offenders' institutions).

2. Counter-Arguments that may be Advanced

³¹⁴ Constitutional Council no. 2013-353 Constitutional Priority Questions (QPC - question prioritaire de constitutionnalité) of 18th October 2013, Journal Officiel of 20th October 2013.

³¹⁵ Paragraph 2 of article 9 of the European Convention

³¹⁶ Cf. article R.57-9-7 of the Code of Criminal Procedure.

In relation, more precisely, to foodstuffs, the administration does not raise any serious obstacle to agreeing to this.

Three counter-arguments may be advanced.

The first on principal. That of the Judicial Youth Protection Service (PJJ - *Protection judiciaire de la jeunesse*): secularism prevents meals being served which meet religious requirements. Two meanings can be given to this question. It cannot be prevented, on the one hand, where religion is a personal matter and meeting a request of this sort would be to enter into personal life, abandoning a position of neutrality towards other persons who are not concerned in the place of deprivation of liberty. But neutrality consists in examining the requests submitted, which may concern the proper functioning of a public service, and examining them with respect to identical criteria for good order and health. Preparing a “religious” meal would, on the other hand, in itself be an infringement of secularism; meals served by a public service should not in any way be given any religious significance. But where a diet relates, for persons of a particular religion, to religious practices, how can they be refused when, as recalled, the abovementioned paragraph 2 of article 2 of the law of 1905 provides for “chaplaincy services” and a budget allocated for exclusively religious purposes.

The fact that article D. 354 of the Code of Criminal Procedure, which provides that food received by prisoners complies with “the rules..., insofar as possible, with their philosophic and religious convictions” was repealed and replaced by article 9 of the standard rules and regulations for prisons (effective from 30th April 2013) hardly changes the givens of the legal problem. In no way is this provision an obstacle to the authorities serving, as far as possible, food which meets religious directives, without infringing any principle.

Indeed they already do, for that matter: on the one hand, in most places of deprivation of liberty, food is served without pork. Of course this is simply an abstention, but the intention is truly to meet religious prohibitions. There is no difference, with regard to the principle of secularity, in not serving pork and serving animal meat which has been killed in way that is provided for by a religion. We might just, in this respect, ask precisely whether the administration is complying with the principal of neutrality which is inseparable from that of secularism, as it frequently happens that no pork is served to anyone, whatever their beliefs. In prison, prisoners complain regularly and rightly so. We would add, as in the aforementioned opinion, that other administration of than those of the justice ministries serve meat which complies with religious requirements to their staff, without the principle of secularism being raised against them. At the very least we can conclude that there is no unilateral reply.

The second argument needs to be mentioned *pro forma*. Public order may oppose the serving of foods in compliance with the requirements of any religion. Prison security might, with great difficulty, be mentioned (it might be where, extravagantly, one might imagine directives requiring stimulating products³¹⁷ etc.), it might be that these are opposed on health grounds. Such would be the case for food whose quality, with respect to hygiene standards, could not be guaranteed. The administration would be well founded in opposing the distribution of food which threatens the health of those for which it is responsible. But, on the one hand, it does not forward any such argument; furthermore, we know that although practices which hardly complied with health standards previously existed, the same is not the case today.

Undoubtedly this last argument is the most serious; it rests on the physical possibility of government agencies ensuring the feasibility of the operation. Moreover, this is what former article D. 354 of the Code of Criminal Procedure, which is now article 9 of the rules and regulations, implies: “insofar as possible” refers in other words to the technical impossibilities of the conditions for operating public services. This is what the director of the prison’s

³¹⁷ *Such as the Hashish Eaters in the Middle Ages*

administration suggests when, questioned on the aforementioned administrative court judgement, she stated: “Not only are we against [religious meals], but we believe that it is impossible to implement halal or kosher food regulations in prisons which have not been fully designed to serve meals that meet the rites of beliefs. Our kitchens have definitely not been designed to segment the meals service in this way”³¹⁸.

This obstacle is real and merits examination. It covers two concrete but distinct areas: cooking a variety of foods and their distribution. These two subjects call for qualified and precise responses.

a/ It should be first recalled that the preparation of food in accordance with beliefs needs to be reconciled with the requirements of preparing food for the whole prison population. As it is hardly different (neither easier nor more complicated) from that of all other foods and what is in question is less the food preparation itself than its source (animal slaughter rituals, on the one hand; use of these animal products (fats etc.) in food in general, on the other) the authorities cannot claim that it is physically impossible for the public services to carry out the necessary preparations. Their arguments are deficient, to put it simply, where the sources of foods are different and the cooking is much the same (to traditional meals).

We would then state that the diversity of foods presents no difficulty in places of deprivation of liberty which are supplied by third-party private companies specialising in catering services, cooking being carried out outside of prisons and then delivered in cold form. These suppliers are capable of designing food trays with extremely diverse types of food. This is the case with police custody facilities, detention centres for illegal immigrants and a good third of prisons³¹⁹, representing about a half of prisoners.

We would emphasise that a “faith”- based menu, within the limits mentioned above, from a practical point of view, presents no different problems than those arising from providing a “medical” menu, i.e. one created with the restrictions and additions prescribed by medical directive. Such directives exist in places of deprivation of liberty as elsewhere.

To shed light on these problems, the *Contrôle Général* has used a comparative approach in the table below for services which are already offered by the catering services in prisons which it has visited, differentiating in particular between those which are publicly managed (P) (cooking organised by the administration) and those which are privately delegated (D) (cooking by private companies).

The results are set out below:

		Normal Menu	“Faith” menu	Vegetarian Menu	Medical Menu	Diabetic Menu	Halal Menu
Ducos	P	+	+	+	+	+	

³¹⁸ AFP press agency statement 29th November 2013

³¹⁹ 51 out of 190 were under “delegated management” at 1st January 2013 and almost all of the institutions had been supplied in this way.

Prison						
Grasse Remand Prison	D	+	+		+	+
Detention Centre Saint Mihiel	D	+	+	+	+	
Saint Briec Remand Prison	P	+	+	+	+	
Epinal Remand Prison	P	+	+	+		
Fleury Remand Prison	P and D	+	+		+	
Longuene. Prison	D	+	+	+	+	+
Toul Detention Centre	P	+	+	+	+	+
Maubeuge Detention Centre	D	+	+	+	+	+
Châteaud. Detention Centre	D	+	+		+	
Laval Remand Prison	P	+	+	+	+	
Gap Remand Prison	P	+	+		+	+

Fleury = Fleury-Mérogis ; Longuene. = Longuenesse ; Châteaud. = Châteaudun

The data for the above table derives from inspections made of establishments by the *Contrôle Général* and are a minimum. The absence of information on the existence of “medical menu” examples may be because none were served during inspections. The same is the case for diabetic menus.

These inspections show that even when meals are prepared on site, the food products may be supplied by industrial manufacturers with whom contracts are made by interregional departments of the prison services. These manufacturers can supply natural or processed products, according to contract.

What appears evident is that there is hardly any difference between the six institutions whose cooking is managed by the prison administration and the five in which the catering is supplied by the private sector³²⁰. The size of institutions (Laval Remand Prison: less than 150 prisoners at the time of inspection; Longuenesse Prison: 752 prisoners) is not a discriminating factor.

The great majority of them of course offer, on the one hand, a “normal” meal; on the other hand, a meal which is often called a “faith” meal, without pork, sometimes with (but not always) a substitute dish; a vegetarian meal; and a variety of menus resulting from medical directives. These latter are interesting to consider³²¹: many of them are “without” meals: without salt, without sugar, without fat, without fish, without shellfish³²² etc. Removing an ingredient from the menu may appear to be uncomplicated. But others are the result of special preparation: either physically (“blended” meals for those with no teeth) or in their composition: such as “high-calorie” meals. The existence of blended meals is found in two publicly managed institutions: Ducos Prison and the Gap Remand Prison.

There is no doubt that all of the prisons - we should pay tribute to them - are now capable of offering diversified foods, some of which require special preparation. This possibility exists notably because an undoubted effort has been made in renovating kitchens, in particular at the end of the first decade of the 19th century. In these circumstances, doubt can be cast on the incapacity of the administration, for reasons relating to existing installations, to supply meals prepared with ritually slaughtered meat.

On the other hand, capability appeared much more limited in young offenders’ institutions. Practically all prepare meals on site for a small number of persons. They do not have access to major suppliers. There are few reasons for medical menus to be prescribed in large numbers. Requiring chefs to find alternative sources of supply is certainly not impossible, but undoubtedly difficult, in particular in rural areas, where a number of young offenders’ institutions have been built.

b/ The question of preparation is not the only one to solve. There is also the question of distribution.

It is not so much a matter of the physical distribution of meals (delivering one dish or another amounts to the same thing), even if it is indisputable that presentation in tray form (not very popular with “consumers”) is undoubtedly more practical when meals are diversified than the traditional “Norwegian” style meals distributed on a plate.

Above all it is a question of knowing how, between prisoners, food differences are to be assessed when tensions, conflicts or even violence may already exist in relation to differences in general.

The question is, above all, to take into consideration the prisons in which meals are eaten in common. Such is not the case in police custody facilities (except in joint cells, most often the last to be occupied) nor in prisons where meals are eaten in cells. Cells which are occupied by a number of persons simultaneously in a prison certainly exist: however, it is difficult to believe that the type of food would lead to cellmates discovering the faith of a prisoner due to lack of

³²⁰ *At the time of inspections in January 2010, the Fleury-Mérogis remand prison showed, as “D4 tripartite”, the women’s remand prison and the young offenders’ institutions under public management and the D1, D2 and D5 “tripartites” under private management*

³²¹ *They represent 6.7% of meals prepared at the Châteaudun detention centre in 2009 example; 3% at the Saint-Mihiel detention centre at the time of our inspection.*

³²² *As for current faith meals, without pork, which, in principle are easy to implement*

privacy. On the other hand, in other institutions (psychiatric hospitals, young offenders' institutions, detention centres, prisons for minors), all inmates are seated at the same table. The particularity of a meal may give away a person's faith.

Risks which might arise as a result appear, *a priori*, low whether from a point of view of the individual or in terms of the administration's concerns. They may be significant in places where there are pre-existing tensions. In this situation, the administration's right to opposition should be acknowledged, if it can establish that the need for proper order in the institution precludes meals that are "ostensibly" prepared according to religious requirements. It seems, however, that such prohibitions should remain the exception.³²³

c/ A final situation needs to be envisaged. Where, as is currently the case, public services are not organised to prepare and distribute foods meeting faith requirements, can the administration not plead an absence of obligation in this respect due to the possibility of alternative solutions for believers?

This alternative is rarely found in most places of deprivation of liberty, but it seems to exist in prisons. Indeed, in prisons, each prisoner can purchase items from the "prison shop" (external), in particular foodstuffs which enable them to add to their usual fare. We should emphasise that the "prison shops" in almost all of the institutions offer foodstuffs which comply with religious requirements. As each prisoner has the possibility of cooking in their cell, it could be maintained that the issue of "religious" food is thus resolved.

It is clearly not, for a number of reasons.

Firstly, a number of prisoners complain, because of the absence of "compliant" dishes served by the administration, of never eating meat and not having enough to eat. We should be wary of this claim, which is in no way presented as a radical idea but as the result of a purely factual situation, which might lead to suspicion of discriminatory treatment.

Secondly, because available "religious" foodstuffs in the prison shop are limited (except possibly during holiday periods) to a few products which one could not expect prisoners to continuously consume. It is true that during institution inspections, charity workers (Jews and Muslims) have informed inspectors that, after having asked for authorisation, they brought this type of food into the prison on various occasions.

Thirdly, and above all, the solution of purchasing food which complies with faith requirements in the prison shop is liable to be seen as double discrimination.

On the one hand, discrimination between those practising the same religion as, according to their means, some will be able to purchase food and others not. We would recall the considerations set out in reports on the level (generally low) of prisoners' resources and those in the 2011 annual report³²⁴, according to which only 27.7% of prisoners work in prison and consequently have an (irregular) income.

And on the other hand, discrimination between prisoners on the basis of their beliefs. Whilst the Code of Criminal Procedure and the rules and regulations of each institution provide that maintenance (in particular food) of prisoners is the responsibility of the authorities, it is hardly conceivable that, according to whether a prisoner is agnostic or not or whether they are of one faith or another, some are effectively provided for by the authorities and others are not. This distinction would not only be discriminatory, but would also be founded on a distinction based on religious belief, which the principle of secularism specifically prohibits.

³²³ For example in a young offenders' institution with a number of minors from very diverse origins, between which tensions exist.

³²⁴ Page 149.

The situation described is that which pertains today. That is why the situation must be addressed.

In summary. The question of food which complies with religious requirements is not simply a question of principles. It questions in a very practical way areas of health, safety and the management of public services. However, in the light of the assessment carried out, it appears that:

- The principle of secularism is not opposed, quite the contrary, except where there is discrimination based on religious origin, to the preparation and distribution of “faith” foods in places of deprivation of liberty;
- Reasons based on proper order in these places, in particular in small institutions and those where communal life is developed, may be rightly claimed by the administration to oppose these requirements. But these objections, which need to be justified by precise circumstances, should be the exception rather than the rule.

Section 9

The Rights of the Sick and those Suffering from Mental Health Problems

Since Act no. 2002-303 of 4th March 2002 (known as the “Kouchner” Law) relating to the rights of the sick and the quality of the health system, the question arises as to whether the rights it defined are applicable in full to all patients including those with mental health problems.

1. Existing Provisions

We should recall the essential economy of the wording of this Act which legitimised, concentrated and strengthened rights which are often yet sporadically acknowledged and which entered into legislation just before the Public Health Code as a set of principles to which all health care professionals (and others³²⁵) and healthcare practices are subject.

The Minister of Health (Bernard Kouchner) stated before the Senate on 30th January 2002 that it was “an overarching law whose purpose is to recognise the fundamental rights of the sick and to guarantee the quality of a health care system and to build a foundation for a healthcare democracy...”³²⁶.

The first section (in fact called the “preliminary section” to emphasise its exceptional nature) defines the principles by which health care is to be given. It can be summarised as follows:

The quality and the equality of healthcare (L. 1110-1 of the Public Health Code) and its corollary, the absence of discrimination in access to healthcare (L. 1110-3);

The need for continuous training of professionals (L. 1110-1-1);

Respect for the dignity of the sick (L. 1110-2);

Respect for their private lives including confidentiality of information relating to them (L. 1110-4);

The right to receive effective treatment on the basis of medical knowledge without disproportionate risk, including pain relief (L. 1110-5);

Education adapted to children who are hospitalised (L. 1110-6);

The right for the sick to have a free choice of medical practitioner and health institution (L. 1110-8);

The right to palliative care and assistance as required by the state of health (L. 1110-9).

³²⁵ As is the case for institution staff who are not health care practitioners.

³²⁶ We might consider the wording strange. “Democratic health care system” and “healthcare democracy” might have been more appropriately put.

The second section arising from the Act (chapter 1, part 1 of book 1 of the first part of the Code) relates to information provided to health care system users and the expression of their wishes. The “general principles” are as follows:

Users' rights are inseparable from their responsibility to perpetuate the healthcare system and its principles (L. 1111-1);

The right of all to be informed of their state of health, in the absence of express indication to the contrary on their part (L. 1111-2);

The right of all to be informed of the costs that they may need to pay (L. 1111-3);

The right of all to consent, freely and in an informed manner, to decisions relating to their health with a professional (L. 1111-4);

The right of all (adults) to appoint a trusted legal representative to give consent in their place when they are not in a position to do so themselves (L. 1111-6);

The right of disabled people to appoint a third party to help them with movements that they can no longer manage themselves (L. 1111-6-1);

The right of all to access all information held by health care professionals relating to their state of health (L. 1111-7);

The right of those who are dying to stop health care and ensure protection of their dignity by a doctor (L. 1111-10).

To these instructions are added specific provisions for the sick and those entering health care institutions, who must provide medical information to the person concerned upon request; seeking the views of the patient on the quality of their healthcare; establishing a committee (CRUQPEC³²⁷) to monitor respect for their rights; protecting the items entrusted to them by patients.

If the question of applying these provisions to the sick who are held in an institution for the mentally ill arises, in particular without their consent, it is primarily because they are unequally applied in these institutions; and then because they have not solved all of the potential issues.

Protecting the rights of the sick and also the actual treatment requirements of patients require that these ambiguities be resolved, in particular in the context of a potential future law on mental health.

2. Implementing the Provisions in a Psychiatric Context

The *Contrôle Général's* inspections of institutions reveal varied application of the provisions of the 2002 Act.

As illustration, five measures relating to the protection of the rights of the sick have been used. Four arise from the Act: access to medical files, the appointment of a trusted legal representative, the existence of a committee for relations with users and their quality of care (CRUQPEC) and finally the presence of associations. The latter relates to legislation on hospitalisation without consent; it relates to inspections of the institution of the departmental committee for psychiatric hospitalisation (CDHP - *commission départementale de l'hospitalisation*

³²⁷ *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] L. 1112-3 of the Code.

psychiatrique), which was succeeded in 2000 by the departmental committee for psychiatric treatment.

These five areas were studied in four institutions, all of which were specialist hospitals, and the related reports were sent to the Minister of Health in 2013. The institutions concerned were La Valette, in Saint-Vaury (Creuse), Dole in the Jura, Prémontre (Aisne) and La Charité-sur-Loire (Nièvre). Part of these inspections took place before the reform of the Act of 5th July 2011. These four illustrations are broadly corroborated by other inspections made before and afterwards.

	La Valette	Dole	Prémontre	La Charité/L.
File access	Yes	Yes	NP	Yes
Trusted legal representative	Sometimes	No	Rarely	NP
CRUQPEC	Yes	Yes	Yes	Yes
Associations	Yes	Yes	No	No
CDHP/CDSP	No	Yes	Yes	Yes

NP = Not provided

Some comments must be made.

The CRUQPEC is a key institution in the 2002 reforms, in relation to which the report drawn up by the National Assembly to examine the proposed law stated that it was the means by which the sick “might be stakeholders in the control and quality of their health care³²⁸”. This provision of the law has been applied throughout, both in general hospitals and in specialised institutions.

The same is true of the departmental commission for psychiatric hospitalisation, but to a lesser degree. Indeed, problems may arise in its composition in particular in under-populated French departments and in particular which have very few psychiatric doctors: such was the case in the Creuse in 2011 at the time of the conversion from the departmental committee for psychiatric hospitalisation (CDHP) to the departmental committee for psychiatric treatment (CDSP - *Commission départementale des soins psychiatriques*). These problems may be temporary; but sometimes they are lasting. Where it works, the commission visits institutions with notable differences in the way the sick are informed and made aware of their presence in hospital, as the *Contrôle Général* has already emphasised.

The place of associations representing the sick and their families may be organised in very different ways according to the institution, and may be very unequally “participative”.

³²⁸ National Assembly Report no. 3263 by Messrs Claude EVIN, Bernard CHARLES, Jean-Jacques DENIS, deputies, 11th legislature

The criterion used here has been that of the physical presence of one or more associations (in general UNAFAM³²⁹) within the hospital inspected. Usually they exist but not generally. Dialogue may be more or less formal or, on the other hand, productive. Of course, not only structural questions come into play but also relational problems.

The other key measure in the 2002 Act, which consists of recognising patients' right of access to their medical file (article L. 1111-7 mentioned above) has a slightly more nuanced application.

Certainly, access procedures exist across the board; a distinction is generally made between the hospitalised sick and outpatients. But, at least as far as the former are concerned this right may be subordinated to a doctor's opinion. This opinion may, it seems, be favourable or unfavourable: at the time of inspection, it was clearly stated that access could be authorised "wholly" or "partially".

The appointment of a trusted legal representative is, in almost all cases, very problematic. In no institution inspection was it found to be systematic. In most, the procedures had not been implemented or if so on a very ad hoc basis.

Non-application of the law by those who are responsible for its implementation is never negligible, and cannot be settled by ministerial reprimands in the form of circulars. The professionals that were met did not hide their problems in understanding the usefulness of this right as (in many institutions) a reference nurse is appointed to each person admitted; they also question the suspicion they are under as they are not trusted legal representatives within the meaning of the law. They also testified to the actual problems the patients have in finding someone; when an appointment is made, as they said, very often it is the emergency contact person; in this sort of facility the means do not exist to exploit the full legal potential of the role of trusted legal representative.

This analysis may review all advances in the law to assess their application. But this may be summarised as follows: everything in relation to institutions (committees etc.) has been implemented quite easily, subject to external constraints (lack of personnel or budget); on the other hand, when it relates to the way in which patients are understood, particularly the way in which they can be, as the law intended, "actors" in the healthcare system, is much more problematic.

3. Legal Analysis

3.1 The Extension of Principles to the Sick and those Suffering from Mental Health Problems

With hindsight we might ask why, during preparatory work in drafting the law, the question of extending the principles it set out to the sick and those suffering from mental health problems was not dealt with, and consequently left in relative uncertainty.

But was it asked in these terms? It was mentioned just once during this work when the Minister of Health spoke before the National Assembly law commission. One Member of Parliament³³⁰ insisted on the place that mental health should occupy in the proposed processes.

³²⁹ *The National Union of Friends and Families of the Mentally Ill* [Union nationale des amis et familles de malades psychiques]

³³⁰ Mrs LIGNIÈRES-CASSOU, 11th September 2001.

The minister replied “debate will take place next October on the report requested by the Government. However, the hospital aspect of this question is treated in the proposed law”. This was a way of referring the provisions of the amendments to the law to hospitalisation without consent criteria, without replying to the question of whether principles relating to the sick would apply automatically to those suffering from psychological problems.

The context in which the law was passed provides more answers. The “national conference on health care” convened by the Government at the end of 1998 to mid-1999 sought, according to the report by Mr Etienne CANIARD³³¹, legislation “devoted to the rights of the sick”. The perspective chosen by this report is very broad. Leaving aside the idea of the “consumer” and even that of the “citizen”, its author states that “the rights in question here are those of the individual as a human being”, leading him to favour the term “health care system user” which was not taken up. In any event, it is easy to see that a very wide perspective was chosen. The law does not therefore claim to distinguish between categories of the sick, as the minister confirmed before the Senate: “we reassert, in article 1 of the proposals, the right of all patients³³² to dignity, protection against discrimination..., respect for their private life, preventative health care and quality of health care”³³³. It is difficult to make any distinction in this respect between the two series of principles, set out above, outlined in the law. And if mental illness is not mentioned, it is no doubt because the universality of these proclaimed rights would appear evident to all.

3.2 Current Analysis of the Law

The view that all of the provisions in this legislation are applicable to those with mental health problems is supported by the analysis of legislative provisions currently in force.

Clearly a distinction can be made between the two series of principles: the first (dignity, quality of health care etc.) refers to the way in which each patient is to be treated by the health care system. It essentially relates to the obligations of the latter and of health professionals. Each illness is therefore, if it can be understood as such, “passive”. In the second series, on the other hand, the sick are to benefit from a “right to know” “in order to decide”³³⁴, in other words, they are to be informed so that they may be able to give their consent. Therefore it needs to be “active”, not only to collect information when it is not spontaneously provided (which is the case when access to a medical file is requested), but above all to exercise, according to the wording used, “free and informed consent”. “The right to consent”, as the minister says, “is to be an expression of active participation by the patient in decisions relating to them, an expression of responsibility for their own health”³³⁵.

The authors of the proposed law acknowledged that the type of person or the situation that some persons found themselves in did not enable them to exercise their responsibilities. Two categories are subject to special provisions: these are those of minors and adults in the care of a guardian. Thus in relation to the right to information (art. L. 1111-2 of the Public Health Code), consent to healthcare (art. L. 1111-4 and L. 1111-5) and access to medical files (art. L. 1111-7).

³³¹ Report requested by the authorities in order to convey the aspirations expressed in the national conference into concrete measures. Etienne CANIARD, *La place des usagers dans le système de santé : rapport et propositions du groupe de travail* [The place of users in the health care system: report on proposals by the working group], Paris, Secretary of State for Health and the Handicapped, December 2000, 63 pages

³³² Our emphasis.

³³³ Senate Debate, 30th January 2002.

³³⁴ To refer back to the distinction in the report filed with the National Assembly, *op cit*.

³³⁵ Senate Debate, *ibid*.

Article L. 1111-4 on consent to health care however introduces another distinction. Stating that “consent from a minor or an adult in the care of a guardian shall always be sought where they are able to express their wish to participate in this decision”, it also refers to the situation of a person “not in a state to express their wishes”³³⁶, as opposed to those in a position to give their consent³³⁷. For the former, “no intervention or examination may be carried out, except in cases of emergency or impossibility, without the trusted legal representative..., or the family, or failing this, a close relation being consulted. The process adopted is therefore quite clear, even if there are a few loopholes³³⁸: if the patient cannot express their consent, someone else must do it, and that person obviously cannot be a healthcare professional responsible for that person (which also responds to the objection made earlier by which a “reference nurse” could fill the requirement). This other person must be sufficiently close to be able to claim that they speak in the patient’s place.

This approach, which is essential in the consent process, is nonetheless widely inapplicable as it implies that the patient appoints a trusted legal representative **before** becoming unable to express their wishes. While an anticipatory choice may be possible (worsening condition), this is not always the case.

This is particularly true for patients with mental health problems, who may go through unpredictable phases and who, in addition, may find themselves in a more isolated situation than others.³³⁹

Finally, the provisions in force - more developed on patient participation in health care than on patient information, relating to patients deprived of the ability to express their wishes - have not entirely settled this difficult paradox: how can provisions on free and informed consent for hospitalised patients be implemented without their consent?

3.3 The Contributions of the Act of 5th July 2011

The provisions of the Public Health Code relative to psychiatry, and in particular to patients hospitalised without their consent, fortunately provides not only useful details but a few additional questions, particularly since the Act of 5th July 2011.

The spirit of these provisions in relation to the rights of the sick is based on three principles.

On the one hand, there is a distinction between healthcare provided with consent and that provided without consent. Whereas the principle is that, in compliance with the provisions of the 2002 law, nobody may receive psychiatric health care without having consented to it (art. L. 3211-1 of the Public Health Code), there is an exception for persons falling under the provisions of healthcare treatment at the request of a third party or the prefect³⁴⁰ (art. L. 3211-2-1).

On the other hand, individual rights and freedoms of patients hospitalised without their consent can only be infringed by those, necessary and proportionate, required by their state of health and the implementation of their treatment (art. L. 3211-3). In addition, these people are to

³³⁶ Without doubt one would think rather of the unconscious sick or wounded or those who are very seriously ill. But this could also describe those with mental health problems.

³³⁷ Paragraphs three and four.

³³⁸ A close relation would undoubtedly not have the same information as a conscious patient.

³³⁹ It should be added - but this is a different sort of problem - that consent to psychiatric health care, the definition of which is less precise than many physical health care treatments, is more awkward to formulate.

³⁴⁰ As we know, this exception represents about 84,000 measures taken annually in full hospitalisation.

be informed, insofar as possible³⁴¹, of decisions relating to their care (and therefore their hospitalisation).

Full hospitalisation without consent was placed under the legal control of the liberty and custody judge since the Act of 5 July 2011.

In doing so, the law does not agree to a substantial concession in what is known as “a process of healthcare democracy”³⁴². It argues quite differently. It is not a case of bringing this democracy into existence but of ensuring that democratic rights that free individuals have always are not reduced more than necessary. It is no longer a question of a patient's right to information, but of a duty to inform by healthcare professionals (and the prefect), clearly adapted to the condition of the patient's health. It is true that information given for decisions relating to hospitalisation reflect more closely the procedures relating to individual administrative decisions with unfavourable results (see article 24 of the Act of 12th April 2000³⁴³) than an active search by a patient for information relating to their health.

With this in mind, the recent law has been innovative. It mentions not only health care and healing but also “social rehabilitation” for patients (art. L. 3211-11-1).

But it is no longer a question of consent, by definition. This absence of consent should not only extend to times of admission and crisis, but throughout the whole stay in hospital and health care given whatever the condition of health of the interested party. At most, it is stated (art. L. 3211-3), as the sole reference to the spirit of the principles of the 2002 Act that in relation to patients “without consent”; “this person’s view on the methods of treatment should be sought and taken into consideration insofar as possible”; additionally, when hospitalisation treatment has been completed, a psychiatrist is to inform their patient “as necessary, of the need to continue outpatient treatment and health care informing them of the treatment that they deem most appropriate to their condition”. (art. L. 3211-12-6). One imagines that this is very little. During inspections made by the *Contrôle Général*, the response given to the wishes “sought” from the patient was small or very small. Letters received by the *Contrôle Général* from patients - certainly without any discernible representative nature - show, on the contrary a failure of information, in a spirit which pre-existed 2002 for all health care.

It should also be noted that in these specific psychiatric provisions, nowhere is the “trusted legal representative” mentioned in article L. 1111-6, whilst mention is made (however modestly) of the family, guardians and custodians (e.g. art. L. 3213-9).

The sole explicit link between these provisions and the general provisions of 2002 is the possibility for a person subject to health care without consent with completely hospitalisation to bring the matter before the CRUQPEC (paragraph 2 of art. L. 3211-3): this reference, which is legally superfluous, is the least that could be done. It is no more and no less than an administrative recourse, in the same way as referral to the departmental committee for psychiatric treatment.

Questions arising from general wording, of which the impact should be verified.

Article L. 3211-5 provides that persons who have received psychiatric health care retain “at the end of this care, all” of their rights and duties as citizens without their previous medical history being brought against them. Ultimately it is recognition that they will not be discriminated

³⁴¹ “Before any decision on continuing healthcare ... or defining the type of treatment ... the person... is, in so far as their condition allows, to be informed of this proposed decision” (art. L. 3211-3).

³⁴² CANIARD report, mentioned above

³⁴³ Concerning the rights of citizens in their relations with public administrations

against in their day-to-day life (employment, for example) because of former illnesses. Does this provision relate to health care without consent? There is every reason to think so.

More difficult is the interpretation of the second paragraph of article L. 3211-1 under which the freedom to choose a medical practitioner (also acknowledged under article L. 1111-8 of the 2002 Act) also applies to persons who are subject to psychiatric health care in spite of sectioning³⁴⁴.

Does this very general affirmation apply to all these people, including those who are subject to health care without consent? The wording encourages us to think so. It is true that this freedom is relative in relationship to a choice of institution, as patients hospitalised without their consent are mandatorily placed in institutions by the department of public services treating them (art. L. 3222-1 and 2 and L. 6112-1, 11°). What is left of freedom of choice for the patient hardly has any practical application.

4. To summarise,
5. There is no reason to think that principles relating to patients at the start of the Public-Health Code do not apply to those with mental health problems;
6. However, their application is problematic due to practicalities and the obscurity of the wording;
7. Provisions applicable to psychiatric cases, in particular to patients who are subject to health care without consent, which have been drawn up in another spirit do not end these uncertainties in spite of the recent advances that they contain.

4. Directions for Adapting the Law to Persons Receiving Psychiatric Health Care

To implement appropriate standardised legislation a few essential ideas need to be tried.

Firstly, agreement needs to be reached on the position of patients hospitalised at the request of a third party (or in emergency situations) or at the request of prefectural authorities. They are deemed, by nature, unable to give consent to the necessary care.

This point of view should be retained, otherwise the deprivation of freedom resulting from these procedures would be unfounded.

