The Contrôleur general des lieux de privation de liberté

Annual report 2012
Contents

CONTENTS ........................................................................................................................................... 2
GLOSSARY ............................................................................................................................................... 6
FOREWORD .............................................................................................................................................. 9
SECTION 1: ............................................................................................................................................ 12
STATEMENTS MADE BY THE CONTRÔLEUR GÉNÉRAL TO THE GOVERNMENT IN 2012 ................................................. 12
  1. ASSESSMENTS AND RECOMMENDATIONS PUBLISHED IN THE JOURNAL OFFICIEL ............................................ 12
     1.1 The Assessments made public ........................................................................................................ 13
     1.2 Recommendations concerning Baumettes Prison in Marseille ..................................................... 16
  2. RECOMMENDATIONS CONCERNING INSPECTIONS ...................................................................................... 17
     2.1 Detention Centres for illegal immigrants and Waiting areas ......................................................... 18
     2.2 Young Offenders’ Institutions ...................................................................................................... 30
     2.3 Police Custody and Customs Detention Facilities ......................................................................... 38
     2.4 Prisons ........................................................................................................................................... 47
     2.5 Treatment in Hospitals without Consent ......................................................................................... 64
SECTION 2 ............................................................................................................................................... 78
ACTIONS TAKEN IN 2012 IN RESPONSE TO ASSESSMENTS, RECOMMENDATIONS AND CASES TAKEN UP BY
THE CONTRÔLEUR GÉNÉRAL .................................................................................................................. 78
  1. POSITIVE CHANGES OBSERVED FOLLOWING CASES TAKEN UP AND RECOMMENDATIONS .......................... 80
     1.1 Transgressive acts committed by minors ......................................................................................... 80
     1.2 Maintenance of family relations for imprisoned couples ................................................................ 81
     1.3 Prisoners’ Voting Rights .............................................................................................................. 81
     1.4 The Fight against Poverty in Prison ............................................................................................... 82
     1.5 Degrading Treatments of Detained Persons .................................................................................. 82
     1.6 The Prohibition on the Sale of Coffee in Prison Shops .................................................................. 83
  2. ACTIONS TAKEN IN 2012 IN RESPONSE TO THE PUBLIC ASSESSMENTS PUBLISHED IN THE JOURNAL OFFICIEL .......................... 84
     2.1 The Assessment concerning Numbers of Prisoners published on 13th June 2012 .................... 84
     2.2 The Assessment concerning Partial Release published on 23rd October 2012 ....................... 84
  3. ABSENCE OF PROGRESS ASCERTAINED WITH REGARD TO CERTAIN ISSUES ABOUT WHICH CONTINUAL
RECOMMENDATIONS HAVE BEEN MADE .............................................................................................. 85
     3.1 Confiscation of the brassieres of women placed in police custody .............................................. 85
     3.2 The practice of Religion in Prisons ............................................................................................... 86
     3.3 Supervision of Prison Staff ......................................................................................................... 86
     3.4 The Harmful Use of Fuel Tablets in Prisons .................................................................................. 87
  4. SUBJECTS WHICH CONTINUE TO POSE MAJOR PROBLEMS ........................................................................... 87
     4.1 The Protection of Medical Secrecy in Prison .................................................................................. 87
     4.2 Provision of medical services for transsexual prisoners ............................................................... 88
     4.3 The application of the “Closed Doors” Regime to the Whole of the Prisoners of Long-Stay Prisons and
long-stay Prison Wings .......................................................................................................................... 89
     4.4 Renewal of Prisoners’ Residence Permits ..................................................................................... 89
     4.5 The Use of Information Technology in Prison ............................................................................... 90
SECTION 3 .............................................................................................................................................. 100
DISCIPLINE AND SANCTIONS IN PLACES OF DEPRIVATION OF LIBERTY ........................................................... 100
  1. EMPIRICAL DISCIPLINARY PRACTICES BUILT UPON LEGAL UNCERTAINTIES ..................................................... 101
     1.1 Misuse of Therapeutic Practices for Disciplinary Purposes within Health Institutions .................. 101
     1.2 A Disciplinary Regime with Poorly-Defined Contours in Detention Centres for Illegal Immigrants.. 106
     1.3 Discipline in Young Offenders’ Institutions: a Heterogeneous Construction ................................ 108
  2. PRISON DISCIPLINE: PERFECTIBLE LAW AND QUESTIONABLE PRACTICES .................................................... 111
     2.1 Disciplinary Regulations that are specific, while leaving room for improvement ....................... 112
<table>
<thead>
<tr>
<th>Section</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2 Misapplication of Statutory Provisions as an Indirect Means of Discipline</td>
<td>125</td>
</tr>
<tr>
<td>2.3 Unlawful Practices for the Purposes of Punishment</td>
<td>136</td>
</tr>
<tr>
<td>2.4 The impact of Prison Disciplinary Sanctions upon Court Decisions</td>
<td>137</td>
</tr>
<tr>
<td><strong>SECTION 4</strong></td>
<td><strong>147</strong></td>
</tr>
<tr>
<td>ACCESS TO DEFENCE RIGHTS FOR PERSONS DEPRIVED OF LIBERTY</td>
<td><strong>147</strong></td>
</tr>
<tr>
<td>1. Access to Information: an Essential Precondition for any Defence</td>
<td><strong>148</strong></td>
</tr>
<tr>
<td>1.1 Informing Persons Deprived of Liberty of the Existence of their Rights is a Priority</td>
<td><strong>148</strong></td>
</tr>
<tr>
<td>1.2 The use made of the information provided depends upon its content and the way in which it is passed on</td>
<td><strong>153</strong></td>
</tr>
<tr>
<td>2. Effective Exercise of Defence Rights</td>
<td><strong>165</strong></td>
</tr>
<tr>
<td>2.1 The technical nature of defence before a judge places persons deprived of liberty at a disadvantage</td>
<td><strong>165</strong></td>
</tr>
<tr>
<td>2.2 Though apparently more straightforward, defence before the administration is no less difficult to exercise</td>
<td><strong>176</strong></td>
</tr>
<tr>
<td><strong>SECTION 5</strong></td>
<td><strong>183</strong></td>
</tr>
<tr>
<td>DEPRIVATION OF LIBERTY AND ACCESS TO HEALTH CARE</td>
<td><strong>183</strong></td>
</tr>
<tr>
<td>1. Access to Health Care in Places of Short-Term Deprivation of Liberty</td>
<td><strong>183</strong></td>
</tr>
<tr>
<td>1.1 Access to Health Care in Police Custody Facilities</td>
<td><strong>183</strong></td>
</tr>
<tr>
<td>1.2 Access to Health Care in Detention Centres and Facilities for Illegal Immigrants</td>
<td><strong>186</strong></td>
</tr>
<tr>
<td>2. General Health Care in Prisons</td>
<td><strong>189</strong></td>
</tr>
<tr>
<td>2.1 Background details</td>
<td><strong>189</strong></td>
</tr>
<tr>
<td>2.2. The Principal Points Reported by the Contrôleur général des lieux de privation de liberté</td>
<td><strong>192</strong></td>
</tr>
<tr>
<td>2.3 The Highly Variable Quality of Provision of Health Care to Prisoners in General</td>
<td><strong>195</strong></td>
</tr>
<tr>
<td>3. Daily Life in Prison for the Elderly and Persons Suffering from Disabling Pathologies</td>
<td><strong>200</strong></td>
</tr>
<tr>
<td>3.1 Daily life in prison for persons with restricted mobility</td>
<td><strong>201</strong></td>
</tr>
<tr>
<td>3.2 Daily life in prison for elderly persons</td>
<td><strong>204</strong></td>
</tr>
<tr>
<td>4. Health Care within the Framework of Preparation for Release and Reduced Sentencing</td>
<td><strong>206</strong></td>
</tr>
<tr>
<td>4.1 Remission and Temporary Release</td>
<td><strong>206</strong></td>
</tr>
<tr>
<td>4.2 Deferment of Sentences on Medical Grounds</td>
<td><strong>207</strong></td>
</tr>
<tr>
<td>4.3 The problematic situation of unconvicted prisoners</td>
<td><strong>208</strong></td>
</tr>
<tr>
<td>4.4 Deferment of Sentences on Emergency Medical Grounds</td>
<td><strong>209</strong></td>
</tr>
<tr>
<td>5. Health Care in Semi-Custodial Institutions</td>
<td><strong>209</strong></td>
</tr>
<tr>
<td>6. Somatic Health Care in Mental Health Institutions</td>
<td><strong>210</strong></td>
</tr>
<tr>
<td><strong>SECTION 6</strong></td>
<td><strong>216</strong></td>
</tr>
<tr>
<td>“FOR THE ATTENTION OF THE CONTRÔLEUR GÉNÉRAL...” (TESTIMONIES RECEIVED)</td>
<td><strong>216</strong></td>
</tr>
<tr>
<td><strong>SECTION 7</strong></td>
<td><strong>222</strong></td>
</tr>
<tr>
<td>THE CONFINEMENT OF CHILDREN</td>
<td><strong>222</strong></td>
</tr>
<tr>
<td>1. An Accepted and Limited Principle of Confinement</td>
<td><strong>222</strong></td>
</tr>
<tr>
<td>1.1 The Debates on Confinement</td>
<td><strong>222</strong></td>
</tr>
<tr>
<td>1.2 Confinement of Children on Criminal Grounds</td>
<td><strong>223</strong></td>
</tr>
<tr>
<td>1.3 The Confinement of Children on other Grounds</td>
<td><strong>224</strong></td>
</tr>
<tr>
<td>2. Special Modes of Deprivation of Liberty</td>
<td><strong>228</strong></td>
</tr>
<tr>
<td>2.1 Separation from Adults</td>
<td><strong>229</strong></td>
</tr>
<tr>
<td>2.2 Limited Mixing of Sexes except in Prison</td>
<td><strong>230</strong></td>
</tr>
<tr>
<td>2.3 A Regime of Confinement with Specific Characteristics</td>
<td><strong>231</strong></td>
</tr>
<tr>
<td>2.4 Specialised Staff</td>
<td><strong>232</strong></td>
</tr>
<tr>
<td>3. The Necessarily Uneven Effects of Confinement</td>
<td><strong>234</strong></td>
</tr>
<tr>
<td>3.1 The Opposition between Confinement and the Interests of the Child</td>
<td><strong>235</strong></td>
</tr>
<tr>
<td>3.2 Ill-Being</td>
<td><strong>236</strong></td>
</tr>
<tr>
<td>3.3 Fragmented Lives</td>
<td><strong>236</strong></td>
</tr>
<tr>
<td>3.4 Difficulties of Assessment</td>
<td><strong>238</strong></td>
</tr>
<tr>
<td><strong>SECTION 8</strong></td>
<td><strong>241</strong></td>
</tr>
</tbody>
</table>
ASSESSMENT OF THE WORK OF THE CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ IN 2012

1. The Act of 30th October 2007: Towards an Amendment? ................................................................. 241
   1.1 Principles that should be considered established ........................................................................... 241
   1.2 Issues that should be considered as leaving room for improvement ............................................. 244
2. Relations with the Authorities and Other Corporations ................................................................. 250
   2.1 The Authorities ............................................................................................................................. 250
   2.2 Independent Government Agencies with Specific Regulatory Powers ........................................ 252
   2.3 Other Corporations ....................................................................................................................... 253
3. Cases Referred ................................................................................................................................... 255
   3.1 Analysis of the Cases Referred (letters sent to the contrôle général) ............................................. 255
   3.2 Actions Taken in Response to the Cases Referred (letters from the contrôle général) ................. 264
   3.3 On-site inquiries ........................................................................................................................... 270
4. Inspections ............................................................................................................................................ 272
   4.1 Quantitative data ............................................................................................................................ 272
   4.2 Completion and Results of Inspections .......................................................................................... 277
   4.3 The Drafting of Reports ............................................................................................................... 278
5. The Resources Allocated to the Contrôleur général des lieux de privation de liberté in 2012 ........... 279
   5.1 Staff ............................................................................................................................................ 279
   5.2 The Budget ................................................................................................................................... 281
6. The International Activity of the Contrôleur général des lieux de privation de liberté ...................... 283
   6.1 Multilateral International Action ................................................................................................ 283
   6.2 Bilateral International Action ..................................................................................................... 284

SECTION 9

PLACES OF DEPRIVATION OF LIBERTY IN FRANCE: STATISTICAL ELEMENTS ........................................... 286

1. Deprivation of Liberty in Criminal Affairs ..................................................................................... 287
   1.1 Number of persons implicated in offences, police custody measures and persons imprisoned .... 287
   1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned ................................................................. 288
   1.3 Number of Police Custody Measures and Rate of Use thereof according to Type of Offence .... 289
   1.4 Annual Intake of Penal Institutions according to Criminal Category ......................................... 290
   1.5 Population of Serving Sentences or on Remand and Prisoners at 1st January of each year .......... 291
   1.6 Distribution of Convicted Persons according to the Duration of the Sentence being served (including reduced sentencing without accommodation) ......................................................................... 292
2. Compulsory Commitment to Psychiatric Hospitalisation ............................................................. 293
   2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2007 to 2011 293
   2.2 Compulsory Commitment to Hospitalisation without Consent in 2011 ........................................ 295
3. Detention of Illegal Immigrants, Foreigners Refused Entry to the Country and Asylum Seekers .... 296
   3.1 Number of persons implicated in offences by the immigration department and number of police custody measures ................................................................. 296
   3.2 Implementation of Measures of Removal of Foreigners from the Country (2002-2010) ............ 297
   3.3 Detention Centres for Illegal Immigrants (Metropolitan France). Theoretical capacity, number of committals, average duration of detention, outcome of detention ................................................................. 298

ANNEXE 1 .................................................................................................................................................. 299

SUMMARY TABLE OF THE PRINCIPAL RECOMMENDATIONS OF THE CGLPL FOR THE YEAR 2012 ........ 299

ANNEXE 2 ................................................................................................................................................ 316

MAP OF INSTITUTIONS AND DEPARTMENTS INSPECTED IN 2012 ...................................................... 316

ANNEXE 3 ................................................................................................................................................ 317

THE INSPECTION REPORTS MADE PUBLIC ON THE WWW.CGLPL.FR WEBSITE ......................... 317

ANNEXE 4 ................................................................................................................................................ 319

BUDGET BALANCE SHEET ........................................................................................................................ 319
1. **Budget Allocated to the CGLPL in 2012**
   1.1 Distribution of the Overall Budget
   1.2 Distribution of Ordinary Expenditure
   2. **Development of the Means Allocated to the CGLPL since its Creation**

**ANNEXE 5**

**Inspectors and Colleagues**

- Inspectors
- External Inspectors
- Departments and Centre in charge of Referred Cases

**ANNEXE 6**

**REFERENCE TEXTS**

- Resolution Adopted by the General Assembly of the United Nations at 18th December 2002
- Optional Protocol to the Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Act No. 2007-1545 of 30th October 2007 Instituting a Controleur General des Lieux de Privation de Liberte (1)

