OPINION of 24 February 2011
of the Controller General of Places of Deprivation of Liberty
on the exercise of religion in places of deprivation of liberty

1. The exercise of religion in places of deprivation of liberty must clearly be conceived in accordance with the secularism principle deriving from Article 1 of the Constitution. As we know, this principle means that the State does not recognise any individual religion; it also has the effect of prohibiting *anyone from citing his or her religious beliefs as grounds for failing to comply with the common rules governing relations between the public authorities and private individuals"* (Constitutional Council, No. 2004-505 DC of 19 November 2004, recital 18).

The secularism principle, which guarantees the free exercise of religion, must be implemented, as stated in Article 1 of the Law of 9 December 1905, in a manner compatible with the imperatives of public order, whose protection is a constitutional objective.

The scope of secularism neither disappears nor weakens in places of deprivation of liberty, any more than does freedom of conscience, a fundamental principle recognised by the laws of the French Republic (see also ECHR, 25 May 1993, Kokinakkis v. Greece, § 30). This is reiterated, in the specific case of prisons, in the Law of 24 November 2009, Article 26 of which provides that *prisoners are entitled to freedom of opinion, conscience and religion; they may exercise the religion of their choice.* On the other hand, the implementation of these provisions must be reconciled with stricter requirements of public order (as the prisons law also points out) and with the specific nature of such places to the effect that the inmates are not allowed to leave them. This is why Article 2 of the Law of 9 December 1905 expressly laid down, as an exception to its general principles, that chaplaincies may be funded from the budgets of public corporations in order to ensure *free exercise of religions in such public establishments as schools, hospitals, asylums and prisons*.

2. The implication is that where persons are no longer free to come and go as they please, the State must defray the cost of the services required for "free exercise of religions". The expression "public establishments" used in the Law should not be understood in the specific legal meaning which it has since taken on, but only as independent services coming under the exclusive responsibility of the public authorities. The list set out in the 1905 Law was not

exhaustive, and must therefore be understood as covering any place in which, beyond a reasonable time-limit, individuals who follow a religion have no access to facilities for worship owing to their "confinement".

Where prisons are concerned, the Code of Criminal Procedure (Articles R.57-9-3 ff) has specified the conditions under which access to worship is provided. The same applies, to a lesser extent, to hospitals (Articles L. 3211-3, 7 and R.112-46 of the Code of Public Health; see also Circular No. DHOS/G/2005/57 of 2 February 2005). There are no provisions on administrative holding centres, although some practical arrangements have been tested, with a fair degree of success. Nor would any firm arrangements appear to have been made for closed educational institutions, for lack of any apparent demand. At all events, the obligations on the authorities responsible for such establishments are no different in nature from those affecting the staff in question, leaving aside certain practical details.

3. Under the aforementioned principles, the administration is in no way required to:

- appoint as chaplains representatives of a *de facto* corporation or legal entity whose religious character has not been established;
- appoint a chaplain who is not guaranteed to endeavour to comply with the rules required for public order in a place of deprivation of liberty;
- authorise religious practices incompatible with the requirements of public order, and in particular with the running of the collective life of the prison, to the extent that they might cause tension; such incompatibility must obviously be established, however;
- organise chaplaincy services where there is no demand for them (although it also cannot block or disregard any requests for such services);
- shoulder responsibility for any inability to appoint a chaplain because the relevant religious authorities have failed to nominate anyone.

With these reservations, it is incumbent on the department responsible for places of deprivation of liberty to "meet the requirements of religious, moral or spiritual life" (Code of Criminal Procedure, Article R.57-9-3) for the persons for whom they are responsible.

4. This is currently not always the case. Under current conditions, the public authorities are liable not only to be reproached with failing to implement the necessary principles, particularly in terms of equal treatment and non-discrimination, but also to be unable to explain certain choices to the persons in their charge, which of course leads to misunderstandings in respect of the requirement on the State to show neutrality vis-à-vis religion, as well as to occasional tension.

5. Broadly speaking, just as "detained persons are authorised to receive or retain in their possession religious items and the books necessary for their spiritual lives" (Article R.57-9-7 of the Code of Criminal Procedure), the same must apply to all persons deprived of their liberty on a long-term basis, whatever the place of deprivation of liberty.