Conversely, it implies that where it is not acknowledged as being justified (by a director, a prefect or a judge), a patient would recover all of the rights relating to their capacity as set out in article L. 3211-1 of the Public Health Code.

Secondly, in relation to persons who effectively no longer have capacity to consent, we must start from the principal already used in the current provisions of “persons not in a state to express their consent”.

In the legislation in force, this situation has different consequences. In article L. 1111-4, for example, a patient is to be substituted by “a trusted legal representative... or the family, or failing this, a close relation”. In other words, a third-party partially takes over the role that they cannot themselves fulfil. In contrast, in article L. 1121-8, in the completely different context of biomedical research, researchers are obliged to have more restricted behaviour; they can only

³⁴⁴ Cf. article L. 3211-3 et seq. of the Public Health Code.

carry out research on such a person when they have no alternative and solely under certain conditions³⁴⁵. Finally, in article L. 1221-5, relating to donating blood to another person, this blood donation is completely prohibited for adults under guardianship or wardship and consequently, *a fortiori*, one would imagine, for persons not in a state to express their consent³⁴⁶.

Consequently, absence of consent does not lead to an unequivocal solution. But is still involves caution, in the sense of respect for persons who are more fragile and vulnerable than others.

As far as health care is concerned, however, there is little doubt as to the solution. A deteriorated state of health, sometimes seriously, requires medical intervention. We are not, as in the case of research or blood donation, faced with possible alternatives. On the contrary, there is no doubt as to the need for care; this is why the patient has lost their freedom: this is not to be trivialised. Treatment is necessary. This is the hypothesis of article L. 1111-4 presented here. Therefore the solution lies in calling upon a third-party.

Two possibilities exist.

Either, institutions with psychiatric units or psychiatric care are to be reminded that in spite of all of the ambiguities which have existed up until now, article L. 1111-6 of the Code relating to trusted legal representatives fully applies to them. It will then be up to the administrations to ensure that, upon admission, where their state of health is such as to allow it, a patient appoints this person.

In any event, the provisions of article L. 1111-4 are equally applicable. Even if a trusted legal representative has not been appointed, health care professionals cannot carry out “any examination or intervention” without having received the **opinion** (and not the consent³⁴⁷) of a third party: if a trusted legal representative has not been appointed, this may be the “family” or a “close relation” as previously mentioned.

Or, we consider that psychiatric care or the mentally ill hospitalised without their consent are such that the trusted legal representative should have special characteristics defined in the general principles of the Code. Their method of appointment, the conditions for their intervention and the prerogatives that they might be given in relation to active information (asking for medical information³⁴⁸) or passive information (healthcare professionals’ duty to provide information) might be considered. The role that they should play in a patient's appearance before the liberty and custody judge should also be considered (articles L. 3211-12 and L. 3211-12-1).

Although it would be more difficult to implement, the second solution appears preferable. It should not lead to the trusted legal representative being given a lesser role than the one they have under common law. On the contrary, it is a matter of giving them wider scope, so that patients deprived of their capacity to give consent are effectively represented in all decisive actions in their life as a patient (admission, healthcare, outpatient care, discharge). Indeed, the paradox which needs to be emphasised is that **nowadays, the sick amongst the most restricted, those that are hospitalised after committal for psychiatric treatment at the request of a third party (ASPDT) or after committal for psychiatric treatment at the request of a representative of the State (ASPDRE³⁴⁹), are those who benefit least from the**

³⁴⁵ They only give an opinion (cf. below).

³⁴⁶ One would imagine that research carried out prior to drugs for persons having serious mental illnesses being placed on the market would fall within this concept.

³⁴⁷ Clearly this distinction is crucial.

³⁴⁸ Within the limits set by the opinion issued by the Committee on Access to Administrative Documents (CAAD) no. 2004-0049 of 22nd January 2004.

³⁴⁹ ASPDT: Admission en soins psychiatriques à la demande d’un tiers: ASPDRE: Admission en soins psychiatriques à la demande d’un représentant de l’État (previously involuntary commitment / hospitalisation d’office).

rights of sick under the 2002 law. Additionally, this solution should create provisions under which an appointment is made as early as possible (for example, at the time of consultation at a mental health centre) when provisions are made for circumstances which are still hypothetical³⁵⁰; the most careful as well: family quarrels are sometimes not unknown where hospitalisation is made by request of a third party. It is in this context that substitution, in the event of there being no appointment by the family or a close relation known to healthcare providers, remains nonetheless necessary.

A number of other elements should be specified.

The case of minors is already regulated by legislation, including in relation to psychiatric situations. There is therefore no point in referring to it again. In any event, parental authority remains the essential keystone.

The occurrence of adults under protection is relatively common in psychiatry. 30%, 40% (possibly more?) of persons hospitalised without their consent are in this situation. Should a protected person have the right to appoint a trusted legal representative? Article L. 1111-6's reply is in the negative in the case of guardianship, but not in the case of wardship. There is no reason to provide a separate structure for trusted legal representatives in psychiatry. Should it be then, that in the case of wardship, it should necessarily be the ward who is appointed? Nothing suggests so. Not only should the patient be able to appoint another person, but they should be able to change the appointment.

Two more delicate questions remain.

Current law, as set out above, provides that when a person is hospitalised without their consent, they are deemed incapable of appointing a trusted legal representative until the end of their release. This is clearly to simplify the legal provisions relating to their hospitalisation. Does this single regime correspond to their actual condition? It is doubtful; it might be asked whether, on the basis of various improvements noted, it could not be accepted that the healthcare provided has in some way restored their lost capacity. However, it should be acknowledged that determining the point at which this occurs would undoubtedly be uncertain and therefore difficult.

Finally, it could be maintained that healthcare given to a person hospitalised without their consent is, in a certain way, restricted in its nature where it relates to ending a crisis. In other words, does consultation with a trusted legal representative in such circumstances (ASPDT or ASPDRE) have a useful impact? For example, if a session of shock treatment was programmed³⁵¹ and, when consulted, the trusted legal representative did not consent, should their opinion not be objected to in any event on the grounds that this treatment is in the public interest? This would be to forget that, even in the area of mental health, there are always possible choices in providing treatment. Consequently, consulting a third party makes sense, whatever the method of hospitalisation.

It is in the light of the preceding that action must be taken. These considerations should be expressed as legislative provisions since the current Public Health Code does not seem to be such as to clarify all of the responsibilities in treating those suffering from mental health problems.

³⁵⁰ See, for example, the mandate for future protection in articles 477 et seq. of the Civil Code.

³⁵¹ It must be recognised that this is an "intervention" within the meaning of article L. 1111-4 of the Code.

Section 10³⁵²

The Vexatious Litigant

Attempts to describe what a “vexatious litigant”, attempted by many competent people, is in prison refers to a person who is already well-known to those familiar with the prison system; someone who intends to “resist” the prison system as opposed to the self-effacing, those who “tow the line” and let problems and provocations slide without reacting, even the dispossessed and those without hope.

This resistance has a certain originality nonetheless. It includes using “legal procedures”, otherwise known as the “law in force”, immediately reduced in this vocabulary to its formal dimension. It contrasts with other forms of resistance, whether passive (refusing to enter a cell) or active (threatening, attacking, lighting fires etc.). This opposition is far from absolute: one single person may use different types of opposition during their imprisonment. But, let it be said from the outset, this recourse to more or less elaborate appeals to judges to impose regulations on the prisons administration which, as far as the applicants are concerned, are not complied with, is always very severely viewed by the latter. Without their authors necessarily being aware of it, this threatens the very core of prison relationships which public authorities now set out to implement, often independently of its actors.

We should also immediately state that these procedural actions are impossible to quantify. On the one hand, because they are often part of other procedures that lead their authors to call upon a number of authorities (the Minister of Justice, the President of the Republic), jurisdictions and associations whose social purpose relates to the protest (in particular the International Prison Observatory / OIP) and independent authorities whose job it is to be informed of these (in particular the *Contrôleur général des lieux de privation de liberté*). On the other hand, for reasons which we will mention, some cannot succeed to a greater or lesser extent. Finally, because to our knowledge, there is no jurisdiction, either legal or administrative, that keeps records of complaints or appeals from prisoners, something the *Contrôle Général* has already publicly deplored as if they were recorded this would in itself be a very useful index of the climate in a prison.

That a large number of prisoners exhibit this sort of behaviour (many more than take action) should not in any way be doubted. The *Contrôle Général* inspections and letters received from places of deprivation of liberty, amongst others, provide multiple proof of this.

What can be left out of the debate is, on the one hand, court procedures (essentially appeals and appeals in cassation) relating to the reason for imprisonment and, on the other hand, those relating to decisions made by the judge responsible for the execution of sentences on, and we will limit ourselves to this example here, the conditions of detention themselves, the principles or application of which a person intends to contest.

In their varied forms, these remedies call for three comments, relating firstly to applicable law; secondly to their purpose; and thirdly to their effect.

1. The Law in relation to Prison

³⁵² This section is the development of a contribution to a conference by the International Prison Observatory in January 2013 which is to be published with the proceedings of this conference in early 2014 and elements of a speech to the congress of the French Association of Lawyers (Syndicat des avocats de France) in Lyon on 9th November 2013.

We should start from the following premise: in the Rule of Law, established rule, known to those subject to legal proceedings, may be contested, according to the determined means, both in their definition and their application. Thus these procedures take place in this way, at least “outside”. This is not the case in prison.

1.1 What Known Rule?

The principal “ignorance of the law is no defence” does not mean, as is often asserted, that each person should know the law but only that each person should behave as if they knew it and, in any event, that public authorities themselves will act as if it were known to all. There are however limits to this useful empiricism. On the one hand, public bodies have, for some time, had a duty to provide information on the main legislative texts at the time they come into force. On the other hand, this approach has received further impetus over the past 40 years under the double requirements of transparency (and in particular access to administrative documents) and European case law relating to legal standards accessibility. Technology (digital) has done the rest.

Again these requirements mostly stop at the gates of penal institutions. The way in which prisoners are able to access the legislative texts applicable to them is again very problematic; even more so when you descend the standards ladder. It is remarkable to see how lightly these obligations weigh on the administration.

The principal laws naturally become known (after an often prolonged lapse of time: the story of how article 57 of the Prisons Act relating to searches was disseminated, which caused a stir in relation to the 2012 and 2013 detentions, that is three or four years after the law was promulgated, would merit detailing) less in detail than in principle, less in legal rigour than in the reading that prisoners might make of them. In any event, the *Contrôle Général* has never seen a collection of *Journal officiel* in prison libraries; criminal codes and procedures are often old (there is no requirement to renew them annually); codes of administrative law (providing instructions on how to go about urgent applications, etc. have never been seen.

A fortiori, the same true of circulars from the prisons administration; there being no orders to organise their provision, and consequently their reading, in prison libraries, despite the considerable weight that they have in the practical organisation of prisons. Thus, for example, successive instructions over the past years have defined products that are liable to enter prison via visiting rooms. One circular authorised (in part) personal hygiene products; a second retracted this. Prisoners, in the absence of the necessary tools to understand this reversal, have been neither capable of understanding it (cf. observations on this subject in the letters sent to the *Contrôle Général*) nor to interpret it, and even less capable of contesting it in a timely way before a competent judge.

The same is even truer of administrative decisions, which are not issued in circular and which prisoners only know about through their application or the absence of measures. The example is well known in prison of the announcement made by the Minister of Justice at the time (in 2010) of an €8 reduction in the monthly cost of television per person in prison was not applied in mixed management institutions, since another policy decision in 2012 had deemed the idea of calling into question the current contracts entered into with administration concessionaires inopportune, due to the cost. The *Contrôle Général* has, on many occasions, had to supply explanations to its correspondents who are both in a state of ignorance and anger, convinced that they were victims of bad faith.

Even the rules and regulations are difficult to understand. Often they are not available in institutions because they are “out of date” or “being updated”. It is true that changes to the Code of Criminal Procedure and the Prisons Act have rendered many regulations inappropriate. But

updates have been delayed and their approval more so. This notwithstanding, regulations are often inaccessible.

Certainly, there are more and more booklets for new arrivals in prisons; they are always rather silent on possible remedies, whether administrative (how many mentioned the *Contrôleur Général*?) or judicial.

Without information, prisoners have no “hold” (as they say in rock climbing) on how to take legal action. Which is why the *Contrôle Général* has repeatedly asked that the measures it has identified be taken in order for the principle of accessibility to the law³⁵³ effective in prison.

1.2 What Established Rule?

More fundamentally, the place of current standards in prison must be questioned. The role which is principally attributed to them should always be accompanied - this is a recent preoccupation of our legislature³⁵⁴ - by the question of their effectiveness and, more decisively, their reality. In relation to the reality of law in penal institutions, two observations, amongst others, must be made.

Firstly, many prison staff - perhaps insufficiently trained in this area – along with many contemporaries (and herein lies the problem) believe (or act as if they do) that prisoners, because they are deemed or recognised as being outside the law having committed one (or more) offence(s), have somehow completely set it aside and therefore are to be denied all access to the law. The guilty would in these circumstances, as we can see quite specifically in other societies (for example US society), be cut off from our world and find themselves in quite a different one, a sort of Dante-esque inferno where our rights are no longer accessible. The testimonies received (at the *Contrôle Général* and elsewhere) on this subject are abundant: “But madam”, the polite, surprised reply by a warder to Hélène Castel who asked for something, “you are in prison here”³⁵⁵; or “this is not a hotel”³⁵⁶ “... or Geneva” (this from an ingenuous prisoner claiming protection under the “Geneva Convention”³⁵⁷). Or in more simple terms, you have been judged to be “outside the law”, say prison staff, and outside of the law you will remain, not through our doing but yours.

Secondly and consequently, there is no other law and no other rights than those recognised by prison staff. This point should be underlined so that it can be understood. There can be no doubt that the law gives authority over prisoners to the prisons administration. This perfectly legitimate authority should prevail. But, in the need for this authority to necessarily have “the last word”, there is a shift in meaning. Because it is difficult to exercise, due to the often distressing conditions under which it is carried out, the authority which has been appointed by the law and regulated by the law in force becomes the authority as exclusively defined by its custodians. This point needs to be emphasised: it is not the seditious will of representatives of the law; it is the very conditions of the job (including remote hierarchical management and the absence of effective middle management) which lead prison officers to say in reply to requests or

³⁵³ See for example of the opinion of 13th June 2013 concerning the possession of personal documents by prisoners and their access to accessible records, *Journal officiel* of 11th July 2013.

³⁵⁴ In acknowledging the right to censure the law on the basis of the negative competence of the legislature, the Constitutional Council protects the subject of law against an attack “on rights and freedoms which the Constitution guarantees” (point 6 in decision no. 2012-298 Constitutional Priority Question, QPC, of 28th March 2013, *Majestic Champagne SARL*)

³⁵⁵ Hélène Castel, *Retour d'exil d'une femme recherché* (Return from Exile of a wanted woman) Paris, *Le Seuil*, February 2009, 247 p. See page 92.

³⁵⁶ See letter no. 4 for use of this expression included above in section 7.

³⁵⁷ It is clearly not by chance that this common usage willingly compares prison with “hotel” and “restaurant” (“Fouquet’s carcéraux”, (prisons described in terms of Fouquet’s high-class restaurant in Paris)), a pamphlet which had its moment of glory in 2012 or, formerly, three, four and five star hotels).

protests: “I am the law”, that is “there is no other law than mine”. This approach, which is deeply rooted in “authority in action” mechanisms that exists not solely in prison administration but also among police officers, and even bureaucrats of all types confronted with problems that they do not know how to solve, has to be exclusive if it does not want to be challenged. In this respect too, there are plenty of testimonies. “Rule no. 1” a prison officer says to a prisoner “is that the warder is always right; rule no. 2, if you forget everything else, always remember rule no. 1”.

Under this sort of regime, which is not exclusively found in the prisons administration but which are so much more significant for the latter as prisons operate largely in an enclosed environment and, as Mrs Thatcher would have said “there is no alternative”, that is to say, no other possible interlocutors, claiming standards which are beyond a prison officer is **in itself** a threat to their authority, even where the principle of recourse to this standard is an integral part. Current discussions on loss of authority are a constant theme... between prison authorities and their staff. It has its share of truth in its portrayal of the “public”. Yet it also owes its existence, there is no doubt, to this possibility, stronger now than ever, even in prison, of recourse to standards which are not exclusively those defined by prison officers. For them **recourse to legal principles is not a victory of the law, but a weakening of their capacity to carry out their work**, which they see as an attack by the “thugs” on necessary order. This difference in interpretation, so long as it lasts, will be an obstacle to any significant advance. In any event, this intrusion is inevitably poorly welcomed and its use by prisoners consequently encounters many problems.

2. The Purpose of Procedures

2.1 What Help for Prisoners in their Procedures?

Two things need to be postulated, once the indisputable need has been recognised, both inside and outside prison, for access to the law and the resulting procedures.

The first is, without painting too simplistic a portrait of the “disaffiliated” (according to the term used by Robert Castel³⁵⁸) nature of prisoners, the great majority of them are helpless in the face of legal procedures. Indeed, for many contacting a third party to protest against their living conditions consists – in their words – in “complaining” without clearly differentiating this idea from recourse to a third party, administrative remedy and judicial remedy. As far as the latter is concerned, the recipient of the complaint is the public prosecutor, identified as the universal recipient for prisoners' protests. Filing a complaint and a claim for criminal indemnification is unknown or *a fortiori* understood; recourse to other authorities (for example the administrative judge) even less so. People set out feverishly but with few means, such as a defence strategy, the basic tenets of law: this self-study is uncommon and has an even more limited impact.

The second is that in these circumstances, the place and the role of external persons in advising and providing guidelines for prisoners, when the latter deem it useful, are necessary. But they are certainly insufficient.

Consequently, without taking excess precautions, we should like to demonstrate the observations of the *Contrôle Général* on this matter, relating to the possibility of clarifications, advice and support that the prisoners might find internally, that it is, in the institutions in which they have been placed.

³⁵⁸ See in particular *Les Métamorphoses de la question sociale* (The changes in social issues), Paris, Gallimard Folio Essais, Sept. 1999, 816 p.

Prison rehabilitation and probation counsellors do not, in principal, do not enter into procedures originated by prisoners, excluding those for which the judge responsible for the execution of sentences have jurisdiction to decide. Undoubtedly their work, which still needs better definition since the 1999 reform, would make it difficult for them in any case as they are already overworked and because they are part of the prisons administration and, more generally, their role as public servants would place them, in these circumstances, in a situation of conflict of interests that is unacceptable in principle.

We know that since 2005, agreements have been put in place in prisons for independent persons, originally appointed by the French Ombudsman which has been attached to the Defender of Human Rights since 2011. Specifically, their role is to intervene in the event of dispute between the “user” and the “administration”, and consequently in the event of prisoner dissatisfaction in the way in which the institution functions or the behaviour of its staff. This therefore, in some ways, makes recourse to a judge by prior procedure, which is one of the possibilities of remedy, useless. There no doubt exist prisons where these representatives deal with, defuse and resolve conflicts. These prisons are not the majority. In many of them, the recruitment of representatives, the conditions under which they work (sporadic appearances or dependent upon demand) and the way in which they see their role do not meet prisoners’ needs and, consequently, do not stop them making complaints which they deem to be necessary.

Lawyers are of course, by virtue of the law, the “natural” advisers of prisoners wishing to take court action against the administration. But on the one hand, the questions of access to justice and to those who act within it arise, in the understanding of legal aid processes and the point in time at which decisions relating to this aid should occur. On the other hand, relations between convicted prisoners and lawyers are not “neutral”; there may be much prejudice from the former (un-convicted prisoners, whose penal process is, in principal, accompanied by advice, are undoubtedly much better equipped in this respect), which creates an obstacle to easy recourse to a lawyer, meaning resolved material issues (*terra incognita* for legal representatives accessible from the institution for sentencing). Finally, in spite of lawyers “returning to prison” thanks to their presence before most disciplinary committees meeting in institutions, and the awareness of some of them, most are unaware of the disputes which might occur after sentencing. Progress needs to be made on these different points.

There remains the question of “legal information and advice points” (PAD / *points d'accès au droit*) which have been organised in many institutions (and should be in all) thanks to the vigilance of some heads of courts and the role of “department committees for access to the law” (see article R. 57-6-21 of the Code of Criminal Procedure). These legal information and advice points may (and should always) include lawyers in their procedures. Their role, however, appears doubly limited both in the extent of their actual presence and in their area of jurisdiction (most often, criminal cases cannot be brought up): they are limited to family cases, and management of assets and immigration. They need to be strengthened in three ways: professional independence and confidentiality must be guaranteed (including the confidentiality of correspondence sent to them); their jurisdiction should not be limited (which means solid training and above all working in network for those who provide support); and they must be able to support procedures (except those strictly relating to the execution of the sentence), including facilitating access to lawyers where this is necessary. It is only under these conditions that their role can become significant.

In any event, most prisoners today intending to take legal action are doubly alone: in relation to the legal system and with regard to their prison institution.

2.2 What is the Purpose of Procedures?

The grounds for prisoners' preoccupations are not exactly the same as the reasons for which they start procedures (complaints). In so far that they can be identified (as previously stated, there is no record), the reasons are not therefore those of the letters sent for example to the *Contrôle Général*, whose subjects are set out, in decreasing order of importance, in each of its annual reports³⁵⁹. Rather, they give evidence that recourse to procedures is an expression of stressed relationships over a period of time between the writer and the prison system; in that, having not found what they were expecting in the “legal” processes of their detention (in its translation in their daily life), the chosen solution is one of inescapable necessity; in that, finally, the person is aware, for reasons to be mentioned below, that they are entering into a situation which is openly in conflict with the administration and that, if it is to be resolved, it is because they believe that in actuality this conflict is already open.

There are four major categories of reasons for complaints (this term being extended to its most general meaning), at least as described by their authors (which does not solely correspond to the way in which these complaints are written).

The first is violence, generally following a situation leading to an “incident report” being drawn up by prison staff, the seriousness of which gives the graded officers or officers in charge reason to believe that they need to be placed in a punishment cell (“the cooler”) pending hearings, in other words whilst awaiting a meeting of the disciplinary committee responsible for giving sentence for disciplinary breach. Those subject to these measures claim that they are accompanied by the use of disproportionate force.

The second is that of “harassment”. The person believes that they are the victim of repeated, constant discrimination by one or more members of staff in the form of benefits which are not granted to them (employment, training etc.) of “oversights” in the cell or more seriously disclosure of their criminal history to others, refusal to grant of employment, provocation, insults etc. These complaints are the result of long periods of tension and suffering.

The third is that of non-assistance to a person in danger and covers situations in which a person, feeling ill and sometimes at risk of serious health problems, feels that or indeed cannot access the required healthcare or that medical or nursing staff have not provided this health care, due to the operation of the institution. These complaints can cover many different situations, whether completely unfounded or not. They can be seen in the double reflection of the exaggerated questions of threats to health in prison and the very real fear felt by sick prisoners of dying in prison, particularly at night when calls for help can be long in being answered.

The fourth category relates not to attacks on the individual but on property, in particular the disappearance of personal effects - a frequent occurrence - during transfers or failure to return items after “searches” (property office) or, for those with a computer, deletion of data during verification of the appliance.

3. The Effect of Procedures

Becoming involved in procedures, except in the case of violence, never happens without the person resorting to them feeling powerless to achieve what they hope for in any other way. Indeed, they cannot be unaware of the fact that they will often be disappointed.

³⁵⁹ See below, in this annual report, the “Activity summary” section, § 2 Referrals to Court.

3.1 Success and Failure in Procedures

As it is impossible to quantify the number of procedures (as defined) by prisoners, it is *a fortiori* impossible to determine which are completed, on the one hand, and which have a positive outcome on the other.

Based on the statements made by people who have written to or have been questioned by the *Contrôle Général*, there is hardly any doubt however that most procedures which are started are unsuccessful.

Of course we do not intend to minimise results achieved by prisoners' procedures (bearing in mind François Korber and his procedures in relation to the cost of providing televisions receivers in prison) either solely or, above all, supported in their efforts either by lawyers (for example Etienne Noël) or by activists (support committees for a person or categories of people) or associations (in particular the International Prison Observatory): violence has been identified and penalised (for example in Valenciennes); questionable behaviour called into question (the implementation of article 57 of the Prisons Act concerning searches); disgraceful conditions of imprisonment have been compensated (at the Rouen remand prison and elsewhere). It is easy to deduce from this that external support is certainly a precondition for positive outcomes to procedures.

Certainly, these case-law developments, which do not need to be recalled here, in particular in relation to the administrative judge, moreover equipped, since 2000, with effective intervention tools (urgent hearings applications and summary applications for fundamental freedom³⁶⁰ and urgent applications for findings³⁶¹), have facilitated prisoners applications being taken into account.

Certainly it is not to be forgotten that these processes, even when they appear to be unfruitful may, fortunately, result in the prisons administration changing their original position and attitudes.

However, with regard to the number of processes which prisoners claim to have undertaken, these outcomes still remain limited. The “usual” court for filing a complaint remains the ordinary court, that is to say the State Prosecutor’s Office or more precisely the public prosecutor, universally known in prison. Sending a “complaint” to this court either results in no follow up known to its originator (numerous letters on this point) or in those cases which are deemed the most serious (claims of violence), in the opening of enquiries resulting in questioning by gendarmes or police officers in a “lawyers” visiting room. But, as far as we can assess, the great majority of complaints filed lead to no further action being taken, often, moreover without prisoners being aware of this (rightly or wrongly). In addition, these procedures do not only leave them dissatisfied, as would any plaintiff frustrated in their efforts; they give them the feeling (the “proof”) that they are no more heard by the judicial system than by the prison system. Thus these procedures are often an ever-growing cycle of disappointment – proceedings - disappointment which add to the negative past experience of their authors.

3.2 The Effect inside Prison

The reasons why institution staff have not taken these initiatives have been given. They react to them all the more so, because, like everything else in prison, procedures brought by prisoners do not remain unknown. Everyone knows, moreover, that those directly involved may

³⁶⁰ Respectively articles L. 521-1 and L. 521-2 of the Code of Administrative Justice

³⁶¹ Article R. 531-1 of the same Code

spread their intentions to do so, like information given of a step taken to increase the tension felt within the institution.

Firstly, there can be direct opposition to this process in the form of non-transmission of a complaint to the State Prosecutor's Office. Of course, the law guarantees prisoners freedom of correspondence and decree (art. D. 242 of the Code of Criminal Procedure) exempts all letters sent to judges from checks. Although these rules are generally observed, there may be a number of breaches which the *Contrôle Général* has regularly brought to light. In other words, it is not sure that a complaint will reach its destination, on the one hand, and the confidentiality of its content, on the other hand, is by no means assured.

Secondly, it is possible that when a complaint is filed, there can be pressure for it to be withdrawn. Here is a particularly enlightening example. Shortly after a complaint had been filed against the administration, this prisoner was called in by the block officer. When the prisoner entered the office, according to their account, the officer had in his left hand a blank sheet of paper and in his right hand a transfer application form³⁶². This officer then told the prisoner: either to withdraw the complaint (indicating the white sheet), or to immediately sign the transfer application. Because the prisoner wanted to stay in the same place (the family was close by and so could visit), the prisoner reluctantly withdrew the complaint.

Above all it results, thirdly, in "punishment" in prisons against persons who are audacious enough to complain before a judge of their lot in prison: "The warder told me but if I complained I'd be messed up"³⁶³. Punishment not provided for by any legislation, and for good reason, which does not differ from a general attitude adopted by staff who believe in a strong-armed approach to recalcitrants. It can be passive, consisting in not meeting requests made to the administration by persons who are deemed to be "vexatious litigants": non-inclusion in the list of people put on activity (employment, professional training, leisure time etc.); or simply "forgetting" to open the cell when "movement" is scheduled for the person concerned; or refusal of visiting rights (double visits) etc. The list may be long as each initiative by a prisoner is subject to intervention by a member of the administration. This passivity results in the resistant being put "in quarantine" to a lesser or greater degree and for longer or shorter periods. Active measures are also taken, with an equally endless list: more "thorough" searches coming out of visiting rooms or repeated cell searches; sleep hindered at night; mentioning criminal files to fellow prisoners or simply implying that the person in question is in fact a "grass"; electricity cuts in cells; and generally staff behaviour aiming to push the "vexatious litigant" into making a mistake. "Pushing a prisoner to make a mistake" gives the right to draw up an "incident report" for breach of disciplinary rules and then to inflict a punishment on the basis of this³⁶⁴. The almost automatic link between this punishment and the withdrawal of additional reductions in their sentence, which results in an increase, even if slight, in its term, and generally the close connection between the "disciplinary hearing" and the assessment of the judge responsible for the execution of sentences, makes this extremely dissuasive. In this light, it is clear that reduced sentencing is not so much as for what it agrees as for what it refuses.

In these circumstances, the originator of the complaint is not necessarily the most patient of people, and is generally already aware that they have exceeded "customary practices in prison" and, in a certain way, acted in desperation. The tensions resulting from this passive or active punishment may in fact result in incidents which have two virtues: that of re-establishing relations between the vexatious litigant and the administration by way of internal settlement where the latter is sure to win; that of demonstrating *a posteriori* that the author of the complaint is

³⁶² That is to say, changing the institution

³⁶³ Letter received by the *Contrôle Général* on 26th August 2013.

³⁶⁴ We know of the especially strong dissymmetry that exists in prison disciplinary procedures (cf. *CGLPL 2012 report*, page 129 et seq.

nothing but an impulsive, violent individual who does not know how to comply with the rules and, therefore, the procedure is devalued as being devoid of credibility.

As the mistake has occurred, for the most part as a result of “punishments”, internal rules regain their power. The “vexatious litigants”, who cannot control themselves are, as are others who resist, the preferred object not only of disciplinary punishment but also classification in the “closed” regime in institutions that have a “system for executing punishment”, placement in isolation by administrative decision and, of course, transfer for the purposes of order and safety. We know of persons who, having entered with a *quantum* of sentences of so many years, find themselves in highly secure prisons, as prisoners who are specifically labelled under another regime for the sole reason, they believe, (and as was explained by one person encountered in a long-stay prison) that they merely “asserted their rights”.

4. Conclusion

Right to the law is therefore fiercely contested for those who are regarded as being “outside the law” and consequently outside of access to rules relating to access to the law.

In what it tells us of the state of mind of an imprisoned person wishing to end what is perceived as being a host of unbearable attacks on the dignity of prisoners, recourse to procedures is not radically different from other forms of calling prisons into question: self-harming, violence against others, rebellion against prison life. However, between these forms of protest and the “complaint” made to a court, there is an essential difference. The former should be avoided for various reasons; the latter is not only legal, but it is one of the expressions of a person's fundamental rights which includes, in particular, the right to defend oneself before a court to any unlawful attack. In amalgamating the two, those who forcefully oppose the “vexatious litigant” are not only obstructing a right which cannot be denied but, additionally, are wrong in their analysis. The exercise of the right to remedy can only offer prisoners a way to settle their conflicts in a way that releases tensions that are inevitably felt. Refusing to recognise these processes only contributes to continuing tensions and consequently abnegating prison's objectives. This is why the system provided to those with recourse to procedures is not secondary, but reveals a prison concept that deserves to be highlighted and criticised. This is why the cost of refusal is, both to the detriment of prisoners and prison staff, higher than that of accepting the rules. Awareness of this reality will lead to the necessary changes.