**ANNEXE 7**

**The Rules of Operation of the CGLPL**

**Table of Contents**
### Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAH</td>
<td>Allowance for disabled adults <em>(Allocation pour adulte handicapé)</em></td>
</tr>
<tr>
<td>AFPA</td>
<td>Association for the professional training of adults <em>(Association pour la formation professionnelle des adultes)</em></td>
</tr>
<tr>
<td>AGDREF</td>
<td>Application program for the management of files on foreign nationals in France <em>(Application de gestion des dossiers de ressortissants étrangers en France)</em></td>
</tr>
<tr>
<td>APA</td>
<td>Personal care allowance <em>(Allocation personnalisée d’autonomie)</em></td>
</tr>
<tr>
<td>APIJ</td>
<td>Public agency for real estate development for the legal system <em>(Agence publique pour l'immobilier de la justice)</em></td>
</tr>
<tr>
<td>ARS</td>
<td>Regional Health Agency <em>(Agence régionale de santé)</em></td>
</tr>
<tr>
<td>ASPDRE</td>
<td>Committal for psychiatric treatment at the request of a representative of the State <em>(Admission en soins psychiatriques à la demande d’un représentant de l’Etat)</em>, formerly HO</td>
</tr>
<tr>
<td>ASPDT</td>
<td>Committal for psychiatric treatment at the request of a third party <em>(Admission en soins psychiatriques à la demande d’un tiers)</em>, formerly HDT</td>
</tr>
<tr>
<td>AVS</td>
<td>Home help and care provider <em>(Assistant de vie sociale)</em></td>
</tr>
<tr>
<td>CAF</td>
<td>Social security office <em>(Caisse d’allocations familiales)</em></td>
</tr>
<tr>
<td>CDAPH</td>
<td>Committee for the rights and autonomy of disabled people <em>(Commission des droits et de l’autonomie des personnes handicapées)</em>, formerly COTOREP</td>
</tr>
<tr>
<td>CAP</td>
<td>Sentence Board <em>(Commission de l’application des peines)</em></td>
</tr>
<tr>
<td>CARSAT</td>
<td>Employment Health Insurance Fund <em>(Caisse d’assurance retraite de la santé au travail)</em> (replaces the CRAM state regional health insurance offices)</td>
</tr>
<tr>
<td>CCR</td>
<td>Orders, conduct, regime <em>(Consignes, comportement, régime)</em>; note used in the GIDE software application.</td>
</tr>
<tr>
<td>CD</td>
<td>Long-term Detention Centre <em>(Centre de détention)</em></td>
</tr>
<tr>
<td>CDSP</td>
<td>Departmental committee for psychiatric treatment <em>(Commission départementale des soins psychiatriques)</em></td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>CEF</td>
<td>Young offenders’ institution <em>(Centre éducatif fermé)</em></td>
</tr>
<tr>
<td>CEL</td>
<td>Electronic liaison register <em>(Cahier électronique de liaison)</em></td>
</tr>
<tr>
<td>CESEDA</td>
<td>Code for Entry and Residence of Foreigners and Right of Asylum <em>(Code de l’entrée et du séjour des étrangers et du droit d’asile)</em></td>
</tr>
<tr>
<td>CFG</td>
<td>School leaving certificate <em>(Certificat de formation générale)</em></td>
</tr>
<tr>
<td>CGLPL</td>
<td>Contrôleur général des lieux de privation de liberté <em>(Contrôleur général des lieux de privation de liberté)</em></td>
</tr>
<tr>
<td>CHS</td>
<td>Psychiatric hospital <em>(Centre hospitalier spécialisé)</em></td>
</tr>
<tr>
<td>CICI</td>
<td>Interministerial Committee for the Management of Immigration <em>(Comité interministériel du contrôle de l’immigration)</em></td>
</tr>
<tr>
<td>CLAN</td>
<td>Food and nutrition liaison committee <em>(Comité de liaison alimentation et nutrition)</em></td>
</tr>
<tr>
<td>CLI</td>
<td>Local IT correspondent <em>(Correspondant local informatique)</em></td>
</tr>
<tr>
<td>CME</td>
<td>Public health institution medical committee <em>(Commission médicale d’établissement)</em></td>
</tr>
<tr>
<td>CMP</td>
<td>Mental health centre <em>(Centre médico-psychologique)</em></td>
</tr>
<tr>
<td>CMUC</td>
<td>Supplementary Universal health care coverage <em>(Couverture maladie universelle complémentaire)</em></td>
</tr>
<tr>
<td>CNE</td>
<td>National Assessment Centre <em>(Centre national d’évaluation)</em></td>
</tr>
<tr>
<td>CNIL</td>
<td>French Data Protection Authority <em>(Commission nationale de l’informatique et des libertés)</em></td>
</tr>
<tr>
<td>CNSA</td>
<td>French national solidarity fund for the autonomy of elderly and disabled people <em>(Caisse nationale de solidarité pour l’autonomie)</em></td>
</tr>
<tr>
<td>CP</td>
<td>Prison with sections incorporating different kinds of prison regime <em>(Centre pénitentiaire)</em></td>
</tr>
<tr>
<td>CPA</td>
<td>Reduced sentencing training prison <em>(Centre pour peines aménagées)</em></td>
</tr>
<tr>
<td>CPIP</td>
<td>Prison rehabilitation and probation counsellor <em>(Conseiller pénitentiaire d’insertion et de probation)</em></td>
</tr>
<tr>
<td>CPP</td>
<td>Code of criminal procedure <em>(Code de procédure pénale)</em></td>
</tr>
<tr>
<td>CPT</td>
<td>Committee for the Prevention of Torture <em>(Council of Europe)</em></td>
</tr>
<tr>
<td>CPU</td>
<td>Single multidisciplinary committee <em>(Commission pluridisciplinaire unique)</em></td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
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</tr>
<tr>
<td>CRAM</td>
<td>State regional health insurance office (Caisse régionale d'assurance maladie) (recently changed to CARSAT)</td>
</tr>
<tr>
<td>CRUQPEC</td>
<td>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)</td>
</tr>
<tr>
<td>CSL</td>
<td>Open Prison (Centre de semi-liberté)</td>
</tr>
<tr>
<td>CSP</td>
<td>Public Health Code (Code de la santé publique)</td>
</tr>
<tr>
<td>CRA</td>
<td>Detention centre for illegal immigrants (Centre de rétention administrative)</td>
</tr>
<tr>
<td>DAP</td>
<td>Prisons administration department (Direction de l'administration pénitentiaire)</td>
</tr>
<tr>
<td>DAVC</td>
<td>Diagnosis for criminological purposes (Diagnostic à visée criminologique)</td>
</tr>
<tr>
<td>DGGN</td>
<td>Central administration of the French national gendarmerie (Direction générale de la gendarmerie nationale)</td>
</tr>
<tr>
<td>DGPN</td>
<td>Central administration of the French national police force (Direction générale de la police nationale)</td>
</tr>
<tr>
<td>DGOS</td>
<td>Central health administration for the provision of health care (Direction générale de l'offre de soins)</td>
</tr>
<tr>
<td>DGS</td>
<td>Central health administration (Direction générale de la santé)</td>
</tr>
<tr>
<td>DISP</td>
<td>Interregional Department of Prison Services (Direction interrégionale des services pénitentiaires)</td>
</tr>
<tr>
<td>DPS</td>
<td>High-security prisoner (Détenu particulièrement signalé)</td>
</tr>
<tr>
<td>DPU</td>
<td>Emergency Allocation of Protective Clothing and Blankets (Dispositif de protection d'urgence)</td>
</tr>
<tr>
<td>DSPIP</td>
<td>Department of prison services for rehabilitation and probation (Direction des services pénitentiaires d'insertion et de probation)</td>
</tr>
<tr>
<td>ELOI</td>
<td>Software application programme for the management of files on foreigners removed from the country (Logiciel de gestion de l'éloignement)</td>
</tr>
<tr>
<td>EPM</td>
<td>Prisons for minors (Établissement pénitentiaire pour mineurs)</td>
</tr>
<tr>
<td>EPSNF</td>
<td>National public health institution at the remand prison of Fresnes (Établissement public de santé national de Fresnes)</td>
</tr>
<tr>
<td>ERIS</td>
<td>Regional emergency response and security teams for dealing with incidents in prisons (Équipes régionales d'intervention et de sécurité)</td>
</tr>
<tr>
<td>FAED</td>
<td>French national fingerprints database (Fichier automatisé des empreintes digitales)</td>
</tr>
<tr>
<td>FNAEG</td>
<td>French national DNA database (Fichier national automatisé des empreintes génétiques)</td>
</tr>
<tr>
<td>FIJAIS</td>
<td>French national database of sexual offenders (Fichier judiciaire automatisé des auteurs d'infractions sexuelles)</td>
</tr>
<tr>
<td>GAV</td>
<td>Police custody (Garde à vue)</td>
</tr>
<tr>
<td>GIDE</td>
<td>Computerised prisoner management (Gestion informatisée des détenus, software application)</td>
</tr>
<tr>
<td>HAS</td>
<td>Independent scientific public authority contributing to regulation of the quality of the health system (Haute autorité de santé)</td>
</tr>
<tr>
<td>HDT</td>
<td>Hospitalisation at the request of a third party (Hospitalisation à la demande d’un tiers, has now become ASPDRE)</td>
</tr>
<tr>
<td>HL</td>
<td>Free, i.e. voluntary hospitalisation (Hospitalisation libre)</td>
</tr>
<tr>
<td>HO</td>
<td>Hospitalisation by court order (Hospitalisation d'office, has now become ASPDT)</td>
</tr>
<tr>
<td>ILE</td>
<td>Breach of the law on foreigners (Infraction à la législation sur les étrangers)</td>
</tr>
<tr>
<td>ILS</td>
<td>Breach of the law on drugs (Infraction à la législation sur les stupéfiants)</td>
</tr>
<tr>
<td>IPM</td>
<td>Public and manifest drunkenness (Irrésist publique manifeste)</td>
</tr>
<tr>
<td>ITT</td>
<td>Temporary unfitness for work (Incapacité temporaire de travail)</td>
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<td>JAP</td>
<td>Judge responsible for the execution of sentences (Juge de l'application des peines)</td>
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<tr>
<td>JLD</td>
<td>Liberty and custody judge (Juge des libertés et de la détention)</td>
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<tr>
<td>LC</td>
<td>Release on parole (Libération conditionnelle)</td>
</tr>
<tr>
<td>LRA</td>
<td>Detention facility for illegal immigrants (Local de rétention administrative)</td>
</tr>
<tr>
<td>LRP</td>
<td>Software application programme for the drafting of procedures (Logiciel de rédaction des procédures)</td>
</tr>
<tr>
<td>MA</td>
<td>Remand prison (Maison d'arrêt)</td>
</tr>
<tr>
<td>MAF</td>
<td>Women’s remand prison (Maison d’arrêt “femmes”)</td>
</tr>
<tr>
<td>MAH</td>
<td>Men’s remand prison (Maison d’arrêt “hommes”)</td>
</tr>
<tr>
<td>MC</td>
<td>Long-stay prison (Maison centrale)</td>
</tr>
<tr>
<td>MDPH</td>
<td>Departmental centre for disabled people (Maison départementale des personnes handicapées)</td>
</tr>
</tbody>
</table>
OFII French agency in charge of migration and welcoming foreign people (Office français de l'immigration et de l'intégration)

OFPRA French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides)

OMP Member of the State Prosecutor’s Office (Officier du ministère public)

OPJ Senior law-enforcement officer (Officier de police judiciaire)

OQTF Obligation to leave French territory (Obligation de quitter le territoire français)

PAF Border police (Police aux frontières)

PCC Central control post (Poste central de contrôle)

PCI Central information post (Poste central d'informations)

PEP “Sentence enforcement programme” (Parcours d'exécution de la peine) as well as Main Entrance Door in prisons (Porte d’entrée principale)

PIC Information and control post (Poste d’information et de contrôle)

PP Police headquarters (Préfecture de police)

PJJ Judicial youth protection service (Protection judiciaire de la jeunesse)

PPP Public-Private Partnership

PSAP Simplified reduced sentencing procedure (Procédure simplifiée d'aménagement de peine)

PSE Electronic tagging (Placement sous surveillance électronique)

PTI Alarm system for isolated workers (Protection du travailleur isolé)

QA New arrivals wing (Quartier “arrivants”)

QCP Short sentences wing (Quartier “courtes peines”)

QD Punishment wing (Quartier disciplinaire)

QNC “New concept” wing (Quartier “nouveau concept”)

QI Solitary Confinement Wing (Quartier d'isolement)

QPA Wing for reduced sentences (Quartier pour peines aménagées)

QSL Open wing (Quartier de semi-liberté)

RIEP Industrial management of penal institutions (Régie industrielle des établissements pénitentiaires)

RLE Local Teaching Manager (Responsable local de l'enseignement)

EPR European Prison Rules

RPS Additional Remission (Réduction de peine supplémentaire)

SEFIP End of sentence electronic tagging (Surveillance électronique “fin de peine”)

SEP Prisons employment service (Service de l'emploi pénitentiaire)

SL Partial release (Semi-liberté)

SMPR Regional Mental Health Department for Prisons (Service médico-psychologique régional)

SMR Minimum rate of pay (Seuil minimum de rémunération)

SPIP Prison service for rehabilitation and probation (Service pénitentiaire d'insertion et de probation)

SPT United Nations Subcommittee on Prevention of Torture

STIC Database of records of offences (Système de traitement des infractions constatées)

TA Administrative court (Tribunal administratif)

TAP Sentence execution court (Tribunal de l'application des peines)

TGI Court of first instance in civil and criminal matters (Tribunal de grande instance)

UCSA Prison medical consultation and outpatient treatment unit (Unité de consultations et de soins ambulatoires)

UHSA Specially-equipped hospitalisation unit (Unité d’hospitalisation spécialement aménagée)

UHSI Interregional Secure Hospital Unit (Unité hospitalière sécurisée interrégionale)

UMD Unit for difficult psychiatric patients (Unité pour malades difficiles)

UMJ Medical Jurisprudence Unit (Unité médico-judiciaire)

ZA Waiting area (Zone d’attente)
Foreword

At the end of another year of vigilance and hard work, the Contrôleur général here submits its fifth annual report on the state of places of deprivation of liberty in France, along with the recommendations that it infers therefrom, which it addresses to the authorities.

In order to understand these pages, it is necessary to rid oneself of three attitudes.

The first of these is very familiar: “‘They’ are only getting what they deserve”, and, “‘They’ have caused suffering. Now, it’s ‘their’ turn to pay”. This is an attitude that obviously cannot apply to those who are deprived of their freedom without ever having committed an offence (those suffering from mental illness, certain cases of police custody etc.) and which, quite apart from the question of showing due respect for every human being’s right to dignity, backfires on those who hold it: if deprivation of freedom is accompanied with inhuman treatment, what kind of state can we expect beings who have endured it to be in when they are released?

The second is a complaisant relativism: places of deprivation of freedom are admittedly not perfect in France, but the situation in other countries is far worse. Look at other continents’ overcrowded prisons. Look at the psychiatric treatment applied in certain countries. This official rejoicing overlooks two considerations. The first, which is often recalled – in these annual reports at least –, is that there is no way of quantifying suffering: who can assert that the burden endured by a sick person, beset by troubles and deprived of relations with their family and friends, is lighter than that supported by their counterparts in countries where healthcare is more “rustic”? The second is that fundamental rights, to the protection of which the Contrôleur général devotes its work, are indivisible by their very nature. There is no such thing as a petty infringement, a harmless slighting of, or humorous disregard for these rights. Imagine prison visiting rooms which took the form of shared halls, in which one had to shout in order to make oneself heard by one’s wife: these are conditions of infringement of the right to respect of one’s private and family life, which are no more or less serious than a scale of punishments in a young offenders’ institution, in which the length of a child’s telephone conversations with its parents were fixed according to its behaviour. Both cases involve disregard of rights. Though necessary, this observation is sufficient.

The final attitude is the most crippling. It tends to object to systems of deprivation of liberty being called into question, on the grounds that those who serve in them make enormous efforts to make them work, that their daily life is exhausting and sometimes dangerous, and that they have already agreed to make a great many sacrifices in order to change them. “Look at all of the changes that have already been made; look how much trouble they go to”… All considerations which are perfectly true; but which, nevertheless, are not the question. Respect for fundamental rights is simple and firm. It does not boast of circulars and inter-ministerial committees. It has one key principle: effectiveness. In other words, it means an obligation to achieve results; not a best-efforts obligation. Without adopting this point of view, it is impossible to give close attention to the conditions under which fundamental rights are respected or disregarded: working conditions, the propensity of the police to respect the law, people’s attitudes etc. Moreover, in order to address these issues, the order of factors needs to be scrupulously respected. Desire for reform is too often sacrificed upon the altar of insult to officers, ignorance of the realities of their profession, and ground already covered. Moreover, as those who uphold that deprivation of liberty should take place in dens of wolves, rather than in accommodation for human beings, thereby act against their own interests, similarly those who defend an idea of security that flouts the dignity of persons are probably the first victims of their own convictions.
For armed with these initial observations, the Contrôleur général here gives a summary of a year of work, in the form of topics, to which it returns, or upon which it expands, according to a framework similar to that of the previous annual report, which will facilitate the task for our most faithful readers, who survived its reading.

The first section summarises and reviews the reports sent to ministers in 2012, while distinguishing that which was made public (three assessments or recommendations) from that which was not. In order to facilitate reading, the latter part is divided into sub-sections corresponding to each of the principal categories of places of deprivation of liberty (detention and waiting zones, young offenders’ institutions, police custody, prisons and psychiatric hospitals etc.). Three different aspects of each of these places of deprivation of liberty are successively examined in the sub-sections: in the first place background details (government and other initiatives in 2012); secondly, a factor which the Contrôleur général wishes to emphasise (e.g. removal of prisoners from prison in order to go to hospital); thirdly, other recommendations made to ministers, amongst which certain observations made in previous reports will probably come up again. Nevertheless, the Contrôleur général does not fear repetition or even, horresco referens, indecorous insistence.

The aim of the second section is to highlight action taken by the authorities in response to the Contrôleur général’s recommendations, both published and unpublished. Contrary to what is sometimes hoped by those who call upon it, the latter institution’s prerogatives only extend to description and analysis, on the one hand, and earnest encouragement on the other; a far from negligible role, with which it is satisfied. Responsibility, as to whether or not to follow-up the recommendations made, lies with elected representatives. Is it necessary to recall here, in these years of lean kine, that as far as the upholding of human dignity is concerned, all is not a question of funds?

There follow four purely topical sections, selected in accordance with the inspectorate general’s current concerns, and fuelled by the mail that it receives (in abundance) and the inspections that it carries out. The first of these (section 3) examines the conditions in which discipline is defined and exercised in places of deprivation of liberty: indeed, discipline is often problematic with regard to methods and very heavy in its consequences. In the same field, the second (section 4) examines the defence of the rights of persons deprived of their liberty, which involves several fundamental rights (the right to defence, the right to an effective remedy whose importance is often underestimated. The third (section 5) concerns long-term pathologies in places of deprivation of liberty and access to treatment: although very generally speaking it appears that emergency care, on the one hand, and the most commonplace complaints, on the other, are, on the whole, provided for, the same does not apply to other illnesses, whose treatment is often difficult to reconcile with the inevitable security requirements. The final section (section 7) expands upon the manner in which the imprisonment of children is currently conducted in France.

Finally, the report sets out considerations which, though henceforth “customary”, are nevertheless indispensable for an understanding of the Contrôleur général’s work:

Its knowledge of the daily life of persons deprived of liberty: the purpose of section 6 is to provide an illustration thereof, by offering a certain number of first-hand accounts from persons in custody (which have been made anonymous).

Its openness (to scrutiny) with regard to public opinion and the authorities: the activity report (section 8) sets out comprehensive details of the actions taken and resources employed by the Contrôleur général, including a draft bill amending the act by which it was founded;

The places inspected have been incorporated into an overall assessment of statistical data on penal policy, detention and psychiatric treatment (section 9), thanks to series of figures that
have been kindly updated for the inspectorate by Mr Bruno AUBUSSON de CAVARLAY, researcher at the CSEDIP [French Centre for Sociological Research on Law and Criminal Justice Institutions]/ CNRS [French National Centre of Scientific Research], to whom I would like to express my gratitude.

The annexes will enable all readers to gain a better understanding of the work of the Contrôleur général des lieux de privation de liberté, to place its action within the framework of the rules that pertain to it (United Nations Protocol and act of 30th October 2007) and to gain a clearer view of the actions undertaken (institutions inspected, recommendations made, reports placed online at www.cglpl.fr) and the staff and resources employed.

With regard to the latter point, readers will easily ascertain the extent to which inspection work, which too often sets up a single person as its sole perceptible symbol, is totally collective, both with regard to the thinking that informs it and the actions conducted. This report is a perfect illustration thereof. Anonymity is the rule and should not be an obstacle to the deep gratitude that I would like to express to all of the inspectors, responsible for inquiries as well as administration, who probably made a small contribution to progress in the cause of the protection of rights. They are rightly proud of this contribution; they may say to themselves that their work and unsparing effort has played its part. They are the “invisible hand” of fundamental rights.

Jean-Marie Delarue
Section 1:

Statements made by the Contrôleur général to the Government in 2012

Article 10 of the Act of 30th October 2007 provides that, after each inspection of an institution, the Contrôleur général des lieux de privation de liberté sends conclusions and recommendations to the Ministers concerned, and that the said Contrôleur général has the right to set out assessments and proposals before the authorities. Recommendations and assessments may be made public. In general, they are not, at least until a certain time has elapsed. The purpose of this section is to set out the content of the proposals that were made to the Government in the reports and assessments sent to it in 2011.

As the months went by, in course of conducting inspection duties and sending recommendations to the Ministers concerned after completion of inspections of institutions (prisons, hospitals, police establishments etc.), it very quickly became apparent that it was necessary to supplement these recommendations with assessments of more general concern. Indeed, although inspections make it possible gain insight into questions that transcend individual cases, this is not so in every instance. Conversely, when a certain number of inspections have been conducted, recurring issues stand out more sharply, in a way that recommendations concerning single institutions do not necessarily make it possible to convey.

1. Assessments and Recommendations Published in the Journal officiel

The Act of 30th October 2007 instituting the General Controller of places of deprivation of liberty, allows the publication of assessments and recommendations according to two different procedures.

Under ordinary law, article 10 of the Act provides that the Contrôleur général shall formulate assessments, recommendations and proposals for the amendment of applicable laws and regulations and that each of these assessments and proposals may be published, provided that the authorities are informed thereof and that the latter's comments are incorporated in the said publication.

Under article 9 of the act, an exceptional measure applies when, in the course of an inspection, the Contrôleur général ascertains a “serious violation of the fundamental rights of a person deprived of liberty”; in such scenarios, observations are passed on to the ministers concerned, who are allotted a set time in order to reply. After this deadline, a report is drawn up recording whether or not the serious violation has ended and, if the Contrôleur général considers necessary, the observations and replies (if received) are “immediately” made public.

In 2012, two assessments were made public under article 10 and one recommendation was published on the basis of article 9.
1.1 The Assessments made public

The two assessments were in reality complementary, since they are both concerned with partial release: the first with regard to the number of persons detained, the second with regard to a procedure for reduced sentencing likely to reduce the latter number and illustrative of reduced sentencing generally speaking.