It is therefore incumbent on all staff working in such places, not to decide what constitutes a religious item, but, with the relevant training, to be able to identify prayer items (eg phylacteries and ciboria) and, to an extent compatible with the proper functioning of collective life, to devote particular attention to them:

- detainees must be allowed to retain unobtrusive religious signs or symbols, of whatever kind,;
- works "required for spiritual life" must be introduced thought the channels stipulated in the Code of Criminal Procedure, including by chaplains, and no distinction need be drawn in places of detention between paperback and hardback books;
- prisoners should be allowed to retain religious items which are not prejudicial to security. These items must be respected, whatever the religion of the person possessing them (neutrality as an expression of secularism) and whatever the convictions of the staff members responsible for the detainees (civil servant neutrality). The Controller General has received complaints in the past, whose veracity he has been unable to verify, of the disappearance of or deliberate damage to such items, and of obvious contempt shown towards them;
- more generally, tendentious comments by public or private staff on religious convictions and practices of any kind are at various with the rules applicable to places of deprivation of liberty: they are always unnecessary and usually harmful.

6. Some religions have fewer adherents, notably because of the current diversity of religion in France. However, where there is a demand for assistance in respect of a group which is indisputably religious in nature and where the corresponding religion is able to meet this demand in organisational terms, no objection can be made to it under the secularism principle, other than those set out in para. 3 above concerning principles.

This places two obligations on the administration.

First of all, while it is obviously not for the administration independently to decide which alleged group or denomination has religion status, it must bow to judicial recognition of the religious character of corporations where they have been officially defined as such. This applies, for instance, to one such body in respect of which a court not only defined certain of its activities as the public exercise of a religion (Lyon Administrative Court of Appeal, 18 January 1990), but also awarded the status of religious association to a number of its sub-groups (Council of State, Section, 23 June 2000, Minister for the Economy, Finance and Industry, No. 215 109) within the meaning of Part IV of the Law of 9 December 1905, and a number of administrative bodies have followed suit (eg the Consultative Commission on Religions, setting of 26 October 2001). These decisions obviously override the "sect" status which had previously been assigned to various groups practising this same religion. Such recognition of the religious nature of corporations, and therefore of the right of their members to have a chaplain, has nothing to do with recognising practices prejudicial to individuals. It is an expression of the neutrality required by secularism.

Secondly, the administration cannot grant a lesser status to chaplains on the grounds that they represent a minority religion. When a religion is regarded as such under the relevant legislation, its chaplains must be granted the same specific rights as all other chaplains; nor must they be confined, eg in prisons, to "visitor" status, which can lead to the creation of "visiting room religions" (in which meetings with the "chaplain" are confined to this room), rather than in the cell or special premises set aside for the purpose. The administration must, on the other hand, obviously ensure that the number of approved chaplains for a given religion is proportional to the number of persons adhering to this religion. This is the only possible interpretation of the

relevant texts, especially European Prison Rule No. 29 para. 2 (which cannot, in fact, override the Law of 1905 and the Prisons Law), unless we opted to consider, precisely, that when religion status is granted to a given corporation's activities, the administration, abandoning the secularism principle which should be fully implemented here, sets itself up as an authority responsible for deciding which religions can be admitted to places of deprivation of liberty, and with which particular rights.

What applies to one denomination applies to all those whose dependent associations are religious in nature, even if they are in the minority in France (and/or possibly in the majority in certain regions or localities).

7. Several denominations represented to a varying degree in places of deprivation of liberty impose dietary prescriptions on their adherents.

The question of prescribed diets is especially important in that the issue of food (quantity and quality) is vital for all persons deprived of their liberty. Currently, with very few exceptions, all places of deprivation of liberty are able to provide a variety of meal types. However, very few of them provide food which complies with ritual prescriptions. One result is the warping of religious practices, with persons deprived of their liberty requesting vegetarian meals, even though they in no way wish to avoid eating meat; another is real dietary deficiencies, with young men frequently complaining of not having enough to eat, particularly in prisons.

The public authorities' argument that the food provided meets the requirements of balance, variety and food hygiene is irrelevant to the question as posed.

Places of deprivation of liberty must nowadays be organised in such a way as to provide menus which meet specific dietary requirements, obviously provided that they correspond to religious practices, in addition to any medical prescriptions.