Section 11

Assessment of the work of the *Contrôleur général* des lieux de privation de liberté in 2013

In June 2013, the *Contrôle Général* started its sixth year of work. The chance departures and recruitment of inspectors has meant that this year has coincided with the arrival of new recruits with experience in various areas, in particular with respect to international work which will help to improve the institution's methods and outlook.

This relative seniority will, however, enable the volume of this section to be reduced. In relation to its management and activity data, 2013 has not brought substantial changes in the *Contrôle Général's* focus of work in terms of the means at its disposal and the results achieved. Whilst respecting the obligations that were defined from the outset, that is to say, making all data relating to its work accessible (transparent, one should say), in this section it will condense the key events of 2013. This shorter summary will thus enable the *Contrôle Général* to develop those fundamental considerations (cf. previous sections) which it feels are most appropriate in the long term elsewhere in its report.

5. Relations with the Authorities and other Corporations

5.1 The Reform of the Act of 30th October 2007

In its report for the year 2012, the *Contrôle Général* outlined the shortfalls arising from the Act of 30th October 2007 under which it was established. In question were a possible extension to the role of the body to EHPAD retirement homes for infirm elderly people (*Etablissement d'hébergement pour personnes âgées dépendantes*), uncertainties about what to do with referrals received by the institution, detailed improvements in visiting procedures and finally, and above all, the reality of the threat of reprisals against persons contacting the *Contrôle Général* in one way or another, which must end. Legislative changes were desirable in response (at least partially) to these questions. For this purpose, draft legislation was transmitted to the Government in May 2012.

The Prime Minister's office found this to be of sufficient interest to be taken into consideration. However, a logjam in the Parliamentary calendar with proposed Government legislation led to a preference for a proposed legislation process. The Socialist group in the French Senate was therefore given the responsibility for this question and accepted to carry out the necessary procedures with a view to the adoption of legislation by the assembly. At the end of 2013, Ms Catherine TASCIA, the ex-minister and Senator of the Yvelines department, was appointed as spokesperson for the proposals and began preliminary hearings with the examination of the proposed legislation by Law Commission before discussion in plenary session.

It is therefore to be hoped that a legislative proposal will be adopted by the Senate in early 2014 (a debate is scheduled for 21st January on the proposed legislation) and that the National

Assembly will then accept it with a view to final adoption as legislation amending the Act of 2007, improving the effectiveness of the *Contrôle Général's* work.

The question of widening the jurisdiction of the *Contrôle Général* to EHPADs has not been decided upon, and therefore does not appear in the proposals. However, it continues to be discussed, often heatedly, as is normal, within the professions concerned. For its part, the *Contrôle Général* insists on the necessity of questioning the means of protecting the rights of persons held within these institutions and continues its dialogue with all stakeholders, either in the context of meetings organised by the competent Ministry or in initiatives that it has taken (meetings with the principal organisations concerned on their premises). It remains available for any sort of explanation, in particular in the context of preparing the draft law announced by the Prime Minister for 2014 concerning senior citizens.

5.2 The President of the French Republic, Government and Parliament

Necessary relations, initiated in previous years, have been continued with an ongoing concern of naturally protecting the independence of the institution whilst providing the authorities with the information for which it is the repository.

The 2012 report was addressed to the President of the Republic, and the Presidents of the Senate and the National Assembly.

Meetings have taken place at various times with ministerial authorities (ministers or cabinets), whether or not in the context of preparing legislation; with the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Affairs and Health, the Ministry for Senior Citizens, the Ministry for Women's Rights³⁶⁵ and the Ministry for Educational Success.

The Director General of the French national police force, the new directors of the Judicial youth protection service and the prisons administration have been met in the context of welcome informal discussions.

The *Contrôle Général*, like other corporations, has been partner to the Ministry of the Interior's preliminary work on developing legislation on immigration; in discussions by this same ministry and that of the Ministry of Justice on the examination centre at the Mesnil-Amelot detention centre for illegal immigrants and the waiting area at the Roissy Charles-de-Gaulle airport³⁶⁶; and in discussions by the Ministry of Justice preceding the draft law on penal reform (consensus conference). The inspectors were able, in various ways, to express their views before both judiciary and administrative judges and before various lawyers' representative bodies; upon request by the Director of the Central Department of Public Security (*directeur central de la sécurité publique*), Mr Pascal LALLE, and before all of the Departmental Directors of Public Security. As in previous years, they spoke of their roles to students in schools directly (National School of Administration / ENA, the National School for the Judiciary / ENM, the National School of the Judicial Protection of Youth / ENPJJ, the National Police Academy / ENSP, the National Gendarmerie Academy / EOGN³⁶⁷) or indirectly (the National school of Bridges and Roads / *Ecole Nationale des Ponts et Chaussées*, in relation to public works) concerned by the *Contrôle Général's*

³⁶⁵ In the context of events for the rights of women launched by this ministry, the *Contrôle Général* organised an exhibition of photographs on women in captivity on its premises; there were two presentations, including one to the press on 12th September.

³⁶⁶ A subject they were requested to review by associations and lawyers, which led to a new specific on-site inspection on 16th July 2013. As can be seen below, the Roissy waiting area was subject to a second follow-up visit in December 2013.

³⁶⁷ But not at the National School of Penitentiary Administration (*Ecole nationale d'administration pénitentiaire*).

work, as well as to students in higher institutes (the Institute for Higher Studies in Security and Justice / INHESJ, the Higher Studies Centre of the French Ministry of Interior / CHEMI, and the War-National Gendarmerie School / *Ecole de guerre – gendarmerie nationale*), with consistently discussions. Useful meetings and working sessions have regularly taken place with the *Contrôle Général* teams (legal and administrative services - Interior, National police, National gendarmerie, prisons administration, and the Judicial youth protection service in particular).

As far as Parliament is concerned, contrary to the tradition of previous years, the 2012 annual report did not give rise to any hearing either before the Law Commission at the National Assembly or before the Senate. On the other hand, the *Contrôle Général* was regularly heard in relation to Parliamentary works, either in the context of informational work, information reports or reports: thus on statistics in relation to delinquency, mental health, immigration and detention of illegal immigrants, improvements in victim aid, investment in the police and gendarme forces, prisons, and care for the deprived. Preparing the 2014 finance law has given rise to further meetings in the two assemblies. It has been received by the National Assembly parliamentary prison group and at the day organised by this same group. There have therefore been many occasions for discussion.

Implementing agreements with other independent government agencies has been carried out without difficulty. Regular correspondence has taken place with the *Défenseur des droits* ombudsman; a new joint project has been subject to contact with the French Data Protection Authority (CNIL).

The preparation of French Court of Auditors (*Cour des comptes*) reports, in particular on the subject of mental health, has also given rise to new discussions. The sixth subsection of the Council of State (*Conseil d'Etat*)³⁶⁸ contentious proceedings, having authority for proceedings concerning the prison system, has heard the *Contrôle Général* on an informational basis.

New prospects for joint discussions were opened. On the one hand, with the national committee of the French national professional association for doctors (*Conseil national de l'ordre des médecins*), which proposed the signature of an agreement which is currently under consideration. On the other hand, with the French National Consultative Commission for Human Rights (CNCDDH) which took the initiative of asking the *Contrôle Général* for a joint intervention in proceedings, before the European Court of Human Rights, opposing a person held in the Nouméa Prison against France, raising the question of prison overcrowding in particular. With the agreement of the President of the Fifth Chamber of the Court, this intervention was submitted to the court registry; as far as the *Contrôle Général* is concerned, this is in line with the urgent recommendations relating to this institution³⁶⁹. It emerged that the observations presented by the CNCDDH and the *Contrôle Général* could be fully complementary. This complementarity may suggest that other interventions of the same nature, in certain situations, would be useful either before international or internal courts.

5.3 Other non-public Corporations

As in other years, because relations with these relations are essential, the *Contrôle Général* presented its annual report to professional organisations concerned in the areas of policing, the protection of minors and prisons administration in particular, before it was made public. It is a

³⁶⁸ Moreover, the Council of State made its premises available to the *Contrôle Général* for its fourth annual seminar.

³⁶⁹ Journal officiel of 6th December 2011.

matter of regret that two major organisations of prison officers did not, for the first time, respond to the invitations sent to them.

The inspectors were as present as possible in events organised as part of National Prisons Week with the national focus group on prisons (GNCP / *Groupe national de concertation sur les prisons*), notably in Brest, Limoges, Mulhouse and Troyes etc., and were involved in other discussion meetings in various contexts, such as the Lille "Cité Philo". Above all, relations were continued with associations in various forms (annual report presentation meeting, bilateral meetings, participation at general assemblies and congresses etc.) The *Contrôle Général's* interest in these discussions with persons of great experience should be emphasised here.

For the second consecutive year, the *Contrôle Général* organised a discussion meeting between assessors not belonging to the prisons administration for disciplinary committees in institutions³⁷⁰. It was even more opportune than in 2013, as some of them wished to meet in order to carry out, in particular, necessary training for their members. Discussions took place on the administration's reception of these assessors, the conditions under which they are called upon (or not) and the role definitively assigned to them in commission meetings.

Finally, associations wishing to call the attention of the *Contrôle Général* to such or such and aspect of places of deprivation of liberty, or to difficulties relating to their activity, have been regularly heard by the *Contrôle Général*.

5.4 International Relations

The 2007 Act made it obligatory for the *Contrôle Général* to cooperate with international institutions with a similar role to its own. The United Nations Optional Protocol added to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 11) makes it mandatory that the responsible Sub-committee for this organisation (the SPT³⁷¹) to advise the mechanisms established in each signatory country. Consequently, the *Contrôle Général* is part of a worldwide network as national preventive mechanisms now exist in 51 States³⁷².

Multilateral relations continued in 2013, principally in the context of Council of Europe meetings and in the extension of processes begun in previous years (for example, at the end of the year, a meeting on care provided in detention centres for foreigners). Some of these may be used in to advise the Parliamentary Assembly on future agreements relating to various aspects of prison life.

The *Contrôle Général* has also been involved in multilateral meetings organised by the Association for the Prevention of Torture intended to inform the authorities and non-governmental organisations of the interest in and feasibility of national prevention mechanisms. It has willingly associated, in particular in meetings of this type organised in Algiers and Tunis.

It is to be regretted that, in the framework of the European Union, no initiative was taken by the European Commission or by the European Parliament in 2013, in spite of efforts made by the *Contrôle Général* in this

³⁷⁰ It should be recalled that since 2011, under the Prisons Act of 2009, one of the two assessors of this committee includes a person, appointed by the President of the Court of first instance in civil and criminal matters, from "civil society".

³⁷¹ For "Sub-committee for the Prevention of Torture".

³⁷² Source: OPCAT, Database, Association for the Prevention of Torture. For example, Brazil has set up a national mechanism but some Federal States in this country have also instituted regional mechanisms.

area in previous years. Additionally, the "Green Book" envisaged by the Commission in 2011 to tackle the subjects which appeared to fall within its jurisdiction, in particular in terms of remand detention, appears, for the time being, to have been forgotten

In terms of bilateral work, the *Contrôle Général* has also emphasised the work that it has undertaken in previous years with certain countries, both non-European, such as Senegal, and European; in particular, cooperation with the English mechanism and with the Czech Republic institution has been extended in the form of new inspector exchanges and simultaneous inspections.

Numerous foreign delegations have been received by the *Contrôle Général*, in particular from African countries, the Middle East (Iraq) and Europe (Kosovo, the Russian Federation), or have entered into relations with it (Georgia, Serbia, Albania) for reciprocal informational purposes. A very dynamic and determined Nepalese non-governmental organisation has also been received.

Undoubtedly, increased concerns of French representations abroad would enable growth in the scope and effectiveness of these meetings, which should nevertheless fall within the normal context of the institution's activities and should not therefore be multiplied, as mentioned in writing last year.

6. Cases Referred

Article 6 of the Act of 30th October 2007 provides that any natural person, as well any corporation whose purpose is to ensure respect for fundamental may refer cases or situations to the *Contrôle Général des lieux de privation de liberté* that are likely to fall within its area of competence. The same is true for public authorities (Prime Minister, Members of the Government, Members of Parliament etc.) and the *Défenseur des droits* ombudsman.

With regard to the wealth of letters sent to the *Contrôle Général* and in spite of the absence of precision in this Act with respect to possible follow-up³⁷³, the *Contrôle Général*, as of 2009, has set up a specialist team, the "Centre in charge of Referred Cases" comprising five inquirers under the responsibility of the director of services³⁷⁴, responsible for analysing them and proposing any appropriate follow-up. Thus, the *Contrôle Général* replies systematically to all letters arriving under various manners: information issued to the person originating the referral, direction towards the relevant representative, requests for appropriate details to enable a better understanding of the situation, two-way discussions with the authorities concerned and, where appropriate, on-site inquiry.

As part of its preventative work, the *Contrôle Général* may be required, at the end of discussions with the authorities and the person(s) concerned, to draw up recommendations for the attention of the director of the institution, the regional authority (Interregional Department of Prison Services, Regional

³⁷³ The proposed amendment to the Act of 30th October 2007 mentioned in §1.1 of this section is intended, as stated, to enforce the organisation and methodology during these five years of operation.

³⁷⁴ It should also be emphasised that the secretariat of the institution provides a telephone reception service from Monday to Friday, from 8:30 AM to 6:30 PM. Although telephone calls do not constitute a method of referral to the CGLPL, except in the case of special emergency, the two members of staff responsible and the inquirers listen with sympathy but necessary distance, so as to direct prisoners towards the relevant representatives within the institution so that they can claim their rights and also and above all to disarm tensions or to provide support to persons who frequently feel deeply ill at ease.

Health Agency etc.) or even the National Directorate and the relevant Ministry. These recommendations are, moreover, liable to become public when they are drawn up following an on-site inquiry. Beginning this year, the *Contrôle Général* publishes inquiry reports on its website, ensuring the strict anonymity of the person(s) concerned and the staff encountered.

These recommendations, and more widely, all of the information collected in the context of joint discussions, also serve as a basis for published notifications (such as notifications relating to young children in prison and their imprisoned mother, to prisoners' personal documents, and to unjustified stays in units for difficult psychiatric patients, for example).

Finally, these referrals are, also, important elements - amongst others - enabling inspections of institutions to be programmed but also to measure developments, whether positive or negative, occurring since a previous inspection and therefore to provide for follow-up inspections. The fact remains that the absence of referrals from an institution is also taken into account.

6.1 Analysis of Referrals Received in 2013

6.1.1 Letters Received by the *Contrôle Général*

Total volume of letters in referral to the *Contrôle Général* (excluding replies to surveys³⁷⁵) per year

	2008	2009	2010	2011	2012	2013 (estimate) ³⁷⁶
	(4 months)					
Number of referral letters received	192	1,272	3,276	3,788	4,077	4,116

Percentage increases

2009 compared to 2008³⁷⁷: 231% (or x 3.3)
 2010 compared to 2009: 158% (or x 2.6)
 2011 compared to 2010: 16% (or x 1.2)
 2012 compared to 2011: 7.6% (or x 1.08)

The number of letters sent to the CGLP has tended to stabilise as the increase is only 1% between 2012 and 2013.

This equilibrium, which started in 2012, does not however enable the conclusion that the problems encountered in places of deprivation of liberty only concern a minority of people, firstly because a letter of referral may relate to a number of persons or even all of the prisoners in any given institution (the way the prison shops work, access to health care etc.), but also because the *Contrôle Général* is convinced that many people fear reprisals if they make referral³⁷⁸ and are even actively dissuaded from doing so.

³⁷⁵ These are replies to enquiries made to the authorities.

³⁷⁶ Current data: January – November.

³⁷⁷ Where an estimate of 384 letters is used for 2008.

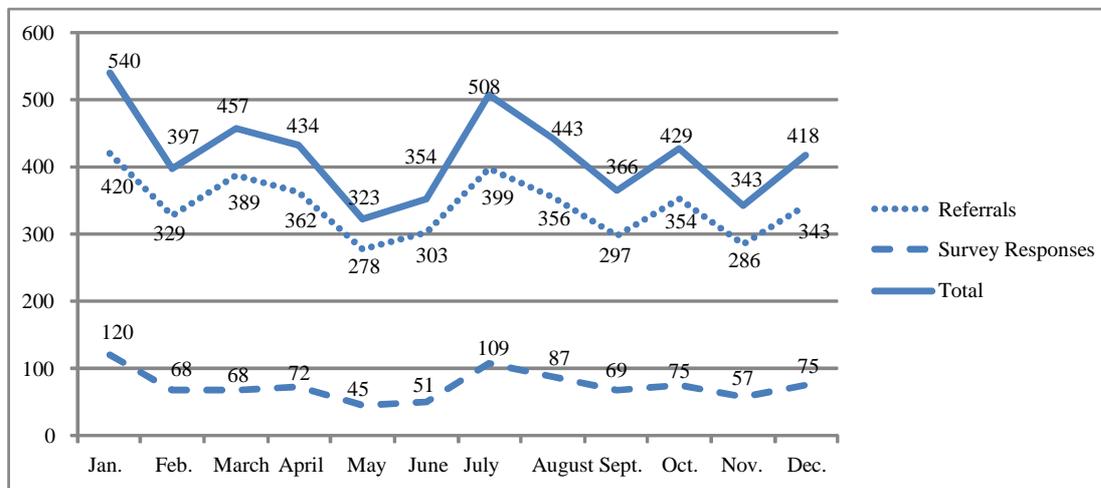
³⁷⁸ See the above section concerning the "vexatious litigant".

In this respect, 70 letters received between January and November 2013 mention reprisals or dissuasion of the author aiming to avoid situations being brought to the attention of the *Contrôle Général*.

In addition, 42 letters raised the problems of correspondence exchanged with the latter, either of letters sent by the *Contrôle Général* arriving to their recipients already opened, in breach of the provisions of article 4 of the Prisons Act of 2009, or of letters sent to the *Contrôle Général* not arriving.

This data does not of course reflect the reality of the situation: the numbers of these letters are clearly below that of actual pressure; indeed, they only relate to persons who have disregarded this and brought a referral to the *Contrôle Général* all the same.

Monthly Variations in the Number of Letters Received in 2013 (including survey responses)



Average number of Letters per Writer

Of the letters received in 2013 as a whole, an average of two letters were written by a single author. In 2009, the average was 1.7 letters; 2.5 letters in 2010; 3 letters in 2011 and 2 letters in 2012.

6.1.2 Interviews

To be added to the letters sent to the *Contrôle Général*, are situations brought to the attention of the inspectors in the interviews carried out during institution inspections.

In 2013, out of 283 interview files recorded (January - November)³⁷⁹, 214 did not require follow up (i.e. 75.62%) either because the problem raised was of a general nature and was already included in the inspection report or because it was possible to reply to at the time of the inspection. The remaining 69 files (24.38%) are divided as follows:

³⁷⁹ This data does not relate to all of the interviews carried out at the time of inspection, which are much greater in number, as all interviews do not entail the recording of an interview file on the Acropolis software.

20 interview files gave rise to written correspondence and joint meetings (enquiries) with the authority concerned;

17 were related to existing inquiry case-files (these relate to persons whose situation was already known to the *Contrôle Général*);

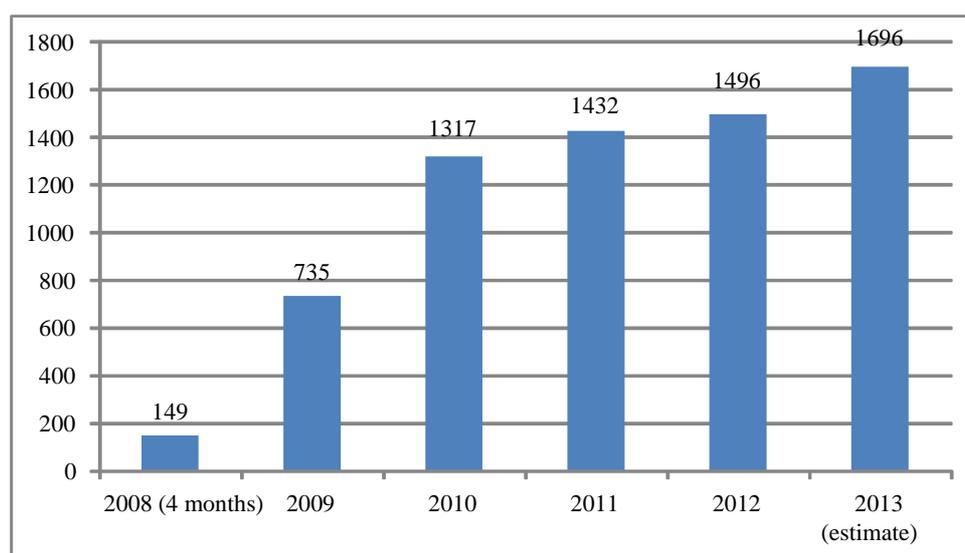
32 interview files gave rise to follow-up other than an inquiry (requests for clarification or information on follow-up given locally).

Although the number of letters sent to the *Contrôle Général* tends to stabilise, the fact remains that, from a qualitative point of view, the number of persons writing to the *Contrôle Général* for the first time has been constantly growing since 2008, but also, and above all, that the concerns submitted to it are becoming more and more complex and give rise to more specialised investigations.

6.1.3 The Persons Concerned

New Persons Applying to the *Contrôle Général* for the First Time.

In 2013, the situation of 1,696 persons or groups of persons³⁸⁰ was brought to the attention of the *Contrôle Général* for the first time, i.e. 13% more than in 2012.



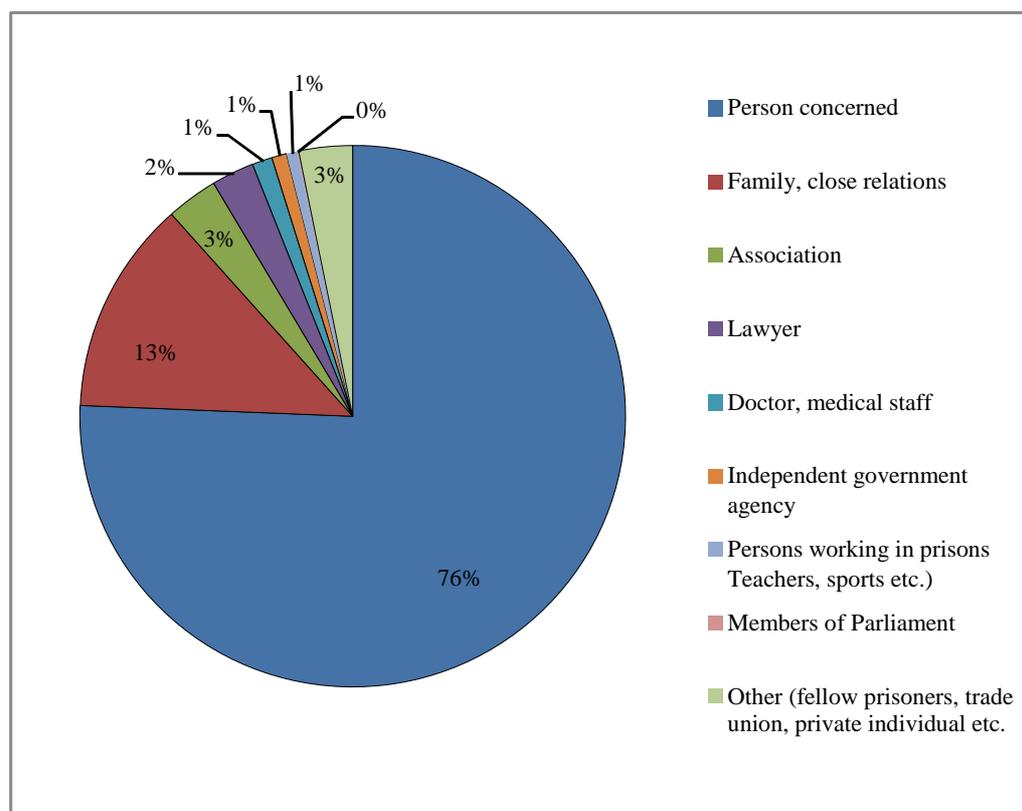
In 2008, 78% of the letters reported situations concerning new persons, as compared with 58% in 2009, 40% in 2010, 38% in 2011, 37% in 2012 and 41% in 2013.

Since it began its work, the *Contrôle Général* has reviewed the position of 6,825 people in the context of their referrals, to which is to be added all of those with whom the inspectors have held interviews at the time of their inspections and whose situation has not given rise to the recording of an interview file.

Categories of Persons Referring Cases to the *Contrôle Général*

³⁸⁰ This might be an identified group of people or not (all prisoners in an establishment or in a wing of an establishment but also all prisoners in France) Thus 122 letters related to a group of people.

Categories of persons referring cases to the Contrôle	Estimate 2013	% 2013
<i>Person concerned</i>	3,113	75.63%
<i>Family, close relations</i>	526	12.78%
<i>Association</i>	126	3.06%
<i>Lawyer</i>	105	2.55%
<i>Doctor, medical staff</i>	49	1.20%
<i>Independent government agency</i>	36	0.87%
<i>Persons working in prisons (teachers, sports etc.)</i>	27	0.66%
<i>Members of Parliament</i>	3	0.07%
<i>Others (fellow prisoners, trade union, private individual etc.)³⁸¹</i>	131	3.18%
Total	4,116	100%



³⁸¹ The “others” category comprises: 35 letters for allocation transmitted by the President of the French Republic; 25 administration officers; 20 fellow prisoners; 15 anonymous persons (i.e. 0,4% of the letters received ; 14 private individuals; 8 “others”; 3 directors of hospital establishments; 3 trade unions; 2 ARS; 2 judges; 2 SPIP and 2 self-referrals.

Categories of persons referring cases	Statistics drawn up for the 1 st Referral letter		Statistics on the basis of letters received		
	2009	2010	2011	2012	2013
Year					
Persons concerned	80.93%	80.33%	77.61%	77.90%	75.63%
Family, close relations		7.14%	9.37%	10.94%	12.78%
Association	5.04%	3.87%	3.02%	2.97%	3.06%
Lawyer	7.08%	3.49%	2.85%	3.68%	2.55%
Doctor, medical staff	0.95%	0.84%	1.24%	0.76%	1.20%
Independent government agency	1.91%	1.21%	0.79%	0.81%	0.87%
Persons working in prisons	Unknown	0.61%	0.58%	0.74%	0.66%
Member of Parliament	1.50%	0.76%	0.32%	0.29%	0.07%
Others (fellow prisoners, union, individual)	2.59%	1.75%	4.22%	1.91%	3.18%
Total	100%	100%	100%	100%	100%

The type of persons referring their cases to the *Contrôle Général* is practically identical to that published in previous years.

It can be seen from the above table that the proportion of letters from prisoners has decreased slightly whereas those sent by the family have increased. This development reflects fears of reprisals that prisoners may have and the need to send their testimonies via an intermediary. This possibility is, however, limited to persons who have regular contact with their close relations. This is why the *Contrôle Général* has constantly and repeatedly encouraged lawyers and associations to provide information on the problems within its field of competence encountered by persons with whom they are in contact. This encouragement has not had sufficient concrete response³⁸².

Apart from those persons whose situation falls within the field of competence of the *Contrôle Général* by nature, it should be noted that the latter received a little over 100 letters from government employees and persons working in prisons. Their letters and questions are, for the most part, full of information as they are witness to the daily life in these places. Their anonymity is, in all cases, guaranteed in processes which may be initiated by the *Contrôle Général* (except where the persons concerned asks that this not be the case) so as not to in threaten their work and to protect them from any reprisal.

³⁸² In relative values, the number of lawyers making referrals to the *Contrôle Général* decreased again in 2013.

Persons Referring Cases according to the Type of Institution

	Person concerned	Family Close relations	Association	Other	Lawyer	Doctor Medical staff	AAI	Persons working (Teachers, Sports staff etc.)	Members of Parliament	Total
Prisons	2,932	451	81	104	93	21	26	26	3	3,737
Health Institutions	50	43	10	10	1	18		1		233
Other	2	27	6	6		9				50
Detention centres for illegal immigrants	3	1	29	2	4	1	6			46
Police custody facilities	18			2	7		4			31
Unspecified	8	5								13
Young offenders' institutions		4		1						5
Court custody				1						1
Total	3,113	531	126	126	105	49	36	27	3	4,116

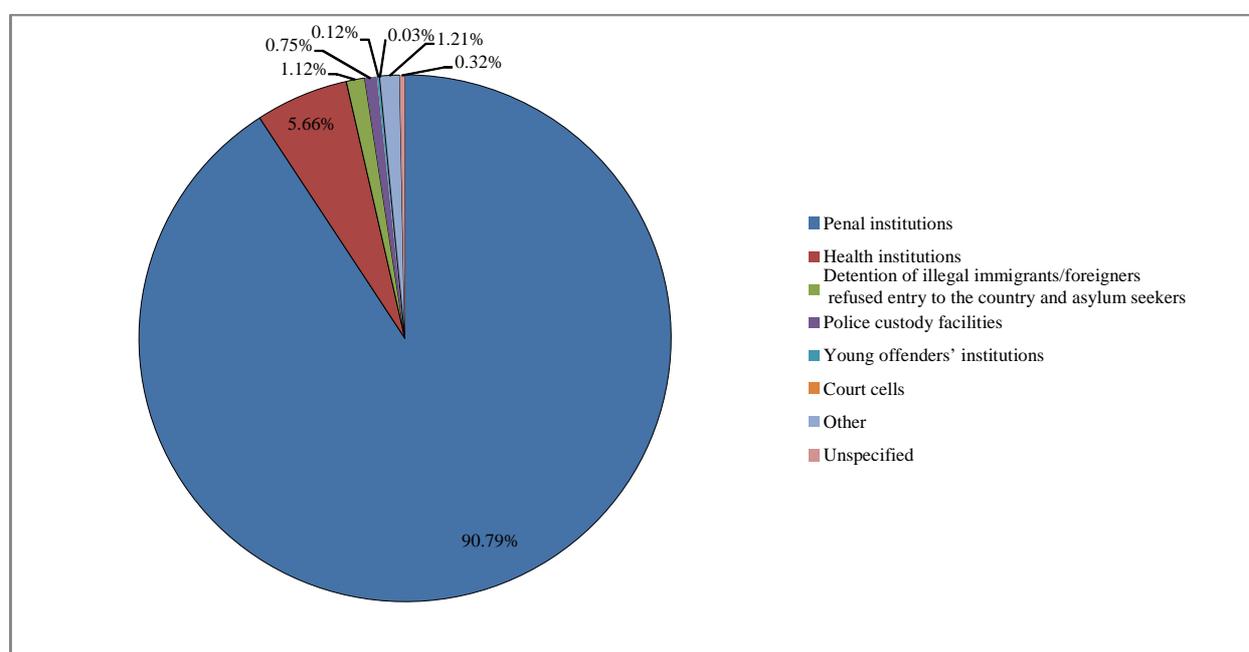
6.1.4 The Places of Deprivation of Liberty Concerned

Distribution of Cases Referred according to the Nature of the Place of Deprivation of Liberty Concerned

Type of institution		Total 2013	Percentage
Penal institutions	Prison (with sections incorporating different kinds of prison regimes)	1,568	41.96% of PI
	Long-term detention centre	866	23.17%
	Remand prison	1,016	27.19%
	Long-stay prison	230	6.15%
	Hospital (UHSA, UHSL, EPSNF, CMSJS)	20	0.54%
	Open Prison	2	0.05%
	National Assessment Centre	17	0.45%
	Prison for minors	1	0.03%
	Reduced sentencing training prison	1	0.03%
	PI as a whole	6	0.16%
	PI unspecified	10	0.27%
Total Penal institutions		3,737	100%
			90.79% of the places

as a whole			
Health institutions	Psychiatric hospital	108	46.35%
	UMD	45	19.31%
	Hospital (psychiatric sectors)	60	25.75%
	Secure room	1	0.43%
	Unspecified	13	5.58%
	HI as a whole	4	1.72%
	Private establishments	2	0.86%
Total health institutions		233	100%
5.66% of the places as a whole			
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers	Detention centre for illegal immigrants	38	82.61%
	Waiting area	6	13.04%
	Detention facility for illegal immigrants	2	4.35%
Total detention of illegal immigrants, foreigners refused entry and asylum seekers		46	100%
1.12% of the places as a whole			
Police custody facilities	Police Station	23	74.19%
	Gendarmerie	2	6.45%
	Customs	1	3.23%
	Border police	4	12.90%
	Unspecified	1	3.23%
Total police custody facilities		31	100%
0.75% of the places as a whole			
Young offenders' institutions		5	100%
0.12% of the places as a whole			
Total court cells		1	100%

	0.03% of the places as a whole	
Others (EPHADs, retirement homes, PSEM, young offenders)	50	100%
	1.21% of the places as a whole	
Unspecified	13	100%
	0.32% of the places as a whole	
Overall total	4,116	100%



Distribution of letters according to type of institution	Statistics based on 1 st referral letter		Statistics based on all letters received		
	2009	2010	2011	2012	2013
Penalinstitutions	87%	91.42%	94.15%	93.11%	90.79%
Health institutions	6%	5.32%	3.48%	4.24%	5.66%
Police custody facilities		1.21%	0.29%	0.74%	0.75%
Detention of foreigners		0.99%	0.71%	1.10%	1.12%
Young offenders' institutions		0.23%	0.05%	0.15%	0.12%
Court cells		0.15%	0.11%	0.07%	0.03%
Other	7%	0.38%	0.79%	0.12%	1.21%
Unspecified		0.30%	0.42%	0.47%	0.32%
Total		100%	100%	100%	100%

The proportion of letters relating to prisons has decreased for the second consecutive year whilst principally letters relating to health institution, essentially from patients hospitalised without their consent and from their close relations, have increased.