1.1.1 The Assessment concerning numbers of persons detained published on 13th June 2012

This assessment was published in a specific situation, i.e. during the legislative elections, a circumstance that was obviously not a matter of coincidence.

The intention was not so much to recall the consequences upon persons in custody of the overcrowding, which is noticeably affecting all remand prisons (and sometimes, in French overseas departments and territories, penal institutions for definitively sentenced prisoners); the Contrôleur général having already mentioned this issue in its first annual report. It was rather – apart from the traditional perfunctory descriptions of mattresses on the ground, to which comments on overcrowding are often limited – to bring up the causes of the situation and to put possible solutions forward.

Indeed, the observation that most countries comparable to France are also experiencing phenomena of prison overcrowding and that less wealthy countries (Africa, Latin America) host phenomena which are much more dreadful still, does not exempt us from searching for the national causes of this problem, without giving in to the temptation of attributing any inevitability to a phenomenon that is established in the functioning of our society. An analysis of this kind should, moreover, have been made much earlier, in particular at the time of elaboration of the massive construction programmes of new places of detention. As the assessment points out, the reasons adduced in the annexes to the Act on Planning and Enforcement of Sentences (loi de programmation et d'exécution des peines) of 27th March 2012, in order to justify the need to build twenty-four thousand new prison places, are quite scant and questionable. The identification of appropriate solutions requires reflection on the growth of the population of persons in custody.

This growth – at least that which characterises the marked increase of the last ten years – is caused by many factors: offences punished by prison which were not previously; the development of faster trial procedures; the implementation (except in case of special motive) of minimum sentences in certain situations; greater harshness with regard to many serious offences; and the efforts made by the courts since 2010 for improved enforcement of very short prison sentences. As a result, very short, and very long sentences are simultaneously filling the prisons.

This multiplicity of factors itself requires a variety of solutions: Questioning the merits of imprisonment for certain offences and certain persons; subjecting the national prison system to scrutiny with regard to its capacity to prevent recidivism; questioning the procedures that lead to the penalty of imprisonment, including the capacity of defendants to defend themselves under acceptable conditions and, accordingly, the hearing of evidence taken from them; the development of new sentences besides imprisonment – which are nonetheless “effective” for all

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2 For example, the capacity to prepare social inquiry reports that are sufficiently informative for the judge in rapid procedures.
3 The question “How can the effectiveness of a sentence be assessed?” seems incongruous to many people.
that; increased use of reduced sentencing, in accordance with the spirit of the so-called Prisons Act of 24th November 2009; in this latter area, giving priority above all to sustainable measures that facilitate rehabilitation, rather than short-term procedures which, while admittedly useful, are without significant quantitative effect (such as electronic tagging).

The assessment took a stand on two points that, after publication, gave rise to discussion; which is a very satisfactory situation.

In the first place, reservations were expressed with regard to the idea of applying *numerus clausus* to prisons, in order to reduce inmate numbers.

It was inferred therefrom that the Contrôleur général, in spite of the fact that its purpose is to improve the protection of the fundamental rights of persons deprived of liberty, was, in reality, against any reform; as though the refusal to prescribe a dangerous medicine amounted to opposition to healing in general.

*Numerus clausus* is not a new idea and, indeed, outstanding thinkers have defended it with conviction. Nevertheless, its legal feasibility is highly questionable, that is to say, its compatibility with our norms, and constitutional norms in particular.

Moreover, this idea is based upon the following mechanism: when a prison is deemed unable to receive new prisoners, due to the size of its existing inmate population: either releases are brought into play and a prisoner is taken out in order to make their place available for a new arrival; or the flux of admissions is regulated and a person sentenced to imprisonment, or charged and placed on remand, waits at the prison gates, so to speak, for a place to become vacant.

In the former case, a period of imprisonment is brought to an end for reasons that are not inherent to the character of the prisoner and the nature of the offence that they committed, but are solely attributable to circumstances with regard to prisoner numbers within the institution, a consideration that is totally foreign to the enforcement of the sentence of any prisoner that may thus be released. The sentences of two different prisoners, held at different times in the same institution, will therefore be enforced in different ways, without any reference to their characters and the offences committed.

In the second case, individuals are obliged to wait at the gate after sentencing and, when their prison terms are finally enforced, one risks repeating what happened between 2010 and 2012: persons who had been completely rehabilitated since committing their offences were taken to prison months or years after the pronouncement of their sentences, a circumstance that inevitably thwarted their efforts to return to collective life in society.

Indeed, what is at issue here, especially in the first case, is the constitutional principle of sentencing depending upon the individual requirements or characteristics of the defendant⁴.

It would probably not be impossible to achieve results, while avoiding any direct link between the sentences enforced and the population levels within institutions, by taking action upstream rather than downstream (with regard to admissions rather than releases) and through rulings made by the State Prosecutor’s Office and the Bench, rather than through simple adjustment of the time of enforcement.

Re-reading it as it was written, the amnesty in question very specifically concerned those convicted persons who were taken to prison long after their sentences had been pronounced –

⁴ Cf. the rulings of the Constitutional Council, implementing this principle drawn from article 8 of the Declaration of Human Rights, cited in the assessment.
due to lack of sufficient resources for the courts, need it be recalled – while pointing out that, although the principle of enforcement of sentences pronounced by judges should not suffer any exception (apart from any limits set by the latter themselves), in the case in point, it would be wiser for such exceptions to be made exclusively with regard to the future, and not in a retrospective manner. The amnesty was a necessary and sufficient means of avoiding cases where, once again, people who have put their offences behind themselves and are largely rehabilitated are ordered to leave their homes in order to serve terms of imprisonment. This suggestion was intended as much for the former government as for the new, resulting from the presidential elections of 2012.

The public debate, which followed this assessment from the Contrôleur général, clearly highlighted the absence of any temerity on the part of the authorities, with regard to topics considered important to public opinion, such as that of security.

Has the latter so imposed itself upon the authorities, over the last ten years (date of the last amnesty), that the very idea of resorting to an act of this nature appears incongruous, providing grounds for the idea that their policies might consist of “making concessions” and “letting up the pressure” in the face of an evil – criminality – that spreads terror; to put it plainly: would the prison gates be opening in order to let criminals out? This idea is so wholly inaccurate that one hardly dares believe that it could constitute the real grounds for certain responses received by this modest proposal; and, if this is indeed the case, then - when taken to this extreme - the need for security corrupts morality, as one would have said in the 18th century.

1.1.2 The Assessment concerning Partial Release published on 23rd October 2012

The assessment of 26th September concerning partial release was published, in a very different situation. A certain number of principles of crime policy had by then been made known, since the report made by the Minister of Justice to the Cabinet meeting of 19th September 2012, concerning in particular the end of individual directions and the fight against recidivism, in contrast with the principles previously in force. The idea of increased emphasis on reduced sentencing stands out in particular in the circular setting out these policies.

The assessment was intended to provide an illustration of the conditions of enforcement of a reduced sentencing measure, in this case partial release, within the new framework.

The latter measure is decided upon (when a sentence of less than or equal to two years is incurred) by the judge pronouncing the conviction (article 132-25 of the Penal Code (code penal)), or indeed by the judge responsible for the terms and conditions of sentences, either prior to the commencement of enforcement of the prison sentence (article 723-15 of the code of criminal procedure (code de procédure pénale)), or in the course of its enforcement.

While partial release requires rulings from members of the national legal service, it also requires, on the part of the judges as well as on the part of the prison officers, a certain number of practical conditions in order to bear fruit, that is to say the best possible readjustment of convicted prisoners to economic and social life.

In particular, the assessment notes the conditions according to which partially released persons gain access to their new “status”: on the one hand, are found the cases where the persons concerned have remained free (the vast majority of cases) for inappropriately long

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5 The Minister of Justice writes the following to the State Prosecutor’s Offices: “I ask you to devote particular attention... to reduced prison sentencing” (§ 6, in bold in the circular).
periods of time after their sentences were pronounced, dooming them to a long interval in which they are left in a state of uncertainty with regard to the fate that awaits them, without being able to make any undertakings or plans whatsoever; on the other hand, are the cases involving prisoners held in detention, without, in most cases, their time of imprisonment having been put to good use for the preparation of the procedures and formalities that become essential with partial release: for example the preparation of an identity card. In both cases, the responsibility falls to courts and services that are overloaded and poorly coordinated.

The assessment also raises questions with regard to the dimensions and choice of location of open prisons: those that are set up in large cities, within the jurisdiction of important courts and in the heart of active labour market areas, are bombarded with applications and overcrowded. The opposite applies to those established in areas that are badly-served by public transport and far from jobs and training; these are largely empty. Whereas site choices have been determined by a rationality based on real-estate considerations, the logic of employment and access to services should prevail in all cases.

Material conditions in the open prisons are often disastrous, all the more so where there are no staff specifically devoted to their management and supervision. Persons sent to them may even have the feeling of a worsening of their material conditions as compared with ordinary detention. They may also experience worsened conditions in terms of medical care (persons left too much to their own devices) and health education; worsening with regard to activities, which are often lacking when the persons concerned are inside the centre; and lastly, worsening in terms of certain security measures, some of which are completely unnecessary.

Finally certain parts of applicable regulations (though open prisons tend to lack policies and procedures, or are unable to cite them) are in need of amendment or greater detail. The conditions under which prisoners are placed in “waiting cells” do not comply with current law.

From this it is clear that the development of effective reduced sentencing measures depends not only upon ministerial directives and support from judges for such approaches (which can often be taken for granted), but also upon their practical feasibility and the tools allocated to their implementation. Of course, the Contrôleur général’s recommendations with regard to partial release also apply to other reduced sentencing measures.

1.2 Recommendations concerning Baumettes Prison in Marseille.

These recommendations follow on from the inspection conducted by the Contrôleur général in this institution from 8th to 19th October 2012 (including Saturday and Sunday, as well as two night inspections) with a team composed of twenty-two inspectors, capable of investigating all aspects of this vast institution of 1,190 places and 1,769 inmates. Moreover, everything possible was done on-site, in particular by means of constant efforts to ensure openness on the part of the director of the institution, in order to make the necessary inspections easier.

As already stated, these recommendations, which were published in the Journal officiel of 6th December, come within the framework of the procedure for urgent cases set out under article 9 of the Act of 30th October 2007. This procedure concerns the reporting of “serious violations of fundamental rights”. Since 2008, it had been used on one single occasion, one year previously. The Contrôleur général is aware of its exceptional nature, which it has no wish to trivialise.

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6 By pure coincidence the recommendations concerning the prison of Camp-Est (Nouméa) were published in the Journal officiel (the official gazette of the French Republic) on 6th December 2011, exactly one year previously.
Nevertheless, none of the inspectors present at Marseille felt any hesitation whatsoever about drawing up the report.

Indeed, on the one hand, conditions of existence are wretched, because the material setting for living (walls, temperature, dampness, detrimental etc.), which is moreover insufficiently maintained, places persons accommodated in the institution in danger of bodily harm: due to the fact that the activities offered (despite considerable originality and sustained commitment) are very inadequate; due to the existence of violence, particularly between prisoners, in this economy of scarcity, where the smallest good (sometimes even behaviour) is bought and sold; these three factors being closely linked. On the other hand, the state of the prison has been regularly brought to the attention of the authorities for twenty years, by the (European) Committee for the Prevention of Torture, which inspected it twice, by the European Commissioner for Human Rights and, finally, by a commission from the French Senate: all of these inspections led to denunciations of the situation prevailing in the institution, without any significant changes being made in the intervals between them.

The improvements carried out there, though indeed real, have not resulted in any amelioration in daily life for staff and prisoners. Furthermore, currently planned improvement work will lead to the demolition (in order to build two modern remand prisons on the same site) of what is, at the present time, the least dilapidated part of this vast complex (the women’s prison). This operation cannot make any sense unless it is combined with the renovation (or reconstruction, a more costly option) of the main building (the men’s remand prison). Any other solution will not change the currently existing unacceptable living conditions, of which most persons with whom the Contrôleur général had exchanges underlined the serious consequences.

The recommendations made as a matter of urgency concerning Nouméa were intended to secure the granting of planning permission, refusal of which was preventing the process of rebuilding the prison from going ahead. Those concerning Baumettes prison are intended to lead the authorities to an acknowledgement, at short notice, of the need to include “Baumettes 3”, i.e. the men’s remand prison, in the work to be completed, rather than stopping at the currently planned work. The Contrôleur général will remain very vigilant with regard to this point, amongst others, in the course of the year 2013.

2. Recommendations concerning Inspections

The Act of 30th October 2007 places an obligation upon the Contrôleur général des lieux de privation de liberté to bring his observations on the inspections conducted, to the attention of the ministers concerned, in particular with regard to the “state, organisation and functioning” of places of deprivation of liberty. The Act provides that, for their part, the ministers shall make known their comments in response to these observations, if they consider this to be useful, or if the Contrôleur général expressly requests them to do so.

In practice however, these comments are systematically requested. This kind of approach appeared necessary in order to create a certain dynamism after the completion of inspections, in order to promote the changes called for in the inspection reports.

The following details therefore concern the recommendations included in the inspection reports sent to ministers (principally those responsible for Justice, the Interior and Health)
between 1st January and 31st December 2012. Many of them return to questions that had already been taken up previously. However, this does not apply to all of them. We will therefore endeavour to bring out and illustrate the most original amongst them, those which address new issues; topics that have been raised more frequently will then be mentioned more succinctly, since their persistence is problematic in itself and the Contrôleur général has no intention of renouncing, even at the price of repeatedly raising the same question, the reporting of what it deems to be a violation or risk of violation of fundamental rights. This approach shall be applied to each category of place of deprivation of liberty.

2.1 Detention Centres for illegal immigrants and Waiting areas

2.1.1 Background details

2.1.1.1 Length of Detention

As far as the detention of illegal immigrants or of asylum seekers due to be deported and periods of waiting at borders is concerned, the year 2012 was marked, as were previous years, by a series of events linked to changes in European law with regard to a subject which, since the Amsterdam Treaty, increasingly falls within the jurisdiction of European Union decisions – although this situation is not sufficiently noticed in France. However, laws relating to this subject are not being brought into line in an unequivocal manner: certain parts of European law, in a situation which is often denounced as “fortress Europe” providing a destination for influxes of immigrants, are unfavourable to foreigners; whereas others, conversely, are forcing changes in national legislation and practices in a direction which is more favourable to the latter.

2012 is the first full year of application of Act no. 2011-672 of 16th June 2011 concerning immigration, integration and nationality\(^8\) one of the purposes of which is, precisely, to implement several European texts within French law: European Directive 2008/115/EC of 16th December 2008 referred to as the “return” Directive, which defines the common standards and procedures according to which, in particular, foreigners whose residence papers are not in order are to be returned to their countries of origin or to third States in relation to the EU; Directive 2009/50/EC of 25th May 2009, referred to as the “Blue Card” directive, instituting a residence permit for foreigners entering the European Union for the purposes of taking up highly qualified employment; and finally Directive 2009/52/EC of 18th June 2009, or the “sanctions” directive, concerning the sanctions applicable to employers of foreign workers whose residence papers are not in order. Thus the possibility of accompanying deportation rulings with entry bans, prohibiting foreigners from returning to French territory (for periods of up to three years, which in certain cases may be extended for two additional years), which is provided for by the Act\(^9\), was not previously a part of French law and is “of European origin”.

However the Act of 16th June 2011 also includes provisions that were not imposed by the European directives, in particular the decision adopted by the Government at the time of a

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\(^7\) Treaty signed in 1997, which came into force on 1st May 1999.
\(^8\) Journal officiel no. 0139 of 17th June. Also cf. the circular issued by the ministry of the Interior on the same day (NOR IOCK1110771C) and sent to prefects.
\(^9\) This measure is set out in the provisions of section III of article L. 511-1 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA / Code de l’entrée et du séjour des étrangers et du droit d’asile).
seminar of 8th February 2010 and the follow-up to the “Mazeaud report” with regard to litigation concerning foreigners.  

In the field of detention, pursuant to the directive, the law lays down the principle that detention may only be used when other measures are ineffective. For this reason it amends and increases the scope of 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) with regard to compulsory residence orders. However, at the same time, it lengthens the maximum detention period from thirty-two days before the act, to forty-five days: an administrative period of five days maximum, followed by two periods of twenty days authorised by the ordinary courts (the second period being, in theory, less liberally granted than the first). These new regulations include an exception applicable to persons implicated in cases of terrorism (according to the meaning of title II of book IV of the penal code (code pénal)), who are deported or banned from French territory: the second twenty-day period is increased to one month and may be renewed, with a maximum limit of six consecutive months (that is to say a total of six months and twenty-five days).  

The Government of the time justified this lengthening of the detention period in two ways. On the one hand, within a group of countries applying different detention times, France’s detention time is the shortest. The directive fixes a six-month period as the “harmonised” detention time within the EU; countries are therefore expected to move closer towards this duration. On the other hand, in the negotiation of readmission agreements with non-EU States, the Commission requests deadlines for responses from the authorities of these States of no less than forty-five days; on the basis of such agreements France cannot therefore continue to demand responses from partner States within the shorter deadline of only thirty-two days.

These reasons are not really convincing.

Article 15 § 5 of the Directive does not attempt to harmonise maximum detention times within the EU. Were this the case, France’s initiative of increasing its maximum detention time by thirteen days in order to move closer to a six-month period might be considered derisory. On the contrary, the objective of the European text is exclusively to fix a maximum detention period, which many Member States currently exceed: “Each Member State shall set a limited period of detention, which may not exceed six months”; the intention could not be clearer. Moreover, article 4 of the same directive (§ 3) mentions “the right of Member States to adopt or maintain provisions that are more favourable” to foreigners, provided that they are compatible with the Directive, which is clearly the point at issue. This provision is moreover necessary for France, where it is doubtful that a period of detention of as long as six months for an “ordinary” foreigner would be considered to be in compliance with the Constitution.

For its part, the justification based on “harmonisation” with the periods provided for in readmission agreements negotiated by the European Commission, is hardly more convincing.

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11 The “theoretical” question as to whether this principle is really new in French law is open to debate, as are its practical consequences.
12 In its ruling concerning the Act of 16th June 2011 (no. 2011-631 of 9th June 2011), the Constitutional Council judged the provision permitting the renewal of the second detention period for a maximum period of twelve months to be unconstitutional.
13 Readmission agreements: agreements by which the State of origin of a foreigner, taken in for questioning in an EU State and lacking valid residence papers, undertakes to readmit the latter to its territory, on the condition that the said foreigner is identified as one of its nationals (within a deadline of forty-five days).
14 Six States have detention periods of longer than six months (Belgium, Poland, Hungary, Greece, Germany and Latvia) and six have no specified maximum period (United Kingdom, Denmark, Estonia, Finland, the Netherlands and Sweden).
About twelve of these agreements have been signed since 2002. With the exception of three or four States, these agreements in no way concern countries from which France receives large numbers of migrants. The question of deadlines for responses from the States of origin of migratory population movements affecting our country therefore remains to be addressed. In addition, the illustrations provided by the Government in support of its choices are hardly convincing: the agreement between the EU and Hong Kong is cited, for which the response deadline is fixed at one month (therefore... thirty days) and that with the Russian Federation, for which the deadline is twenty days (therefore less than thirty...) with an extension (exclusively) in case of difficulties of up to sixty days (therefore greater than forty-five...). Yet for many lawyers in these countries, a period of less than twenty days is sufficient in almost all cases, provided that the consular authorities are willing to acknowledge whether (or not) a foreigner placed in detention is one of their nationals.

