
RECOMMENDATIONS

of the 17 october 2013

of the Contrôleur général des lieux de privation de liberté
made using the procedure of article 9 of the Act of 30 October 2007
concerning young offenders' institutions
in Hendaye (Pyrénées-Atlantique) and Pionsat (Puy-de-Dôme),

1/ Article 9 of the Law of 30 October 2007 allows the Contrôleur général des lieux de privation de liberté, if he observes a serious violation of the fundamental rights of persons deprived of their liberty, to immediately submit these observations to the competent authorities and ask them to respond. After the response has been received, he observes whether the indicated violation has been corrected; he may make public his findings and the responses.

Using this urgent procedure for the third time, the CGLPL hereby publishes the following recommendations concerning the "Arverne" CEF in Pionsat (Puy-de-Dôme *département*) and the "Txingudi" CEF in Hendaye (Pyrénées-Atlantiques *département*), visited by two inspection teams, respectively, from 27-30 August and from 23-26 September 2013.

2/ These recommendations have been addressed to the Minister of National Education, the Minister of Justice and the Minister of Health and Social Affairs. They were given 17 days to respond with their observations. The Minister of Justice provided her response, shown below. The other ministers did not respond. The standard procedure, which requires the inspectors to draft an exhaustive report of their visit, is in process and the final reports will be submitted to the competent ministers to once again request their observations. They will be made public at the end of the procedure.

3/ The Convention on the Rights of the Child, signed and ratified by France, provides that "the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." (Article 3, § 3).

Safety and health are therefore indispensable objectives for institutions that admit children. Given the risks inherent in the behaviour of minors and, *a fortiori*, of children who have already experienced varying degrees of criminality, these requirements are simply another way of asserting the right to life and the right to not be subjected to inhuman or degrading treatment, as both are part of the European Convention on Human Rights and Fundamental Freedoms as well as the Convention on the Rights of the Child (Articles 6 and 37).

Two observations made at the Hendaye CEF are inconsistent with these principles.

4/ A choice was made to establish this CEF on public land that formerly was assigned to the Navy. Access to the site is difficult and is worth describing in detail:

- The road providing access to the CEF (via a tunnel) is inaccessible to pedestrians and there is no plan to change that;
- There is a pontoon used as a landing stage on the shore of the Bidassoa River. It was clearly used in the past by the Navy sailors. Now it is used only occasionally by the CEF for recreational outings. An improvement project raises doubts about this facility;
- The only way for a young person to leave on foot is to cross two railroad tracks and the Hendaye - Irun tramway line. The latter is protected by a level crossing, but the railroad tracks are prohibited to pedestrians and are not fitted with safety fixtures.

Of course, pedestrians frequently cross the tracks. But for the children living at the CEF to cross railroad tracks, even under supervision, let alone during an impromptu outing or when running away, is not consistent with the safety required by the legal principles mentioned above. It exposes these children – who may escape the vigilance of their educators at any time – to significant risks and is therefore, by reason of its permanent presence, a severe infringement of their right to life.

5/ We note that the CEF will soon move to the nearby town of Bidart. However, this move is only temporary, in order to allow works that, in accordance with national directives, will increase the capacity of the CEF, while degrading the living conditions for some of the minors who are admitted. When the CEF returns to Hendaye, with an expanded staff, risks will increase. The choice of location, made in 2003, speaks volumes about how seriously the safety and educational dimensions were viewed at that time.

6/ The presence, in the CEF's freezers, of a large stock of meat several months past its expiry date, also flies in the face of the Convention's stipulations. Perhaps this meat would not have been fed to the children: there is no proof. In addition, once the situation became known, management immediately took the required measures. However, it is established that, at the very least, the minors in the CEF's care ran a health risk due to the mismanagement of food intended for their consumption. Moreover, when the inspection visit was conducted, the most recent veterinary services inspection dated from 2008 and no periodic inspection by an independent food hygiene laboratory was planned.

7/ Article 29 of the Convention on the Rights of the Child emphasises education and the orientation it must take, concerning "development of the child's personality" and "mental and physical abilities". The statutory instrument of 2 February 1945, as amended, provides that CEFs should be subject to ongoing supervision and inspection "to ensure heightened educational and pedagogical support adapted" to the personality of the minors who are admitted.

8/ This is contrary to the inspectors' observations at the Pionsat CEF. Without questioning the goodwill of the educators – who are lacking in skills and training – the inspectors noted the total absence of an educational project. An institutional project, written in June 2010, before the facility opened, is being used in the absence of a service project. But, in any case, the staff is not familiar with this document.

During the inspection visit, the children's activities for the day were determined that same morning. As the day began, neither the young people nor the educators knew what they would do; no advance planning had taken place. During interviews, children complained about the institution's lack of organisation.

The "activities" taking place during the inspection visit were largely improvised (cutting weeds, outings with the maintenance man to buy supplies, four-person ball games on the paved sports area) and evinced little or no educational value for the young people.

Nothing was planned to fill the gap left by the absence of schoolwork during the summer holidays. In addition, at the time of the visit (27-30 August 2013) – just a few days before the beginning of the school year, in an institution that receives children subject to compulsory education – no teacher had been assigned by the school district administration.

In view of the gravity of these breaches, clearly perceived by the new director, who began duties a few days before the visit, they constitute a serious violation of children's rights to education as defined by the aforementioned texts.

9/ These observations lead the Contrôleur général des lieux de privation de liberté to strongly recommend:

- Permanently relocating the Hendaye CEF to another site compatible with the health and safety of children who are admitted;
- Realising a comprehensive, multifactorial written analysis prior to the selection of sites where CEFs are to be established;
- Focussing additional attention on the initial and continuing training of educators, as previously recommended (cf. "Recommandations du 1^{er} décembre 2010 du contrôle général relatives à quatre centres éducatifs fermés" [Recommendations of 1 December 2010 in view of an overall inspection of four CEFs], *Journal officiel*, 8 December 2010);
- Requiring all CEFs, including Pionsat, to draft an educational project that is clearly identified, known to all concerned, updatable, susceptible to inspection, and inspected by the competent territorial services;
- Requiring competent authorities to appoint teachers in a time frame compatible with the children's needs and which provides educational services in a continuous manner during the summer holidays.

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