The proposal for the *Contrôle Général's* authority to be extended to EPHADs mentioned in the previous annual report and above has resulted in some 50 persons, mostly close relations of elderly persons, making referrals to testify to the conditions of their treatment.

6.1.5 Content of the Cases Referred

Principal Causes³⁸³ (by category of institution) for the two most significant categories: Prisoners and Hospitalised Patients.

Principal causes for health institutions:

Proceedings (disputing of hospitalisation, non-compliance with procedures etc.): **37.13%**

Relations with the outside (access to the telephone, visits etc.): **9.41%**

Access to health care (access to medical file, psychiatric care and treatment, courses of treatment etc.): **7.92%**

Assignment (determination of the administrative district, assignment outside of administrative district, readmission after UMDs etc.): **6.44%**

Patient/staff relations (confrontational relations, disrespect, use of force): **5.94%**

Preparation for release (health care programme, forced retention in hospital due to lack of places in specialist institutions such as EPHADs and institutions for autistic persons etc.): **4.95%**

Material conditions (accommodation, hygiene, meals etc.): **4.46%**

Solitary confinement (duration, grounds invoked, protocol etc.): **4.46%**

Other causes (13.84%) account for too few letters to be significant.

In 2010, the three principal causes were: proceedings/preparation for release/solitary confinement.

In 2011, the three principal causes were: proceedings/preparation for release/assignment.

In 2012, the three principal causes were: proceedings/assignment/legal information and advice

It should be specified that the *Contrôle Général* was also referred to on a number of occasions for difficulties relating to application of the Act of 5th July 2011 and, more particularly, in the multiple medical certificates and methods for their drawing up, but also those related to the

³⁸³ In letters sent to the *Contrôle Général*, people commonly mention a number of different problems. For statistical purposes, one single reason will be qualified as the principal cause given the importance given to it with regard to respecting fundamental rights.

removal of trial release procedures - finally re-established by the Act of 27th September 2013³⁸⁴. In the context of this re-establishment, the *Contrôle Général des lieux de privation de liberté* recommended, at the time of its hearing before the Senate law commission, that State representatives should not be able to impose restrictive measures on persons with the right to trial release procedures. This recommendation echoed a referral relating to a person hospitalised at the request of a representative of the State which, at the time of trial release procedures (before the Act of 5th July 2011) was, in addition to nursing staff, always escorted by two police officers.

Principal causes for penal institutions:

Transfers (13.79%)

72.67% of referrals in this category concerned transfer requests, 13.80% transfer conditions, 10.63% administrative transfers and 2.82% international transfers.

Prisoner/staff relations (9.68%)

47.57% of referrals in this category concerned conflictual relations, 29.73% violence and 22.7% non-respect.

Access to health care (9.53%)

38.78% of referrals in this category concerned somatic health care (delays, quality of treatment etc.), 25.32% access to specialist health care, 14.42% access to psychiatric health care, 11.22% access to hospitalisation and 10.26% to various problems (distribution of medicines, preventative health care, access to medical files etc.)

Material conditions (prison shops, accommodation, hygiene, meals, television etc.) (8.82%)

Relations with the outside (access to visiting rights, conditions of visiting rooms, mail, telephone, etc.) (8.13%)

Preparation for release (reduced sentencing, SPIP, relations with outside bodies, administrative formalities etc.) 7.3%

Proceedings (disputing procedures, enforcement of sentences, disclosure of grounds for imprisonment etc.) (6.76%)

Activities (education, training, employment, IT, sport, exercise etc.) (6.61%)

Internal order (discipline, searches, use of means of physical restraint, systems of security etc.) (6.52%)

Relations between prisoners (assaults, extortion rackets, gifts etc.) 5.78%

Internal assignment (cell allocation, differentiated regimes etc.) (3.13%)

Other (2.32%)

Financial situation (personal account, taking poverty into account etc.) (2.32%)

³⁸⁴ Cf. section below on the *Contrôle Général Politiques Analyses*

Legal information and advice (access to a lawyer, remedies, legal information etc.) (1.79%)

Self-harming behaviour (self-injury, hunger strikes, suicide attempts etc.) (1.67%)

Solitary confinement (conditions, duration, grounds invoked, visits from the doctor etc.) (1.52%)

Inspection (request for interview etc.) (1.25%)

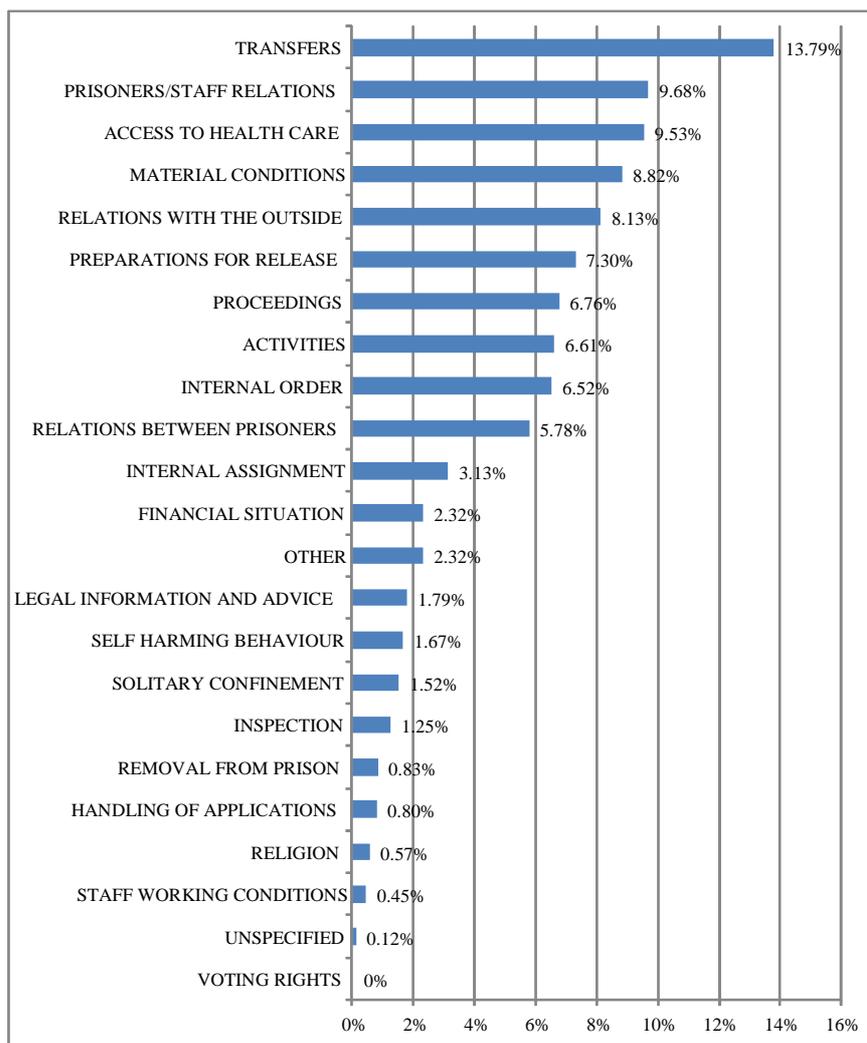
Removal from prison in order to go to hospital (use of means of physical restraint, cancellation, conditions etc.) (0.83%)

Handling of applications for remedy (absence of response, hearings, use of the CEL) (0.80%)

Religion (availability of religious services, dietary requirements, religious objects etc.) (0.57%)

Staff working conditions (0.45%)

Unspecified (0.12%)



In 2010, the three principal causes were: transfer/access to health care/material conditions.

In 2011, the three principal grounds were: transfer/access to health care/activities.

In 2012, the three principal grounds were: transfer/access to health care/activities.

Whereas the principal causes in 2013 remain those relating to the problems of transfers, the *Contrôle Général* notes that transfer policy pursued by interregional agencies and the prisons administration department relating to the constraints imposed by article 88 of the Prisons Act is increasingly marked by mathematical management of places to the detriment of consideration of elements relating to the actual prisoners themselves. As such, some prisoners are assigned to institutions for definitively convicted prisoners several hundred kilometres away from their close relations even though the latter find it impossible to travel due to largely financial reasons and/or health-related. Sexual offenders are even more victims than others of this distancing as they are assigned to specific institutions as the rule, without this necessarily being accompanied by any special treatment and without thought as to whether any special treatment is necessary.

The problem relating to assignment is just as significant when it comes to female prisoners. Even though the opening of the Réau Prison, the sole institution for definitively convicted prisoners in the Paris region with a women's wing, has enabled closer links with the family, the fact remains that the southern half of France has no such establishment, thus depriving a large number of women of their right to maintain family ties³⁸⁵.

Whilst in 2012, relations between staff and prisoners was the principal cause for referral in 7% of letters received, this figure reached almost 10% in 2013. This does not mean that the *Contrôle Général* is able to establish the factual circumstances in all of these situations. Nevertheless, this denotes a certain tension within prisons, or at least in some of them.

As far as the rest is concerned, the type of difficulties mentioned by prisoners remains identical to those in 2012, being essentially related to access to health care, material conditions and to relations with the outside.

6.2 Actions Taken in Response to the Cases Referred

6.2.1 Overall Data

The lengthening of the deadlines in which the *Contrôle Général* is able to reply to referrals is significant in 2013 (an average of 62 days in 2013 compared with 41 days in 2012). This lengthening, in spite of an increase in productivity as a result of the new inquirers who are, for the most part, very experienced, results in three phenomena:

A growing complexity in follow-up (letters from the *Contrôle Général* to a number of successive authorities) and in content (in particular in legal terms);

An increase in on-site inquiries, which remains insufficient (cf. below), involving inquirers;

³⁸⁵ See section 4 of the 2010 annual report.

Above all, an inadequate number of staff in the "centre for referred cases" for the volume of work.

The *Contrôle Général* again reiterates that: the need for rapid response is not unnecessary perfectionism, it is an absolute necessity as the people who write often do so out of desperation and a lack of response risks causing, at the very least, additional anxiety and disorder in prison.

The required deadlines have therefore led, to its great regret, to the establishment of reply procedures from June 2013 in the form of acknowledgements. Thus, anybody referring to the *Contrôle Général* for the first time receives an acknowledgement relevant to their personal situation, except where this requires an extremely urgent reply. Additionally, when a person requests an interview, this first response provides a means of explaining that this correspondence can only be in writing and that they can share, via sealed unchecked correspondence³⁸⁶, the problems that they encounter in compliance with respect of their fundamental rights. In the same way, where a referral does not clearly fall within the jurisdiction of the *Contrôle Général* (e.g. challenging a sentencing decision by a judge) the acknowledgement specifies the field of jurisdiction and the relevant authority to be referred to as appropriate. Finally, when information contained in a letter is too succinct, details are requested at the time of this acknowledgement (e.g. a person who alleges violence without giving details of the time or the place or elements enabling their author to be identified). The *Contrôle Général* has thus sent some 560 acknowledgements between June and December 2013.

Actions taken in response to cases referred to the CGLPL consist of, in decreasing order:

- providing information relating to the described situation (30.5% of replies)
- referral to the authority concerned in the framework of joint discussions (29%)
- requests for further information (27.8%)
- stating lack of competence (4.1%)

	Type of action taken	Estimate 2013	Percentage
Inquiries	Inquiry (referral to the authority)	817	29%
Responses given to letters not giving rise to the immediate opening of an inquiry	Request for further information	788	27.8%
	Provision of information	862	30.5%
	Lack of competence	117	4.1%
	Other (no follow-up, taken into account for inspection, passed on for reasons of competence AAI, article 40)	245	8.6%
	Subtotal	2,012	71%
	Total	2,829	100%

³⁸⁶ At least in principal as has been seen.

In the context of inquiries, the following have been sent out (extrapolated over the 12 months of 2013):

- 817 letters to the authorities concerned,
- 661 letters informing authors of referrals of the opening of an inquiry,
- 586 letters informing the authority referred to of the follow-up to the inquiry,
- 491 letters informing the author of the referral of the follow-up to the inquiry,
- 272 reminder letters,
- 184 letters informing the author of the referral of the reminder issued to the authority concerned.

Thus, the centre for referred cases generated 4,604 letters from January to November 2013, i.e. 5,023 letters sent over the year (122% of letters received).

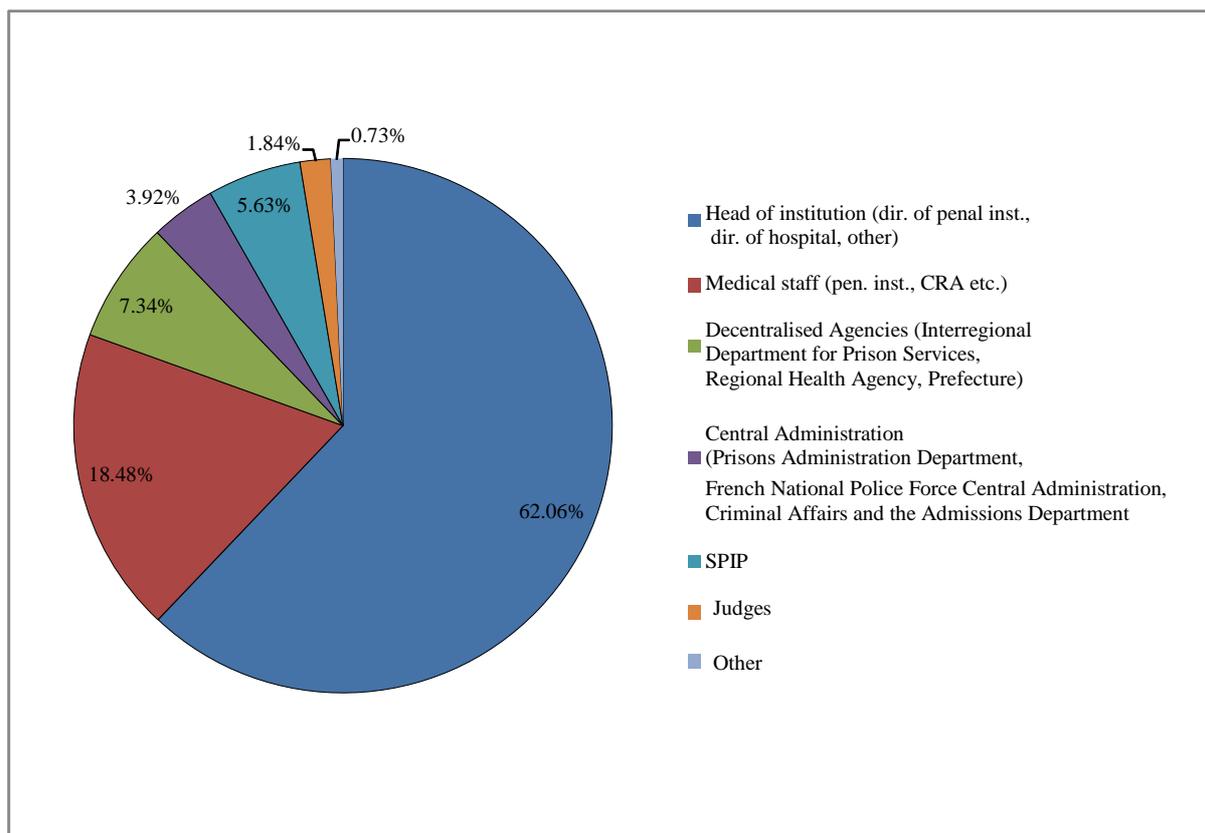
6.2.2 Cases Referred Giving Rise to Inquiries

Of the 817 inquiry letters issued, the majority were sent to heads of institutions and, more particularly, to prison directors, given the type of persons referring their cases to the *Contrôle Général* (**2.4 letters per year per prison on average**). There are also joint discussions with the doctors in the health units (US / *unités sanitaires*) and the Regional Mental Health Departments for Prisons (SMPR / *services médico-psychologiques régionaux*) where access to health care constitutes a problem frequently experienced by prisoners.

Inquiries Conducted in 2013 according to the Type of Authority Referred To

Type of authority referred to		Estimate 2013	Percentage
Head of Institution	Prison directors	453	55.45%
	Hospital directors	35	4.28%
	Illegal immigrant detention centre directors	9	1.10%
	Police	7	0.86%
	Young offenders' institution directors	1	0.12%
	Gendarmeries	1	0.12%
	Illegal Immigrants Detention Facility/ Waiting Area directors	1	0.12%
<i>Subtotal</i>		507	62.06%
Medical Staff	Doctor responsible for Regional Mental Health Department for Prisons	146	17.87%

	Detention Centre for Illegal Immigrants Doctor	5	0.61%
<i>Subtotal</i>		151	18.48%
De-Centralised Agencies	Inter-Regional Department for Prison Services	44	5.39%
	Regional Health Agency	8	0.98%
	Prefecture	8	0.98%
<i>Subtotal</i>		60	7.34%
Central Administration	Prisons Administration Department	26	3.18%
	Criminal Affairs and Pardons Department	2	0.24%
	French National Police Force Central Administration	2	0.24%
	Other Central Administration	2	0.24%
<i>Subtotal</i>		32	3.92%
SPIP		46	5.63%
Judges		15	1.84%
Other		6	0.73%
Total		817	100%



Comparison 2011-2012

	2012	2013 (estimate)
Head of institution (Prison directors, Psychiatric Hospital directors, Other)	64.79%	62.06%
Medical staff (pen. inst., CRA etc.)	12.56%	18.48%
Regional agencies (Into Regional Prison Services Department DISP, Regional Health Agency ARS)	8.21%	7.34%
Central administration (ministries, Prisons Administration Department etc.)	6.23%	3.92%
SPIP	5.30%	5.63%
Judges	2.91%	1.84%
Other	-	0.73%
Total	100%	100%

In the context of enquiries, the *Contrôle Général* sent 256 reminders to authorities referred to from January to November 2013³⁸⁷. After two reminders to institution heads, the *Contrôle* contacts the next higher authority (in practice, usually the interregional department of prison services).

Authority called upon	Number of reminders
PRISONS ADMINISTRATION DEPARTMENT	13
FLEURY-MEROGIS REMAND PRISON	10
AITON PRISON	9
FRESNES PRISON	8
NANCY -MAXVILLE PRISON	7
SAINT-QUENTIN-FALLAVIER PRISON	6
VAL-DE-REUIL LONG-TERM DETENTION CENTRE	6
RENNES-VEZIN PRISON	6
LIANCOURT PRISON	5
EYSSES LONG-TERM DETENTION CENTRE	5
MAUZAC LONG-TERM DETENTION CENTRE	5
VILLEFRANCHE-SUR-SAONE REMAND PRISON	5
TOUL LONG-TERM DETENTION CENTRE	5
AIX-LUYNES REMAND PRISON	4
LILLE INTERREGIONAL DEPARTMENT OF PRISON SERVICES	4
BAPAUME LONG-TERM DETENTION CENTRE	4
ROANNE LONG-TERM DETENTION CENTRE	4
LILLE-SEQUEDIN PRISON	4
SUD-FRANCILIEN-REAU PRISON	4
BOUCHES-DU-RHONE SPIP	3
LYON-CORBAS REMAND PRISON	3
GRASSE REMAND PRISON	3
CHATEAUDUN LONG-TERM DETENTION CENTRE	3

³⁸⁷ This number should be seen in the perspective of the 817 letters sent for enquiries in 2013. This is only an approximation as 256 reminders relating to enquiries partly opened in 2012. These figures therefore do not relate to the same period. But they imply that 30% of enquiries give rise to reminders.

RENNES WOMEN'S PRISON	3
BAIE-MAHAULT PRISON	3
ARLES LONG-STAY PRISON	3
LILLE ANNOEULLIN PRISON	3
LILLE-SEQUEDIN REMAND PRISON	3
MAUBEUGE PRISON	3
PARIS POLICE PREFECTURE	3
MONT-DE-MARSAN PRISON	3
ILLE ET VILAINE SPIP	3
BEDENAC PRISON	2
AQUITAINE REGIONAL HEALTH AUTHORITY	2
NORD-PAS-DE-CALAIS REGION PREFECTURE	2
TOULOUSE SEYSSES PRISON	2
NANTERRE REMAND PRISON	2
MARSEILLE-LES BAUMETTES PRISON	2
THE MINISTRY OF THE INTERIOR	2
CAEN REGIONAL HOSPITAL CENTRE	2
UZERCHE LONG-TERM DETENTION CENTRE	2
PAS-DE-CALAIS SPIP	2
PERPIGNAN PRISON	2
OERMINGEN LONG-TERM DETENTION CENTRE	2
TARBES REMAND PRISON	2
LYON INTERREGIONAL DEPARTMENT OF PRISON SERVICES	2
ORLEANS REMAND PRISON	2
PACA/CO INTERREGIONAL DEPARTMENT OF PRISON SERVICES	2
REMIRE-MONTJOLY PRISON	2
MEAUX-CHAUCONIN PRISON	2
SAINT-MIHIEL LONG-TERM DETENTION CENTRE	2
ARRAS REMAND PRISON	2

SOCIAL SECURITY DEPARTMENT	2
PARIS INTERREGIONAL DEPARTMENT OF PRISON SERVICES	2
TOULOUSE INTERREGIONAL DEPARTMENT OF PRISON SERVICES	2
Subtotal	199
Other (institutions to which a single reminder was issued)	57
Overall total	256

The data in this table demonstrates that the number of reminder letters is not proportionate to the size of the prison population.

The Fleury-Mérogis Remand Prison receives an enormous amount of letters from lawyers in the Paris region for its 3,591 prisoners (at the time of the *Contrôle Général's* inspection) The prisons at Aiton and St-Quentin-Fallavier receive a number of reminder letters relatively close to that of Fleury-Mérogis, for a prison population that is 7.5 times lower (476 to 478 prisoners respectively at the time of the inspection).

Inquiry Case-files

A referral gives rise to the creation of an inquiry case-file when a person submits a specific situation in any given establishment to the *Contrôle Général*. In the context of a single case-file, a number of authorities may be referred to at the same time or successively.

Between 1st January 2013 and 30th November 2013, 446 new inquiry case-files were opened, i.e. a projected 487 for a full year. These case-files related to 414 people³⁸⁸ i.e. a projection of 452 for a full year.

Type of institution	Estimated total	Percentage
Penal institutions	Remand prisons & Remand centres (QMA)	174 38.58% of PI
	Prisons and Detention Centres (QCD)	127 28.16%
	Prisons (section not defined)	112 24.83%
	Long stay prisons and Remand centres	29 6.43%
	EPSNF and UHSI	5 1.12%
	National Assessment Centre	2 0.44%
	Open Prisons and open areas	1 0.22%

³⁸⁸ A number of inquiry case-files may be opened for a single person.

	(QSL)		
	Juvenile centres	1	0.22%
Total penal institutions		451	100%
		92.61% of places as a whole	
Health institutions	Hospitals (psychiatric sectors)	9	40.91% of PI
	UMD	9	40.91%
	Psychiatric hospitals	4	18.18%
Total health institutions		22	100%
		4.52% of the places as a whole	
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers	Detention centres for illegal immigrants	7	70% of CRAs
	Removal	3	30%
Total detention of illegal immigrants, foreigners refused entry and asylum seekers		10	100%
		2.05% of the places as a whole	
Total police custody facilities	Organisers	3	100%
		0.62% of the places as a whole	
Total young offenders' institutions		1	100%
		0.20% of the places as a whole	
TOTAL		487	100%

From January to November, 424 inquiry case-files were closed (an estimated 463 for the full year) and at 30 November 2013, 432 inquiry case-files were outstanding (an estimated 471 for the year).

The Average Duration of Inquiries

The average duration is eight months. Nearly 50% lasted less than seven months.

Length	Number of files	Percentage	Cumulative percentage
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Under 2 months	12	2.59%	2.59%
From 2 to 3 months	20	4.32%	6.91%
From 3 to 4 months	25	5.40%	12.31%
From 4 to 5 months	47	10.15%	22.46%
From 5 to 6 months	54	11.66%	34.12%
From 6 to 7 months	70	15.19%	49.31%
From 7 to 8 months	56	12.09%	61.40%
From 8 to 9 months	41	8.80%	78.20%
From 9 to 10 months	27	5.83%	76.03%
From 10 to 11 months	25	5.40%	81.43%
From 11 to 12 months	19	4.10%	85.53%
From 12 to 18 months	47	10.15%	95.68%
From 18 to 24 months	14	3.02%	98.70%
Over 24 months	6	1.30%	100%
	463	100%	

Fundamental Rights Concerned by these Inquiries

Fundamental right concerned	Estimated cases 2013	Percentage
Access to health care and prevention	99	20.33%
Maintenance of family / outside relations	75	15.40%
Protection from physical injury	70	14.37%
Dignity	44	9.03%
Property rights (possessions and money)	34	6.98%
Rehabilitation / preparation for release	34	6.98%
Equal treatment	28	5.75%
Access to employment, training and activities	23	4.72%
Protection from mental injury	13	2.67%

Freedom of movement	12	2.46%
Legal information and advice	9	1.85%
Confidentiality	9	1.85%
Other	8	1.64%
Right of access to information	7	1.44%
Defence rights / compliance with the <i>inter partes</i> principle	5	1.03%
Freedom of conscience, thought and religion	5	1.03%
Other ³⁸⁹	12	2.46%
Total	487	100%

The three principal fundamental rights in question justifying inquiry are the same as those for the previous year: access to healthcare (the right to health of persons detained) the maintenance of family ties and protection from physical injury.

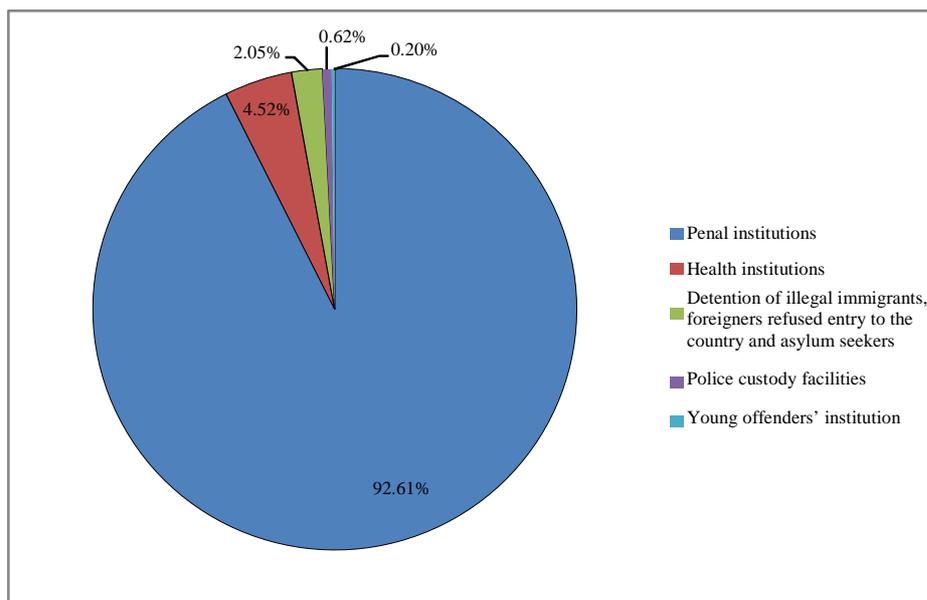
The situations for which protection from physical injury is in question relate both to violence between fellow prisoners and use of force by prison staff. In the latter case, the *Contrôle Général* notes that too often, replies provided by institution directors are limited to affirming that force used by its staff has been legitimate and proportionate without providing more details. Yet, it is their responsibility to arrive at their own assessment of the legitimacy and proportionality of force used. In addition, to date, in spite of numerous requests, the *Contrôle Général* has never been able to obtain videos of the incidents, as the time limit for the conservation of these is too short (rarely more than 48 hours).

Next come inquiries relating to respect for the dignity of persons (9.44% of inquiry case-files as compared with 8.44% in 2012) and which, essentially, relate to carrying out full searches and more particularly their systematic nature, as well as the presence of prison staff at the time of medical consultations carried out in hospital.

Inquiries related to access to work - and more particularly, to conditions of remuneration - and to activities, have been substantially less numerous than in 2012 (4.7% in 2013 compared with 11.8% in 2012). In fact, the *Contrôle Général* no longer needs remind institution directors of the terms of the Prisons Act of 24th November 2009 in relation to remuneration as their action is suspended upon distribution of a circular, contrary to the principle of hierarchy of standards. As the first compensation cases resulted in condemnation from the Ministry of Justice, it can be hoped at present that what was not obtainable by legal rigour will be obtained via financial pressure.

Places concerned by Inquiry Case-files Opened in 2013

³⁸⁹ This category includes three "social rights", two "detention without cause", two "respect for the person", two "rights to individual expression", two "image rights" and one "staff conditions of work".