The change from thirty-two days (with regard to asylum-seekers only; for all others the maximum period was previously thirty days) to forty-five days is nevertheless far from trivial.

On the one hand, periods of deprivation of liberty ordered by the administrative authority alone (even when subject to the supervision of the ordinary courts) cannot be used lightly; the use of internment without trial should remain as limited as possible, as a manner of principle. On the other hand, from a practical point of view, a period of around thirty days can be passed off as a holiday, thus making it possible to hold down a job. The same does not apply for longer periods. Accordingly, this worsens the risks of breakdown of the detainee’s social integration (in terms of both work and accommodation). Yet, is there any need to recall that, rather than being deported, over half of foreigners placed in detention are freed by virtue of a court ruling or decision from the administration? For the latter, detention carries the risk of devastating consequences with regard to their social integration, without serving any useful purpose. Hence the deep tensions observed in most detention centres after the act of 16th June 2011, which found expression in acts of despair (hunger strikes etc.) and assaults (in the form of self-harm or violence to others). This prejudice was in no way counterbalanced by any increase in the likelihood of deportation.

The question of the length of detention periods cannot therefore be regarded as definitively resolved; the Contrôleur général recommends that it should be opportunely revised downwards.

2.1.1.2 Illegally staying foreigners and police custody

In this field, changes have also arisen from European law, in response to which French judges have implemented the required follow-up measures at the national level.

In 2011, the Court of Justice of the European Union was called upon on two occasions to give verdicts concerning the compatibility of Member States’ laws providing for penal sanctions in the form of prison sentences for foreigners, solely on the grounds of their residence papers not being in order, and the provisions of the “return” Directive 2008/115/EC.


Such were the findings of the special fact-finding mission set up by the Law Commission of the French National Assembly on detention centres for illegal immigrants and waiting areas (report (rapport) no. 1776, rendered on 24th June 2009), of which “proposal no. 2” consisted of maintaining the detention period at 32 days, in spite of the coming into force of the “return” directive.
The first of these verdicts, delivered on 28th April 2011, concerned Italian law, the Italian Government not yet having transposed the directive of 2008 into its internal law\(^7\); the second, delivered on 6th December 2011, in a case transferred from the Court of Appeal of Paris concerning article L. 621-1 of 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*), in the version of the latter posterior to the act of 16th June 2011 which, however, had not modified this article\(^8\).

In both cases, the Court ruled that when a foreigner staying illegally in a Member State does not wish to leave voluntarily, the Directive obliges the said State, in the first place and above all, to take care of their physical removal from the country. Provision cannot therefore be made for penal sanctions, such as imprisonment, on the same grounds, when the said imprisonment would result in postponing the foreigner’s departure from the territory. Accordingly, in delaying deportation by the implementation of sanctions of this kind, States fail to respect the objectives of the Directive. On the other hand, when deportation measures have been applied in accordance with the Directive, but have failed to result in the foreigner’s removal from the country, sanctions of this kind may apply, that is to say when the procedures of the Directive have been implemented and, in particular, when the full period of detention provided for by national law has come to an end. In other words, in order of priority, the application of deportation measures (in accordance with the principles of the Directive) shall necessarily take precedence over prison sentences.

After the first case concerning Italian law, the French Government had tried to defend the idea (cf. circular of 12th May 2011) that the case law originating from the Court of Justice only applied when a deportation measure had been taken. In reality, the prohibition of prison sentences applies as long as the implementation of deportation measures has not been attempted. In consequence, in the spring of 2011 there was a certain hesitancy as to the correct policy to be applied, which was manifested for several weeks in an appreciable fall in numbers of inmates in detention centres for illegal immigrants\(^9\).

In 2012, the French Court of Cassation was called upon to draw the consequences of this case law with regard to the placing of foreigners in police custody. Under the terms of article 62-2 of the Code of Criminal Procedure (*code de procédure pénale*), police custody can only be decided upon, by senior law-enforcement officers, with regard to persons about whom “there are one or several plausible reasons to suspect that they have committed or attempted to commit a serious crime or an indictable offence punishable by a prison sentence”. If no imprisonment is possible as long as a deportation procedure has not been implemented, can police custody be decided upon when the sole grievance against the foreigner is the fact that their residence papers are not in order?\(^20\) In a short space of time, several judges of French courts of first instance in civil and criminal matters pronounced verdicts which answered this question in the negative\(^21\). When this issue was referred to it in the last resort, in particular by two Principal State Prosecutors, the 1st Civil Division of the Court of Cassation requested the


\(^8\) CJEU, 6th December 2011, Alexandre Achughbabian, case C-329/11. Article L.621-1 of the CESEDA provides that foreigners whose residence papers are not in order incur a prison sentence of one year, a fine of €3,750 and, if necessary, may be banned from entering French territory for up to three years.


\(^20\) Naturally the question is posed in a different manner if the foreigner taken in for questioning is suspected of having committed or attempted to commit other offences (under ordinary law) punishable by prison sentences. Moreover, this falls within the competence of the Court of Justice: in this case, it writes, the foreigner may be excluded from the field of application of the Directive (Achughbabian above-mentioned).

\(^21\) See the rulings quoted by G. Poissonnier, chronique (Law Reports) cited, note 37.
opinion of the Criminal Division which, in a verdict pronounced on 5th June 2012, given in the light of the rulings of the Court of Justice, considered that, in such scenarios, since foreigners do not incur imprisonment, they cannot therefore be placed in police custody. By three judgements of 5th July 2012\(^2\), the Civil Division upheld rulings declaring police custody, based solely on the fact of a foreigner’s residence papers not being in order, to be unlawful and overturned a ruling by the President of a court of appeal having judged the opposite.

This development led the Government to introduce a bill (as a matter of urgency), concerning detention for verification of temporary residence rights\(^2\).\(^3\).

The 1st Section of the bill institutes a form of “detention” in police facilities (with the exception of police custody facilities), for a maximum period of sixteen hours, “for the purposes of verification of their right to free movement and temporary residence on French territory”\(^4\).

The institution of this kind of detention would therefore introduce a specific framework for short-term deprivation of liberty that is distinct from police custody\(^5\). It would also be distinct from the hearing (examination) provided for under article 62 of the Code of Criminal Procedure, which is limited to four hours and, moreover, presupposes that there is no plausible reason to suspect that an offence has been committed. Above all, it would be distinct from detention, as specified under article 78-3 of the same code, in order to allow the establishment of a person’s identity, which similarly may not exceed a period of four hours. A four-hour period was therefore deemed insufficient, taking the necessary verifications into account, in order to establish whether a foreigner, taken in for questioning by the police, is residing in France illegally. One might hold the contrary to be true, in view of the comprehensiveness of the databases listing residence permits issued to foreigners\(^6\) and the obligation incumbent upon them to show the permits authorising their temporary residence in France when so required by the police\(^7\). However, the text’s impact study, citing the “brief but reasonable” period mentioned by the Court of Justice in the above-analysed judgements, lists the requirements weighing upon the police (transport time, time of notification of rights, time for finding an interpreter, meeting with a lawyer etc.) that may justify exceeding a period of four hours. At least it is permissible to hope that the maximum of sixteen hours will not be reached too often.

In 2012, as in the previous year, the uncertainties weighing upon the applicable rules resulted in a significant reduction in the numbers of persons placed in detention. During the inspection conducted by the Contrôleur général between 12th and 16th November 2012, between twenty and twenty three persons, on the various days, were accommodated in a centre of seventy-two places.

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\(^2\) Nos. 959, 960 and 965.
\(^3\) Furthermore, the text modifies the offence of assisting illegal residence “in order to exclude humanitarian and disinterested actions therefrom”.
\(^4\) For which, it goes without saying, the Chief Inspector of places of deprivation of liberty shall accept competence if the bill is passed, without there being any need to amend the act of 30th October 2007.
\(^5\) Application program for the management of files on foreign nationals in France (Application de gestion des dossiers de ressortissants étrangers en France / AGDREF), authorised by a decree (décret) of 19th March 1993, whose content is estimated in a report from the French Senate (initial finance bill for 2011 – Cion des lois (Law Commission) – Sécurité, immigration, asile et intégration (“Security, Immigration, Asylum and Integration”) J.P. COURTOIS and F.X. BUFFET) at five million individual files; AGDREF 2 was authorised by a decree of 8th June 2011 (cf. articles R.611-1 and et seq. of the CESEDA) and corresponds to the development of biometric temporary residence permits. Other resources of this kind include a “File of refused applications”, data concerning the follow-up of deportation measures, and European records, for example the SIS and EUROMAC (fingerprints of asylum seekers and illegal immigrants).
\(^7\) Article L 611-1 of the CESEDA.
However, these uncertainties also led to a change in the composition of the population of inmates in detention centres: the majority of those present were persons having been in police custody, as well as persons released from prison, for offences other than the sole fact of their residence papers not being in order. There was therefore a change of atmosphere in the centres, with greater circumspection before the placing of persons in detention.

2.1.1.3 Litigation

As already recalled, in the follow-up to the “Mazeaud Report” proposals and with the Act of 16th June 2011, changes were introduced with regard to litigation involving foreigners in detention. Although cases can henceforth be referred to an administrative judge within forty-eight hours, for the delivery of a verdict within three days with regard to the lawfulness of deportation measures and placement in detention, the liberty and custody judge (juge des libertés et de la détention / JLD) no longer delivers a verdict on the extension of periods of detention at the end of forty-eight hours, but rather after a five-day period. This change has its rationale, which was defended by the Government when the Act was voted. In the past, the liberty and custody judge (JLD) gave a verdict on the extension of detention periods, without the lawfulness of measures of deportation or placement in detention being firmly established. Henceforth, such lawfulness is first verified — if the foreigner so wishes, by referring the matter to the competent judge. The Constitutional Council of France ratified the principle of a five-day period separating the commencement of detention and referral of the matter to the liberty and custody judge (JLD), on condition that the permissible 48 hours of police custody are not added to this period.

The associations involved in detention issues take a different view.

On the one hand, due to congestion of the courts, in many Administrative Courts submission for hearing was not possible within the allowed deadlines. Moreover, and above all, many foreigners were unable to be referred to the liberty and custody judge, since they were actually deported within the first five days of detention. According to their report, in 2010, 8.4% of persons were deported within forty-eight hours (therefore without appearing before the liberty and custody judge /JLD); in 2011, after the reform, a quarter of persons in detention were deported within five days. In other words, the lengthening to five days of the detention period during which no court action is required, would only appear to have allowed the administration to deport more foreigners in the absence of any effective judicial action. This remark is logical. However, its significance is qualified by the data contained in the report: although there was indeed a “post-reform” fall (−14%) in the number of persons released by liberty and custody judges (JLD), on the other hand, the volume of those released by administrative judges on the contrary increased (+49%) and there was a slight “post-reform” increase (+2.6%) in the overall number of foreigners released by court decision (ordinary and administrative courts) as compared with 2010 i.e. “pre-reform”. However, this data obviously needs to be followed in the long-term, in order to assess the effects, on persons placed in detention, of this reversal of judges’ respective roles.

2.1.1.4 Minors

Shortly after his appointment within the Government, the Minister of the Interior announced new directives aimed at avoiding the placement in

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28 Ruling no. 2011-631, op. cit., consid. 69 to 73.
29 See the Rapport 2011 sur les centres et locaux de rétention administrative (“2011 Report on centres and facilities for the detention of illegal immigrants or of asylum seekers due to be deported”), drafted jointly by the ASSFAM, Forum-Réfugiés, France Terre d’Asile, the CIMADE and the Ordre de Malte, Paris, 18th November 2012.
detention of families with minor children. This measure had been widely requested. It means giving priority to compulsory residence orders, in cases of application of deportation measures to families with young children, pending implementation of the said measures.

Moreover, the nature of these directives was virtually inevitable in the wake of the judgement of 19th January 2012 in which the European Court of Human Rights censured the excessive disrespect of family life resulting from the placement in detention of a family from Kazakhstan, in particular at the detention centre for illegal immigrants (CRA) of Rouen-Oissel. The Court noted that France was one amongst only three European countries that systematically resort to the detention of accompanied minors, that the family did not show any identified risks of eluding the deportation measure and that no alternatives to detention had really been considered. “The higher interest of the child, it writes, cannot be limited to keeping the family together however (...) the authorities shall implement all necessary means in order to limit the detention of families accompanied with children as far as possible and effectively protect the right to family life”.

This view is all the more justified in that, as the Contrôleur général has frequently noted in its inspections of detention centres for illegal immigrants (and a fortiori in the case of detention facilities), very few of the latter are really equipped to accommodate children. Although families are placed separately in rooms of suitable dimensions, spaces for walking are reduced to a strict minimum, as are available activities.

It is true that two significant limitations are included in the ministerial directives.

The first of these is the fact that compulsory residence orders cannot be found to apply in scenarios where families have attempted to elude previous deportation procedures. This might be regretted, however, such a possibility was specifically acknowledged by the ECHR. The second is that application of the directives is (implicitly) limited to metropolitan France.

However specific the nature of certain public authorities in French overseas departments and territories may be, as far as immigration policy is concerned, their special characteristics do not appear to justify families - with regard to the right to a family life - and children - with regard to the higher interest of the child upheld by current texts – being dealt with differently in metropolitan France and overseas, notwithstanding the fact that the CESEDA indeed provides for notable exceptions to the law relating to foreign nationals in certain overseas departments and territories.

2.1.2 A few observations concerning Waiting areas

2.1.2.1 Waiting areas under the Act of 16th June 2011

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30 Circular to prefects of 6th July 2012 (NOR INTK1207283C).
31 See, amongst others, the report of the Chief Inspector of places of deprivation of liberty for 2010, in particular the table of recommendations given therein, page 295, no. 38.
32 ECHR, Fifth Section, Aff. Popov vs. / France, Nos. 39472/07 and 39474/07.
33 Editor’s note: which precisely would lead to the placement in detention of all of the members of the same family, including the children.
34 By way of illustration, cf. photo no. 6 published in the report of the contrôlé général for 2010, centre section, p. VI.
35 We know that children are often placed in detention in French overseas departments and territories (where, according to the associations, almost half of deportations are carried out), in particular at the CRA of Pamandzi (Mayotte) where, in August 2012, a very young child was found dead beside its mother. If the initial investigations have been verified, that is to say that the child had already died the day before, when the group of Comorans were taken in for questioning on their disembarkation from the boat, one might have doubts as to the validity of the brief examination of this group carried out by a nurse at the time of disembarkation.
In 2011, without reference to any European incentive, the legislature provided for better demarcation of waiting areas that have been created *ex nihilo*, in particular in the case of the grounding of sea-going ships with numerous persons on board lacking documents for entry into France\(^{36}\). This measure, the basis of which can hardly be questioned, comes in the wake of two episodes of this kind that occurred in France in 2001 and 2010. No applicable cases have occurred since the Act was voted.

2.1.2.2 *Waiting areas apart from Roissy*

The Roissy waiting zone focuses attention, and rightly so, in view of the fact that, as the report devoted to it by the Contrôleur général pointed out\(^{37}\), as far as the placing of foreigners in waiting areas in France is concerned, nine cases out of ten occur in this airport.

Nevertheless, there are also waiting areas at the principal crossing points of the French border, for the most part airports as well as a few ports, in metropolitan France and overseas departments and territories. Apart from Roissy, the Contrôleur général has, to date, inspected seventeen of these sites, which have very different activities and, therefore, dimensions.

Here we would like to draw some lessons from observations taken from these inspections.

2.1.2.2.1 Foreigner’s Rights and the Effectiveness thereof

In the first place, a careful distinction needs to be drawn between those foreigners who, contrary to the provisions of article L.211-1 of the CESEDA, do not have the necessary documents and are therefore “refused entry” to French territory, according to the procedures set out under article L.213-2; and foreigners who, having been refused entry, are placed in waiting areas in accordance with the provisions of chapter 1, title II of book II of the same code, “for the time strictly necessary for their departure and, in the case of asylum-seekers, for an examination aimed at ensuring that their application is not manifestly unfounded” (article L.221-1), according to rules for the deprivation of liberty which – it has to be recalled, since confusion on this point is frequent – are not the same as those provided for the detention of illegal immigrants.

The former group, composed of persons to whom entry has been refused, is necessarily larger than the latter, those “held” in waiting areas. Indeed, there are scenarios in which no waiting time is required before those “refused entry” can depart once again, in particular when, after a stopover, the aeroplane which brought them is due to take off from the same airport, returning to the destination of origin.

However, it should be noted that the differences between these two groups are of very variable proportions, according to the waiting zone considered. At Orly Airport, for both of the years in which inspections were conducted by the inspectorate, between 90% and 95% of persons “refused entry” were later “held” in the waiting zone. At Lyon-Saint Exupéry Airport, the percentage fluctuates between 20 and 25%. In waiting areas where the number of those refused entry is low, hardly any foreigners are “held”. In other words, the greater the number of persons refused entry (presumably, because air – or port – traffic levels are high), the higher the percentage of persons held in waiting areas, and vice-versa.

Nevertheless, it is essential to determine whether this procedure for dividing foreigners who are refused entry into two groups, which comes entirely

\(^{36}\) *New paragraph of article L. 221-2 of the Code for Entry and Residence of Foreigners and Right of Asylum (code de l’entrée et du séjour des étrangers en France et du droit d’asile).*

\(^{37}\) *July 2009; the report may be consulted on the www.cglpl.fr website where it has been placed online.*
Indeed, border police officials assess whether or not foreigners refused entry can be removed immediately and, if not, whether they have to be placed in a waiting zone. The consequences of this assessment are far from negligible. Firstly, this assessment has an impact upon the workload of the officials themselves; as well as upon removal success rates (the earlier removals occur, the more successful they are); and finally, upon what happens to the foreigner: when they are to be removed immediately, foreigners remain in the police station, in the custody of the officials, with hardly any concrete possibilities (access to a telephone) and without any of the associations that may be concerned, or the United Nations High Commissioner for Refugees, having access to them, whereas the latter do have access to waiting areas; above all, without the possibility of access to the liberty and custody judge who, after a foreigner has been held for a period of four days in a waiting zone, is responsible for examining whether this period should be extended or brought to an end (article L. 222-1 of the CESEDA). Moreover, it is doubtful that asylum applications can be made and taken into account under the conditions of procedures of this kind\textsuperscript{38}; and yet applications of this kind have to be protected\textsuperscript{39}.

