



OPINION

of 10 June 2010

of the French Contrôleur général des lieux de privation de liberté

concerning the protection of property of detained persons

issued in compliance with Article 10 of the Act of 30 October 2007

1. Every natural person is entitled to the peaceful enjoyment of his possessions. This requirement of applicable law benefits detained persons just like anyone else. It therefore extends to the personal belongings that the detained persons may have with them on the day of their incarceration and during their imprisonment. The guarantee is all the more necessary for persons deprived of their liberty since they are separated from the majority of their possessions as a result of their detention and have only a few objects with them; moreover, the majority of these individuals, lacking significant resources, do not have the possibility to have a large number of belongings and have only those that are essential to them. But this guarantee is all the more easy to ensure since the detainees - with the exception of those serving out their sentence in a partial release regime - are subject to constant constraints and supervision by the administration which orders their remand in custody or enforcement of the sentence.

2. Certainly, inmates do not enjoy unlimited use of these possessions. The administration can naturally regulate their use according to the requirements related to the compensation of the victims of the offense committed, the preparation for leaving incarceration and for safety reasons. As such, the code of criminal procedure provides for a certain number of provisions regarding financial assets and valuables, and objects or property. Certain items may be retained by the individual being incarcerated; others must be handed over to the establishment's accounting department which stores them until the detainee is released. These include items on the list of prohibited objects, or those which must be managed by the administration (funds); and finally, others may be prohibited but not managed and are handed over to the family or to a third party "owing to their value, their importance or volume" (Article D.337).

In the case of a transfer, the code of criminal procedure also provides that the administration is responsible for transporting the possessions, unless they are too voluminous, in which case their shipment is borne by the prisoner; moreover, in the event of

a prisoner's death, the possessions are released to the *Administration des Domaines* (Land Office) if not claimed by the heirs within a period of three years.

3. The application of these provisions, currently insufficient, raises significant challenges that must be corrected in order to effectively protect the right of detainees to the peaceful enjoyment of their possessions.

Numerous testimonies collected by the French *Contrôleur général* regularly report cases of missing and damaged property, either in the locker rooms of the facilities where they are stored, during transfer operations, or following the death of detainees.

These cases of missing or damaged property are more likely to occur in cases where the prisoner is transferred on short notice. Such is the case when the assignment of the prisoner is changed for reasons of order and security (following an incident), when measures are taken to reduce prison congestion or when a medical emergency necessitates rapid extraction. This can also happen when relatives send clothing, a book, shoes, CDs or DVDs (now authorised) to the prisoner.

In addition to contradicting everyone's rights, the disappearance of property creates tensions within the prison and with the families that should not exist; they not only abnormally divest detainees of their property, but they also turn against the entire staff.

The facilities are aware of these crimes against property and certain have already sought to remedy the situation.

4. To bring a stop to the problem, it is recommended that the penitentiary administration adopt the following preventive measures in the interests of prisoners, families and staff:

§1 Anyone who is incarcerated has the right to possess and use property for which its possession and use are not explicitly prohibited by a text, particularly by the internal regulations. Only its use may be subject to regulations required by collective life (hygiene, noise, etc.).

§2 The penitentiary administration is depositary of the property of detainees, regardless of the market value, when kept in a locker room or in any other location which prohibits its use by its owners. The administration thus has custody and, consequently, the responsibility of the property, except when it is established that the loss, destruction or deterioration of said property are not attributable to it. With this one exception, it has the responsibility to ensure that the property is not lost, destroyed or damaged and, when it is, to compensate its owners for its value, as is currently foreseen in certain cases (see § 14 below).

§3 As the Mediator of the Republic noted in his last annual report, property of any kind must be inventoried in the presence of and authenticated by both parties each time the property, of any kind whatsoever, is:

- turned over to the accounting department of a facility;
- deposited or withdrawn in an establishment's locker room.

§4 The necessary personnel and time must be made available for this purpose, particularly in remand prisons, in light of the requirements that such inventories impose. Only trained prison wardens dedicated solely to this task must be able to carry out the duties in accordance with a formalised procedure and, as is already the case in certain establishments, computerised as early as possible. In their absence, especially at night, the property must be kept in a closed location in closed packages by means making it impossible to open until the inventory is taken no later than the next business day; in case of the departure of a prisoner, inventories are performed 24 hours in advance at the earliest and the packages are sealed in the same manner. Under no circumstances shall inmates assigned to general service intervene in these operations, except possibly for handling already sealed packets.