Type of Person Referring their Case to the *Contrôle Général* which Led to the Opening of an Inquiry Case-file in 2013

Categories of persons referring cases to the <i>Contrôle Général</i>	Estimated total	Percentage
Person concerned	369	75.77%
Family, close relations	51	10.47%
Association	20	4.11%
Lawyer	15	3.08%
Persons working in prisons (teachers, sports etc.)	7	1.44%
Fellow prisoner	7	1.44%
Doctor, medical staff	5	1.02%
Others (SPIP, individual, staff)	13	2.67%
Total	487	100%

6.3 On-site Inquiries

Without revisiting the circumstances upon which the use of on-site inquiries are based or the methodology which has already been described in the 2012 annual report³⁹⁰, it is useful to state

³⁹⁰ Page 321 et seq.

that the *Contrôle Général* made its first on-site inquiry reports public in support of the opinion concerning young children in prison and their mothers. The other inquiry reports should be available online on its Internet site at the start of 2014 after the necessary and detailed anonymisation (to comply with confidentiality) of reports and replies from institution heads.

The choice was made to include in the inquiry reports sent to institution heads recommendations relating to problems on which they could act at their level. The *Contrôle Général* has noticed that they have used these to develop their practices within their institutions and as a basis for their budget requests where appropriate, as has already been observed in relation to inspections. Moreover, recommendations arising from the findings of the inquirers which fall within the area of ministerial intervention are either subject to a letter sent to the relevant central management or are included in published notices.

In 2013, nine on-site inquiries were carried out by the centre for referred cases as a result of correspondences received:

Two relating to the problems of the place of children in prison and their mothers (Fleury-Mérogis Remand Prison and the Rennes Women's Prison)³⁹¹ in line with that carried out at the Toulouse-Seysse Remand Prison in 2012,

Two relating to solitary confinement and treatment of non-French speaking persons in detention as a result of two inquiries carried out in 2012 relating to difficulties encountered by Somalians imprisoned in the context of acts of piracy committed in the Gulf of Aden,

One relating to access to information in prison in a delegated management institution, in addition to those carried out in 2012 in two publicly managed institutions,

One inquiry carried out within a penal institution and an attached hospital centre relating to the terms of removals from prison for medical treatment (methods of constraint, terms of removal, the channels used in the hospital, terms of consultations),

One inquiry at the medical-social-legal safety centre following a referral by a person placed in preventative detention,

One inquiry whose purpose was to ensure that measures had been taken to end a situation which was characterised by inhuman and degrading treatment discovered by a team of inspectors at the time of their inspection of a penal institution,

And, for the first time, an inquiry within a health establishment for persons hospitalised without their consent enabling a patient's treatment to be examined.

It can therefore be seen that some of these inquiries follow on from other inquiries, in order to refine the *Contrôle Général's* information on a predetermined subject; the others deal with new subjects.

Of the nine on-site inquiries, three were carried out without prior warning, and for six prior information was given to the institution head two or three days before the inquirers' arrival.

Whether inquiries are unexpected or scheduled, management always ensures that inquirers can access the documents requested, are able to interview both the persons concerned

³⁹¹ Published on the website www.cglpl.fr

and the staff in confidentiality and have access to the premises they wish to inspect. In this area, the principles set out by the Act of 30th October 2007 have been fully respected.

7. Inquiries Carried Out in 2013

7.1 Quantitative Data

Table X. Inspections by year and by category of institution

Categories of institutions	Number of institutions ³⁹²	Inspections in 2008	Inspections in 2009	Inspections in 2010	Inspections in 2011	Inspections in 2012	Inspections in 2013	TOTAL	of which inst. inspected once only	% inst. inspected
Police custody facilities	4,095	14	60	47	43	73	59	296	291	7.11%
– of which police	600	11	38	33	28	42	41	193	189	
– gendarmerie	3,495	2	14	13	13	29	14	85	85	
– various ³⁹³	Not specified	1	8	1	2	2	4	18	17	
Detention by customs	236³⁹⁴	4	2	4	5	3	7	25	25	10.59%
– of which judicial	10	0	1	0	1	0	0	2	2	
– ordinary law	226	4	1	4	4	3	7	23	23	
Court cells/jail	182	2	7	11	10	19	15	64	61	33.52%
Other³⁹⁵	-	0	0	0	0	1	0	1	1	-
Penal institutions	191	16	40	37	32	25	29	179	170	89.01%
– of which remand prisons	98	11	21	13	16	15	16	92	80	
- prisons (with sections incorporating different kinds of prison regime)	45	1	7	9	7	7	4	35	35	
- long-term detention centres	24	2	5	8	6	1	3	25	24	

³⁹² The number of institutions changed between 2012 and 2013. The figures presented below have been updated for young offenders' institutions (at 22nd January 2013) and prisons (at 18th September 2013).

³⁹³ This concerns facilities of the central departments of the national police force (criminal investigation department, PAF etc.) and gendarmerie facilities other than territorial headquarters.

³⁹⁴ This figure corresponds to the number of customs detention and custody facilities at the disposal of the Directorate-General of Customs and Indirect Taxes (direction générale des douanes et droits indirects). It possesses a total number of 397 cells, that is to say an average of 1.7 cells per facility.

³⁹⁵ Military arrest facilities etc.

– long-stay prisons	6	0	3	3	0	0	1	7	6	
- prisons for minors	6	1	3	1	2	0	0	7	6	
– various (CSL etc.)	11	1	1	2	1	2	5	12	12	
– EPSNF	1		1				0	1	1	
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers	101	11	24	15	11	9	1	71	62	60.78%
– Of which CRA	24	5	12	9	7	5	0	38	31 ³⁹⁶	
– LRA ³⁹⁷	26	4	6	4	2	3	0	19	18	
– ZA ³⁹⁸	51	2	6	2	2	1	1	14	13	
Health institutions	369	5	22	18	39	22	17	123	122	33.06%
– of which CHS	252 ³⁹⁹	5	7	7	6	7	5	37	37	
– Hospital (psychiatric sectors)		0	5	4	8	3	2	22	22	
– Hospital (secure rooms)	48	0	2	4	17	6	4	33	32	
– UHSI	7	0	3	3	1	0	0	7	7	
– UMD	10	0	2	0	1	5	2	10	10	
– UMJ	48	0	2	0	6	0	1	9	9	
– IPPP (Psychiatric infirmary of the Paris police headquarters)	1	0	1	0	0	0	0	1	1	
– UHSA	3	0	0	0	0	1	3	4	4	
Young offenders' institutions	47	0	8	8	11	7	12	46	44	93.62%
OVERALL TOTAL	5,219	52	163	140	151	159	140	805	776	56.14% ⁴⁰⁰

³⁹⁶ All CRA except for the Réunion CRA were inspected. Two of them have now been closed (Nantes and Pamandzi).

³⁹⁷ Since detention facilities for illegal immigrants are opened and closed by prefectural order, counting them is a delicate task, including for the competent ministry, which undertook to provide the Contrôle Général with the precise number thereof. The figure given here therefore represents an order of magnitude.

³⁹⁸ This number of 51 waiting areas should not create any illusion: virtually all foreigners detained are held in the waiting areas of Roissy-Charles-de-Gaulle and Orly airports.

³⁹⁹ Source: BOISGUERIN Bénédicte, MINODIER Christelle (dir.). *Le panorama des établissements de santé* [“An Overview of Health Institutions”] – 2012 edition. DREES, 2012. 172 p. (Etudes et statistiques)

⁴⁰⁰ The ratio is not calculated from the total of the institutions inspected on at least one occasion between 2008 and 2013, which is shown in the previous column, but on the basis of these inspections after deduction of inspections of police custody facilities, customs detention facilities, court jails and cells and military arrest facilities; that is to say 393 inspections for a total of 708 places of deprivation of liberty.

Data relating to the number of prisons is to be taken with caution: on the one hand because some data are variable, for example those relating to detention facilities for illegal immigrants, which are often opened on a temporary basis, in police stations for example (cf. note below); on the other hand because some others appear to be poorly counted (police stations); and finally because the use of certain establishments as places of deprivation of liberty is not certain (even although police quarters hold nobody in police custody)

The total number of institutions above however is much closer to reality; some numbers, by category (prisons, hospitals etc.) are rigorously accurate to within a few elements, corresponding to recent openings and closings, or temporary closures (young offenders' institutions for example)

The *Contrôle Général* has of course automatically increased the share of institutions visited in 2013, as shown by the table below;

Percentage of institutions visited	2012	2013
Police custody	7.6	10.5
Customs	5.7	7.1
Court jails and cells	26.3	33.5
Penal institutions	73.8	89.0
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers	60.8	60.8
Health institutions	28.7	33.0
Young Offenders' Institutions	75	93
TOTAL	48.4	56.1

More than half of the places of deprivation of liberty have been subject to detailed inspections over the past five and a half years.

But this percentage is very variable.

On the one hand it should be compared with the numbers of persons held in prison. As far as remand prisons are concerned, police stations and headquarters in all large towns have been inspected and the gendarmeries visited are often (not always) those which have the highest number of persons in custody. It should be presumed therefore that the places inspected represent a share of custody much higher than 7%. Additionally, as has been noted in the previous annual report, relatively low values represent data which is high in absolute values (nearly 300 premises inspected), which gives the inspectors some experience in this area.

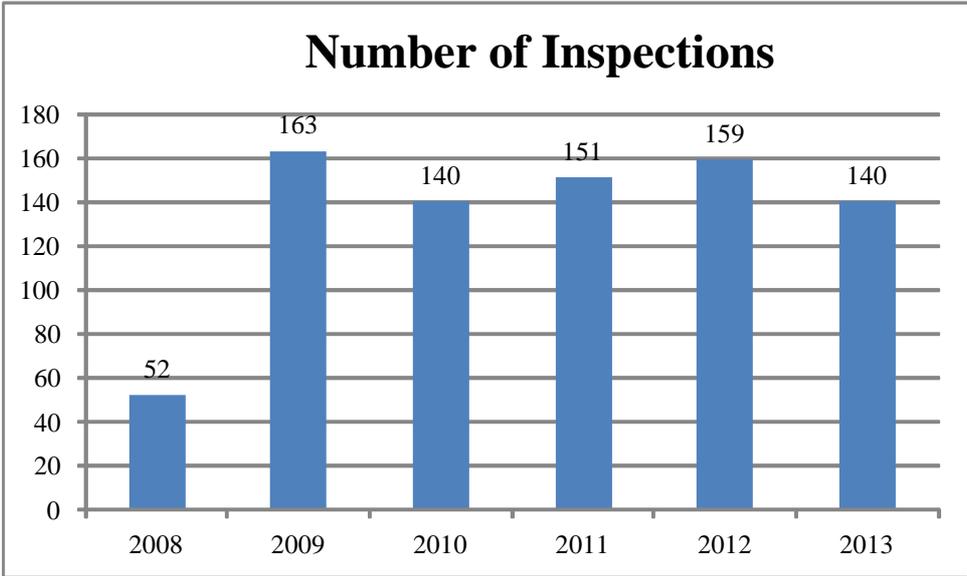
On the other hand, it should be compared to the categories of institutions. It is only with respect to police custody and customs detention facilities that inspection percentages are equal to or less than 10% of all institutions. Next are health institutions and court jails and cells, where one third of those places for which the *Contrôle Général* is responsible have been visited. Then comes detention of illegal immigrants, foreigners refused entry to the country and asylum seekers,

with 60%: this percentage masks a significant difference however between the detention centres for illegal immigrants that have been visited, many twice, and detention facilities for illegal immigrants. Finally there are penal institutions and young offenders' institutions, nine out of ten of which have been visited.

No category has been so little visited that inspectors lack experience or knowledge of them. On the contrary, the *Contrôle Général* has reached a point where it is able to develop comparatives (cf. developments in section 2 above relating to police stations), ensuring that its findings gain in general referrals and in accuracy. Some categories of institutions have been visited so often that the institution has been almost comprehensively inspected. They can be spared charges of incompetence.....

7.1.1 Number of Inspections

	2008	2009	2010	2011	2012	2013
Number of inspections	52	163	140	151	159	140



The "raw" number of inspections in 2013 is not particularly high. It should be recalled that from the outset, the *Contôle Général* committed to carrying out 150 annual inspections. This commitment has not been fully upheld during the year covered by this report for three reasons.

Firstly, the inspections included a share of institutions requiring extended inspections and, above all, mobilisation of large teams: this is the case for example with the inspection carried out at the Clermont-de-l'Oise Hospital and at the Sud Francilien prison (CPSF);

Secondly, the arrival of new inspectors as mentioned above (in the first paragraph of this section) has resulted in a temporary obligation to further expand inspection teams; indeed, the new inspectors work, during their first inspections, in tandem with more experienced colleagues, in particular for interviews;

Thirdly, many inspectors were victims of prolonged illnesses in 2013; they were greatly missed as inspection teams were composed from reduced staff numbers. For example, if two

persons are absent, the number of teams carrying out inspections has to be reduced from 5 to 4, due to a lack of sufficient staff for the fifth.

Over the past five years now however (2008 not being counted), the average number annual inspections carried out was 150.6. It can therefore be estimated that in spite of uncertainty and regular extensions of inspection durations, which were not initially planned, the original objective has been met.

7.1.2 Average Duration of Inspections (days)

	2009	2010	2011	2012	2013
Young offenders' institution	2	3	4	4	3.25
Court jails and cells	1	2	2	1.5	2
Penal institutions	4	4	5	5	5
Police custody facilities	1	2	2	2	2
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers ⁴⁰¹	2	2	2	3	5 ⁴⁰²
Detention by customs	1	2	1	1,5	2
Health institutions	2	3	3	4	4
Overall average	2	3	3	3	3

The duration of inspections in days is, overall, stable at a relatively high level. Indications in terms of detention are misleading (cf. note). These averages hide large disparities, not in relation to "small" institutions whose dimensions do not vary proportionately such that the duration of inspections need to be substantially changed (young offenders' institutions receiving, in principal, the same number of children as there are court decisions and runaways), but for large scale institutions: a specialist hospital with nine psychiatric sectors clearly requires a much greater commitment than a hospital with two sectors.

Inspections therefore vary between a half day (an empty court jail) and two weeks (and consequently from 1 to 28). The number of staff in teams clearly varies as well, albeit to a lesser extent (from 1 to 12): a minimum of two controllers; between 22 and 25 at most.

The extension of inspection durations naturally depends on the capacity of the *Contrôle Général* to undertake them. As an example, the increase in the average duration from 4 to 5 days for 29 prisons (the number of those inspected in 2013) results in 29 days of additional inspections in these institutions, which is the equivalent of inspections for nearly 6 fewer institutions over a full year. This choice was clearly explained from the

⁴⁰¹ And waiting areas

⁴⁰² Only the Roissy waiting area was inspected in 2013, for a duration of five days.

outset: the length and therefore the quality of inspections have deliberately been preferred over numerous but less substantial inspections.

7.2 Nature of the Inspection (since 2008)

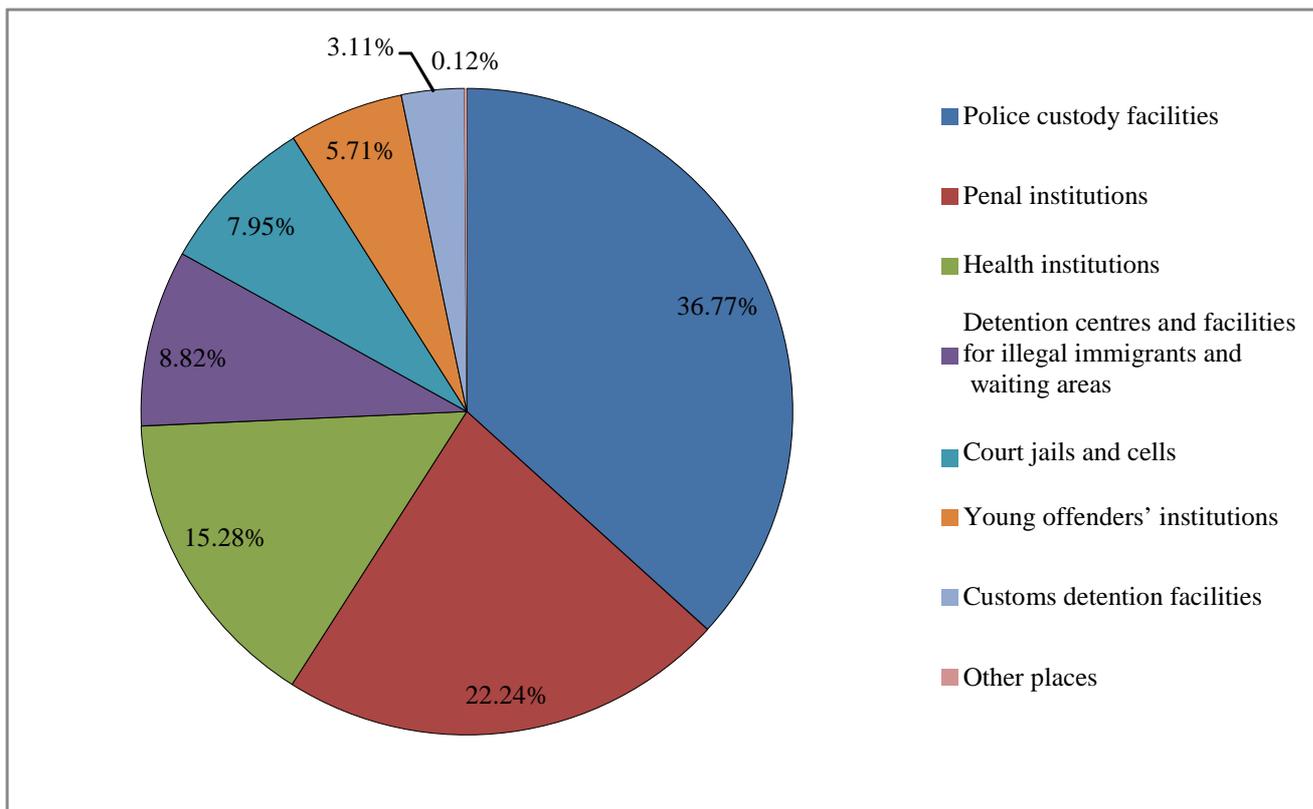
	Police custody, TGI cells, customs	Young offenders' institutions	Health institutions	Penal institutions	Detention centres and facilities for illegal immigrants, waiting zones	TOTAL
Unexpected	385	41	66	87	65	644
Scheduled	1	5	58	91	6	161

Data in this respect varies little: 75% of inspections are not programmed. As the schedule demonstrates however, this percentage varies according to the category of institution. Explanations for this have been given in preceding annual reports.

7.3 Categories of Institutions Inspected

In total, 805 inspections have been carried out since 2008. Analysed as follows:

36.77% concerned police custody facilities;
 22.24% concerned penitentiary institutions;
 15.28% concerned health institutions;
 8.82% concerned detention centres and facilities for illegal immigrants and waiting zones;
 7.95% concerned court holding centres and jails;
 5.71% concerned young offenders' institutions;
 3.11% concerned customs detention facilities;
 0.12% concerned other places of detention.



The remarks made in previous reports will be briefly recalled here. The number of inspections compared with the number of institutions (cf. § 3.1 above) is one thing. The relative weighting of institution categories as a whole for inspections is another. The greatest number of visits concerned police custody facilities (over one third); followed penal institutions. These two types of institution represent, on their own, nearly 60% of inspections.

This is not surprising. It is in these places of police and gendarmerie custody and prisons where there are the greatest security requirements and, consequently, constraints; the risk of breach of fundamental rights is therefore highest. The allocation observed here also results from deliberate choices.

7.4 Follow-up Inspections in 2013

These were conducted in the following institutions, already previously inspected (the year of the first inspection is indicated in brackets):

- Liévin young offenders' institution (2009);
- Secure rooms at the Saint-Malo Hospital (2009);
- Saint-Malo police station (2009);
- Grenoble police station (2009);
- Paris regional court of first instance (2010);
- Roissy waiting area (2009).

Follow-up inspections, the effectiveness of which can be shown by measuring the way in which the administration uses or not the recommendations made by the *Contrôle Général*, have reduced compared to 2012 (decrease from ten to six).

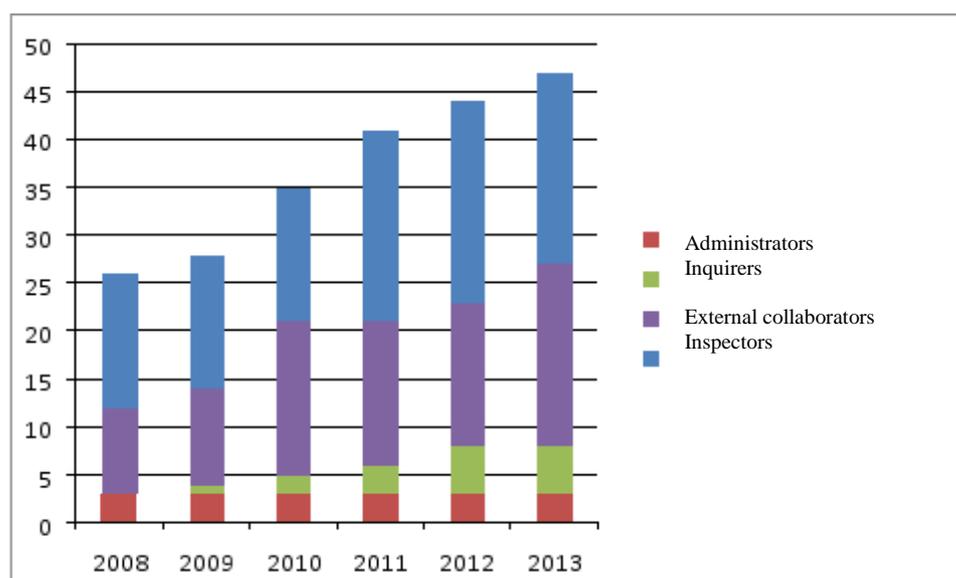
This decrease is less significant than it appears as, in two cases, the inspectors returned to the site to record possible changes several weeks or months after the initial inspection. This is the case in particular for the Marseille les Baumettes Prison (cf. section relating to follow-up measures taken in response to of recommendations).

Moreover, it is true that in 2013 the focus has been on young offenders' institutions and penal institutions which had not yet been visited.

8. The Resources Allocated to the *Contrôle Général* in 2013

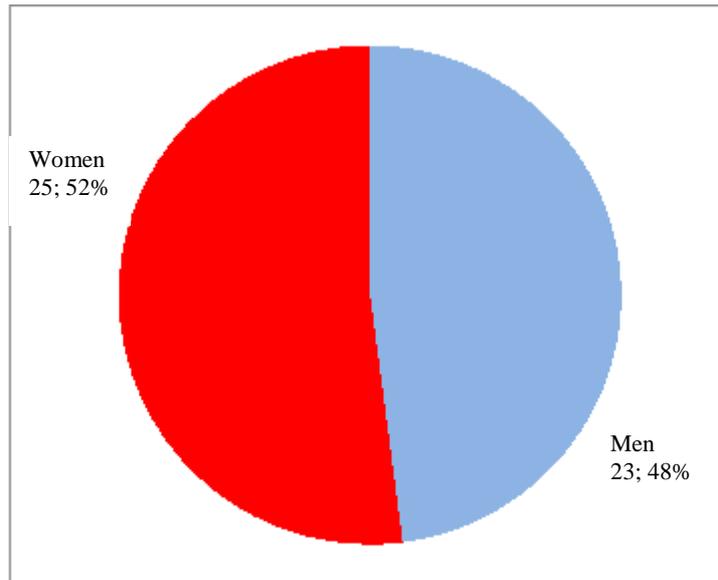
8.1 Staff

In order to carry out the work entrusted to it by the Act of 30th October 2007, the *Contrôle Général des lieux de privation de liberté* has seen its staff numbers increase from 2008-2013, as shown in the graph below:



This growth has enabled the increase in the duration of inspections to be met and has also strengthened the centre for referred cases. As has been shown (cf. § 6 above), the number of referrals has increased, as well as the complexity of situations dealt with. Additional staffing has proven necessary in order to bring deadlines for replying to prisoners to an acceptable threshold. This was not the case in 2013.

Recruitment in 2013 increased the number of women to 25 (i.e. 52% of staff) compared to 23 men. The average age of permanent staff was 49.4 compared to 50.2 in 2012.



8.1.1 Permanent Staff

In 2012 in addition to new staff, a number of staff movements occurred, compensating for departures.

A number of staff went returned to their original administration before retiring. This was particularly the case for one judge, one director of the prison rehabilitation and probation department and one assistant to the *Contrôle Général*. There were other reasons for the return to original administrations: parental leave for the secretary of foreign affairs in her position as an inspector, delegated to international relations, success in competitive exams for the director of services for the legal protection of young offenders by an inquirer from the prison officer corps and transfer to a regional authority for an administrative attaché acting both as an inspector and as communications manager.

Five recruitments have compensated for these departures: a prison director, two lawyers (including one for the centre for referred cases), a director of prison services for rehabilitation and probation, and an employee for access to rights.

In 2013, an administrative assistant position was created. The assistant recruited, who has worked in a prison service for rehabilitation and probation, was given the task of organising work and settling expenses. This reinforcement also enabled a continuous period of telephone staffing from 8:30 AM to 6:30 PM, which had not always been possible before.

8.1.2 External Inspectors

There were 19 external inspectors in 2013. Their number is increasing, with six new recruits in 2013: an ex-delegate of the International committee of the Red Cross, a retired judge, an ex-manager of a multimedia centre for a penal institution, a *Défenseur des Droits* officer, a nurse and a lawyer.

Temporary Staff

Vacancies have called for reinforcement from temporary staff (contracts from 1 to 3 months), including two replacements since 1st July for the departure of a single assistant to the *Contrôle Général*. A third was required to enable development of a recommendation follow-up tool.

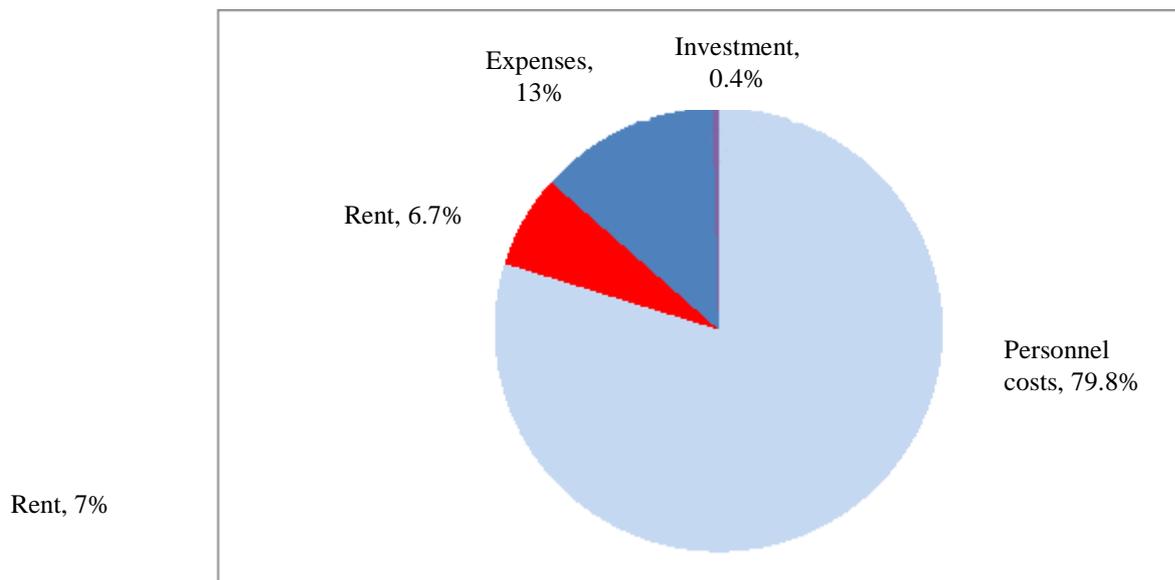
Trainees

In 2013, the *Contrôle Général* took on 11 trainees, i.e. one more than in 2012, for a total of 143 weeks. The average duration of training increased in 2013 13 weeks, compared with 10 weeks in 2012. This is what the *Contrôle Général* is looking for: the specific nature of tasks given to them and their sensitive nature requires training and behaviours which can only be learned over time. On the other hand, these trainees, for the most part highly qualified legal staff, provide essential help to the *Contrôle Général*, in particular in relation to referrals. Without them, response times would be considerably longer.

Training	Number of trainees			Training duration
	Short training (one week)	1 to 3 months training	Long training (> five months)	
EFB (Bar College)			3	76 weeks
ENM (Initial training)		1		5 weeks
ENM (Ongoing Training)	2			2 weeks
IRA		2		15 weeks
CFJA (Council of State)		1		6 weeks
Masters year 1		1		13 weeks
Masters year 2			1	26 weeks
TOTAL	2	5	4	143 weeks

8.2 Financial Means

In 2013, the *Contrôle Général* received an overall budget of €3,966,400 in commitment appropriations (AE / *autorisations d'engagement*) and €4,206,996 in payment appropriations (CP / *crédits de paiement*) as compared with €4,149,226 in commitment appropriations and €4,388,823 in payment appropriations in 2012, i.e. a reduction of 4%. It also had its allocations frozen, which applied to €72,570 for commitment appropriations and €87,811 for payment appropriations. To this is to be added a freeze on its FIPHFP funds (Fund for the Integration of Handicapped People into the Civil Service / *fonds pour l'insertion des personnes handicapées dans la fonction publique*) of €10,975 (both in commitment appropriations and payment appropriations). The following graph shows the allocation of payment appropriations in 2013 by main categories of expenditure.



8.2.1 Payroll

Principal Developments

The appropriations allocated to staff salaries have increased since 2008 due to the various positions created: reinforcement for the centre for referred cases, creation of a fifth inspection team, creation of an administrative assistant position.

In 2013, appropriations allocated in the initial Budget Act amounted to €3,282,057 compared with €3,630,293 in 2012, in spite of the creation of the assistant position. This has therefore been self-financed by the *Contrôle Général*.

The staff budget has been reduced by €348,236, a measure justified by the Government by lower use of appropriations allocated over a number of years. In 2012, this availability was notably explained by a vacancy, over a number of months, of a position with a view to the creation of a police superintendent, and lower use of allocated appropriations for compensation to external collaborators.

Although the grounds for this use have already been presented in previous reports, it is useful to revisit some of them in order to ensure complete transparency in the use of appropriations and to judge the Institution's performance.

Firstly, it should be noted that the use of appropriations under item II has constantly increased since 2008: 76% in 2009, 82% in 2012 and 89% in 2013⁴⁰³. The payroll for permanent staff amounted to €2,750,747, and €145,904 for external inspectors.

As regards, more particularly, permanent staff, the problem of recruiting inspectors in the absence of recruiting grounds comparable to those found in central administration, for example, should be underlined. Selection is therefore difficult and recruitment procedures (obligatory⁴⁰⁴)

⁴⁰³ Figures at 30th November 2013

⁴⁰⁴ Announcing and publishing vacancies...

are lengthy. Numerous applications are indeed received⁴⁰⁵. Moreover, the qualities required for inspections are, owing to the *Contrôle Général*, draconian. Finally, once the choice has been made, actual arrival times, owing to procedures (secondment, notice etc.) may be long: the delay in actual arrival of a member of the prisons administration has never been less than three months. The result is that the choice and subsequent appointment may take months when the profile sought is that of a specific professional. Thus the position that became vacant in 2012 was not filled by a police superintendent until December 2012: it was not fully effective until 2013.