Another related issue is associated with this question. The law (article L. 213-2 of the CESEDA) provides that, when foreigners are notified that they have been refused entry, they have the right to request that they be granted a clear day before their repatriation, which necessarily leads to their being placed in a waiting zone. Furthermore, the law provides that this notification shall be made “in a language that they understand”. Finally, in order to ensure that this provision is scrupulously respected, this procedure should not be carried out at such a pace that, independently of the language used, there is a risk of foreigners failing to understand the information communicated to them and the documents that they sign\textsuperscript{40}: thus the meaning of a “clear day” (“jour franc”) is not immediately obvious, especially for foreigners when asked “Clear day? Yes or no?” An expression of this kind is unlikely to be understood in the same way as “You may remain in France for twenty-four hours before leaving; do you wish to have the benefit of this possibility?”

When police officials are questioned about the manner in which they operate, a clear procedure is set out. On the one hand, “passengers are systematically offered the benefit of a clear day”\textsuperscript{41}; on the other hand they fix a limit to the time during which a person may be immediately re-embarked (two hours, at Lyon-Saint Exupéry Airport for example; or four hours, for example at Orly\textsuperscript{42}); finally, they mention that they pick up luggage belonging to persons “refused entry” from the airport conveyor belts (if necessary under the eye of the person concerned) and give them back to their owners immediately.

However the first two assertions cannot be verified. The first assertion, concerning the clear day, does not correspond to what inspectors see in the majority of airport police stations when they are present at the time of notification of refusal of entry. The officials fill in the forms and frequently tick the space declining the benefit of a clear day themselves, amongst others, before handing the documents to foreigners for signature. Although there is admittedly no proof

\textsuperscript{38} The possibility of seeking refugee status is a fundamental freedom according to the meaning of article L. 521-2 of the code of administrative law (code de justice administrative) (French Council of State, judge with power to hear urgent applications, 12\textsuperscript{th} January 2001, Mrs Hyacinthe, no. 229 039).

\textsuperscript{39} Cf. the necessity, in this respect, of effective remedy according to the meaning of article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: ECHR, 2\textsuperscript{nd} division, 26\textsuperscript{th} April 2007, Gebremedhin vs. France, no. 25389/05.

\textsuperscript{40} If they wish to have the benefit of a clear day they must mention this on the document issued to them. In the forms in use, a cross has to be marked in a space provided for that purpose.

\textsuperscript{41} However, at Orly, for example, it is calculated that 23% of persons refused entry ask to have the benefit of a clear day.

\textsuperscript{42} This difference is already cause for concern in itself.
that these practices are in general use (the same practices were noted during the inspection of Roissy Airport\(^{43}\)), they are at least in partial use. In any case, at best, it appears that practices often vary according to the official. The second assertion, for its part, is also unverifiable, since there are no documents, signed in the presence of the parties involved, making it possible to retrace foreigners’ brief stays in the airport, from hour to hour, between their arrival and departure. Although there are registers, they are far from being accurately kept: in particular, with regard to the time of departure which, when shown, is not accompanied with the foreigner’s signature. As a result, the facts cannot be established.

Finally, with regard to luggage, on several occasions the foreigners questioned contradicted the information given by the police, pointing out that their luggage only reached them after the decision to place them in the waiting zone had been taken. If this is a true indication, the police presumably keep the luggage for as long as there is a chance of being able to quickly remove persons refused entry.

\begin{itemize}
\item Everything seems to indicate a variety of practices, some of which may be highly expeditious. In any case, the effectiveness of the acknowledged rights belonging to foreigners arriving at the border without the required documents (right to apply for asylum, possibility of being notified of refusal of entry, as well as the rights accompanying such refusal, in a language that they understand, possibility of notifying a certain number of people in France, right to the benefit of a clear day) makes it necessary to ensure that respect for these rights is verifiable.
\item It is therefore demanded that the stages of completion of the procedure, or least the parts thereof that guarantee effective application of the above-mentioned rights, should be noted down in the presence of the parties involved\(^{44}\). Such is not currently the case: in one (major) airport, the inspectors ascertained the absence of any directive on the part of the senior management with regard to the application of the clear day and the deadline within which foreigners refused entry may be “immediately” removed.
\item We therefore recommended that a register, comparable to that provided for in waiting areas strictly speaking and mentioned under article L. 221-3 of the CESEDA, should be instituted in the police stations making it possible to retrace the whole of the operations carried out there.
\end{itemize}

2.1.2.2.2 Facilities

It will easily be admitted that there is no airport on French territory that is designed for holding people against their will; and the same applies to ports and railway stations. Transport infrastructures of this kind are by nature places that people pass through quickly, otherwise, in cases where people do stay in them (in transit for example), they are equipped with some facilities to ensure that the experience of spending time in them is pleasant. As a result, the premises used are structurally unsuitable for the deprivation of liberty and dependent upon the good will of the manager of the airport, which is the owner of the premises, whose enthusiasm for accommodating foreigners refused entry to the country is not always readily apparent.

\begin{itemize}
\item Unsuitability of Facilities.
\item Foreigners refused entry, when not confined to a “wing” with a view to their immediate departure, are either housed in narrow rooms, equipped in any manner possible within the premises: such is the case in particular in airports of modest or medium dimensions; at Lyon-Saint Exupéry Airport there are two rooms containing bunk beds – two in the first, which
\end{itemize}

\(^{43}\) Cf. the aforementioned report of the contrôle général, in particular pages 7 (for the interpreter), 9, 15 and 38.

\(^{44}\) Cf. access to defence rights and access to medical treatment in detention in sections 4 and 5 of this report.
occupies a surface area of 4.95 m², and four in the other, in a space of no more than 6.44 m² – or else a waiting zone is reserved for them, installed in what was initially a waiting room for passengers of 200 or 250 m², with its inevitable plate glass windows overlooking the tarmac, where they remain during the day, and sometimes also at night; these are cold in the winter and very hot in the summer, with limited facilities (no drinks dispenser note the inspectors in one inspection): such is the case at Strasbourg International Airport and at Paris Orly Airport. At Orly however, at night, persons “held” are taken to a hotel open to the public, in which twelve rooms are reserved for foreigners: at the time of the inspection, the doors had to remain ajar all night, with complete disregard for privacy, with police officers stationed in the hallway. At Cayenne – Rochambeau Airport, the whole of the international zone is open to persons held, who obviously cannot leave and sleep on the seats that are there. Whatever the situation, and the length of stay, a common point in all of these premises is the denial of any access to the open air for persons held there, even for a few minutes 45. It is not always easy to make contact with officials: there is neither any video surveillance (which is not a measure called for by the Contrôleur général) nor any intercom: at Lyon, persons held have to bang on the door (a traditional feature in aeternum of deprivation of liberty in French territories) in order to call the guard.

The public authorities have a responsibility to impose standards of comfort upon the legal entity which, nolens volens, provides accommodation for foreigners refused entry, with regard both to the work of their personnel and the conditions in which persons are held. All aspects of border control and the areas of competence pertaining thereto need to be taken into account at the time of signature of occupancy agreements; including national provisions with regard to surface area per person, supply of goods (meals service within the Aéroports de Paris airports authority), ventilation of premises and cleaning. It would be preferable for minimum standards, such as those that exist for detention centres for illegal immigrants 46, to be defined by statutory means. Officials interviewed are in general little informed with regard to what they can or cannot obtain. At the time of one inspection, the officials did not know what company was charged of cleaning or what expectations they might have in this respect. Activities are provided for on a minimal basis (at Orly, there is one television for a large waiting room 47, and nothing more), even though the presence of children, though not frequent, is far from being an exceptional occurrence (sixty-six for the year 2009 at Orly).

2.1.2.2.3 Relations with Carriers

Article L. 213-6 of the CESEDA provides that expenses incurred for taking care of persons “held” during the time preceding their removal are payable by the carriers.

The spirit of the law is that the latter should have taken the precautions necessary in order to avoid embarking foreigners lacking the documents necessary for their entry into France. This spirit might be thought rather harsh, but this provision is relatively old, and has never been seriously called into question. Routines should therefore be established in order to ensure that persons “held” are not victims of prevarication or hesitation on the part of transport companies with regard to meeting the expenses that the law requires them to pay: the Contrôleur général has come across situations in which distribution of meal trays to foreigners and cleaning of premises is carried out in a rather lax manner, either because of general ill will or vague procedures. The local officials were obliged to intervene as best they could in these difficult circumstances. Relations with the carriers which, with a few exceptions, are major companies, should be properly

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45 Contrary to the provisions made at Roissy (inspection report, op. cit.).
46 Article R.553-3 of the CESEDA.
47 At the time of the inspection, it broadcast the six traditional terrestrial channels.
organised, and agreements should provide specific details of how services are to be supplied and financed (should preference be given to the reimbursement of invoices passed on by the border police or, on the contrary, to direct organisation by the carriers of services defined as being those provided for ordinary passengers?). It is recommended that firm national instructions should be issued on this question.

2.1.2.2.4 The Provision of Information on Legal Rules in Waiting areas

All persons deprived of liberty have the right to be informed of the rules applicable to them. In general, the situation is disappointing in this respect, especially when, rather than examining the legal “theory”, attention is focused on the concrete application that is made thereof.

In the first place, action is required with regard to the rules of procedure. In too many of the waiting areas inspected, these rules are either inaccessible, or correspond to stereotyped models lacking local provisions - which are nevertheless necessary - or only exist in the French language. All persons “held” should be able to inform themselves of the specific rules in force, in a language that they understand. It should be possible to consider that linguistic requirements have been satisfied when the rules of procedure are translated and displayed in the six languages recognised as being those in use by the United Nations (Security Council) except when another language is very predominant in the waiting zone in question.

Secondly, action is also required as far as unaccompanied minors are concerned. Apart from Roissy, the arrival of unaccompanied minors is exceptional (at Lyon, two cases in the course of one year). Without here repeating the whole of the issues developed in depth, in particular by the independent authority charged with the defence and promotion of children’s rights (Défenseur des enfants), it is necessary to pay particular attention to the rapidity with which an appropriate guardian is appointed by a public prosecutor at a court of first instance (procureur de la République) (article L. 221-5 of the Code for Entry and Residence of Foreigners and Right of Asylum), to ensuring effective access to the child for the person thus appointed, to ensuring the latter’s involvement in decisions taken concerning the child and to the precautions to be taken when the child is admitted to French territory.

In the third place, action is also required with regard to the keeping of the register, not, of course, the register mentioned above which has not yet been created, but rather the register that is provided for by law, which has to be kept in waiting areas. Unfortunately, the situation in waiting areas does not differ greatly from the practices observed in too many police custody facilities. In one inspection it was noted that twenty-three foreigners had been held in one waiting zone in the course of the previous year. Although information was available with regard what happened to nineteen of them (eighteen removed and one released), the fate of the last four was unknown, in the absence of sufficient information. These uncertainties are a source of confusion with regard to the way in which, after all is said and done, the flux of persons refused entry to the country and placed in waiting areas is recorded. However, above all, they render any internal or external inspection difficult, or even impossible.

Lastly, action needs to be taken in order to allow persons held to make contact with associations for the defence of foreigners. In none of the zones inspected (apart from Roissy) is provision made for the regular presence of a humanitarian association, such as those mentioned under article L.223-1 of the CESEDA (though some of them make occasional visits). However, in many waiting areas, telephone contact details for such associations are displayed, as well as a list of lawyers at the local Bar. These practices are useful and should be brought into general use.

48 English, Arabic, (Mandarin) Chinese, Spanish, French and Russian.
2.2 Young Offenders’ Institutions

2.2.1 Background details

Following the comments made during the election campaigns on criminality among minors and the means of containing it, of which there was no shortage, media interest was attracted all the more to young offenders’ institutions because, on the one hand, an undertaking had been made to increase their number and, on the other, there appeared to be a consensus in favour of this measure, if not in terms of the level of funds to be allocated to it, at least with regard to its principle, since under the 2007-2012 legislature the Government had also made a similar declaration.49

Following these debates, the Government that came out of the elections wanted to shed light upon the educational value of this approach to dealing with juvenile offenders. It therefore appointed a joint inspectorate (the general inspectorate of legal services and the general inspectorate of social affairs) charged with shedding light on this subject on its behalf. For its part, the French Court of Auditors (Cour des comptes) also opened an inquiry on this subject. At the time of writing these lines, neither of the two inquiries has reached its end. At the same time, the Minister of Justice announced that the best means of preventing recidivism among minors principally involves taking care of them in a so-called “open” environment.

We will not here return to any possible assessment of the institutions which were created by the Act of 9th September 2002, but effectively opened in a progressive manner several years later; for the simple reason that, although an assessment of this kind is possible with regard to their operation (assessing the way in which institutions are run on a day-to-day basis), the same cannot be said as far as their results are concerned, since nobody, whether in each centre, or at any another level, is capable of establishing what has become of the children that have come out of these institutions.50

It is therefore necessary to refrain from taking definitive decisions with regard to these institutions, without being in a position to assess what has become of the significant number of children dealt with under these conditions, despite the fact that, as the Contrôleur général has emphasised on several occasions, we can now consider that the provision of successful, though not yet ordinary, education to children is possible within young offenders’ institutions (CEF).

2.2.2 Which Children should be sent to young offenders’ institutions?

Dealing with children within the framework of young offenders’ institutions appears to be simple: the juvenile court judge orders them to be sent there and the institution enforces the decision. A homogenous population of young people is thereby constituted within young offenders’ institutions (CEFs).

The real situation is more complex and requires careful examination. One is thereby obliged to take the legislature’s intentions into consideration with regard to this point; as well as those of juvenile court judges and the managers of the institutions. At the same time the question is raised as to whether this lack of differentiation within the inmate population should be reinforced or, on the contrary, curbed, and in favour of what and whom.

49 See the parliamentary reports cited in the contrôle général’s report for 2011, p. 37.
50 Cf. report of the contrôle général for 2011, p. 38-41, also see below, section X concerning the detention of young people.
In the first place, it should be specifically recalled on the one hand that no offender is strictly comparable to any other and that, on the other hand, contrary to what is often tacitly assumed, juvenile delinquency itself is in no way a uniform phenomenon. “It is necessary to refrain from seeking the explanation of a phenomenon, which arises from the relation between juvenile delinquents and the social group that notices and punishes them, in the substantial qualities of juvenile delinquents, or even of their family environment” writes Jean-Claude Chamboredon.

2.2.2.1 The Act of 9th September 2002

It is all the more necessary to recall this need for circumspection since the Act of 9th September 2002, article 22 of which created the young offenders’ institutions was instituted in a context of serious concern with regard to the growth of juvenile delinquency.

The report from the French Senate, which was submitted less than a month before the debates that led to the act of 9th September, draws a gloomy picture of the situation, mentioning, on the one hand, a quantitative increase in the number of minors concerned (that is to say arrested for questioning by the police and gendarmerie on suspicion of commission of, or intention to commit offences): 177,017 in 2001, i.e. an increase of 79% in ten years; on the other hand, a growth of violence (increase in the number of intentional violent acts and sexual assaults); finally a fall in the age of juvenile offenders, with increasing involvement of children under thirteen years of age. Above all, the report emphasises what it itself refers to as “the 5% theory”, a “theory” according to which most offences are committed by a very limited number of minors; it mentions small “hard core” groups responsible for juvenile criminality and uses the expression “overactive core”, taken up by the Senate from its hearing of Sebastian Roché. It therefore denounces a small number of “multiple recidivists” or rather, repeat offenders.

It is important to recall the above report, since the parliamentary debates regarding the Act of 9th September 2002 (referred to as “Perben I”) were heavily influenced by its views and vocabulary. The Minister of Justice, for example, stated before the French National Assembly that “minors are committing offences and acts of violence at increasingly young ages”. In the course of the debates, the Minister therefore expanded upon the idea of changes to the penal measures applied to minors, on the basis of four factors in particular: the remanding in custody of minors having failed to comply with the obligations imposed upon them under the terms of judicial supervision; the acceleration of trial procedures after the commission of offences; the need to find an alternative response to juvenile criminality other than the existing secure young offenders’ institutions and prison; and the need to avoid the corruption of minors by adult prisoners and, for this purpose, the construction of new penal institutions exclusively dedicated to minors.

52 Cf. the amendment thus instituted of article 33 of statutory instrument (ordonnance) no. 45-174 of 2nd February 1945.
54 31st July 2002.
55 Secure young offenders’ institutions (centres éducatifs renforcés), the direct successors to UEERs “secure young offenders’ units” (Unités à Encadrement Educatif Renforcé), had been created some years previously. They are young offenders’ institutions designed for repeat offenders. However, they are “open” and in 2002 the government strongly criticised the numerous instances of children running away occurring in them for this reason: one senator mentioned an institution in the Essonne in which, among the eight children who were supposed to be there, only one was present.
56 In contrast to the “children’s wing” found near the “men’s wing” in traditional remand prisons.
According to the authors of the Act, the young offenders’ institutions (CEF) therefore constituted the response which members of the national legal service required, in order to avoid sending a certain category of offenders to prison. “We are creating young offenders’ institutions (CEFs) in order to avoid the risk of recidivism for a small number of young people involved in the “hard core” of juvenile criminality, which is highlighted by all recent research and which we do not currently know how to deal with” the Minister of Justice stated before the Senate, which heard the first reading of the bill.

Admittedly, in legal terms it meant sending minors, under judicial supervision measures or having received suspended prison sentences with probation orders decided upon by juvenile court judges, to the young offenders’ institutions. To these two scenarios, two later acts then added “conditional release” (2004) and “non-custodial posting” (2007). These additions somewhat modify the approach taken in 2002; with the subsequent acts, there is no longer any question of avoiding imprisonment, but on the contrary of reduction of sentencing with regard to detention, while still maintaining close surveillance. However, in reality, minors accommodated under reduced sentencing form a small minority: as the director of one institution points out, placement in young offenders’ institutions (CEFs) in this regard has not “become a part of everyday practice”. The vast majority of children placed in young offenders’ institutions have been charged and placed under judicial supervision (about three quarters); the others have received suspended sentences accompanied with probation orders.

In practice, whether charged or convicted, the objective is indeed the accommodation of minors from the “hard core” of juvenile criminality, who arrive in prison having been frequently implicated, though without ever having been punished. Once again, the Minister of Justice states before the Senate:

“The absence of appropriate responses for multiple recidivist minors currently leads juvenile court judges to send them, in particular, to emergency placement centres (centre de placement immédiat), which, I remind you, were designed to provide a response for juvenile first offenders, of whom Mr Fourcade has just spoken. No appropriate solution is therefore provided in the latter’s case. This is how the situation currently stands. A report from the general inspectorate of legal services reveals that, in their vast majority, minors currently imprisoned have been arrested and appeared in court many times before arriving in prison. Indeed, 90% of these imprisoned minors had already been arrested before the acts that led to their imprisonment, 60% of them had been arrested for questioning on five occasions, and 31% on more than ten. At the time of their first arrest for questioning, the young people currently imprisoned were on average thirteen years of age, 77% had already appeared before a juvenile court and, of these, 40% had done so on at least five occasions. In other words, under the current system these young people go through a large number of purely educational stages, without any punishment, after which, well before reaching the age of eighteen, they finally end up in prison, where there are currently close to 1,000 of them, under conditions that this report deems to be totally unacceptable.”

This argument justifies the six hundred places in young offenders’ institutions (CEFs) provided for by the Act and for the construction of penal institutions for minors: since punishment of the “hard core” takes the form of what is referred to as “legal” detention, with a “high educational content”, and the penalty of imprisonment is imposed if the child runs away, it is necessary to build both young offenders’ institutions (CEFs), within which a few hundred places which will suffice, and prisons where runaways can be sent.

