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## OPINION

of 21st October 2009

of the French Contrôleur général des lieux de privation de liberté

concerning detainees' exercise of their right to correspondence,

delivered in accordance with Article 10 of the French Act of 30th October 2007

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1. The right to private and family life includes the right to retain the maximum possible proximity with one's family. In addition, the right to correspond in writing is a form of individual freedom that falls within the freedom of expression. Finally, an individual's ability to appeal to the author of a decision applying to that individual should be preserved. For these three reasons, we must pay particular attention to detainees' right to correspondence. Such a right can therefore only be restricted – and in a proportionate manner – if specific conditions requiring this restriction are simultaneously met.

That is why the Code de procédure pénale (CPP, Code of criminal procedure) (and curiously, today only in its regulatory part) provides for prisoners' freedom to correspond: "convicted prisoners may write to any person of their choosing and receive letters from anyone" ... "every day, without limitation". Moreover, upon entering the establishment, they are provided with paper and writing materials.

However, this freedom is subject to a double restriction. First, in general, all letters sent and received "may be read" (the reading of defendants' letters must be authorised by the examining magistrate, to whom they are transmitted). Second, the head of the establishment may "retain" (i.e. refuse to deliver) a recipient's mail, in two cases: when the content of the letter "appears to seriously compromise" the prisoner's rehabilitation or the establishment's security (unless the letter is sent to a spouse or family member) or when the letter contains specific threats to the security of the establishment (even if it is sent to a spouse or family member).

Finally, there is an exception to this restriction: correspondence between prisoners and their lawyers or certain administrative authorities specified in the code is not inspected.

2. Correspondence deserves respect; this should lead the prison administration to treat prisoners' correspondence with care and to standardise their sometimes-disparate practices, according to the following principles.

**3.** Tools to facilitate correspondence should be made available to detainees in two regards. Writing paper, writing materials and proper envelopes to hold correspondence should be regularly distributed free of charge, rather than only being available for purchase by the concerned parties. Moreover, people for whom writing presents a serious difficulty should be provided with a service to assist them, within their establishment, which respects their right to confidentiality.

**4.** Metal mailboxes, closed in a secure manner, should be made available in different locations, accessible to inmates as they move within the establishment, or close to their cells for those who are permanently held there. There should be three mailboxes, clearly labelled for "internal mail," mail directed to medical personnel ("UCSA, SMPR") and finally, mail for "outside" recipients or non-professional third parties involved with the establishment (e.g. visitors, chaplains, students). The responsibility to place mail in the boxes can only be performed by prisoners when outside their cells, except in very special cases (e.g. disabilities, people refusing to leave their cells; in these cases, the prisoner should be able to choose the person who places the letters in the boxes). The amount of additional movement resulting from this requirement appears to be very limited.

Mail should be picked up regularly from these mailboxes: mail for the UCSA and SMPR should only be picked up by the staff of these units, at least twice a day; mail in the internal and external mailboxes should be picked up by the "vaguemestre" (prison mail officer), who has exclusive authorisation to open them, at least once a day, and under their sole responsibility.

**5.** At least two people per establishment should be authorised by the head of that establishment to be vaguemestre (without obliging these jobs to be full-time). To be eligible, they must be on the prison administration's staff and must prove, in particular, that they have been informed of the provisions relating to the right to correspondence and the restrictions that may be imposed.

The vaguemestres are responsible for delivering internal mail directly to its recipients and transmitting external mail to personnel or to the postal service.

**6.** There is no reason to read internal mail, since it is for a member of the establishment's staff. However, any staff member who receives correspondence should, if necessary, report to management anything he deems threatening to the good order of the establishment.

Regulations providing for the possibility of disciplinary action against detainees in cases of abuse should be eliminated.

**7.** Mail sent outside the establishment should always be able to be inspected, in accordance with the CPP. In practice, however, this inspection should be quite moderate in most circumstances for prisoners known to the establishment's administrators.

Solely the vaguemestres should read the letters. They must be bound by professional secrecy, with exceptions made, in accordance with the laws in force, for cases concerning the rehabilitation of the prisoner or the safety of people or property.

The vaguemestres should keep anonymous statistics concerning letters that are inspected and those that are retained.

**8.** No other administrative employee should be aware of the content of detainees' correspondence, except its recipient, barring the case where the content must be brought to the attention of a third party in accordance with point 7 above.

In the particular case of the mail for UCSA staff, additional protection is necessary because of medical information that may be included. Only the UCSA or SMPR medical staff

(excluding security personnel assigned to those services) should have access to prisoners' correspondence.

**9.** Regarding mail addressed to prisoners, when the size of an establishment makes it impossible for mail to be distributed solely by the *vaguemestres*, the respect for correspondence should be guaranteed. In particular, letters opened by *vaguemestres* must be closed again using a method that will show that the letter was inspected, and will also prevent inopportune reopening. All inadvertently opened correspondence must be clearly flagged and be delivered to the addressee by the *vaguemestre*.

Correspondence addressed to the medical staff must only be delivered by the *vaguemestre*. Any mail from the UCSA or SMPR to prisoners is always private and cannot be opened.

**10.** Correspondence exempt from inspection (Articles D.69 and D.262 of the CPP) may never be opened. If such correspondence is opened in error, it should be closed according to the procedure described in point 9 above. This requirement does not apply when there is no external indication of the protected nature of the correspondence. The number of errors of this type constitutes an indicator of the quality of the *vaguemestres*' work.

From the point of view of correspondence, no distinction needs to be made between administrative authorities referred to in Article A.40 of the CPP and the lawyer representing the prisoner in a trial. Correspondence they send, or that is sent to them, should be treated identically.

The register referred to in the last paragraph of Article D.262 should be signed within 24 hours by the prisoner for each item of correspondence received or sent. This formality is carried out under the supervision of the *vaguemestre*.

**11.** When correspondence is flagged for possible retention by the *vaguemestre*, the final decision to retain it can only be made by the head of the establishment or his assistant, specifically delegated for this purpose.

**12.** These rules, which the Contrôleur général has already observed in some of the establishments it visits, and which should be systematised, do not require any modification of the code in force, with the exception of a new provision binding *vaguemestres* to secrecy.

**13.** They should be applied as soon as possible, pending further studies of methods to enhance the balance between security imperatives and the secrecy of correspondence.

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