As regards external inspectors in particular, they provide regular support or, more occasionally as far as some are concerned, for the teams. They numbered 19 at 31st December 2013. During the year they carried out 555 days of work, i.e. an average of 30 days for eight inspections. Although 2013 expenditure had initially been estimated at €267,541, the unspent budget at the end of the year is principally explained by the absence of overseas inspections in that year and by the variable "duration of inspections", which were difficult to quantify at the start of the year. Inspections of police custody premises thus results in less remuneration than an inspection of 4 to 5 days of a penal institution. Moreover, the six external inspectors were recruited in the months of July, September and November.

Nonetheless, the right to recruit, enabling the availability of allocations, remains essential to the way in which work is carried out.

8.2.2 *Non-Item II Appropriations*

Administrative appropriations, which totalled €423,286 in 2008 (commitment appropriations = payment appropriations), amounted to €682,633 in commitment appropriations and €920,854 in payment appropriations in 2013, that is to say an increase of 38% in commitment appropriations and 54% in payment appropriations. This increase in means is linked to the Institution's development. The appropriations voted in the initial Budget Act for 2013 increased by €176,658 compared to 2012.

The context of public finance management leads the *Contrôle Général* for prisons to strictly manage and optimise its appropriations.

Since 2008, pooling has been carried out with the Prime Minister's office in the framework of a delegated management agreement and through participation in a shared service centre. As such, many contracts have naturally been pooled (short term car hire, office supplies, paper and computer consumables).

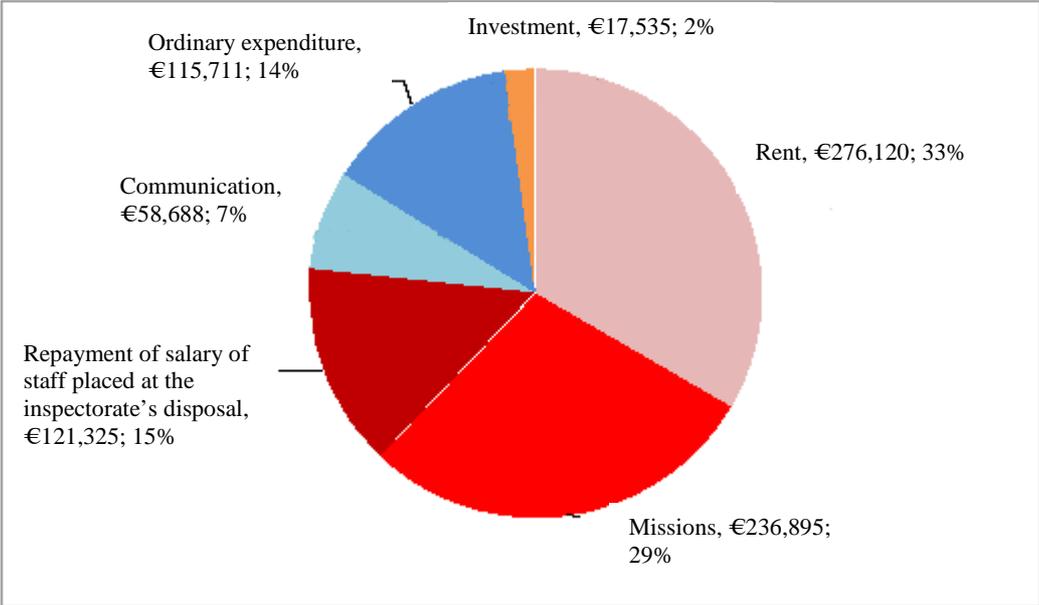
Amongst the expenditure items⁴⁰⁶, in addition to the cost of rent (€276,120.10 including charges), the cost of inspections represents €201,903.47. This expenditure item has been a major concern. Since 1st September 2013, the *Contrôle Général* has benefited from the services of the "SNCF Business Portal". This decision was taken to retain the flexibility required for the organisation of inspections and to optimise allocated resources. The cost was inferior to that incurred when using a travel agency. Moreover, the *Contrôle Général* is involved in implementing the CHORUS DT application as a pilot site. A new order from the Prime Minister's office should establish the reimbursement terms for expenses incurred on inspections. The *Contrôle Général* has maintained its own reimbursement policy since its creation. Payment for meals and accommodation conforms with current legislation (€60 for accommodation and €15.25 per meal in mainland France) and is identical for all members of the *Contrôle Général*.

⁴⁰⁵ Applications are subject to an initial selection process based on portfolios, a second based on interviews with two institution managers and a third based on a conversation with the *Contrôleur Général* In the context of a high work load.

⁴⁰⁶ Figures at 30th November 2013

Particular effort was made in 2013 to increase the visibility of the *Contrôle Général* at an international level by increasing bilateral and multilateral contacts. The annual report has been translated in full into English⁴⁰⁷. All the opinions and recommendations published since 2008 have been translated and will be provided in Spanish next year⁴⁰⁸. This expenditure represented a cost of €27,047, and is included in communication expenditure.

At the end of 2012 the decision was made to replace the department vehicle. The choice was to opt for a lower range vehicle. Thus the Citroën C5, on long-term rental, was replaced by a Renault SCENIC acquired from the Union of Public Purchasing Groups (UGAP / *Union des groupements d'achats publics*) at a cost of €17,535 paid against the 2013 appropriations.



The level of use of the 2013 budget will probably be approximately 95%. There are a number of reasons to explain this rate. On the one hand, in 2013, as mentioned above, no overseas inspections were programmed⁴⁰⁹. The average cost of an inspection in the Pacific Ocean is around €25,000, and €9,000 in the Indian Ocean. This therefore amounts to savings of €35,000 in 2013. On the other hand, a safety reserve was created in programme 308. The CGLPL did not participate in this and preferred to “self insure” itself, which partly explains the availability at the end of the year.

⁴⁰⁷ A practice used by most European “National Preventive Mechanisms” counterparts (Federal Republic of Germany, Spain, Poland etc.)

⁴⁰⁸ With the costs shared between the *Contrôle Général* and the Association for the Prevention of Torture

⁴⁰⁹ The inspectors' workload, in particular in terms of drawing up reports, did permit this.

Section 12

Places of Deprivation of liberty in France: statistics⁴¹⁰

The main statistical sources which include data on measures of deprivation of liberty and the persons concerned were set out in an initial contribution in the 2009 Annual Report of the *Contrôleur général des lieux de privation de liberté*. Readers are invited to refer to the latter as well as to the previous reports for 2010, 2011 and 2012 to supplement the contribution made here with regard to definitions and methods of data collection.

For this edition, the same basic data have once again been updated according to the dates of dissemination specific to the various sources. They are presented in the form of graphs and tables.

⁴¹⁰ Data kindly passed on by Bruno Aubusson de Cavarlay in his capacity as a researcher at the French National Centre of Scientific Research (CNRS / Centre National de la Recherche Scientifique) and not as chairman of the Monitoring Commission for Pre-trial Detention (commission de suivi de la détention provisoire).

1. Deprivation of Liberty in Criminal Affairs

1.1. Numbers of persons implicated in offences, police custody measures and persons imprisoned

Source: *Etat 4001*, Ministry of the Interior, serialisation by B. Aubusson.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences), Metropolitan France.

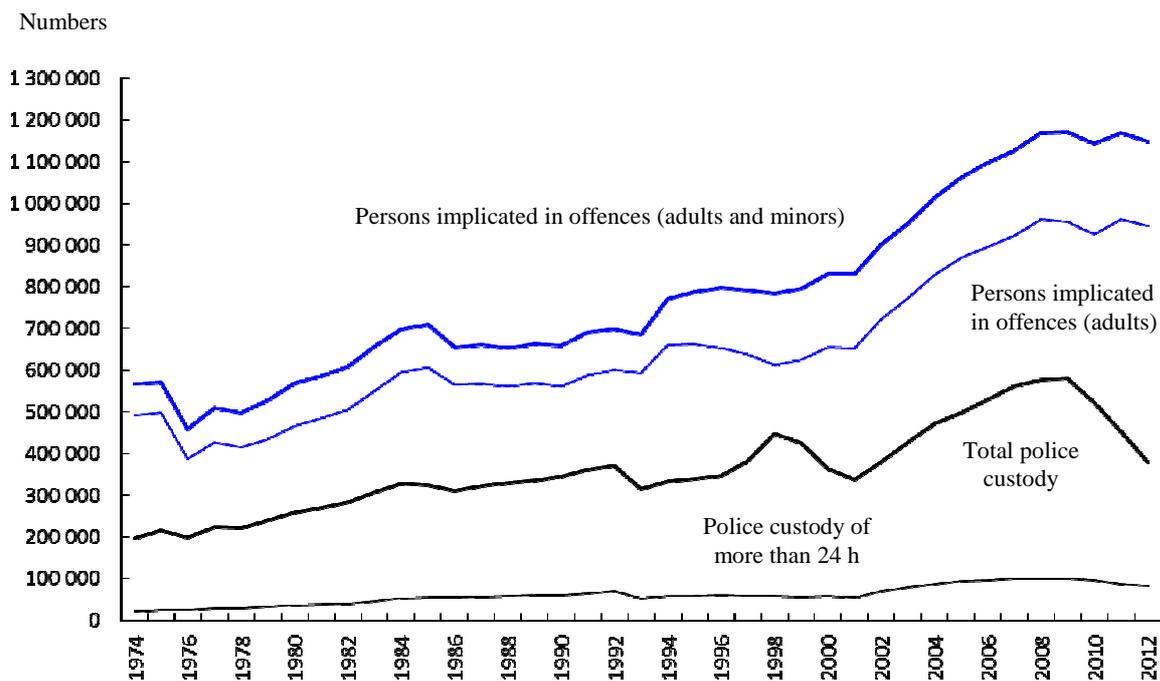
Five-yearly averages from 1975 to 1999, followed by annual results.

PERIOD	PERSONS IMPLICATED IN OFFENCES	POLICE CUSTODY MEASURES	of which less than or equal to 24 hours	of which more than 24 hours	PERSONS IMPRISONED
1975-1979	593,005	221,598	193,875	27,724	79,554
1980-1984	806,064	294,115	251,119	42,997	95,885
1985-1989	809,795	327,190	270,196	56,994	92,053
1990-1994	740,619	346,266	284,901	61,365	80,149
1995-1999	796,675	388,895	329,986	58,910	64,219
2000	834,549	364,535	306,604	57,931	53,806
2001	835,839	336,718	280,883	55,835	50,546
2002	906,969	381,342	312,341	69,001	60,998
2003	956,423	426,671	347,749	78,922	63,672
2004	1,017,940	472,064	386,080	85,984	66,898
2005	1,066,902	498,555	404,701	93,854	67,433
2006	1,100,398	530,994	435,336	95,658	63,794
2007	1,128,871	562,083	461,417	100,666	62,153
2008	1,172,393	577,816	477,223	100,593	62,403
2009	1,174,837	580,108	479,728	100,380	59,933
2010	1,146,315	523,069	427,756	95,313	60,752
2011	1,172,547	453,817	366,833	86,984	61,274
2012	1,152,159	380,374	298,228	82,146	63,090

1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned

Source: *Etat 4001*, Ministry of the Interior, ONDRP, the National Delinquency and Criminal Response Observatory, after 2009, serialisation by B. Aubusson.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences). Bad cheques are also excluded for reasons of homogeneity. Metropolitan France.



1.3 Numbers of Police Custody Measures and Rate of Use thereof according to Type of Offence

Source: *Etat 4001*, Ministry of the Interior.

Field: Serious crimes and offences reported to the state prosecutor's office by the police and gendarmerie (apart from traffic offences), Metropolitan France.

Type of offence	1994			2008			2012		
	Persons implicated in offences	Police custody measures	%	Persons implicated in offences	Police custody measures	%	Persons implicated in offences	Police custody measures	%
Homicide	2,075	2,401	115.7%	1,819	2,134	117.3%	1,830	2,120	115.8%
Procurement	901	976	108.3%	759	768	101.2%	880	753	85.6%
Robbery with assault	18,618	14,044	75.4%	20,058	18,290	91.2%	20,206	16,945	83.9%
Burglary	55,272	34,611	62.6%	36,692	27,485	74.9%	41,532	27,206	65.5%
Theft from parked cars	35,033	22,879	65.3%	20,714	16,188	78.2%	18,272	11,613	63.6%
Drug trafficking	13,314	11,543	86.7%	23,160	15,570	67.2%	18,074	11,480	63.5%
Sexual assault	10,943	8,132	74.3%	14,969	12,242	81.8%	17,055	10,568	62.0%
Car theft	40,076	24,721	61.7%	20,764	15,654	75.4%	16,596	9,263	55.8%
Insults and assaults on officers	21,535	10,670	49.5%	42,348	29,574	69.8%	41,409	22,938	55.4%
Arson, explosives	2,906	1,699	58.5%	7,881	6,249	79.3%	6,745	3,682	54.6%
Other offences against morality	5,186	2,637	50.8%	12,095	8,660	71.6%	10,369	5,519	53.2%
Foreign nationals	48,514	37,389	77.1%	119,761	82,084	68.5%	77,455	35,430	45.7%
Other thefts	89,278	40,032	44.8%	113,808	61,689	54.2%	112,847	44,175	39.1%
Forged documents	9,368	4,249	45.4%	8,260	4,777	57.8%	10,315	3,896	37.8%
Bodily harm	50,209	14,766	29.4%	150,264	73,141	48.7%	148,094	52,278	35.3%
Shoplifting	55,654	11,082	19.9%	58,674	20,661	35.2%	62,242	15,334	24.6%
Use of drugs	55,505	32,824	59.1%	149,753	68,711	45.9%	170,480	40,707	23.9%
Destruction, criminal damage	45,591	12,453	27.3%	74,115	29,319	39.6%	59,245	13,651	23.0%

Weapons	12,117	5,928	48.9%	23,455	10,103	43.1%	25,692	5,910	23.0%
Personal injury	28,094	5,920	21.1%	65,066	20,511	31.5%	66,137	14,760	22.3%
Fraud, breach of trust	54,866	17,115	31.2%	63,123	21,916	34.7%	63,327	11,797	18.6%
Other general police matters	15,524	3,028	19.5%	6,190	926	15.0%	7,805	1,152	14.8%
Fraud, economic crime	40,353	6,636	16.4%	33,334	9,700	29.1%	37,541	5,500	14.7%
Family, children	27,893	1,707	6.1%	43,121	4,176	9.7%	53,622	3,227	6.0%
Unpaid cheques	4,803	431	9.0%	3,135	457	14.6%	3,382	145	4.3%
Total	775,701	334,785	43.2%	1,172,393	577,816	49.3%	1,152,159	380,374	33.0%

1.4 Annual Intake of Penal Institutions according to Criminal Category

Source: “Quarterly Statistics of the Population dealt with in Penal Institutions” (*Statistique trimestrielle de la population prise en charge en milieu fermé*), French Ministry of Justice, Prisons Administration Department, PMJ5

Field: Penal institutions in Metropolitan France, all persons imprisoned.

Period	Unconvicted prisoners: immediate hearing	Unconvicted prisoners: preparation of case for trial	Convicted prisoners	Imprisonment for debt (*)	Overall
1970-1974	12,551	44,826	14,181	2,778	74,335
1975-1979	11,963	49,360	16,755	2,601	80,679
1980-1984	10,406	58,441	14,747	1,994	85,587
1985-1989	10,067	55,547	17,828	753	84,195
1990-1994	19,153	45,868	18,859	319	84,199
1995-1999	19,783	37,102	20,018	83	76,986
2000	19,419	28,583	17,192	57	65,251
2001	20,195	23,688	20,006	33	63,922
2002	25,707	29,855	22,355	42	77,959
2003	27,111	29,100	21,602	19	77,832
2004	27,247	28,471	25,109	10	80,837
2005	29,466	28,387	23,772	4	81,629
2006	27,535	25,812	28,605	14	81,966
2007	25,427	27,243	33,565	16	86,251
2008	22,778	26,709	36,144	30	85,661
2009	20,587	24,828	35,697	19	81,131
2010	19,993	25,039	34,676	84	79,792
2011	20,225	24,827	40,586	117	85,755
2012	20,163	24,218	44,747	47	89,175

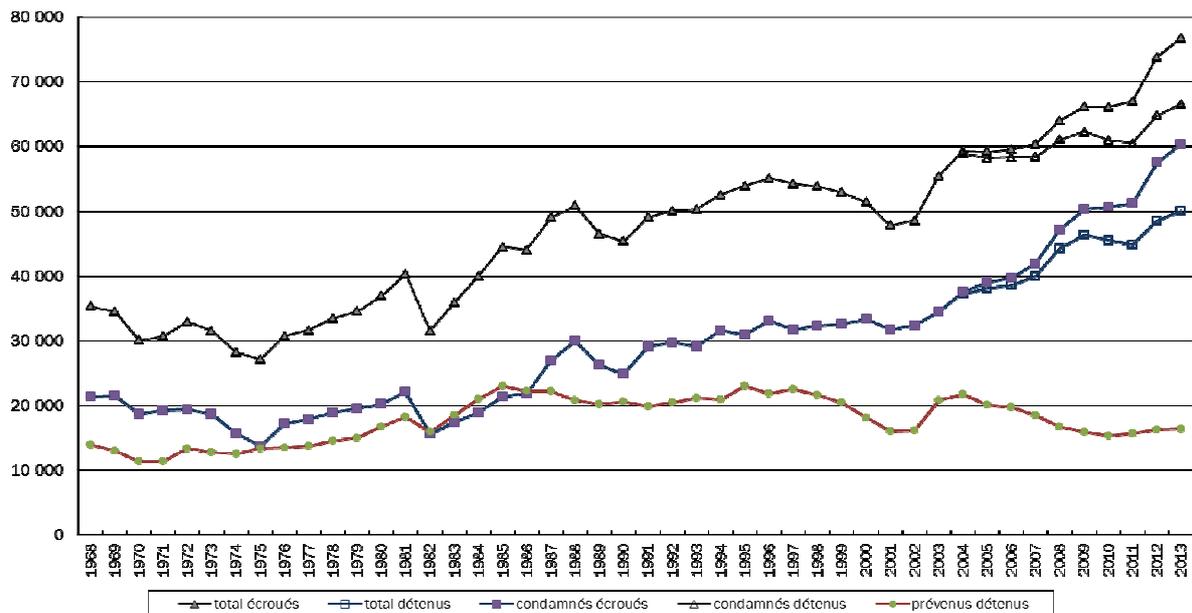
(*) Imprisonment of solvent persons for non-payment of certain fines (*contrainte judiciaire*) as from 2005

Note: according to the Prisons Administration Department (PMJ5), in relation to the whole of France, placements in detention, (committal excluding initial, or within 7 days, reduced sentencing) represented 80% of committals in 2012. Reduced sentencing (external placement or electronic tagging) accounts for over 40% of committals of those sentenced.

1.5 Population of Persons Serving Sentences or on Remand and Prisoners at 1st January of each year

Source: Monthly Statistics of the Population of Persons Serving Sentences or on Remand and Prisoners in France, French Ministry of Justice, *Annuaire statistique de la Justice* and the Prisons Administration Department, PMJ5.

Field: All penal institutions, the whole of France (progressive inclusion of French overseas territories as from 1990, completed in 2003).



écroués = Total persons on remand and persons serving sentences

écroués détenus = Prisoners on remand and prisoners serving sentences

condamnés écroués = Convicted persons serving sentences

condamnés détenus = Convicted prisoners

prévenus détenus = Prisoners on remand

Note: from 2004, the difference between the two lines on the graph for those sentenced represents the total of those committed with reduced sentencing without accommodation (external placement, electronic tagging); this difference is to be found for all committals. Committals are for all detainees.

1.6 Distribution of Convicted Persons according to the Duration of the Sentence being served (including reduced sentencing without accommodation)

Source: “Quarterly Statistics of the Population dealt with in Penal Institutions” (*Statistique trimestrielle de la population prise en charge en milieu fermé*), French Ministry of Justice, Prisons Administration Department, PMJ5

Field: all persons imprisoned; 1970-1980, penal institutions in Metropolitan France, the whole of France from 1980 (progressive inclusion of French overseas territories as from 1990, completed in 2003).

Year	Duration of the sentence enforced: number of prisoners					Percentage distribution			
	Less than 1 year	1 to less than 3 years	3 to less than 5 years	5 years and over	All convicted prisoners	Less than 1 year	1 to less than 3 years	3 to less than 5 years	5 years and over
1970	6,239	5,459	1,660	4,616	17,974	34.7%	30.4%	9.2%	25.7%
1980	7,210	5,169	1,713	5,324	19,416	37.1%	26.6%	8.8%	27.4%
1980	7,427	5,316	1,791	5,662	20,196	36.8%	26.3%	8.9%	28.0%
1990	6,992	5,913	3,084	8,642	24,631	28.4%	24.0%	12.5%	35.1%
2000	8,365	6,766	4,139	13,856	33,126	25.3%	20.4%	12.5%	41.8%
2010	17,445	14,174	5,628	13,442	50,689	34.4%	28.0%	11.1%	26.5%
2011	17,535	14,780	5,709	13,248	51,272	34.2%	28.8%	11.1%	25.8%
2012	20,641	17,226	6,202	13,428	57,497	35.9%	30.0%	10.8%	23.4%
2013	21,961	18,169	6,647	13,563	60,340	36.4%	30.1%	11.0%	22.5%

Note: This distribution of those sentenced according to the sentence completed includes those sentenced whose sentence has been reduced without accommodation.

2. Compulsory Committal to Psychiatric Hospitalisation

2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2007 to 2011

Source: DREES, SAE (“Annual Statistics on Health Institutions”), table Q9.2.

Field: All institutions, Metropolitan France and French overseas departments.

Mode of hospitalisation	Year	Number of patients	Number of admissions	Number of days
Hospitalisation at the request of a third party (HDT) Since the Act of 5 th July 2011 this has now become committal for psychiatric treatment at the request of a third party (ASPDT)	2006 ⁴¹¹	43,957	52,744	1,638,929
	2007	53,788	58,849	2,167,195
	2008	55,230	60,881	2,298,410
	2009	62,155	63,158	2,490,930
	2010	63,752	68,695	2,684,736
	2011	63,345	65,621	2,520,930
Hospitalisation by court order (HO) (art. L.3213-1 and L.3213-2) Since the Act of 5 th July 2011 this has now become committal for psychiatric treatment at the request of a representative of the State (ASPDRE)	2006	10,578	12,010	756,120
	2007	13,783	14,331	910,127
	2008	13,430	14,512	1,000,859
	2009	15,570	14,576	1,083,025
	2010	15,451	15,714	1,177,286
	2011	14,967	14,577	1,062,486

The table continues on the following page .../...

⁴¹¹ Tables were introduced into the SAE (Statistique annuelle des établissements de santé) in 2006; the results are given for information only.

Mode of hospitalisation	Year	Number of patients	Number of admissions	Number of days
Hospitalisation by court order / ASPDRE according to art. 122.1 of the CPP and article L.3213-7 of the CSP	2006	221	146	56,477
	2007	353	303	59,844
	2008	453	458	75,409
	2009	589	477	104,400
	2010	707	685	125,114
	2011	764	783	124,181
Hospitalisation by judicial court order According to article 706-135 of the CPP	2006			
	2007			
	2008	103	104	6,705
	2009	38	23	18,256
	2010	68	39	9,572
	2011	194	251	21,950
Provisional Committal Order	2006	518	1,295	22,929
	2007	654	1,083	31,629
	2008	396	411	13,214
	2009	371	378	14,837
	2010	370	774	13,342
	2011	289	317	14,772
Hospitalisation according to art. D.398 of the CPP (prisoners)	2006	830	1,047	19,145
	2007	1,035	1,189	26,689
	2008	1,489	1,717	39,483
	2009	1,883	2,254	48,439
	2010	2,028	2,493	47,492
	2011	2,070	2,411	46,709

2.2 Compulsory Committal to Hospitalisation without Consent

Source: *Agence technique de l'information sur l'hospitalisation* (French Agency for Information on Hospitalisation), PMSI (medical information system programme) statistics.

Field: Metropolitan France and French overseas departments, public and private institutions.

In 2011:

Compulsory Hospitalisation without Consent	Number of stays	Number of days (thousands)	Number of patients	Average Age	% men	% stays brought to an end
Hospitalisation at the request of a third party ASPDT	74,585	2,553.9	60,709	42.7	54.5	61.6
Hospitalisation by court order ASPDRE	19,192	1,180.1	15,975	39.4	82.4	56.4
Hospitalisation of persons judged not to be criminally responsible	619	69.1	436	37.0	93.8	51.0
Provisional Committal Order	298	10.7	244	21.4	65.3	71.0
Hospitalisation of prisoners	1,747	34.3	1,390	32.4	94.0	89.2
Total	95,333	3,848.1	76,670	41.8	60.9	61.1

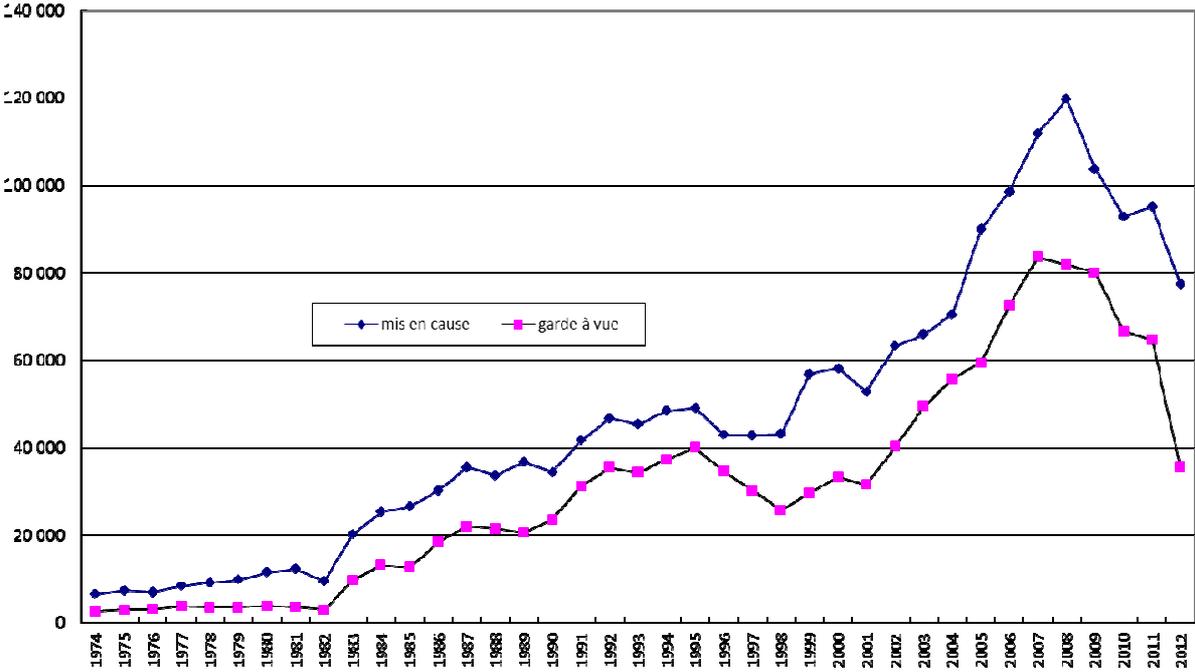
In 2012:

Legal method of care in full hospitalisation	Number of stays	Number of days (thousands)	Number of patients	Average Age	% men
Psychiatric health care by decision of a State representative	19,272	1,020.7	13,361	40.2	83.1
Emergency Psychiatric healthcare	9,810	213.8	8,436	43.7	54.1
Committal for psychiatric treatment at the request of a third party	69,664	2,039.4	52,528	42.9	55.0
Psychiatric healthcare for persons deemed not to be criminally responsible	1,230	102.4	655	39.1	91.0
Psychiatric healthcare in the context of a temporary placement order	360	11.2	277	22.3	58.6
Psychiatric healthcare for prisoners	2,401	51.5	1,905	33.0	90.7
Total psychiatric healthcare without consent	101,457	3,439.1	74,034	42.1	61.3
Free psychiatric healthcare	578,045	15,198.4	356,579	44.9	50.0

3. Detention of Illegal Immigrants, Foreigners Refused Entry to the Country and Asylum Seekers

3.1 Number of persons involved in offences by the immigration department and number of police custody measures

Source: *Etat 4001*, Ministry of the Interior.



Mis en cause: Implicated

Garde à vue: Police custody measures

3.2 Implementation of Measures of Removal of Foreigners from the Country (2002-2010)

Source: Annual Reports of the French Interministerial Committee for the Management of Immigration (CICI), Central department of the French border police (DCPAF).

Year	Measures	Banning from French territory (ITF)	Removal by prefectural order (APRF)	Obligation to leave the French territory (OQTF)	APRF + OQTF	Deportation order	Readmission	Forced removals (subtotal)	Voluntary return	Total removals
2002	pronounced	6,198	42,485	-	42,485	441		49,124		49,124
	enforced	2,071	7,611	-	7,611	385		10,067		10,067
	% enforcement	33.4%	17.9%	-	17.9%	87.3%		20.5%		
2003	pronounced	6,536	49,017	-	49,017	385		55,938		55,938
	enforced	2,098	9,352	-	9,352	242		11,692		11,692
	% enforcement	32.1%	19.1%	-	19.1%	62.9%		20.9%		
2004	Pronounced	5,089	64,221	-	64,221	292		69,602		69,602
	enforced	2,360	13,069	-	13,069	231		15,660		15,660
	% enforcement	46.4%	20.4%	-	20.4%	79.1%		22.5%		
2005	pronounced	5,278	61,595	-	61,595	285	6,547	73,705		73,705
	enforced	2,250	14,897	-	14,897	252	2,442	19,841		19,841
	% enforcement	42.6%	24.2%	-	24.2%	88.4%		26.9%		
2006	pronounced	4,697	64,609	-	64,609	292	11,348	80,946		80,946
	enforced	1,892	16,616	-	16,616	223	3,681	22,412		23,831
	% enforcement	40.3%	25.7%	-	25.7%	76.4%		27.7%	1,419	
2007	pronounced	3,580	50,771	46,263	97,034	258	11,138	112,010		112,010
	enforced	1,544	11,891	1,816	13,707	206	4,428	19,885	3,311	23,196

	<i>% enforcement</i>	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	10,072	101,539
	enforced	1,386	9,844	3,050	12,894	168	5,276	19,724		29,796
	<i>% enforcement</i>	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	8,268	94,693
	enforced	1,330	10,422	4,914	15,336	198	4,156	21,020		29,288
	<i>% enforcement</i>	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	8,404	84,346
	enforced	1,201	9,370	5,383	14,753	164	3,504	19,622		28,026
	<i>% enforcement</i>	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	9,985	94,104
	enforced	1,033	5,980	10,016	15,996	170	5,728	22,927		32,912
	<i>% enforcement</i>	68.9%	24.5%	16.7%	18.9%	87.2%		24.4%		

3.3 Detention Centres for Illegal Immigrants (Metropolitan France). Theoretical capacity, number of committals, average duration of detention, outcome of detention

Source: Annual Reports of the CICI except for the data on removed detainees, which is drawn from the report of the finance committee (*commission des finances*) of the French Senate (3rd July 2009).