- Subject to any requirements linked to the persons' health and proper order in the establishments, they must be allowed to respect fasting periods; this is in fact already often being done.
- Provided the conditions on the food market so permit (which is usually the case in contemporary France), the authorities must endeavour to supply meat and other foodstuffs prepared in accordance with the rites approved by the relevant religious authorities. The information garnered by the Controller General does not show that the price of such foodstuffs is be prohibitive; on the contrary, the asking prices are often lower than those for the products which are usually purchased.
- In return, persons deprived of their liberty who have no dietary prescription of any kind should not have to tolerate dietary constraints which have nothing to do with them. There is no reason, for example, that individuals who so wish should be prevented from eating pork.

Barring early conclusion of the requisite contracts to widen dietary provision, the following steps should be taken:

- chaplains should, where no alternative is possible, be authorised to bring in such foodstuffs, in necessarily limited quantities, subject to the requisite controls and under their own responsibility;
- the range of products on offer in "prison shops" (in places of detention) and cafeterias (in hospitals) should be extended.

These are only palliative measures for a dietary principle in line with the precepts of religion, which the European Court of Human Rights recently enshrined in the case of a detainee (ECHR, 7 December 2010, Jakóbski v. Poland, No. 18429, paras. 44 and 45 – violation of Article 9 of the European Convention on Human Rights). At least they are easy to organise at short notice.

8. Collective practices of a religious natures call for the following comments:

- Collective prayers or services must be allowed in premises set aside for the purpose, of a sufficient area and with appropriate fittings (the Controller General's department has noted rooms without electrical sockets), obviously subject to the requirements of public order (particularly in terms of the number of persons allowed to assemble in these premises) and neutrality vis-à-vis the different religions; the chaplains of the various denominations should take responsibility for use of the premises.
- When services are taking place, in accordance with timetables recommended by the chaplains and accepted by the director of the establishment, some degree of quiet must be guaranteed and steps taken to prevent anyone from deliberately disrupting the prayers or services (particularly by third persons entering the room at inappropriate times or with unnecessary staff interference). It would therefore be desirable, wherever possible and most definitely in all new establishments, to ensure that the premises are used exclusively for services, in order to emphasise their religious dimension.
- In addition to regular services, these premises should also be open, within the limits of public order requirements, to people who wish to celebrate documented and identified religious festivals. The administration should be informed of the dates of such festivals, and when the latter take place it must provide the requisite facilities (for bringing in food, small items, etc), under the chaplains' responsibility.
- No single denomination may monopolise such rooms (this should not apply to chaplaincy offices, where possible).

9. Spiritual assistance may also include events such as discussion groups, meetings for meditation or celebrating a religious festival, choirs, etc. The only valid reasons, duly argued, under which the administration may refuse such use of the premises are linked to public order or lack of space.

10. Spiritual assistance also involves allowing anyone who so requests, even if he or she cannot move (eg in the case of a bedridden or confined person), to be visited by a chaplain. Chaplains must consequently be admitted to the areas where the persons deprived of their liberty are accommodated, by whatever means; they must be able to talk with them personally and obtain the material resources for the purpose; lastly, their relations, including correspondence, with the persons whom they visit must be shielded from any third-party interference.

11. Attendance at services or other gatherings by persons deprived of liberty requires the administration to draw up lists of names, mentioning the person's denomination. The authorisations required under personal data protection legislation and statutes must accordingly be obtained. Furthermore, staff must ensure the confidentiality required by such data. The lists must be meticulously updated on the basis of information provided by the chaplains and during such events as transfers, etc. This is geared to preventing long delays in access by the persons deprived of liberty to these gatherings, as is too frequently the case at present. Lastly, the administration may not adduce the inclusion of a person's name on the list for one religion to block his or her wish to attend a service conducted by another religion.

12. As throughout society in general, members of different religions and persons without religion currently coexist in places of deprivation of liberty. Persons engaged in individual and collective religious practices must ensure respect for the freedom of conscience, ie the spiritual options, of the other members of the community. No constraint or threat can be accepted in terms of observance or non-observance of religious prescriptions, or *a fortiori* of the organisation of the service, which can only be governed by the rules laid down by the authority responsible. The house rules, institutional strategies, the various regulations on prisons and detention centres, public hospitals and accommodation centres for minors must override other considerations under all circumstances, and vis-à-vis all those concerned, in the practices of daily life, eg in the use of showers, activities on offer, medical treatment administered, educational and training courses provided, and occupations involving both men and women.