### 2.2.2.2 Young people accommodated

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57 One sees the adroit sophism inherent in presenting a bill concerning this point as being devoid of any repressive character, since placement in CEFs avoids imprisonment.
The inspections carried out by the Contrôleur général in young offenders’ institutions make it possible to provide responses to two questions concerning the acts for which minors are placed in CEFs on the one hand, and their geographical origin on the other.

The acts for which young offenders are sent to the institutions can, for their part, be identified by means of their committal orders. They are for the most part theft-related offences (with one or several aggravating circumstances) and violent acts (also aggravated in most cases), assault often being one of the aggravating circumstances of a robbery. Thus out of the thirteen inmates in one CEF – several having run away – four had been sent there for multiple thefts; two for assault; four for robberies with assault; one for an offence of a sexual nature; another for arson; and the last for drug trafficking. In another institution: four robberies with assault; three cases of destruction of property by methods liable to create danger for people; a rape of a vulnerable person; robbery in an organised gang; and assault of a person responsible for duties of public service.

Although, as might be expected, offences involving property (and corresponding forms of violence) therefore appear to hold a central place among the offences found, it is necessary to make two additional comments.

In the first place, although the individual children have indeed committed numerous offences, it is difficult to find any similar or closely-comparable life background that would apply to all of them. The “hard core”, identified in Parliament in 2002, is in fact highly diverse. Even among these minors, individual “backgrounds” or “paths through life” can show considerable differences. In any case, the idea that CEFs are a final “step” before imprisonment needs to be abandoned. In reality, a non-negligible proportion of these children have already experienced prison prior to the CEF, either immediately beforehand, or at one time or another in their adolescence. The (agreeable) idea of a progressive, gradated scale of punishment is scarcely in evidence in reality. While ideas may differ among members of the national legal service (for some, CEFs should be used prior to prison sentences, while for others they constitute an almost compulsory stage of release from prison); choices are necessarily influenced by the places available here or there; while children can go through periods in their lives of worsening as well as abatement of their criminality etc.

In the second place, even were one to admit (solely for the sake of argument) the existence of similarities between juvenile offenders guilty of theft, assault and robbery with assault, alongside them, within the CEFs, there is a non-negligible number of children who have committed serious, and often criminal offences. There is an even stronger likelihood of this differentiation insofar as, as we have seen, the law provides that accommodation within CEFs can henceforth arise from reduced sentencing and, in 2011, a governmental measure decided that any minors involved in rapes would necessarily be placed in young offenders’ institutions (subject to remand). And yet, although minors who have committed these kinds of serious offences may be repeat offenders, they may also show characteristics of an entirely different nature from those of the “hard core” depicted at considerable length in 2002. Accordingly, in their current state, and also due to the fact that the communities in young offenders’ institutions are composed of

58 Out of thirty-two children admitted to institutions of this kind in the space of a year, twelve came there from prison, eight from emergency placement centres (CPI) or other young offenders’ facilities, two from a secure young offenders’ institution and one from a hospital, while the last was an unaccompanied foreign minor.

59 In principle, educational institutions for young offenders cannot admit persons beyond their accommodation capacity; prisons have to admit all those sent to them by the liberty and custody judge. This asymmetry inevitably has its consequences.

60 Or assault with robbery, one might say, for some of them.

61 Following a tragic case which occurred on 16th November 2011, in Chambon-sur-Lignon, involving a 17-year old minor under judicial supervision for having previously committed a serious offence of the same nature (rape).
small numbers of children (a maximum of twelve children, in practice slightly more than ten), CEFs may bring minors of entirely different nature together. This is a hard reality, that could probably also be found in the “children’s wings” of prisons. Finally, one must not fail to point out that, although minors may commit offenses, they can also be the victims thereof, and educational measures designed with them in mind cannot ignore this aspect of their personality: thus, among the girls housed in one institution inspected, 40% had been victims of offences of a sexual nature.

With regard to the geographical origin of children, a distinction can easily be drawn between three types of establishment.

The first are those whose inmate populations wholly or partially present a specific character: in these cases, in view of this exceptional nature, the children come from throughout France. This is obviously the scenario for those which have chosen only to admit girls (a certain number of CEFs that had initially considered admitting a mixed population of inmates, before abandoning the idea). As there are very few of them, they are distinguished by their very wide area of recruitment: thus, in one of these centres, children came from Strasbourg, Angoulême, Toulouse, Orléans, Metz and Cherbourg etc.

The second are those which only admit boys, scarcely stipulate any recruitment preferences and, in point of fact, admit inmates from numerous regions, with a core of persons from the region in which they are established, who usually constitute a minority. These establishments hardly impose any selection criteria, and de facto, subject to available places of course, admit all young people that members of the national juvenile legal service send to them: in an institution in the South-West of France, out of fifty-two children admitted over a number of months, only five were from the region.

Finally, the last type is characterised by more or less pronounced “selective” practices, choosing to satisfy requests from their “region”, understood in a broad sense (this is often the “inter-regional area” of the judicial youth protection service (direction de la protection judiciaire de la jeunesse)). It is often these CEFs which have the most clearly established educational projects including, in particular, the incorporation of considerations with regard to the place to be given to the parents of their young inmates: in one of them, in the East of France, the eight inmates came from three departments in two different neighbouring regions.

Indeed, even when it is acknowledged that it is necessary for juvenile delinquents to be cut off from their normal environment, recruitment criteria that fail to take geographical considerations into account have two consequences: in the first place, they move children far from their families, the latter therefore find that, in reality, it is impossible for them to be more or less involved in the “educational projects” worked out for their children. For this reason one often finds that wide geographical recruitment is often combined with relatively weak consistency of the teaching and educational projects implemented. In the second place, such criteria often move children far away from the professionals associated with the legal system: when judges order children to be sent to institutions that they have never visited, as though all of the latter were alike, the youth workers charged with following the child’s development have difficulty in ensuring the continuity between the CEF, previous events and what will subsequently become of the child, due to the unrealistically long distances to be travelled. For both of these reasons, without necessarily wanting to, the CEFs here referred to reinforce the aspect of an “interlude” that can be inherent to a stay in a young offenders’ institution. Moreover, the impact of checks made by these professionals with regard to the results of these institutions will obviously be greatly reduced, not to say non-existent. The undifferentiated nature of institutions resulting from

62 With the sole difference that collective life in a CEF is much more continuous than in prison.
practices of this kind in no way helps judges to determine the greater suitability of one centre as compared with another, for young persons of any particular character.

2.2.2.3 Should children be admitted according to selective criteria?

The idea of criteria that are too highly selective should be approached with caution, since it would result in strong differentiation between CEFs, thereby creating an explicit or implicit hierarchy between them, of which the children would inevitably be aware, which would almost certainly lead to their adopting the attitudes associated with these differences.

Moreover, one would legitimately expect all young offenders’ institutions to provide the services rendered necessary by the nature of their inmates. It is not desirable for certain institutions to be “specialised” in admitting children with problems of mental health, or addictions, or educational underachievement; in view of the fact that one should then expect to encounter difficulties of this nature among the young people admitted, and would therefore have to be ready to deal with them. Accordingly, in its reports, the Contrôleur général has noted shortcomings with regard to the relations between the institutions and the mental health services in their surrounding areas.

Except, therefore, for a few exceptions, it is necessary to avoid the establishment of CEFs “specialised” in inmates of a particular type.

On the other hand, distinguishing between CEFs by means of their respective established educational projects does not create any disadvantages when their differences arise from their methods, since projects of this kind do not result in the formation of special types of inmate populations (for example a project focused on the treatment of addictions would have the detrimental effect of gathering young “heavy” drug users together). The resourcefulness of certain associations and departments of the PJJ (Judicial youth protection service) has made it possible to implement original and coherent programmes in certain CEFs. When sending children to young offenders’ institutions, judges still need to be informed about these programmes, in order to be able to make choices that are based upon matching the child to the selected CEF, and not purely on the criteria of available places and geographical choice. It would be surprising were it possible to use one single method in dealing with young people in need of stability and guidance. Declared projects would also have the advantage of helping children to find their bearings after a stay inside an institution, whilst consolidating the consistency of a stage in their life path that often lasts for several years.

The wealth of experience acquired by the young offenders’ institutions since the Act of 9th September 2002 should now make it possible to reinforce the demands imposed upon managers in the elaboration of their educational programmes. Of course, assessments, both internal and external, should make it possible to distinguish rapidly between good and poor projects: fragile children are not a field for experimentation.

2.2.3 Other observations and recommendations with regard to young offenders’ institutions

In particular, the existence or absence of established and implemented educational projects now constitutes one of the major elements of differentiation between CEFs.

63 The exclusive admittance of girls (in view of the difficulties of managing the mixing of sexes in CEFs) certainly constitutes one such exception, and possibly the only one: it is therefore appropriate to offset the associated disadvantages (here the absence of families has been emphasised in particular) by means of special measures.
It might even be said that the existence of an identifiable project is undoubtedly a major factor in distinguishing institutions that function in a satisfactory manner from those that do not; or, so to speak, that although the existence of a project of this kind may not be sufficient to ensure success, it is definitely a required condition thereof.

Another decisive factor depends upon the quality of the staff in the institutions, including tutors, operational staff, teachers and “house mistresses” etc. In this respect, there are several observations to be made.

As the Contrôleur général has already mentioned, the first years of operation of the young offenders’ institutions were chequered with conflicts of all kinds among the staff, and between the latter and the associations or the administration. These conflicts have for the most part been resolved. They were settled all the more easily where choices made within institutions were discussed and shared. Exchange is a vital tool in the collective education of rebellious children. Initiatives of this kind are still required on the part of the management of certain institutions.

Due to the difficulty of recruitment, the quality of tutors often remains variable. It can however be improved over time. In this respect, there is a clear difference between institutions concerned with enabling their staff to progress, which are open – in spite of difficulties – to both analysis of their practices (by third parties from outside of the managerial structure) and to professional training, in particular through the validation of outcomes of experience at work (validation des acquis de l’expérience / VAE) and other institutions, in which there is hardly any advancement open to tutors, and which show a rapid turnover of staff, with scarcely any methods of qualitative improvement. It is necessary to pay all the more attention to these aspects since many of the officials thus recruited are young men and women originating from underprivileged sections of society, from immigrant backgrounds in particular, who have made great efforts in their education while braving comments from their fellows in misfortune: personalities of exceptional quality are to be found amongst them and their commitment deserves to be rewarded in terms of career advancement.

Finally, executives (in both management and education) should be careful to ensure that children are dealt with in a consistent manner, through consistency of staff action, and should therefore seek to bring officials closer together, whatever their origin and duties. Nobody can be pushed aside in such small educational communities, in which each member has their place.

Understanding is harmed by “theoretical” prohibition (in rules and regulations, booklets for new arrivals etc.) of practices in which inmates “inevitably” engage in practice, and which therefore undermine an educational approach to the relationship between the law and reality. Similarly, practices cannot be imposed at the price of constraints which compromise the dignity of persons (certain practices of searches on return from weekends with the family for example; as well as tutors systematically listening in on children’s telephone conversations with their

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64 Report of the contrôleur général for 2012, section 1, p. 9.
65 In one of the institutions having been the subject of a report in 2012, five tutors out of thirteen were holders of a state diploma (diplôme d’Etat) of some kind.
66 Already mentioned in a previous annual report.
67 On this point see section 3 of this report concerning discipline and punishments in places of deprivation of liberty.
68 One of the institutions inspected has made express provisions that showers shall not be installed in the rooms, in order to make it possible for the children’s clothes to be searched when left in a collective area, while they take their showers (without the children concerned necessarily being aware of this). In another, the rules and regulations make respect for privacy conditional upon respect of the institution’s collective rules by the young person.
The Contrôleur général’s report for 2011 noted a certain number of uncertainties affecting young offenders’ institutions. In 2012 observations of the same kind were made to various degrees: there continues to be a general uncertainty with regard to what becomes of children after their respective stays in institutions; similarly, there is a lack of precision in the documents that make it possible to assess children’s development (in particular the “document of individual measures in dealing with young offenders” provided for by the social action and family code (code de l’action sociale et des familles) since 2002), which continue to be completed in a very uneven manner, except in institutions that run “smoothly”; uncertainties with regard to educational projects have already been mentioned above. These three factors call for significant progress.

It would be useful to engage in collective consideration of the issue of mixing of sexes in CEFs. One of the centres inspected, which practices such mixing, considers it to be highly useful in helping each child to define their personality. This may be a good idea. However it should be noted that many institutions, which, as already mentioned, had initially included this approach, subsequently abandoned it due to the difficulties and even risks arising from the practice of mixing of sexes. It would be worth supplementing simple pragmatism in this regard with more substantial elements.

The close involvement of parents in what happens to their children inside young offenders’ institutions is a key to the success of such stays. Some families are deeply divided and securing their involvement is therefore an arduous process. However, it is above all common to encounter close relations who have given up in helplessness, incapable of responding in a useful manner to the minor’s development. Their contribution is nevertheless irreplaceable, as is the awareness on their part that is sometimes awakened as a result of the child being sent to an institution. Institutions therefore need to integrate various forms of relations with families into their operational methods, even when the families are far away (cf. § 2.2.2.2 above). It is already possible to cite examples of successes of this kind.

Education, above all with regard to sixteen year old minors, cannot be neglected either in the children’s timetable or with regard to the quality of teachers. In one institution inspected, a period of eight months went by between opening and the appointment of a teacher: these periods should be shortened by necessary consultation and suitable opening dates. Since the content and methods of teaching require considerable adaptation, due to the children’s attitudes towards school, the time required for this purpose cannot be disregarded. This is another area in which national and regional reflection would be of help to teachers, who are often isolated.

Finally, for those children who succeed in winning back the possibility of following the ordinary school programme, in spite of their initial problems, schools close to the CEF should be able to open their doors without any difficulties, and plans should be made for their return to another school, close to their place of residence, when released from the CEF.

Links between the educational teams and the health world still need to be consolidated in important fields (somatic, psychiatric, addictions). In certain institutions, medical visits are few and far between and it is not exceptional for tutors to issue medicines to young inmates prescribed by a doctor. The absence of structured dialogue can be an obstacle to proper overall assessment of the child. Problems can remain unresolved, in particular as far as mental health is

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69 In one centre inspected, the length of young persons’ telephone calls to their families thus varies according to the “level” of behaviour that they have achieved.
70 Article L 311-4.
concerned. The educational role of CEFs means that these institutions must make sure, as mentioned in other annual reports, that they establish the necessary connections and that necessary formalities are accomplished (granting of rights) and useful agreements entered into. Awareness should be raised within state health insurance offices (CPAM) of measures placing minors in institutions.

Many young offenders’ institutions do not provide enough activities and such activities as exist are composed of television, board games and sport (many sports instructors are nevertheless exemplary). In particular, initiatives need to be undertaken with regard to pre-apprenticeship work experience in companies – since the managers of companies engaged in the skilled trades show themselves to be ready and willing to cooperate at the local level – and in technical workshops within establishments, thanks to the interest that the supervisory staff (woodworkers etc.) take in their trade and the less off-putting nature of these occupations as compared with traditional school. Such activities require competent staff (who need to be found), as well as premises and equipment, and firm continuity in the management of the establishments, which may sometimes be lacking.

Finally, as already mentioned in previous reports, relations between the establishments and the external institutional environment are often inadequate. “Steering committees” are of inconstant composition and meet irregularly. Relations with city councils and local authorities are very unevenly developed, with the exception of police force districts and gendarmeries. The only significant improvement in this respect is investment in the decentralised and centralised departments of the judicial youth protection service (direction de la protection judiciaire de la jeunesse), whose “audits” and inspections appear to be markedly increasing. However, their new programme with regard to CEFs, which was initially due for completion at the end of 2012, is still not known at the time of writing these lines.

2.3 Police Custody and Customs Detention Facilities

2.3.1 Background details

The Act of 14th April 2011 reforming police custody, which provoked various reactions when it came into force, has now thus been applied for a full year in 2012, without giving rise to any major upheaval. Admittedly, some lawyers considered that the new rights thus instituted did not provide the persons concerned with all of the guarantees that might have been hoped for in terms of acknowledgement of defence rights and endowment with the necessary means.

However, the Constitutional Council, to which matters were referred for preliminary rulings on questions of constitutionality by both the French Council of State and the Court of Cassation, found (with a single reservation concerning article 62 of the Code of criminal procedure) that the act voted did not violate any constitutional principle. It is true that it subsequently judged article 706-88-2 of the code of criminal procedure (providing for the possibility for members of the national legal service to restrict the choice of defence counsel available to persons placed in police custody for serious crimes and offences linked to terrorism)
to be contrary to the Constitution\textsuperscript{74}, as had already been suggested in legal scholarship\textsuperscript{75}. However, the latter ruling is marginal with regard to the application of the police custody system.

Has the Act of 14\textsuperscript{th} April 2011 manifestly changed the practices of senior law-enforcement officers and police custody procedures, as observed by the Contrôleur général during its inspections after the passing of the Act? It may be a matter of doubt.

In the first place, in the course of their interviews the inspectors have not heard any remonstrations or complaints concerning the non-application of the Act (assuming that the details of its provisions are known). Even with regard to questions about which the legislature has taken various different positions over the years (informing persons of the possibility of remaining silent) or that have aroused strong reservations on the part of security professionals (presence of the lawyer during questioning), there has been no mention of any refusal to apply the reform of 2011, the implementation of which, moreover, was quickly passed on through the departments, quite apart from the government circulars, by unequivocal memoranda from their managers. It is sometimes mentioned that “initially” the lawyers had some difficulty in remaining silent during the questioning (the act provides that they have to be present and “take notes”) but that habitual routines quickly became established.

In the second place, the presence of lawyers does not appear to cause any major concrete problems, either with regard to compliance with the deadline of two hours between the sending of notice to them and the beginning of questioning (article 63-4-2 of the code of criminal procedure) or in terms of organisation of the Bar in order to ensure the arrival of a lawyer as quickly as possible. In some cases, in particular in gendarmeries, senior law-enforcement officers (OPJ) may agree to a deadline of more than two hours, if they are sure (as a matter of habit for example) that the lawyer is going to arrive within a longer, but reasonable, period of time. There are also situations in which, either the time required for arrival of the lawyers greatly exceeds two hours, or none of the duty lawyers come who have been called upon; however, these situations are very rare, although they may form a significant percentage in certain geographical areas (in particular in gendarmeries and the Parisian suburbs). However, in view of increased organisation among the Bars, the number of lawyers called (usually via a duty number) who do not arrive before the end of the period of police custody has probably decreased.

In the third place, the use of lawyers has not been significantly increased by the new system. Before the Act of 2011, the percentage of persons in police custody requesting a lawyer was between 25 and 30\%, depending on the facilities inspected. Today it is presumably a little higher. But there has not been any mass trend in this direction. However, the moderate nature of the trend should not lead us to conclude that the increase will not continue. The opposite (a slow but continuous increase) is very likely. This raises problems since there are police stations, and above all gendarmeries, that do not possess any premises equipped for the holding of interviews between persons in police custody and their lawyers. The obligation to promote such conversations constitutes an objective to be fulfilled\textsuperscript{76}.