Field: Metropolitan France

Year	Theoretical capacity	Number of committals	Average occupancy rate	Average length of detention (in days)	Detainees removed apart from voluntary returns (*)	% removals/ committals
2002		25,131				
2003		28,155	64%	5.6		
2004	944	30,043	73%	8.5		
2005	1,016	29,257	83%	10.2		
2006	1,380	32,817	74%	9.9	16,909	52%
2007	1,691	35,246	76%	10.5	15,170	43%
2008	1,515	34,592	68%	10.3	14,411	42%
2009	1,574	27,699	60%	10.2		40% (**)
2010	1,566	27,401	55%	10.0		
2011	1,726	24,544	46.7%	8.7		

(*) CICI 2010 Report. The Report for 2011 gives a rate of 42% for CRAs possessing inter-service removal units and 37% for the rest.

Annexe 1

Summary Table of the Principal Recommendations of the CGLPL for the year 2013⁴¹²

(see table on following pages)

⁴¹² *These recommendations resulting from the topical sections of this report are in no way exclusive of those set out by the CGLPL in its assessments and recommendations published in the Journal officiel in the course of the year 2012, whose content is recalled in the 1st section of this report and which are accessible on the institution's website www.cglpl.fr.*

Place concerned	Theme	Recommendation	Section
Penal institutions	Conditions under which prisoners are held	The <i>Contrôleur Général</i> recommends that there should be a more active presence by surveillance and supervision staff in places of detention and within the prison population.	4
		The <i>Contrôleur Général</i> recommends that the law concerning individual cell occupation be applied.	4
		The <i>Contrôleur Général</i> recommends that in-depth questioning on the reasons for suicide in detention be carried out by the prisons administration.	4
		When prisoners are removed for hospital treatment, the <i>Contrôleur Général</i> recommends that means of constraint which are strictly proportional to the risk presented by the person and allowing respect for their dignity be used, and for there to be equal access to health care.	4
		The <i>Contrôleur Général</i> recommends that the code of ethics be posted in places of detention and that the polite "vous" form in French always be used by warders when addressing prisoners, as provided for in the code of ethics.	4
		The <i>Contrôleur Général</i> recommends that the prisons administration ensure that each prisoner has access to the rules and regulations of the penal institution in which they are held. For foreign prisoners, a translation should be available.	4
		To supplement the information contained in the rules and regulations, prisoners should also be provided with a collection of prison regulations that might contain circulars which must be communicated to prisoners.	4
		As internal video channels are increasing in institutions, this method of broadcasting should be used to communicate information to prisoners which is relevant to their detention.	4

		The <i>Contrôleur Général</i> continues to recommend that prisoners may have use of the Internet, under supervision and clearly without threatening the checks necessary to conserve public order and security in detention. This is an old recommendation made by the <i>Contrôleur Général</i> .	4
		The <i>Contrôleur Général</i> recommends a better distribution of information to prisoners with regard to the valuable assistance that can be found at legal information and advice points.	4
	Family ties	Informing families of the conditions of detention and daily life in prison as recommended by the <i>Contrôleur Général</i> could contribute to reducing legitimate fears and anxiety. This could be in written form or at meetings.	4
	Voting rights	Procedures should be implemented to ensure that persons placed in penal institutions have the possibility to effectively exercise their right to vote as easily as free persons. In this respect, facilitating access to voting forms whilst providing ad hoc rules for prisoners could be a route to explore.	4
	Residence	The <i>Contrôle Général</i> recommends that the prisons act offer the possibility of granting prisoners residence within a communal centre or inter-communal social action centre close to where they are looking for employment in the context of preparing for release from prison.	4
	Consultation of prisoners	Consultation practices with prisoners should be generalised and extended to subjects such as rules and regulations; this should be carried out in association with the various participants, for instance surveillance staff, the rehabilitation and probation department, the medical service and private managers.	4
	Practising Religion	There needs to be additional legislation to supplement article 26 of the prisons act providing for the development of the necessary means for practising religions in a satisfactory manner.	4

Work	When the prisons act is next modified, the role of work in detention should be clearly set out in terms of preparation for rehabilitation. Moreover, the regulations prescribed in articles 32 and 33 of the said law should be applied by both parties – the "employer" and the "employee" - with penalties for any breach whatsoever.	4
Professional Training (financing)	The <i>Contrôle Général</i> recommends that conclusions be publicly drawn from the two experiments carried out, drawing attention to the questions of equal access to training which arise from the possible decentralisation of budgets professional training for prisoners.	4
Access to the Internet (teaching)	True advances in teaching in prisons would be enabled by controlled introduction of the Internet in penal institutions, in particular to develop access to higher education for prisoners serving long-term sentences.	4
Poverty in detention	The rules allocating financial aid to put an end to situations of extreme poverty for certain prisoners should be changed.	4
The geographic location of institutions	As the <i>Contrôleur Général</i> has already recalled in its 2012 annual report, the geographic location of penal institutions is often unsatisfactory with regard to their service (low or none at all) by public transport; this constitutes an obstacle to visits which is not negligible.	4
Family ties	An extension in the number of family life units (UVF / <i>unités de vie familiale</i>), should be encouraged as should the recent development of regulations relating to the terms of use of UVFs: possible access to persons on remand or to those having already had permission to leave prison for example. Conditions for receiving families within penal institutions should be improved. Visiting reservation machines are often out of order and telephone reception is not always of the highest quality. The <i>Contrôle Général</i> recommends that these difficulties be resolved.	4

	<p>The right to correspondence and handling of applications for remedy</p>	<p>In order to improve the fluidity and confidentiality of correspondence, including within penal institutions, the <i>Contrôleur Général</i> continues to recommend a number of measures and notably insists on the following:</p> <ul style="list-style-type: none"> - making separate letterboxes available in accessible areas: for internal letters (applications for remedy, SPIP), for external letters, for letters to health care providers; - acknowledging the importance of applications for remedy to prisoners by establishing a computerised handling of these applications. <p>The <i>Contrôleur Général</i> supports the request made on 4th July 2012 by the Senate that the prisons administration keep a statement of withheld correspondence.</p>	4
	<p>Mobile phones (access)</p>	<p>As the use and ownership of mobile phones is not prohibited outside of prison, applying ordinary law inside prison is a prospect that should not be ignored. The <i>Contrôleur</i> therefore regrets that the purchase of mobile phones at the prison shop and the use thereof (with a security device and control to allow calls solely to authorised numbers) has neither been envisaged nor trialled within prison institutions.</p>	4
	<p>Image rights and image protection</p>	<p>An amendment to article 41 of the prisons act is necessary in order for the right sought by the legislature to be applied and for prisoners to, if they so wish, give evidence openly. It should also be specified that it is mandatory for any person wishing to use the image of a prisoner to obtain their consent, including when this image has not been taken in prison provided that identification of the prisoner is possible.</p>	4

Protection of privacy (personal documents)	Subject to strictly necessary control, it is recommended on the one hand that the personal nature of documents be better respected by supplying prisoners with all of the means, in particular physical means, to protect their confidentiality; on the other hand to ensure that free access is truly guaranteed to consultation and reproduction of administrative documents and all of the applicable rules of daily prison life. Recommendations were made on this subject in 2013.	4
Family ties	In relation to mothers in prison and their children, the <i>Contrôleur Général</i> recommends that reduced sentencing be granted; suspension of sentence for maternity; access to conditional release.	4
Assessment Committee	Providing the assessment committee with the means to complete its inspection duties remains an objective. The prison population and the families of prisoners should more regularly know in advance when the next hearing is to be, in order for letters of complaint, in a sealed envelope, to be sent in large numbers to the prefect, chairman of the assessment committee. The members of the committee should have the right, before, during and after the inspection, to meet with prisoners confidentially. Finally, the composition of the assessment committee could be enriched by the addition of new members: the presence of representatives of internal professional organisations is one possible proposal, as is the presence of family representatives of prisoners.	4
Solitary confinement	The <i>Contrôle Général</i> questions the relevance of placing vulnerable persons in solitary confinement. Undoubtedly it would be preferable to organise the detention and accommodation of vulnerable people differently in specific wings with protected access. They could then enjoy a social life within this wing and come together for exercise and activities. To attenuate the negative psychological effects of solitary confinement and to maintain a minimum social life, prisoners placed in solitary confinement should, on the basis of their personality or level of dangerousness, have a regime enabling them to come together for	4

		activities and exercise.
	CGLPL	At the time of their inspections, the inspectors noted that the <i>Contrôleur général des lieux de privation de liberté</i> is not always shown on the lists of authorities for which the exchange of correspondence is not subject to checks. This omission in rules and regulations sometimes leads to a breach of the provisions of article 4 of the prisons act prohibiting any inspection of correspondence between prisoners and this independent authority. Likewise, the <i>Contrôleur général des lieux de privation de liberté</i> is not always mentioned on the list of bodies which are exempt from the systematic listening of prisoners' telephone communications. 4
	Access to health care	<p>At night, prisoners encounter serious difficulties in making their calls heard. This problem should be remedied by any appropriate means. 4</p> <p>Review of the agreements between penal institutions and hospitals should, in addition, enable an adjustment in health care staffing which is unequal in the different regions. This inequality is only partially explained by regional medical cover. 4</p> <p>The law should give priority to prisoners for access to health care at least for certain specialties, in particular those for which access is already difficult outside of prison for the underprivileged. As such, the fact that poor conditions of detention aggravate health problems and that social problems before imprisonment are responsible for late access to health 4</p>

		care should be taken into account.	
		The remedies for prisoners with regard to their health care treatment (access and quality) are not well known. They may ask the doctor treating them during hospitalisation, the institution director or the committee for relations with users of health institutions and quality of health care. As a last resort they may bring liability actions (addressed in advance to the director of the hospital). Prisoners should be better informed of their remedies.	4
Sentence individualisation and meaning		Training staff in the use of the electronic liaison register for behavioural observations should enable their content to be balanced.	4
		The <i>Contrôleur Général</i> recommends that precise enforceable rules be issued for the sentence enforcement program and their follow up over time, including in the event of transfer between institutions. It also recommends that the human resources essential to the success of such a follow-up tool be provided in institutions.	4
Transfers		With regard to transfers, the <i>Contrôleur Général</i> recommends that time limits for creating and dealing with orientation files be made to reduce disparities between inter-regional managements.	4
		Following a referral to the <i>Contrôleur Général</i> , an institution head has stated that he has reached an agreement with the judges responsible for the execution of sentences that from now on the court registrar will inform the institution of applications for transfers directly made to them. This system should be generalised.	4

All places of deprivation of liberty	Mental Health (statistics)	<p>The importance of psychiatric problems in places of detention must be better known.</p> <p>Noting the absence or the age of studies on the subject, the <i>Contrôleur Général</i> recommends that a longitudinal epidemiological survey be carried out on psychiatric problems in places of deprivation of liberty, including psychiatric hospitals.</p>	6
All places of deprivation of liberty	Staff training	<p>Staff working in enclosed environments need to be better trained.</p> <p>Noting the insufficiency and disparity in their training, the <i>Contrôleur Général</i> considers that all staff working in an enclosed environment should receive training on psychic and psychiatric problems, enabling them to identify these problems and to adapt their working practices as provided for in the methodological guide on health care for prisoners published in the inter-ministerial circular of 30th October 2012.</p> <p>Help in analysing working practices is to be supplied to staff working in enclosed environments.</p>	6
Detention centres for illegal immigrants (CRA)	Access to psychiatric healthcare	<p>Creating organised access to health care in detention centres for illegal immigrants.</p> <p>Noting the weakness and disparities in the psychiatric presence in detention centres for illegal immigrants, the <i>Contrôleur Général</i> recommends that agreements between the detention centres for illegal immigrants and hospital institutions include provisions relating to psychiatric health care. These should appoint an attached psychiatric hospital and nominate a referring doctor. Compensation for hospital psychiatrists and independent psychiatrists in detention centres for illegal immigrants should be systematic.</p>	6

Young offenders' institutions (CEF)	Access to psychiatric healthcare	<p>Integrating young offenders' institutions within an organised health care network.</p> <p>Noting that young offenders' institutions, even though reinforced by specialist mental health professionals, cannot be equated with healthcare structures, the <i>Contrôle Général</i> recommends signing tripartite agreements (PJJ - associations - infant-juvenile psychiatric inter-sectors) to organise a true health care network enabling treatment upon arrival in a young offenders' institution to be connected to therapeutic health care. This healthcare should be accessible to adolescents not only presenting serious psychiatric problems but also to those who, because of their psychological suffering, require ongoing support. Access to health care, which is guaranteed by the International Convention on the Rights of the Child, must be effective.</p>	6
Penal institutions	Human means allocated to health care	<p>Strengthening Health Care Staff</p> <p>Noting the problems of treating personality problems in a prison environment, the <i>Contrôleur Général</i> recommends that a number of nursing and psychiatrist positions be created in health units.</p>	6
	Working practices (changes)	<p>Creating a place of exchange between surveillance staff and health care providers</p> <p>The <i>Contrôleur Général</i> frequently notes a lack of communication between surveillance staff and health care providers, which might lead to a real deficiency in the treatment of prisoners' sufferings. It recommends that discussion and exchange sessions between surveillance staff and health care providers be created with regard to their respective working practices, respecting medical confidentiality.</p>	6

		<p>Affirming the importance of doctors' knowledge of detention</p> <p>The necessity of carrying out consultations in places dedicated to healthcare is likely to enable therapeutic fields to be identified, but this does not hold for doctors who are distanced from the very specific place of accommodation which is a place of detention, knowledge of which would appear useful to understanding the prisoner's situation. In particular, where they are called upon and where it appears that a prisoner has not made a request, it is necessary for doctors to be able to travel to assess the situation.</p>	6
Hospital Institutions	Human resources	<p>Strengthening resources in psychiatric sectors</p> <p>Noting a continuing decrease in human resources in the psychiatric sector and the effect on patient treatment, the <i>Contrôleur Général</i> recommends that the authorities assess the health care professionals necessary for the proper functioning of the various structures (CMPs, admission units, long-stay care units etc.)</p> <p>The <i>Contrôleur Général</i> considers, for its part, that it is necessary to strengthen logistical and human resources in extra-hospital structures and in particular in mental health centres so that they can carry out regular monitoring of patients before and/or after hospitalisation, this psycho-social support enabling multiple enforced hospitalisations to be avoided. In view of these findings, the <i>Contrôleur Général</i> also considers that it is also necessary to increase resources for admission units, notably through the recruitment of nurses and psychiatrists.</p>	6
	Patient status	<p>Granting patients the legal status corresponding to their situation</p> <p>Noting that a number of patients who are clearly incapable of giving their informed consent are admitted to free health care, the <i>Contrôleur Général</i> recommends the implementation of procedures enabling them to benefit from a legal status appropriate to their situation, offering the benefit of guarantees provided by law.</p> <p>The same is the case when a person who has been admitted for free treatment and placed in a seclusion room for more than 12 hours does not</p>	6

		<p>expressly give consent to remain in care under the same status. The public prosecutor should be informed.</p>	
	Solitary confinement	<p>Setting up protocols and traceability for restraint measures and solitary confinement.</p> <p>Following a recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the <i>Contrôleur Général</i> recommends that, in psychiatric hospitals, recourse to physical restraint of patients (manual control, physical instruments of restraint, solitary confinement) be recorded in a special register drawn up for this purpose and in the patient's medical file. The information recorded should include the time at which the measures started and finished, the circumstances of the particular case, the reasons for using these measures and the name of the doctor having prescribed or approved them, within a reasonable time frame. These patients should be subject to additional medical monitoring. This register should be controlled by the departmental committee for psychiatric treatment.</p>	6
	Legal information and advice	<p>Improving systems enabling access to rights for patients under restraint.</p> <p>Noting the great heterogeneity of methods of notifying patients placed under restraint of their rights, the <i>Contrôleur Général</i> recommends that the Ministry of Health draw up a standard document explaining, in simple terms, the different types of hospitalisation without consent and the remedies available to patients, with each hospital institution responsible for complementing or adapting it to local specifics, notably adding the addresses of competent authorities.</p> <p>Each institution should also draw up an agreement and ensure that patients are effectively informed of administrative committal orders, convocations and decisions of the liberty and custody judge, and all</p>	6

		<p>documents relating to their rights.</p> <p>Institutions should formalise collection of patient observations as provided for by article L.3211-3 of the Public Health Code.</p> <p>They should implement legal provisions concerning the right of each patient to appoint a trusted legal representative and give this person all rights provided for by law.</p>
	Consultative body	<p>Strengthening the role of consultative bodies in assessing restraints imposed on patients</p> <p>The <i>Contrôleur Général</i> recommends that a change in the composition of committees for relations with users of health institutions and quality of health care (CRUQPEC / <i>Commission des relations avec les usagers et de la qualité de la prise en charge</i>). The systematic appointment of user associations or sick person's families and legal professionals would give them greater autonomy. The CRUQPEC must be consulted on rules and regulations for units and facilities in seclusion rooms.</p>
	Departmental commissions for psychiatric care	<p>Providing departmental commissions for psychiatric care with sufficient resources to carry out their work</p> <p>It is the responsibility of the Ministry of Health and the Regional Health Agencies (ARS) to provide these bodies with sufficient resources to fully carry out their work. The legislature, in introducing a check by the judicial courts of committal decisions for patients hospitalised without their consent has not suggested removing these local bodies, quite the opposite. They are useful in understanding the situation of patients referring to them as well as their close relations, whilst recourse to a judge is only accessible to them with difficulty.</p> <p>Additionally, the Ministry of Health, following the example of the meeting it organised in December 2011, should encouraged the ARS to coordinate regular meetings of these bodies in their regions. Finally, the ARS, which provide the secretariat, should be reminded that they should address their annual report to the relevant liberty and custody judge in their</p>

		<p>administrative area, to State representatives in the department and, in Paris, to the Prefect of Police, to the Director General of the Regional Health Agency, to the public prosecutor and to the <i>Contrôleur général des lieux de privation de liberté</i>.</p>	
	<p>Right to defence</p>	<p>Training specialist lawyers to assist patients hospitalised without their consent The <i>Contrôleur Général</i> recommends that specific training be given to lawyers who assist or represent those with psychiatric problems hospitalised without consent. Reassessing compensation paid to these lawyers is also essential in providing high quality justice, as nothing justifies their current remuneration being lower than that for other work.</p>	<p>6</p>
	<p>Children</p>	<p>Better inclusion of young patients' requirements Noting that minors are sometimes hospitalised with adult patients, the <i>Contrôleur Général</i> recommends that a sufficient number of beds be created in child psychiatry throughout the country. It recalls that children, within the meaning of the International Convention on the Rights of the Child (under 18 years of age), should not be hospitalised with adults.</p>	<p>6</p>

	Hospitalisation of prisoners	<p>The rights of hospitalised prisoners</p> <p>The <i>Contrôleur Général</i> recalls that status as a patient should take precedence over that of a prisoner during a stay in a hospital institution. Without dismissing security constraints, a patient from a penal institution should receive health care which is equivalent to that received by other patients. They should retain the rights they enjoyed in detention: right to visits, to exercise, access to a telephone etc.</p> <p>Placement in a seclusion room and placing under restraint should not be systematic; they should be subject to a case-by-case examination and be appropriate to a therapeutic need validated by a medical decision.</p>	6
All places of deprivation of liberty	Accommodation conditions for persons deprived of liberty	<p>The use of non-individual cells or rooms should be forbidden. Moreover, the shape of the cell or room should offer a number of possibilities for placing furniture to encourage their personalisation.</p> <p>However, individual occupation of a room or cell should not be to the detriment of its surface area. The Building and Housing Code provides for a minimum surface area of 10 m² per person beyond four inhabitants in an apartment. This area should be imposed for cells and rooms, an area to which should be added that of toilet facilities which should also be provided.</p> <p>Finally, all long-stay places should be able to receive persons with reduced mobility with dignity. Rooms and cells for their use should not only provide the necessary equipment but the movement of a wheelchair from the room to the showers should be possible without depriving the latter of a door.</p> <p>Bays should be designed to enable the occupant to “look out of the window” with no obstruction and to allow air to circulate. It is recommended that windows in rooms or cells should not be placed higher than the average height of a person's shoulders, and that their area should be adapted to the orientation of the room, larger to the north, and its size. They should be equipped with shutters.</p> <p>Whatever the duration of prisoners' stay, the rooms in which there are confined should be of limited height, without being less than 2.5 m, and</p>	5

		with an adequate method of heating.	
Police stations	The Condition and Comfort of Cells	The question of the layout and equipment of police custody cells, which contravene the requirement for rest provided for by law, should be resolved by implementing standards enabling persons in police custody to be able to rest in a horizontal position and to have an individual cell. Old cells should therefore be renovated and adapted.	5
	The situation with regard to sobering up cells	It is sometimes the case that secure rooms and rooms for sobering up are situated on different floors to that of the surveillance post; this architecture does not enable sufficient security to be provided to detainees. This layout is the source of unnecessary worries and tension. Such layouts should therefore be prohibited.	5
Penal institutions	Solitary confinement wing	In penal institutions, cells in the solitary confinement wing are not intended for disciplinary purposes but rather for the protection of the person occupying them. They should comply with the same standards as those in ordinary detention buildings and, for example, provide sufficient space for normal activities that may be carried out, have access to natural light, sufficient air circulation and a system for partitioning off sanitary facilities guaranteeing privacy.	5

	Living areas (configuration)	The architectural design of living areas or passageways for prisoners - holding areas in courts, police stations and gendarmeries, secure rooms in general hospitals, intensive care rooms in psychiatric hospitals, arrival and disciplinary areas in penal institutions - should reconcile requirements linked to security with, for prisoners, those of basic movement and, for warders, their procedures in compliance with rights to dignity, privacy and confidentiality.	5
All places of deprivation of liberty	Hygiene	<p>Whatever the duration of their stay, prisoners should have free access to sanitary arrangements which are isolated from the rest of the room by ceiling-high partitions.</p> <p>The possibility of maintaining their bodily cleanliness to a dignified level is a right which the design of places of detention, in particular police custody facilities, should take into account.</p> <p>Rooms and cells should be equipped with bathrooms comprising, as a minimum, a shower, wash basin and WC, and be reasonably lit and ventilated via windows or, at least, a sufficiently powerful controlled mechanical ventilation system.</p> <p>From this point of view, it would be preferable that rooms be provided with appropriate heating. Moreover, respect for privacy requires that the interior of these bathrooms not be visible from the peephole or viewing window in the door and that they not be visible by care and surveillance staff - who might enter at an untimely moment - upon entry into the room. It should therefore be possible to close off the bathroom itself with a door.</p> <p>In hospitals, specific access routes, separation in a partitioned area with seats, locating secure rooms close to technical facilities should always be provided for.</p> <p>Respect for dignity and privacy should be preserved in full, including in areas subject to increased surveillance. Generally, the design of premises through which prisoners pass or spend their days should be such that their movement, their wait or stay, is sheltered from persons outside of the service.</p>	5

	<p>Right to defence</p>	<p>Interviews with lawyers should take place in sound-proof rooms to guarantee the confidentiality of discussions, without video surveillance and separation installations, separating the persons speaking and obliging them, where necessary, to raise their voice.</p> <p>In all places of deprivation of liberty in which they assist prisoners, lawyers and doctors should have separate facilities ensuring the confidentiality of interviews and consultations.</p>	<p>5</p>
<p>Penal institutions</p>	<p>Protection of personal data</p>	<p>In application of article 42 of the prisons act, the documents citing the reasons for incarceration of prisoners should, upon arrival, be compulsorily handed over to the registrar. Consequently, it is important that the penal institutions provide places where prisoners can consult documents under satisfactory conditions of confidentiality.</p>	<p>5</p>
	<p>Geographical location</p>	<p>It is desirable that penal institutions be established in geographical areas enabling investment by operators and industrial and commercial partners. The proximity of a large town and a road or rail network is, consequently, an advantage in offering broad and qualified employment within institutions.</p> <p>Parking areas appropriate to the accommodation capacity should also be provided so that visitors and participants are not dissuades from visiting an institution via a private vehicle.</p> <p>Finally, these last recommendations in terms of accessibility and parking should be particularly observed in Open Prisons (CSL) and Reduced Sentencing Prisons (CPA) as persons accommodated within them leave daily and rarely have personal means of transport.</p>	<p>5</p>

	Size	The <i>Contrôleur Général</i> recommends that institutions be built with limited capacity (approximately 200 persons), near to urban centres, uniformly divided across the country and strongly implanted locally. This choice would avoid the creation of "detention deserts", experienced, for example in penal institutions for convicted women in the south of France.	5
	Visiting rooms	The design of visiting rooms should guarantee adequate confidentiality of discussions and privacy; a system providing separation and sound insulation between partitioned areas should be implemented. The arrangement of areas dedicated to children within the visiting rooms should enable them to see their parents in the most pleasant conditions possible. Family life units (UVF) and family rooms should be widespread.	5
Hospital Institutions	Living areas (configuration)	<p>In hospitals, the need to confine patients needs to be reconciled with that of retaining contact with the outside and preparation for release. It is necessary to provide a number of meeting areas within the hospital for patients and their close relations.</p> <p>For hospitals with garden areas, picnicking equipment should be provided and games for the children of patients, fathers and mothers who could thus receive their children under pleasant conditions and share these activities with them. This conviviality is likely to encourage adherence to treatment and the smooth progress of hospitalisation. A system of hospitality rooms for visitors should be designed.</p> <p>Following the example of cafeterias, which exist in some mental health institutions, penal institutions should provide areas - judiciously placed to facilitate access - enabling prisoners to access shops or mini-markets in order to directly choose and order purchases, pay for them using a magnetic card system and have them immediately delivered. This type of facility could also enable direct access via an automatic terminal for certain services.</p>	5

All places of deprivation of liberty	Self sufficiency	In all places of deprivation of liberty where persons have to stay long-term, return to self-sufficiency or self maintenance requires the provision of facilities such as a kitchens, laundry rooms and shops.	5
Hospital institutions	Access to exercise	It is important that patients have use of an outdoor area if they are not able to leave their hospitalisation unit. Courtyards or patios should be sufficiently large to walk and relax, offering the possibility of sitting down and being sheltered from bad weather.	5
	Consultation on security measures	Before taking any security measures which might be in opposition to healthcare and fundamental rights, it appears necessary that user, family and staff representatives as well as the hospital ethical committee, which should exist, be informed so that they can give their opinion and even take part in discussions.	5

<p>Penal institutions</p>	<p>Recreational areas</p>	<p>In addition to the arrangements necessary for a minimum attractiveness, which include covered areas and planted areas, walking areas should be redesigned so that they are not equated to real places of segregation. In relation to access to the outside, thought should be given to evolving the “courtyard logic” into a “garden logic”, as has been done in a number of detention centres. According to this way of thinking, a central area serves as a link between the various accommodation units, like a square whose social function is primarily exchanges between prisoners, persons working in prisons and staff, the latter carrying out surveillance by community policing.</p> <p>Areas should be provided that are sufficiently large to enable prisoners to carry out the activity of their choice, vegetable gardening, horticulture or sports.</p> <p>This sort of arrangement should be extended to other institutions, in particular those where there is a separate detention regime by sectors or floors known as "confidence" areas.</p> <p>To meet this need, the architecture of prisons should provide, in each wing of detention centres, a communal room for relaxation and activities, a "community centre" with one section equipped with audiovisual and computer equipment and another set up so that it is possible to cook and to clean clothes.</p> <p>In this regard, the concept of general-purpose rooms is to be avoided; certain activities are likely to be to the detriment of others because of lack of availability. The organisation of activities and movements is to be allocated.</p>	<p>5</p>
<p>All places of deprivation of liberty/ prison institutions</p>	<p>Reading/sport</p>	<p>In all places of deprivation of liberty, the library appears to be the most appropriate setting for a documentation room where everybody can find the information they are looking for (in particular legal, in relation to the restrictive regime to which they are subject) and where Internet access should be possible.</p> <p>There should be access to an independent sports area from all exercise areas, enabling physical exercise and team sports to be practised. Only guided sporting activities or events organised with external teams would</p>	<p>5</p>

		continue to use the central sports field.	
Penal institutions	Sport	Given the fact that the majority of persons in prison are young people, penal institutions and young offenders' institutions should have areas for physical and sports activities. The equipment available should cover both individual needs (bodybuilding) and joint needs, both undercover (gymnasium, multi-purpose room) and in the open air.	5
	Right to defence	Prison wings should include a sufficient number of interview premises and consequently provide for waiting rooms. These should be easily accessible (both in themselves and for prisoners and their families with a view to optimising working time), their size should be appropriate to their use, ensuring the confidentiality of discussions.	5
		Meeting rooms encouraging meetings between the various persons working in prisons should also be provided so that the treatment of persons concerned may be multi-disciplinary and concerted, including between them. Institutional meetings should also be able to take place there, notably to allow prisoners to take part.	5

	Solitary confinement/Punishment wings	<p>The positioning of solitary confinement areas should be redesigned and provision made for a minimum of activity rooms within the solitary confinement wing.</p> <p>In order to enable doctors to carry out their work under normal conditions, an examination room should be provided both within punishment wings and solitary confinement wings.</p>	5
	Teaching/health care	<p>To avoid the situation observed in a remand prison where classrooms, situated on the third or fourth floor, were not used by the prison population, it is important that the abovementioned activity rooms, interview offices and meeting rooms be situated on the same level, where possible on the ground floor. These areas should be easily accessible whilst, as appropriate, retaining the anonymity of those using them and the confidentiality of proceedings. Health care areas should ensure a certain degree of privacy for persons using them.</p>	5
Hospital institutions	Reception of persons deprived of liberty	<p>Deprivation of liberty should, in particular, represent an opportunity for certain disadvantaged persons to reconnect with the health care system; which is why it is important to provide a central place in the health care unit easily accessible to all. These meeting areas should also be provided within hospital institutions.</p> <p>The Ministry of Health should encourage the development, in general hospitals within their emergency reception department for patients presenting psychiatric problems, of areas which are solely for the reception and treatment of psychiatric emergencies as these would be better equipped to carry out both a diagnosis upon arrival and procedures involving implementing health care without consent, in particular under full hospitalisation.</p>	5

All places of deprivation of liberty		Institutions should set up areas for communal activities, in particular for work and training, teaching and cultural activities.	5
		The solution to possible problems inherent in the mixing of sexes in psychiatric hospital units should not lie in the separation of men and women into separate wings or floors but in the possibility of leaving occupants in control of closing their room. The architecture of places of confinement should integrate the mixing of sexes by providing for improvements to make spaces functional and harmonious.	5
Penal institutions	Mixing of sexes/children	<p>The design and arrangement of accommodation wings for minors in institutions which mainly hold adults should be reviewed.</p> <p>The incarceration of young under-aged girls in areas for women is contrary to the law: article R57-9-10 of the Code of Criminal Procedure provides that "prisoners who are female minors are to be accommodated in units provided for this purpose under the surveillance of staff of their own sex". This is to be prohibited.</p> <p>Specific units should be constructed or arranged to receive them as necessary.</p> <p>Generally, in all places of deprivation of liberty there should exist modulable structures which can be developed and adapted to the needs of minors and the treatment they require.</p>	5
	Size/configuration of spaces	<p>The construction of penal institutions, such as those built in recent years, is therefore to be outlawed as their operating failure appears intrinsically linked to their type and size.</p> <p>In addition to arrangements necessary for a minimum attractiveness, which include covered areas and planted areas, walking areas should be redesigned so that they are not equated to real places of segregation.</p> <p>In relation to access to the outside, thought should be given to evolving the "courtyard logic" into a "garden logic", as has been done in a number of detention centres. According to this way of thinking, a central area</p>	5

		<p>serves as a link between the various accommodation units, like a square whose social function is primarily exchanges between prisoners, persons working in prisons and staff, the latter carrying out surveillance by community policing.</p> <p>Areas should be provided that are sufficiently large to enable prisoners to carry out the activity of their choice, vegetable gardening, horticulture or sports.</p> <p>This sort of arrangement should be extended to other institutions, in particular those where there is a separate detention regime by sectors or floors known as "confidence" areas.</p>	
<p>Waiting areas</p>	<p>Protection of fundamental rights</p>	<p>The <i>Contrôle Général</i> recommends that the law (article L. 221-2) be modified to include certain essential principles. For example it should provide, not a "space" for lawyers, but that physical setting should retain the confidentiality related to advising foreigners. The same is the case for privacy, the right to family life and health care etc. for the persons in question. The draft law announced on the reform of asylum could be the vehicle for these additions.</p> <p>It also recommends that, in application of these principles, the regulatory section of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA, chapter 1 section 2 of book II) should be supplemented by a set of provisions comparable (but not identical) to those set out under articles R. 553-1 <i>et seq.</i> of the same code, concerning accommodation standards.</p> <p>The law (article L .221-4) should specify that the rights of foreigners are applicable in all waiting areas whatever the length of the detention. This extension presupposes that the law (article L. 223-1 of the CESEDA) specifies that persons controlling the waiting area have access to all its points and that the regulations (article R. 223-2 <i>et seq.</i>) be changed in this</p>	<p>1</p> <hr/> <p>1</p>

respect. If it is provided, for example, that HCR delegates have access to all asylum seekers, this means that in fact they can only enter the accommodation area as all asylum seekers are sent there. They cannot, for example, check that foreigners seeking asylum are held in a police holding area for immediate departure, without their application being dealt with. 1

The *Contrôle Général* recommends that the question of one clear day's delay should be subject to a separate report, countersigned by the foreigner or, better, that within one clear day the law is applied in the absence of express request to the contrary by the foreigner (article L. 213-2).