§5 To facilitate the implementation of controls, the locker rooms of penitentiary facilities (at least those in which the greatest number of transfers are conducted) must be equipped with X-ray baggage screening tunnels.

§6 The boxes in which the inmate's belongings are placed (except those submitted to the accounting department) are uniform and meet the requirements of the instructions issued in 2009 by the Prisons Administration Director. However, special packaging must be used to distinguish essential goods, all placed in a single priority cardboard box. These items shall be returned to the transferred prisoner upon his/her arrival at the new facility, pursuant to the previous recommendation regarding the inventory.

§7 The boxes containing property that must be stored in the locker room because it cannot be brought into cell, must be inventoried following the transfer as described in § 3 and § 4 above and then closed in the same manner after possible modification of the content in accordance with current regulations. They can only be reopened, if necessary, in the presence of the prisoner and then closed in the same conditions, particularly when the latter leaves the facility.

§8 During a transfer (or a release), and time permitting, the administration should provide the jailed prisoner the cardboard boxes necessary to carry the personal belongings he/she had available. Once the boxes are filled, they should be sent to the locker room in his/her presence so that the specialised staff, mentioned in § 4 above, can conduct an accurate inventory in the presence of the prisoner. The prisoner is given a copy of the inventory, and then the packages are sealed.

§9 All administrations providing transport during transfers must admit the same number of boxes (harmonised) per prisoner in their vehicles. Interdepartmental meetings must determine this number, calculated to avoid the use of subsequent transport by a third party as much as possible, and devise the interior design of the vehicles used.

In any event, the priority box mentioned in § 6 above must always be sent with the prisoner.

§10 If there is an excess number of boxes in a transfer, the current practice is that the additional transport is the responsibility of the prisoner, who bears the costs invoiced by the private transport company. In such a case, however, the additional boxes must be closed prior to the prisoner leaves, the facility must ensure the departure, and finally, for indigent

prisoners, at least part of the financial expense shall fall on the establishment (within the limit of a ceiling).

§11 In case of sudden departure, the administration shall forward, at its expense, the following items to the dispatching facility: the funds in the amount on the day of the departure, the closed boxes stored in the warehouse, and the belongings left in the cell. When the property in the prisoner's cell cannot be transferred prior to the prisoner's departure, these items must be collected and kept under surveillance as soon as possible, particularly in the case where the prisoner shared a cell with others.

§12 In the case of emergency hospitalisations, the administration must have the prisoner sent the items he/she needs for the hospital stay as must be indicated in advance by the hospital (according to a list that should be included in the facility's internal regulations); measures must be taken to protect property remaining in the cell (for example, in the form of an inventory not in the presence of both parties, but in protected packaging, in the locker room). The same applies when the cell the prisoner occupied is not retained for his/her return.

§13 Prisoner queries issued in the case of loss, destruction or damage to property in connection with a transfer are the sole responsibility of the dispatching facility (possibly with the help of the receiving facility).

As an exception, if the transfers are made by the penitentiary administration's National Transport Service (*service national des transports, SNT*), it shall be this service's responsibility.

§14 Loss, destruction or permanent damage of property should result in a simple and fast compensation procedure at the current value on the date of the event, established by any means, in particular by using the joint inventory prepared prior to the move (therefore without a requirement for proof of purchase, which are often impossible to produce). This compensation is paid by the penitentiary administration (unless proof is established that the loss was sustained through a cause for which it is not responsible and except for property entrusted to a private company for care or transportation) within the possible limits of a maximum flat-rate sum that should, however, cover the vast majority of situations.

§15 In the future, a study should be conducted regarding the possibility of substituting washable baggage or cases made of resistant and material (without key lock but with "seals") for the boxes currently in use. However, baggage of this type (and possibly assistance in their transport) should be brought into service from now on for the recovery by family members of personal belongings of prisoners who have died in custody.

In addition, thought should be given to renewing the data concerning the problem of transporting the property of transferred prisoners. Currently assigned to various departments or private transports, it could be assigned exclusively to an extended national transport service, including at least prisons that are indeed major prisoner orientation centres and central prisons.

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