Finally, senior law-enforcement officers did not mention any major inconvenience, in the conduct of investigations, arising for them as a result of the new way of working. Moreover, some of them were very pleased with its implementation, demanding greater openness and more pacified relations with lawyers.

\textsuperscript{74} Ruling no. 2011-223 QPC (Priority preliminary ruling on constitutionality) of 17\textsuperscript{th} February 2012, Lawyers of the Bar Association of Bastia.

\textsuperscript{75} For example, Mrs Julie ALIX, “Les droits de la défense au cours de l’enquête de police après la réforme de la garde à vue : état des lieux et perspectives” (“The right to defence in the course of police investigations after the reform of police custody: assessment of the situation and prospects”). Dalloz, 2011, Chron. [Law Reports] p. 1699.

\textsuperscript{76} On this point see section 4 of this report concerning access to defence rights.
2.3.2 New Technologies and Police Custody

2.3.2.1 Video

In his annual report for the year 2009, the Contrôleur général des lieux de privation de liberté has already addressed the topic of “video surveillance” (a term which in this instance is preferable to “video protection”) in places of deprivation of liberty, including police custody facilities, in order to illustrate the realities, explain the origin thereof and call attention to certain practices.

It is useful to return to this point, since situations of the same type have once again been observed in police custody facilities.

In the first place, an obvious fact: police facilities are extremely well-equipped in terms of video surveillance tools (that is to say cameras and monitors – viewing screens), whereas gendarmerie facilities have little equipment of this kind. Admittedly, the latter account for little more than a fifth of police custody decisions, and moreover comprise a much larger number of premises (about six times more gendarmeries than police stations).

But police stations and headquarters are open twenty-four hours a day (and are therefore permanently manned), which is not the case for gendarmeries, which are closed at lunchtime and during the night. In other words if, as previously noted, video surveillance is a means of making up for inadequate presence of staff, or for their absence, one ought to expect it to be used more extensively in gendarmeries than in police facilities.

However, this is only a paradox in appearance. In reality, when it is borne in mind that video surveillance in places of deprivation of liberty is much less an instrument of surveillance than it is a tool for ensuring distance and separation, the difference becomes more understandable. For gendarmes, close contact with persons is a traditional and constant concern. This close contact is far from theoretical: it is manifested in their way of living and working; in particular in cases of custody. These soldiers have numerous opportunities of physical proximity with persons in their custody, for example the traditional morning coffee provided at the end of the night in the gendarmerie rest room. Dealing with persons deprived of liberty is inseparable from their other duties. This is not the case for the national police force. Far less importance is placed on close contact and dealing with persons in custody is often considered to be a task of minor importance, entrusted to administrative officers, or assigned on a rota basis, or allocated to units that are sought-after for the convenience of their working hours, or to which the less dashing members of staff are posted.

In the second place, the expansion of video surveillance raises certain legal questions, not all of which have been resolved.

The applicable legislation dates from the Internal Security Act (loi sur la sécurité intérieure) of 21st January 1995, which is now codified under articles L. 251-1 and following of the Internal Security Code (code de la sécurité intérieure). Three problems can be identified with regard to this applicable law.

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78 Annual report for 2009, loc. cit.
79 Cf. the Chief Inspector of places of deprivation of liberty’s recommendations concerning the detention facility for illegal immigrants at Choisy-le-Roi, in particular part § 4.
80 At the time of publication of this report, the codification of the regulatory part of the code has not been completed and this area is therefore still regulated by the decree (décret) no. 96-926 of 17th October 1996.
The first problem concerns the places in which video surveillance equipment is installed. Indeed, the law provides, under the conditions that it sets out, for the installation of cameras on the public highway as well as “in premises and establishments open to the public for the purposes of ensuring the security of persons and property when these premises and establishments are particularly exposed to risks of assault and theft”. There is no difficulty in acknowledging that police custody facilities are particularly exposed to the risk of assault: attacks on security staff and, even more so, self-assault (a large number of the rules applied in such premises are governed by the fear of suicide). On the other hand, one might have serious doubts as to their status as premises open to the public, at least insofar as custody facilities are concerned. Admittedly, police stations and gendarmeries are open to the public insofar as they are visited, for example, by plaintiffs and persons who go there to carry out administrative formalities. However, certain parts of such premises are obviously not open to the public: administrative offices, maintenance areas etc. It is an obvious fact that police custody facilities come within this category: although it is true that persons enter these premises who are not members of the police, they do so solely at the latter’s initiative and under duress. Police custody video surveillance devices do not therefore fall within the abovementioned provisions of the Internal Security Code and, for this reason, the authorisation procedures provided for in the code do not apply to them. There does not appear to be any text regulating the conditions under which they are installed and governed. In the case of prison facilities, the act of 24th November 2009 at least provides (under article 58 thereof) for the installation of surveillance cameras in collective areas. Such is not the case for police custody facilities. This is to be regretted. We recommend that the texts should not continue to be silent with regard to this matter.

Another problem arises from the fact that, in premises of this kind, these cameras allow the identification of persons, who may thus be recorded on video. This problem was resolved in principle, following the verdict of the Council of State of 24th May 2011. The question referred to the latter concerned the application of the act of 6th January 1978 to video surveillance systems installed in detention facilities. The Interior Division stated that when premises not open to the public possess systems of this kind allowing the recording and storage of images, on the one hand, and the use of these images for the identification of persons, on the other, these devices shall be subject to the formalities provided for data files of a personal nature set out under the act of 6th January 1978 concerning data processing, data files and individual liberties. However, conversely, systems that merely transmit images from cameras to monitors, without recording them, are not governed by any special formalities. A circular from the Prime Minister of 14th September 2011 repeated the terms of the verdict of 24th May of the same year, while asking ministers to ensure that the necessary authorisations are obtained.

The last problem, assuming that the required authorisations from the French Data Protection Authority (CNIL) are granted, consists of determining whether all of the difficulties relating to the protection of persons are thereby resolved. As far as video surveillance on public highways and premises open to the public is concerned, the Constitutional Council recognised the constitutionality thereof, because the legislature, while taking a certain number of precautions, had successfully reconciled the protection of personal freedoms and the need to prevent violations of public order. In particular, it noted the inclusion of the following measures

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81 For an example of this kind of separation, with regard to court premises, see the ruling of the Council of State, Assembly, 22nd October 2012, Mrs Bleitrach, no. 301 572, concl. Roger-Lacan.

82 With regard to prison facilities, cf. the verdict of the Interior Division of 24th May 2011, in particular part § 5 thereof.

83 Which means, conversely, that surveillance cameras cannot be installed in non-collective areas, i.e. in cells. It will be seen below that the installation of cameras in police custody facilities is scarcely subject to any restrictions whatsoever.

84 Ruling no. 94-352 DC of 18th January 1995 “Loi d’orientation et de programmation de la sécurité” (“Act laying down the basic principles for government action in the field of security”), § 2 à 13.O
among the guarantees implemented: the obligation to inform the public of the existence of video surveillance devices; the possibility given to persons of gaining access to images concerning them and obtaining the destruction thereof within a deadline of one month; the possibility open to them of referring the matter to a departmental video surveillance committee; and the destruction of images after one month. None of these guarantees is applicable in the case of police custody.

It will undoubtedly be pointed out that persons who are in police custody are suspected of having committed or of intention to commit offences and that they do not deserve the same consideration as persons peacefully strolling on the public highway. The objection might also be raised that it is inherent to the very nature of police custody that persons should be under visual and, if necessary, continuous observation. However, these considerations are all the less relevant to the question insofar as “suspicion” rarely gives rise to any charges, and cameras can also record the images of persons placed there for reasons of public and manifest drunkenness. The real question is that of determining whether, as far as the images of persons in police custody are concerned, the guarantees established by the act of 1978, which as we have just seen are applicable, are sufficient in terms of the need to reconcile the prevention of risks of assault with the respect due to persons held in police custody. These guarantees, which for the most part are contained in articles 41 and 42 of the Act, take the form of an indirect right of access (that is to say through the CNIL on behalf of the applicant) in order to disclose, rectify or delete data. In the case in question, in view of the time allowed for action, applications of this kind can hardly consist of anything more than verification by the CNIL that the data has been deleted (rectification not being relevant in the case of images). However, on the one hand, the deadline of one month within which images have to be deleted, for which provision is made with regard to images recorded on the public highway and in premises open to the public, is not applicable in this case, and there is no text providing for such deletion. On the other hand, there are no guarantees other than the right of access: and yet, in the ruling of 18th January 1995 in which it judged the law to be more or less balanced, the Constitutional Council singled out seven guarantees which mutually complemented each other. In this case, persons are not informed of the use of surveillance equipment; there is no possibility of making applications for access to images from the managers of such equipment; and there is no departmental committee offering guarantees of independence to which matters of this kind can be quickly referred. To put it plainly, this constitutes an imbalance, due in particular to the absence of any provision with regard to deletion, which is not satisfactory and should no longer be ignored by the authorities.

Finally, in the third place, this impression of imbalance is confirmed by the observations made concerning practices in police custody facilities, especially, for the reason that has been stated, in police stations.

When interviewed by the inspectors with regard to the length of time for which images are stored after being recorded, police officers for the most part express either ignorance on this point, or hesitation. When a period of time is stated, it varies according to the establishment, or even according to the person interviewed: thirty-two days, eighteen days etc. In reality, it appears that nobody knows or is concerned about the system of operation. It is true that one might assume, conversely, that this uncertainty is a reflection of the rarity with which the recordings thus made are used. However, with regard to images that concern personal dignity, greater precision should be required.

Certain behaviours give even greater cause for concern. Having mentioned the rapidity with which the memory of the video surveillance system installed in a police station became overloaded, the officers pointed out that in order to make up for this lack of storage space, they

85 Similarly, it should be recalled that only 10% of persons placed in police custody are imprisoned, a percentage that remains relatively stable.
86 Concerning, in particular, the processing of data relating to public security.
recorded the images on so-called USB keys (which, moreover, they purchased with their own money). This practice admittedly demonstrates the importance placed by officers on the storage of images: such images making it possible, if necessary, to give proof of blameless conduct. However, it is unacceptable in its very principle. Images of persons deprived of liberty cannot be placed in media which are easily copied and accessible to third parties without difficulty. Practices of this kind should be totally prohibited.

The manner in which the necessary equipment is installed often shows a lack of discernment. In many cases, rather than the being directly installed in the cells, cameras are installed in corridors and directed in such a manner as to make the interior of the cells visible. In general, in recently-built police stations, the cells are equipped with toilets, screened-off by a low wall. However, in some cases persons in police custody are shown using the toilets in the images. Conversely, camera angles sometimes leave blind spots, rendering the effectiveness of the apparatus doubtful. Cameras are sometimes focused on places which should be protected from external view: such as medical examination rooms, where present, and rooms provided for consultation with lawyers: doctors and legal advisers should be aware of the need to respect confidentiality of treatment and professional secrecy. In cases where they may feel a certain apprehension, such concerns should be resolved by a manual alarm system, rather than by the permanent presence of the “eye” of camera surveillance. And finally what can be said of the cameras that are installed in the rooms (or rather cubby-holes) reserved for body searches? They should be rapidly removed.

The case of rooms for sobering up, in which persons in a public and manifest state of drunkenness are placed, poses a special problem. The Contrôleur général has sometimes hoped that these cameras might make it possible to check on what is happening in these rooms, in view of the health risks affecting these persons. Indeed, provision is made for patrols (in principle every quarter of an hour); but it is difficult to establish the reality thereof, especially in the absence of any document attesting to them. Video surveillance would therefore make it possible to attract immediate attention in case of danger. Conversely, should the collection of images of persons in a (momentary) state of weakness be permitted? The latter, unlike other persons locked up at the police station, are not actually in police custody [garde “à vue”, i.e. literally, held and “watched over”] and are not therefore meant to remain within constant view of those responsible for their custody, without overstepping the nature of the measure applied to them. In view of the difficulty of finding the necessary balance between risk and intrusion into the life of the person concerned, it would be preferable to seek to provide proof that the patrols are conducted, without installing cameras. On this point, the Contrôleur général has changed its position.

The report for 2009 had also mentioned the mediocre quality of the images in many of the situations inspected and problems of maintenance of the equipment: in many premises inspected, the equipment is out of order and cannot therefore fulfil its expected role.

Finally, problems sometimes also arise with regard to the viewing of images on the monitors. In the first place, the person responsible for viewing them may have many other tasks, thereby lengthening the response time should any problems arise. Moreover, the monitors may be poorly positioned: in one police station inspected, the monitors were placed in such a way that they were behind the officer’s back, in the latter’s usual position, while, on the other hand, they directly faced members of the public, who were thus able to view their content.

2.3.2.2 Sound

Sound equipment is sometimes installed in a makeshift manner: in one police station inspected, a radio had been placed in the corridor playing music at maximum volume, in order to avoid the

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87 Here we are merely returning to the observations made in the annual report for 2009: op. cit. p.99.
possibility of persons implicated in the same case communicating between different cells. In such scenarios, at the risk of giving rise to extra travel, it would be better to plan custody in different premises, including by means of better cooperation between the police and the gendarmerie.

Nevertheless, in most cases, the only sound in question is that of the shouting necessary in order to make oneself heard in case of need and, if this is not enough, even louder banging against the doors (in anticipation of which persons in police custody often have their shoes taken away – rather than just the laces). Moreover, the prevalence of yelling and banging seems to imply that calls for assistance in front of the camera lens are relatively rarely followed by any short-term effects.

The installation of intercom systems in cells constitutes a solution in case of calls for assistance of this kind, which sometimes go unnoticed for too long. Indeed, the Contrôleur général has called for this measure in order to make up for the absence of personnel in gendarmeries at night, when there are persons in custody present in the premises88.

However, it certainly needs to be borne in mind that intercom is not the “poor relation” of video surveillance. In a way it is the very opposite. Whereas the latter allows the presence of distance between guards and persons in custody, the former leads to persons deprived of liberty being placed at the centre of the work of those responsible for them. Personnel sometimes find it difficult to put up with inopportune interruptions of this kind, especially when they occur without good reason, and even more so when they happen repeatedly. Something which can easily happen in a situation that tends to give rise to anxiety and provocation. Therefore, one may well assume that systems of this kind do not attract much enthusiasm among officers.

There is another difference between the two different systems. Unlike video surveillance, intercom systems can be disconnected by the persons receiving the calls, because they are busy with other tasks or because they do not consider it appropriate to receive them. Any checks that may be necessary with regard to such cases of disconnection are difficult to accomplish. Similarly, intercom systems require equipment to be installed inside the cell itself: damage may therefore be caused to such equipment, as to everything else. As in the case of other technical equipment, maintenance and repair may require long waiting periods.

For these reasons, quite apart from questions of cost, the development of intercom in police custody facilities remains limited and, therefore, shouting and banging on the doors continues to be the usual means of making oneself heard89. Indeed, in police stations it is extremely rare for officers to forestall these kinds of situations.

A number of conclusions can be drawn from these observations.

Whatever the technology that is used, the presence of staff and the requirement for dialogue are indispensable. In situations which are always difficult to manage, a human presence is the most reliable guarantee of custody without excessive tensions; and all the more so when there are risks of danger.

Whatever the technology used, it must therefore allow the safeguarding of dignity and of personal privacy in particular. Any equipment whose installation disregards this principle should be identified and removed.

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88 Recommendations of 23rd February 2010 concerning the gendarmeries of Chambray-les-Tours (Indre-et-Loire), Ecole-Valentin (Doubs) and Mignennes (Yonne) published in the Journal officiel of 4th March 2010.
89 This common feature of deprivation of liberty in France has already been mentioned with regard to waiting areas: banging on doors in order to make oneself heard. The disappearance of this practice would constitute proof of decisive progress in favour of captives in the country.
Whatever storage media are used for recorded images, they should be authorised by clear laws, which are understood and easily taken into account by officers that make use of such media. Intercom should be compulsory when there is a risk of persons deprived of liberty being left alone for long periods. Failing this, a microphone should be installed outside the cell, which is able to pick up and transmit calls for assistance.

Special attention should be given to provisions ensuring the protection of confidentiality and secrecy in police custody facilities, and professionals should be particularly vigilant in this respect. If necessary, manual alarm systems should be placed at the latters' disposal, when there are duly identified risks.

2.3.3 Other observations and recommendations with regard to police custody

2.3.3.1 Lack of space and dilapidation of facilities.

In many situations, premises are unsuitable for the purposes for which they are used, especially in terms of treatment of persons in accordance with respect for their fundamental rights.

By way of illustration, the possibility of placing up to four people in cells of a surface area of less than 5 m² was identified; as well as the existence of two cells of around 4,5 m² for custody of around four persons per day on average. Great lack of comfort results from these situations and, in any case, under these circumstances it is a practical impossibility to ensure the rest periods for which the law provides: in these cells, when one person occupies the bench or bed boards, the other necessarily has to lie or sit on the ground.

Moreover, these cells are not known for their cleanliness, and it is fair to say that the more they are used, the less they are cleaned, due to the shortcomings of the contracts entered into by the SGAP police administrative authorities (Secrétariat général pour l'administration de la police) and the inability of personnel to find time and space in order to empty occupied cells for the purposes of cleaning. In some facilities, regular disinfection operations are also disregarded.

In addition, many facilities are still in a highly dilapidated state, as the Contrôleur général has already emphasised, and too little progress has been made in this respect.

2.3.3.2 Organisational problems

So far, the Act of 14th April 2011, and in particular the provisions of article 63-6 of the code of criminal procedure, which drastically restricts the practice of strip searches and compulsorily limits the confiscation of objects and possessions that are necessary in order to safeguard dignity during questioning, has not had any obvious impact on practices.

On several occasions it was ascertained that, whereas strip searches should be authorised by a senior law-enforcement officer on specific grounds which are recorded in writing, they are often decided upon according to circumstances and, above all, according to local tradition, by officers lacking the status of senior law-enforcement officer (OPJ). Furthermore, scarcely any changes have been made in order to adapt the confiscation of objects and possessions considered dangerous to persons in police custody: glasses and women's bras are still taken away to the same unnecessary extent, in addition to the confiscation of shoes for the reasons of noise mentioned above.

90 With regard to this practice, see the rapport annuel du contrôle général ["annual report of the contrôle général for 2008"], Dalloz, March 2009, 253 p., p.113-115.
In premises in which temperatures may be very cold\textsuperscript{91} (or stifling in the summer, in the absence of circulation of air), the management of (foam) mattresses and blankets remains a problem: there are not enough of them\textsuperscript{92} and their availability is not always specified. Moreover, blankets are not duly cleaned and their state deters them from being used. The (occasional) use of emergency thermal blankets resolves problems of hygiene, but certainly not the question of sleep: it is impossible to sleep under such blankets. It is also impossible to adapt the dimensions of bed boards to those of mattresses, making the lack of comfort worse\textsuperscript{93}.

However long custody lasts, access to bodily cleanliness remains impossible in the vast majority of cases, except in a few exceptional premises and for certain exceptional cases (homeless persons for example), in the absence of the necessary space, facilities and staff time. Even when facilities of this kind exist, they are not used. In one very new police station in the West of France, three showers had been installed: they are never used and the drain hole gives off a foul smell.