Firstly, it should be guaranteed that the detainee can be visited by close relations, naturally without requiring any condition whatsoever of these close relations with regard to the legality of their stay. The fundamental right to family ties transcends obligations arising from French law. Visits should have no consequence on the presence of family members in the country. Most of the managers of detention centres have understood this; it would be desirable if this pragmatic requirement was set out in law.

Secondly, meetings should respect family privacy, in the context of clearly necessary surveillance. But this should be given priority. The presence of a police officer during close relations' meetings is difficult to justify - without specific reason - in proportion to the risks incurred. Security checks on visitors, possibly by means of pat-down searches (in addition to the requirements to hand over certain objects) are less disturbing than the presence of a third party during discussions.

Thirdly, as has been previously stated, meeting areas should be subject to a national specification at least applicable to detention centres (minimum area, separate partitioned areas) and paragraph 8 of article R. 553-3 of the CESEDA appropriately supplemented in this regard.

Fourthly, the duration of meetings should not be less than half an hour, unless justified by specific grounds relating to the person or exceptional overcrowding, which the *Contrôle Général* has seldom encountered.

Moreover, this time limit is set out in the rules and regulations: centre managers should ensure its minimum application. Furthermore, centres exist where extensions are naturally allowed when there is no reason to oppose them. The quality of reception of close relations should also be closely monitored. The possibility of the latter to travel to the centre should be ensured: there are too few signs on the public roads and too

		little public transport.	
Gendarmeries	Definition of rest hours	It is requested, on the one hand, that instructions from the Directorate General repeal any notice or circular authorising counting of rest time outside of the cell; on the other hand that the paragraph 2 of article 64 of the Code of Criminal Procedure be supplemented in order to introduce the mention: "...and rest times which are separate from hearings, independent of formalities required by inquiries and exercise of their rights, time in which they can eat..."	1
Police stations/gendarmeries	Removal of police custody of minors	In this sensitive area, central instructions should be sent to Departmental Directorates of Public Security to advise them of the behaviour to be adopted by police officers.	1
Young offenders' institutions (CEF)	Training for institution staff	This should, as a priority, include the way in which adolescents behave and how to speak to them. It should teach how to speak to them, to encourage them to express themselves and to stop them where necessary. It should affirm the need for calm and self-control. It should teach how to interpret behaviours and how to respond. It should prohibit violence and teach usable techniques in the event, in case of necessity, of dispute.	1

Proposed services and general rules for the operation of centres

It is the responsibility of the managers of each centre to draw up proposals on the reception of children. These proposals should be broken down into objectives and means.

1

Education proposals should serve as a basis for individual observations which should be set out in the documents of each adolescent received (DIPC and any other locally designed document), which are too often neglected.

Frequent meetings should allow young persons' replies to questioning that their behaviour shows, to be standardised.

To these meetings should be added, where necessary, centre staff who have information to provide on minors and their attitudes.

Nurses, psychiatrists, where there are any, doctors and teachers are also people whose knowledge of these persons is essential and should therefore be welcomed, with strict respect, it should be clarified, for the confidentiality of healthcare details.

Adults should be - and this is the difficulty of their task - as direct and straightforward as possible in the treatment children.

Finally, because their work is difficult, staff at young offenders' institution deserve not only verbal support but concrete conditions for dealing with their problems.

It is up to the central, inter-regional and departmental judicial youth protection service (PJJ / *protection judiciaire de la jeunesse*) to facilitate the establishment, preparation, implementation and inspection of each young offenders' institution and its activities. Substantially greater effort than that of the past 10 years needs to be developed, in particular comprising:

The administrative departments of other ministries should also establish methods for discussing and capitalising on the experience of their staff in working in young offenders' institutions. The same goes in particular for the Ministry of National Education and the Ministry of Health. In carrying out such sensitive tasks, with daily difficulties, discussions are also a way of recognising and supporting people.

Formalised relations should also be established with police and gendarmerie services providing regulations for settling all types of offences

on the one hand, and child runaways on the other. But the police, like the gendarmerie, cannot stand alone as a single defence against lawlessness. Staff are solely responsible for carrying out the essential requirements of detention by the necessary educative means.

As the *Contrôle Général* has already stated in its previous reports, the education of children also occurs via meetings with health services (agreements should, as far as possible, be entered into with specialist hospitals for mental health treatment); with educational services (where it is a matter of ensuring the presence at the appropriate time of teachers and possibly of educating children accommodated in centres); with representatives of private companies or public institutions in developing internships in companies; and finally, with cultural services to ensure that projects are carried out. With regard, in particular, to relations to be established with public services, authorisations and accreditations to open these relations should be subject to minimum conditions (e.g. the presence of a nurse, necessary for health care and education in health care, for one day or a day and a half per week).

Finally, the steering committee provided for by law should meet regularly and its members be present, in particular the prefect or their representative and the judicial authority. Its members should be able to inspect the educational centre for which the committee has responsibility. In the same way, those judges having sentenced children or proposing to send adolescents to a centre should have access to it.

At the same time, children should be protected by adults from violence, fear and behaviour which is contrary to health and well-being.

Working with families who may themselves be in a difficult position is inseparable from educating their children.

No child should be accepted without preparation into a young offenders' institution.

Adolescents should be educated through taking responsibility for their daily lives and the activities offered to them.

Centres should be able to suitably assess the results of their actions.

Hospital institutions	Standardising certain rules relating to the rights of patients in sectors	A circular from the Ministry of Health should specify the various elements, in order to inform and facilitate discussions between institutions and reduce differences between sectors relating to conditions of admission, rights to defence, respect for private life and family ties etc.	9
	Application of the Act of 2002 concerning the rights of patients with mental health problems	Psychiatric care, or the mentally ill hospitalised without consent, are such that the trusted legal representative should be given special characteristics defined in the general principles of the Code. Their method of appointment, the conditions for their intervention and prerogatives that they might be given in relation to active (asking for medical information) or passive (the duty to provide information by healthcare professionals) information might be considered. The role that they should play in a patient's appearance before the liberty and custody judge should also be considered (articles L. 3211-12 and L. 3211-12-1). The question of consent to health care by those with mental problems hospitalised without their consent should be considered.	9
All places of deprivation of liberty	Religion	The <i>Contrôleur Général</i> recommends that meals meeting faith requirements for prisoners be made and distributed.	8

Annexe 2

Map of Institutions and Departments Inspected in 2013

Insert map no. 1 entitled “CARTE_1_dptmts visités en 2013_SIG” here.

Annexe 3

The Inspection Reports made Public on the www.cglpl.fr Website

Everything begins with the inspection of institutions: four to five teams, each made up of between two and five inspectors, or more according to the size of the institution, go on-site for a period of two or three weeks.

At the end of inspections, the teams of inspectors each write their draft report or initial report, which, according to the provisions of article 31 of the rules and regulations of the CGLPL⁴¹³, “is submitted to the *Contrôleur Général* who then sends it to the head of the institution, in order to obtain the latter’s comments on the facts ascertained during the inspection. Except in special circumstances, and subject to the cases of urgency mentioned in the second paragraph of article 9 of the Act of 30th October 2007, the head of the institution is given one month to reply. In the absence of a response within this deadline, the *Contrôle Général* may commence drafting the final report. “This report, which is not definitive, is subject to the rules of professional confidentiality which are binding upon all members of the CGLPL with regard to the facts, acts and information of which they have knowledge.

Furthermore, article 32 of the same rules and regulations states that “after receipt of the comments of the head of the institution or in the absence of a reply from the latter, the head of the assignment once again calls together the inspectors having conducted the inspection, in order to modify the report if necessary and draft the conclusions or recommendations which accompany the final report, referred to as the “inspection report” [which] is sent by the *Contrôleur Général* to the appropriate ministers having competence to deal with the facts ascertained and recommendations contained therein. In accordance with the abovementioned article 9, he fixes a deadline of between five weeks and two months, except in case of urgency, for responses from the ministers.”

Once all of the ministers concerned have made their observations, these inspection reports are therefore published on the CGLPL website, which was brought into production in April 2009.

⁴¹³ Rules and regulations established in application of article 7 of decree no. 2008-246 of 12th March 2008.

List of the Departments for which the Inspection of Institutions has led to Public Reports on the CGLPL Website

Insert map no. 3 entitled “CARTE_2_rapports publiés_SIG” here.

Annexe 4

Budget Balance Sheet

1. Budget allocated to the CGLPL in 2013

Initial finances act (<i>Loi de finances initiale</i>) LFI 2013*		
Personnel costs	€3,265,647	77.6%
of which permanent staff	€2,998,106	
of which occasional staff	€267,541	
Other expenditure		
Operation	€940,349	22.4%
TOTAL	€4,205,996	

* in payments appropriations after deduction of frozen sums and reserves

Distribution of Ordinary Expenditure

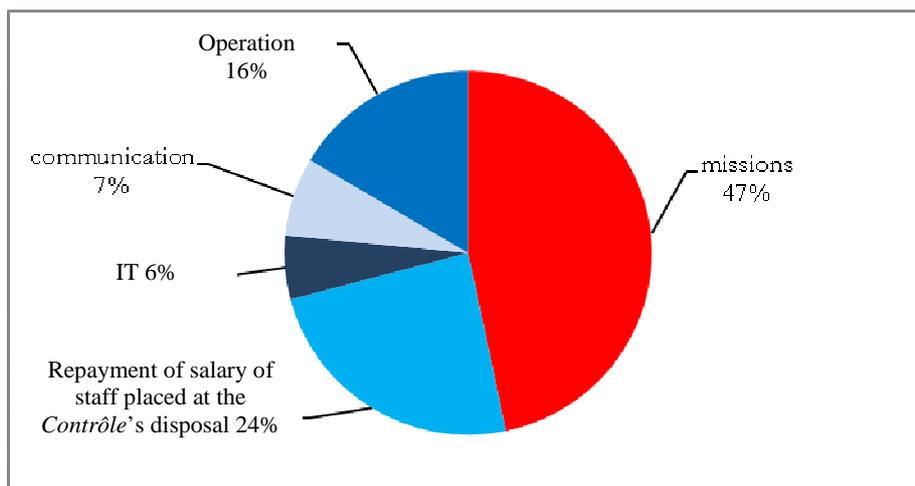
Apart from personnel costs, the budget is principally devoted to payment of rent and mission costs for the inspection of places of deprivation of liberty by inspectors. The graph below presents the distribution of expenditure excluding rent, at 30th November 2013.

The reimbursement of the salary of staff placed at the inspectorate's disposal from administrative appropriations concerns a hospital public sector employee.

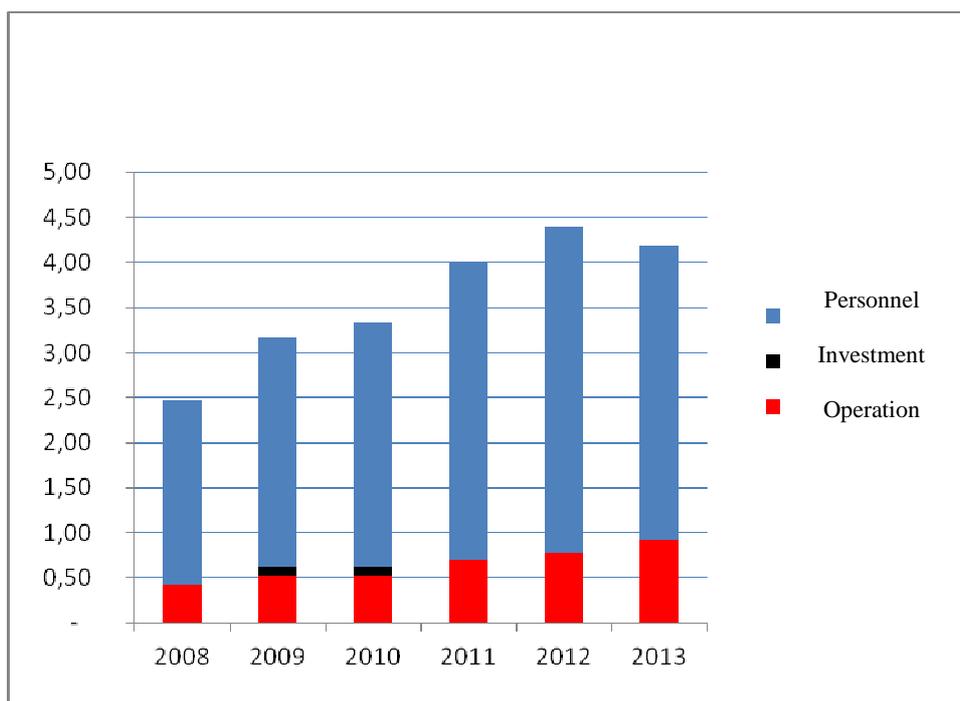
The communications expenditure includes the maintenance of the website and the publication of the annual report. A considerable effort was agreed in 2013 in order to translate all of the published decisions and the annual report.

The other expenditure covers day-to-day operation (equipment, fluids, reimbursement of trainees' expenses, expenditure linked to IT, office stationery and documentation).

It should be emphasised that an investment was made at the end of 2012: a departmental vehicle, a rented *Citroen C5*, was replaced by a *Renault Scénic* purchased for €17,535 paid in 2013.



2. Development of the Means Allocated to the CGLPL since its creation



Annexe 5

Inspectors and Colleagues

The *Contrôleur Général*: Jean-Marie Delarue, *conseiller d'Etat honoraire* (honorary Councillor of State)

Secretary-General: Aude Muscatelli, civil administrator

Assistants: Chantal Brandely, administrative assistant (until 30th July 2013)

Franky Benoist, administrative assistant (from 19th February 2013)

Inspectors

Jean-François Berthier, *commissaire divisionnaire* (chief superintendent of the French national police force)

Chantal Baysse, director of the prison rehabilitation and probation department (from 1st December 2013)

Betty Brahmy, hospital doctor, psychiatrist

Marine Calazel, administrative attaché of the Prime Minister's office (until 15th December 2013)

Gilles Capello, director of prison services (from 1st September 2013)

Michel Clémot, *général de gendarmerie*

Céline Delbauffe, former lawyer

Vincent Delbos, member of the national legal service

Anne Galinier, hospital doctor

Jacques Gombert, director of prison services

Thierry Landais, director of prison services

Isabelle Laurenti, *administrateur de l'Assemblée nationale* (official of the National Assembly of France)

Philippe Lavergne, *principal d'administration central* (head attaché of central government departments)

Muriel Lechat, *commissaire divisionnaire* (chief superintendent of the French national police force)

Anne Lecourbe, *présidente du corps des tribunaux administratifs* (president of the judiciary of administrative courts)

Dominique Legrand, member of the national legal service

Jean Letanoux, director of prison services

Gino Necchi, member of the national legal service (until 15th June 2013)

Yanne Pouliquen, former employee of an access to rights association (from 1st December 2013)

Jane Sautière, director of the rehabilitation and probation department (until 30th November 2013)

Cédric de Torcy, former director of a humanitarian association

Caroline Viguier, member of the national legal service

External Inspectors

Virginie Bianchi, lawyer

Bernard Bolze, former journalist, association worker

Anne-Sophie Bonnet, former representative on the International Red Cross Committee (from 15th July 2013)

Jean Costil, former president of an association

Marie-Agnès Credoiz, former member of the national legal service (from 15th July 2013)

Stéphanie Dekens, special advisor to the *Défenseur des Droits* (from 1st September 2013)

Grégoire Korganow, photographer

Michel Jouannot, former vice-president of an association

Isabelle Le Bourgeois, former prison chaplain, psychoanalyst

Louis Le Gouriérec, former *inspecteur général de l'administration* (chief inspector of a public service)

Bertrand Lory, former attaché to the City of Paris

Alain Marcault-Derouard, former executive of a company engaged in public procurement contracts with the prisons administration

Félix Masini, former headteacher of a secondary school

Guillaume Monod, child psychiatrist

Bruno Raymond, lawyer (from 1st July 2013 to 17th October 2013)

Bernard Raynal, former director of a hospital

Dominique Secouet, former manager of the Baumettes Prison multimedia resource centre (from 1st November 2013)

Dorothee Thoumyre, lawyer (from 1st November 2013)

Bonnie Tickridge, nurse (from 1st February 2013)

Eric Thomas, headteacher (until 10th June 2013)

Yves Tigoulet, former director of prison services

Departments and Centre in charge of Referred Cases

Financial Director:

Christian Huchon, *attaché principal d'administration central* (head attaché of central government departments)

Inspector – responsible for communications:

Marine Calazel, administrative attaché of the Prime Minister's Office (until 15th December 2013)

Yanne Pouliquen, former employee of an access to rights association (from 1st December 2013)

Inspector – responsible for international relations:

Elise Launay-Rencki, secretary for foreign affairs (until 8th May 2013)

Director of services:

Maddgi Vaccaro, *greffière en chef des tribunaux* (court registrar)

Inquirers:

Benoîte Beaury, archivist

Sandrine Collin, *lieutenant pénitentiaire* (officer of the prisons administration department) (until 1st September 2013)

Sara-Dorothee Guérin-Brunet, legal expert

Maud Hoestlandt, lawyer (from 14th October 2013)

Lucie Montoy, legal expert.

Estelle Royer, legal expert

In addition, in 2013 the CGLPL welcomed, for professional training or for temporary employment contracts:

Anne-Françoise Astruc (member of the national legal service in-service training)

Matthieu Bonduelle (member of the national legal service in-service training)

Pénélope Cardon (fixed term contract)

Gaëlle Crouan (IRA / regional training institute for the public administration)

Louise de La Porte (Masters year 2)

Alexandre Delavay (Masters year 1)

Kenza Gaillard-Benkhalaf (trainee lawyer)

Barbara Hild (fixed term contract)

Laure Maufrais (fixed term contract)

Maud Schlaffmann-Amprino (trainee lawyer)

Ophélie Thielen (administrative court (TA) judge)

Henri Vallas (IRA / regional training institute for the public administration)

Cécile Zaregradsky (trainee lawyer)

Annexe 6

Reference texts

1. Resolution adopted by the General Assembly of the United Nations at 18th December 2002

The General Assembly [...]

1. Adopts the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annex 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.

2. 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, if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if 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 if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) The liberty to choose the places they want to visit and the persons they want to interview;
- f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or 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 protected. 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.

3. Act no. 2007-1545 of 30th October 2007 (1)

NOR: JUSX0758488L

Version consolidated at 31st March 2011

Article 1

The *Contrôleur général des lieux de privation de liberté* is an independent authority in charge of inspecting the conditions in which persons deprived of liberty are dealt with and transferred, in order to make sure that their fundamental rights are respected, without prejudice to the prerogatives that the law assigns to the judicial authorities and quasi-judicial authorities.

Within the limit of his areas of competence, he does not receive directives from any authority.

Article 2

Amended by ACT no. 2010-838 of 23rd July 2010 - art. 2

The *Contrôleur général des lieux de privation de liberté* is appointed because of his professional skills and knowledge by decree of the President of the Republic of France for a period of six years. His term of office is not renewable.

Legal proceedings cannot be instituted against him and he cannot be acted against, arrested, held prisoner or tried because of the opinions that he issues and the acts that he accomplishes in the performance of his duties.

His duties cannot be brought to an end before the completion of his term of office except in case of resignation or unforeseen hindrance.

The duties of the *Contrôleur général des lieux de privation de liberté* are incompatible with any other public employment, professional activity or electoral mandate.

Article 3

Amended the following provisions:

Amends the Electoral Code (Code électoral) - art. L.194-1 (V)

Amends the Electoral Code - art. L.194-1 (V)

Amends the Electoral Code - art. L.340 (V)

Article 4

The *Contrôleur général des lieux de privation de liberté* is assisted by inspectors whom he recruits because of their ability in the fields related to his role.

The duties of inspectors are incompatible with the exercise of activities connected to the places inspected.

In the exercise of their duties, the inspectors are placed under the sole authority of the *Contrôleur général des lieux de privation de liberté*.

Article 5

The *Contrôleur général des lieux de privation de liberté*, his colleagues and the inspectors who assist him are bound by the rules of professional confidentiality with regard to the facts, acts and information of which they have knowledge because of their duties, subject to the elements necessary for drawing up the reports, recommendations and assessments provided for under articles 10 and 11.

They make sure that no information enabling the identification of the persons concerned by the inspection is given in the documents published under the authority of the *Contrôleur général des lieux de privation de liberté* and in his speeches.

Article 6

Amended by ACT no.2011-334 of 29th March 2011 - art. 19

All natural persons, as well as any corporation set up for the purpose of ensuring respect for fundamental rights, may bring facts or situations to the attention of the *Contrôleur général des lieux de privation de liberté* that are likely to come within his area of competence.

Cases may be referred to the *Contrôleur général des lieux de privation de liberté* by the Prime Minister, the members of the Government and the *Défenseur des droits* ombudsman (1). He may also take up cases on his own initiative.

NB:

(1) This law comes into force on the date provided by paragraph 1 of article 44 of institutional act (*loi organique*) no. 2011-333 of 29th March 2011 relating to the *Défenseur des droits* ombudsman (31st March 2011) However, article 19 becomes current at the date provided for under the first paragraph of II of the same article (1st May 2011) insofar as it revokes the references to the *Défenseur des enfants*, the Chair of the National Security Ethics Committee (*Commission nationale de déontologie de la sécurité*) and to the President of the national authority for the fight against discrimination and the promotion of equality (*Haute Autorité de lutte contre les discriminations et pour l'égalité*) under article 6 of act no. 2007-1545 of 30th October 2007.

Article 7

Amended the following provisions:

Amends act no.73-6 of 3rd January 1973 - art. 6 (Ab)

Amends act no.2000-494 of 6th June 2000 - art. 4 (VI)

Article 8

The *Contrôleur général des lieux de privation de liberté* can inspect any place where persons are deprived of their liberty by decision of a public authority in the territory of the Republic of France at any time, as well as any health institution authorised to accommodate patients hospitalised without their consent mentioned under article L.3222-1 of the public health code (*code de la santé publique*).

The authorities in charge of places of deprivation of liberty can only oppose an inspection by the *Contrôleur général des lieux de privation de liberté* on serious and urgent grounds linked to national defence, public order, natural disasters or serious disturbances in the place inspected, subject to providing the *Contrôleur général des lieux de privation de liberté* with the reasons for their opposition. They then propose its postponement. As soon as the exceptional circumstances having justified the postponement have come to an end, they inform the *Contrôleur général des lieux de privation de liberté* thereof.

The *Contrôleur général des lieux de privation de liberté* is to obtain any information or document useful to the performance of his duties from the authorities in charge of the place of deprivation of liberty. During inspections, he may hold discussions with any persons whose assistance appears necessary to him, under conditions ensuring the confidentiality of their exchanges.

Disclosure of information and documents requested by the *Contrôleur général des lieux de privation de liberté* cannot be refused on the grounds of the confidential nature thereof, except if such disclosure is liable to harm the secrecy of national defence, State security, the confidentiality of investigation and preparation of cases for trial, medical secrecy or professional secrecy applicable to relations between lawyers and their clients.

The *Contrôleur général des lieux de privation de liberté* may delegate the powers mentioned in this article to the inspectors.

Article 9

At the end of each inspection, the *Contrôleur général des lieux de privation de liberté* makes his observations known to the ministers concerned, in particular with regard to the state, organisation and operation of the place inspected, as well as the condition of persons deprived of liberty. The ministers make observations in response whenever they consider it useful to do so, or when the *Contrôleur général des lieux de privation de liberté* expressly so requests. The observations made in response are then appended to the inspection report drawn up by the *Contrôleur Général*.

If the *Contrôleur général des lieux de privation de liberté* ascertains a serious violation of the fundamental rights of a person deprived of liberty, he immediately passes his observations on to the competent authorities, gives them a deadline for their response and, at the end of this deadline, ascertains whether the reported violation has been brought to an end. If he considers necessary, he then immediately renders public the content of his observations and of the replies received.

If the *Contrôleur Général* learns of facts justifying the presumption of the existence of a criminal offence, he immediately brings them to the attention of the public prosecutor at a court of first instance, in accordance with article 40 of the Code of Criminal Procedure (*code de procédure pénale*).

The *Contrôleur Général* immediately brings facts liable to lead to disciplinary proceedings to the attention of authorities and persons invested with disciplinary authority.

Article 10

Within his field of competence, the *Contrôleur général des lieux de privation de liberté* issues assessments, makes recommendations to the authorities and puts forward proposals to the Government for any amendments to the applicable statutory and regulatory provisions.

He can make these assessments, recommendations and proposals public, after having informed the authorities in charge, as well as the observations made by these authorities.

Article 11

Every year the *Contrôleur général des lieux de privation de liberté* issues an annual report to the President of the Republic and the Parliament. This report is made public.

Article 12

The *Contrôleur général des lieux de privation de liberté* cooperates with the competent international bodies.

Article 13

Amended by Act no.2008-1425 of 27th December 2008 - art. 152

The *Contrôleur général des lieux de privation de liberté* manages the funds necessary to the fulfilment of his duties. These funds are part and parcel of the programme of the “Management of Government Action” (“*Direction de l’action du Gouvernement*”) mission concerning the protection of fundamental rights and liberties. The provisions of the act of 10th August 1922 concerning organisation of the control of expenditure laid out are not applicable to the management thereof.

The *Contrôleur général des lieux de privation de liberté* presents his accounts for auditing by the French Court of Auditors (*Cour des comptes*).

Article 14

The conditions of application of this act, in particular with regard to the terms according to which the inspectors mentioned under article 4 are called to take part in the duties of the *Contrôleur général des lieux de privation de liberté*, are specified by decree of the Council of State (*Conseil d’Etat*).

Article 15

Amended the following provisions:

Amends the Code for Entry and Residence of Foreigners and Right of Asylum (*Code de l’entrée et du séjour des étrangers et du droit d’asile*) - art. L.111-10 (M)

Article 16

This law is applicable in Mayotte, the Wallis and Futuna Islands, the French Southern and Antarctic Lands, French Polynesia and New Caledonia.

(1) Preliminary documents: act no. 2007-1545.

French Senate: Bill no. 471 (2006-2007);

Report by Mr Jean-Jacques Hyest, on behalf of the Law Commission (*commission des lois*), no. 26 (2007-2008);

Discussion and adoption on 31st July 2007 (TA no. 116, 2006-2007).

French National Assembly: Bill, adopted by the Senate, no. 114;

Report by Mr Philippe Goujon, on behalf of the Law Commission, no. 162;

Discussion and adoption on 25th September 2007 (TA no. 27).

Senate: Bill no. 471 (2006-2007);

Report by Mr Jean-Jacques Hiest, on behalf of the Law Commission, no. 26 (2007-2008);

Discussion and adoption on 18th October 2007 (TA no. 10, 2007-2008).

Annexe 7

The Rules of Operation of the CGLPL

The CGLPL drew up internal regulations in accordance with article 7 of decree no. 2008-246 of 12th March 2008 concerning its operations.

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, can be consulted on the institution's website: www.cglpl.fr

The purpose of the CGLPL is to make sure that persons deprived of liberty are dealt with under conditions which respect their fundamental rights and to prevent any infringement of these rights: the right to dignity, freedom of thought and conscience, to the maintenance of family relations, to healthcare and to employment and training etc.

Cases may be referred to the *Contrôleur Général* by any natural person (and corporations whose purpose is the promotion of Fundamental rights). For this purpose, they should write to:

Monsieur le Contrôleur général des lieux de privation de liberté
BP 10301
75921 Paris cedex 19
FRANCE

The inquirers and the centre in charge of referred cases deal with the substance of letters sent directly to the CGLPL by persons deprived of liberty and their close relations, while verifying the situations recounted and conducting investigations, if 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, if need be, putting forward recommendations to prevent any new violations 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, staff or persons deprived of liberty themselves.

Thus for a period of between two and three weeks, four to five teams each composed of two to five inspectors or more according to the size of the institution, go to the site in order to verify the living conditions of persons deprived of liberty, carry out an investigation into the state, organisation and operation of the institution and, to this end, hold discussions in a confidential manner with them as well as with staff and with any person involved in these places.

In the course of these inspections, the inspectors have free access to all parts of the institutions without restriction, both during the day and at night, and without being accompanied by any member of staff. They also have access to any documents except, in particular, those

subject to medical secrecy and professional secrecy applicable to relations between lawyers and their clients.

At the end of each inspection, the inspectors draft a report.

The procedure concerning inspection reports is given in annexe 3, map 3 of this report.

In addition, the *Contrôleur Général* can decide to publish specific recommendations concerning one or several institutions as well as overall assessments on transverse issues in the *Journal Officiel de la République Française* when he considers that the facts ascertained infringe or are liable to infringe one or several fundamental rights.

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