Finally the solutions implemented with regard to visits by doctors continue to vary widely and their status is often fragile, in spite of the reform introduced on 27\textsuperscript{th} December 2010\textsuperscript{94}; the principle of doctors visiting police custody facilities should be maintained. This is vital to the dignity of persons and the interests of the service.

2.3.3.3 The Rights of Minors

Minors are in general given special attention which, moreover, is in accordance with in the spirit of the requirements of the statutory instrument (ordonnance) of 2\textsuperscript{nd} February 1945. However, police custody facilities have been found in which the specific rights of minors (notification of parents of the police custody decision, medical examination of minors of sixteen years of age) are either ignored or else not recorded, and are therefore unverifiable.

The absence of a specific cell for minors in police custody is also relatively common. Although, in many police stations they are placed in the cell closest to the guard-room which, in particular, makes it possible to directly see (or hear) what is happening inside, this is not the case in general. Many police custody facilities, in particular in cities with significant levels of juvenile delinquency, have not been equipped in the necessary manner.

Release from police custody also raises problems in the case of minors. Although, very fortunately, police and gendarmes keep minors with them after the end of periods of custody, in order to hand them over directly to their parents, or to persons invested with parental authority (tutors), the conditions of this waiting period are unpredictable. One facility was found in which a minor was waiting handcuffed to a bench in the arrival hall for persons placed in police custody; in another, minors are locked up in a cubby-hole with neither toilet nor ventilation. Although there are naturally concrete difficulties in resolving these kinds of situations, their foreseeable character should prevent unacceptable treatment.

2.3.3.4 The Registers

\textsuperscript{91} It is to be regretted that, in police stations (though not in gendarmeries), hot drinks are never accorded for breakfast.
\textsuperscript{92} For example, in one police station inspected, three mattresses for six people.
\textsuperscript{93} In the course of one inspection, it was noted that the width of the bench (37 cm) obliged the person in police custody to place the mattress on the floor in order to lie down upon it.
\textsuperscript{94} With regard to this reform, see the contrôle général’s report for 2011, p. 47-53.
Without wishing to go into the details of a question which has already been expanded upon in depth in a previous report\(^95\), it should be mentioned that no improvement whatsoever has been observed in this area.

On the one hand, in police departments in particular, there is a trend towards proliferation of the number of registers, due to the fact that (for reasons of time) each department has their own, which does not prevent the frequent occurrence of sections being completed after the event, as well as the taking of signatures from persons in police custody at the outset, in particular at the bottom of the second page of the register where the stages of the measure are recorded until discharge.

On the other hand uncertainties remain with regard to procedures, in at least two areas: that of persons who are firstly put in a cell for sobering-up and, having recovered their sobriety, are then placed in police custody (in gendarmerie registers they may be recorded in two different parts); as well as persons who are placed in police custody facilities for the purpose of investigations, who are transferred to spend the night in other, more centralised, premises\(^96\).

Finally there are often serious oversights and omissions. Failure to record the date and time at which police custody comes to an end, for example, obstructs checks with regard to the duration thereof. Although, among professionals, it is often (wrongly) pointed out that the information contained in reports makes it possible to make up for gaps in the registers, the Contrôleur général has had occasion to observe in a least one scenario of this kind, in a police station in the South of France, that such was not the case, notwithstanding subsequent ministerial denials on the subject.

\[2.4 \text{ Prisons} \]

\[2.4.1 \text{ Background details} \]

\[2.4.1.1. \text{Name Policies} \]

The volume and composition of the prison population are determined, amongst other factors, by crime policy and prison policy. Furthermore, both of these areas of policy underwent changes in 2012.

As far as crime policy is concerned, the Minister of Justice issued a circular of 19\(^{th}\) September 2012\(^97\) with the intention, on the one hand, of defining new relations between the Central Administration of the Ministry of Justice and the State Prosecutor’s Office and, on the other hand, while to a certain extent immediately applying the principles behind these relations, of giving directions to Principal State Prosecutors and prosecutors for dealing with offences and the persons who commit them. In this regard, the circular admittedly confines itself to existing law; it could hardly have done otherwise. Moreover, as a subsidiary question, it mentions future legislative changes. In the meantime, the circular is based upon provisions prioritising alternatives to imprisonment such as reduced sentencing\(^98\).

\(^95\) Report for 2008, op. cit., section 3, p.45 et seq.

\(^96\) The police proceed in this manner in all large cities possessing secondary police stations.

\(^97\) Journal officiel of 18\(^{th}\) October 2012. This circular has already been mentioned above (page 12) with regard to the assessment concerning partial release.

\(^98\) It has already been shown (report for 2010) that changes to legislation on reduced sentencing were made in a somewhat erratic manner over a ten-year period, alternating between very liberal laws (the “Perben II” Act of 2004 and the Prison Act of 2009) and much more restrictive laws (2005,2007).
The spirit of the text is to encourage the use of all penal sanctions, without giving priority to (or excluding) any of them, in order to ensure the greatest possible adaptation of punishments, not only to the nature of offences and the personalities of persons who commit them, but also to the requirements of rehabilitation and prevention of recidivism. This “plurality of objectives” makes it necessary to “diversify courses of penal action”. It also recalls that, according to article 132-24 of the Penal Code (Code pénal), which results from the Prison Act of 24th November 2009, in criminal cases the pronouncement of prison sentences without suspension can only be used as a last resort.

In addition, reduced sentencing should be encouraged by State Prosecutor’s Offices, whether at the time of conviction or subsequently, when sentences are enforced. Members of the national legal service are asked to keep abreast of the levels of overcrowding by which prisons may be affected, in particular by ensuring that numerical data on the prison population is passed on them.

As far as prison policy is concerned, the new Government has effectively broken away from the Act on Planning and Enforcement of Sentences of 27th March 201299, which, in line with the prison construction programmes launched in 1987 and on the basis of highly contestable projections of growth of the prison population, provided for the construction of 24,397 prison places by 2017, i.e., since certain institutions were closed and the programme in course (elaborated in 2002) was still being implemented, slightly more than 20,000 new places, thus bringing the total accommodation capacity of French prisons to 80,000 places. According to the report annexed to the Act, most of these places would be created by the construction of institutions that were very similar, at least in terms of the number of囚犯 housed (650 on average), to those built since 1987100. Five thousand eight hundred places were, however, to be reserved for institutions or wings referred to as being for “short sentences”, in which security arrangements were to be less Draconian.

Although (at the date at which this report is written) the Government has not repealed the law, its intention not to consider itself bound by the Act on Planning, which does not in itself constitute a legal novelty, is likely to have a considerable impact. The Minister of Justice has indicated that the construction programme is to be limited to six thousand places, even specifying which institutions are to be replaced. The programme voted by the former Government has therefore been drastically cut by three quarters.

This reduction is opportune at a time of constraint in State expenditure. It implicitly calls into question the calculations of growth of the prison population that accompanied the Act of 27th March. These calculations were for the most part based on levels of growth of the prison population in the course of the decade 2002-2011, which might be considered exceptionally high levels. It is clear that changes to criminal policy and prison policy go hand in hand. If the rate at which courts apply the sanction of imprisonment is reduced, the growth in the number of prison places loses its justification.

This thinking is not dissimilar to the argument put forward in the Contrôleur général’s assessment of 22nd May 2012 concerning prison overcrowding, the content of which has been recalled in the first part of this section. In their current state, in particular because they are overcrowded, prisons cannot properly fulfil their role of rehabilitation and prevention of recidivism. This was emphasised by the Minister of Justice when she spoke of “prisons devoid of all meaning”, an expression which made a strong impression.

99 No. 2012-409, Journal officiel of 28th March 2012. See also the ruling by the Constitutional Council on this text no. 2012-651 DC, which dismissed claims of unconstitutionality of the Act (based on the recourse to special public tender procedures for which the text makes provision).

100 With regard to which it should be recalled that the contrôle général takes a critical approach (cf. Report for 2010, p. 29 et seq.).
These choices of crime and prison policy, which should be approved, do not resolve all of the issues.

Such issues certainly remain with regard to crime policy, since certain principles remain part and parcel of the law and crime policy is currently torn between various different inspirations, while multiple reforms have not contributed to simplifying the interpretation of the law, even for legal professionals. Such issues also remain as far as prisons are concerned. Although it is established that the rate of construction of new prisons is to be slowed down, what is the situation with regard to the need for renovation of old prisons, or at least the most unfit for habitation, the dampest and the most poorly heated amongst them? The manner in which prisoners as well as staff live in prison also requires thought. Twenty-five years of experience clearly shows that changes in material surroundings are far from being enough to improve the atmosphere that prevails in institutions. Public opinion also has to be convinced of these changes, while resisting the desire for expeditious solutions provoked by various odious crimes, and without lessening the debt owed to victims, while also overcoming the idea that prison reform necessitates large resources that we do not have.

2.4.1.2 Disarray among certain Staff

It should not pertain to the Contrôleur général to comment on a phenomenon that is purely internal to the prison administration department, and into whose management it cannot and has no desire to enter. However, the interviews conducted by the inspectors both within and outside of institutions have convinced them that the difficulties experienced by certain categories of staff are currently reaching levels such that they cannot fail to have an impact upon the way in which their duties are performed.

Let us simply take a measurable fact: absenteeism among operational staff. In certain institutions, such absenteeism is currently reaching high levels. In one prison inspected, the number of days of absence due to sickness or industrial accidents was thus more than 3,500 days for a single half-year, which in relation to the institution’s two hundred and sixty-two officers, and for the year, makes a total of twenty-seven days per year per officer. If absences attributable to industrial accidents, in a profession in which there are many assaults, are subtracted from the total days of absence, an average of twenty days per year and per officer still remains. These absences are directly related to working conditions and, in particular, to architectural choices in buildings, which are unpleasant for staff and the volume of the prison population. In one remand prison which was transferred from an old building to brand new buildings constructed under the “thirteen thousand two hundred” programme, the number of days of absence increased from two per officer per year in the old institution to 22.8 in the new.

The way in which these absences occur may give still greater cause for concern than the absences themselves. On the one hand, it is not only permanent staff who are concerned, but also young trainees who, until recent years, due to the fact that they are not yet confirmed in their posts, never went absent at any cost. On the other hand, absences are noted without the officers concerned even bothering to inform their administration in one way or another. Finally, certain

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101 Assaults should certainly not be underestimated but industrial accidents may be due to other causes (accidents in the course of travel for example).
103 Construction programme initiated by the Act laying down the basic principles for government action (loi d’orientation et de programmation) with regard to justice no. 2002-1138 of 9th September 2002.
absences are actually closely related to the assignments allocated for the week to the officers in question\textsuperscript{104}: when officers are informed of assignments considered difficult, sicknesses occur.

It would be inappropriate to pass judgment on these behaviours\textsuperscript{105}. However, on the other hand, questions should be raised about their occurrence and impact. The more absenteeism increases, the heavier the workload that falls to other officers, whose working conditions become still worse. In particular, officers theoretically on leave are “called back”. The number of additional hours also increases. A spiral may be created in which the deterioration of the situation creates new conditions liable to give rise to new “sicknesses”. Above all, professional solidarity, which is an essential – and traditional – part of the profession, is weakened between those compelled to relentless professional existences and those judged to be “skivers”.

There are also issues to be raised with regard to the role of middle-ranking “graded” managerial prison staff, referred to as senior prison officers \textit{(premiers surveillants)} and prison “majors” \textit{(majors pénitentiaires)} i.e. high-ranking senior prison officers. In a profession in which the proportion of managerial staff is said to be much lower than amongst police officers\textsuperscript{106}, senior prison officers play an essential but ill-defined role. The same statements recur, emphasising that they are torn between different roles: at night and during the weekends, one of them is in charge of the team on duty, and is therefore the de facto director of the institution, while during the daytime on working days, their duties are much more limited. In addition, even at the latter times, their presence alongside prison officers, in order to supervise the latter in their duties, is becoming increasingly rare. They are to be seen when there are movements of large dimensions (beginning of and return from walks) and are scarcely present at other times, absorbed as they are by a wide range of tasks, often involving paperwork, which vary from one institution to another. In reality, their precise role, which is nonetheless central, remains somewhat uncertain. It would be highly useful to precisely redefine the role and, therefore, the obligations of these officers, all of whom have risen through the ranks. Here and there efforts at such definition have been undertaken, including in the professional organisations. It is to be desired that they should result in the clarification awaited by those concerned.

Finally, there are also issues to be raised with regard to the half-thousand members of the senior managerial staff, directors of institutions and their deputies, who have heavy responsibilities, which they often perform in relative solitude. Over the last two years a certain number of them have chosen to give up the profession. This tendency has always existed. Moreover, the (now long-established) words of a member of the national executive management, which are still readily recalled in the profession, have it that those who leave “will come crawling back”. However, they are leaving in ever greater numbers and are not coming back, crawling or otherwise. These desertions have even become such a regular occurrence that they have not gone unnoticed by the press.

Naturally, they may correspond to completely personal motives and it is difficult to make mass generalisations about individual decisions. The question should nonetheless be raised as to whether the sheer number of those giving up their posts today makes it permissible to view these departures as the sign of a shared difficulty and disarray on the part of managers, who in many cases chose their profession on the strength of personal conviction.

\textsuperscript{104} This issue concerns officers referred to as being “on rotation” (as opposed to those holding “fixed positions”) to whom specific jobs within institutions are assigned for relatively short periods, often for one week at a time. Prison officers present in the passageways of buildings are on rotation.

\textsuperscript{105} At least on the part of the contrôle général. The same does not apply to the prison administration.

\textsuperscript{106} However, in 2005, out of 19,036 officers, 2,212 were graded, i.e. a level of 11.6% (data taken from Laurence CAMBOUR-BESSIERES, “Les premiers surveillants – Une fonction de cohérence” [“Senior Prison Officers – A Role in the Promotion of Consistency”], CIRAP, Dossiers thématiques, ENAP Agen, February 2006, 75p.
It would now be worth taking these various frustrations into consideration, rather than leaving them to be dealt with by individuals as best they can at their own level. Moreover, from the Contrôleur général’s point of view, an analysis of the reality on the ground is necessary because these signs of “abandonment” constitute a threat to the quality with which the prison administration fulfils the duties incumbent upon it.

2.4.2 Uniformity and Diversity: Removal from Prison for Treatment in Hospital

For a precise understanding of imprisonment, it is necessary to take one of its major contrasts into account: uniformity and diversity in the approaches used towards prisoners. On the one hand, prisoners are dealt with in an undifferentiated manner, regardless of the offence that they have committed and whatever their personality, behaviour and level of physical fitness. On the other hand, a personal approach, taking the latter criteria into consideration, may be used in order to determine how individual prisoners are dealt with.

The place accorded to each of these approaches is certainly a defining feature of any criminal policy. From the perspective of a very broad view of the history of prisons, it can be maintained that although, in the past, prisoners were in general dealt with in a very uniform manner, today individualised approaches have been established in many regards.

However, one evidently needs to go into greater depth in order to analyse the unstable balance between these two approaches to dealing with prisoners, which may be characterised, as Caroline Touraut writes, as “collective management” and “personal management”.

The respective scope of each of these two approaches is naturally determined by prison rules themselves: all un-convicted prisoners inside remand prisons and all convicted prisoners inside penal institutions for definitively sentenced prisoners. Days always start at 7 o’clock in the morning and doors are always closed for the night at 17:30 (except, specifically, in certain prisons for definitively sentenced prisoners). All prisoners have more or less the same terms of access to the telephone and the same facilities for the issue of visiting permits to their relations, the same possibilities for use of the prison shop, identical remuneration for work etc. Prisoners are all treated in an identical manner with regard to the management of their personal accounts, the sending of parcels from outside, authorised and prohibited items, the practice of searches (by means of frisking or body searches) etc. and, of course, the system of discipline and the “course of enforcement of sentences” for convicted prisoners.

As far as “distinguishing” between persons is concerned, as we know, the rules separate prisoners according to the criteria of age (minors, young adults, adults) and sex (men, women). The penal code and the code of criminal procedure provide for distinct processes for the enforcement of sentences (above all with regard to access to reduced sentencing measures) according to the seriousness of offences and their nature (as well as security measures and orders for medical treatment). The rules also distinguish “high-security prisoners” from other inmates. Multiple processes of distinction have been highlighted which lead to the definition of differences between inmates in prison: persons lacking adequate resources, those subject to special surveillance at night, those who have special dietary requirements etc.; circulars, rules and regulations are legion in this regard. Finally, quite apart from the traditional psychiatric

108 Except, once again, for differences between un-convicted and convicted prisoners.
109 With the exception of certain activities which can be accomplished together, since the Prisons Act of 24th November 2009 (article 28).
assessments (which have increased in number), for several years prison rules have been increasingly implementing processes of assessment of personalities for various different reasons: prevention of suicides, development of personalities, assessment of dangerousness \(^{111}\), preparation for release etc. These assessment processes\(^ {112}\) are themselves of variable intensity according to the person concerned. Analyses and examinations of individual situations are becoming more frequent, whether conducted within prison “single multidisciplinary committees” or elsewhere. This is henceforth leading, as we know, to a diversification of systems of imprisonment (“closed system”, “trust system” etc.).

The division between the two approaches raises two questions.

On the one hand, that of the respective weight given to uniformity and personalisation. On this point, we may limit ourselves to the observation that, in spite of the development of tools for distinction and work (and prison rehabilitation and probation counsellors in particular), the concrete realities of imprisonment procedures remain relatively uniform. This is true to such an extent that prisoners have difficulty in understanding the investigation processes to which they are subject, since the differences of treatment resulting therefrom are barely noticeable.

On the other hand, and above all, the question of factors weighing in favour of uniformity and elements promoting “differentiation”, factors and elements which often lead to frustration of the provisions of the rules. In certain cases, staff try to break with uniformity in order to encourage diversity; in other situations, the opposite is sought. Analysis of these differences is of course a decisive consideration in understanding conditions of imprisonment. Here we will only examine the subject in a cursory manner.

The factors that encourage uniformity obviously involve considerations of convenience of management. Differences are costly in time and in terms of the spaces where staff have to be deployed for the management of prisoners’ daily lives. Pressures weighing upon the number of prison officers and, in the opposite direction, upon prisoner numbers in remand prisons (overcrowding), unquestionably make time-saving (of which absence of differentiation is a component part) a necessity. A single example can provide an illustration of this. The code of criminal procedure once again provides for\(^ {113}\) a special system for “young adults” (18-21 years of age), especially with regard to teaching and training, on the one hand, and isolation at night, on the other. Apart from a few exceptions, this system is never implemented.

This need to adapt to staff numbers and concrete resources is compounded by a will to play down incidents and avoid dwelling upon situations for which, as often in prison, no obvious solution is available. Thus, the mass treatment of extremely varied pathologies, without recourse to in depth enquiries, by means of a few widely distributed anti-inflammatories\(^ {114}\), suffices most of the time, but not in all cases.

Another factor of equal (or, on the contrary unequal) treatment is constituted by the type of relations that staff maintain with prisoners. These relations are affected by how well-known the prisoner in question is: the less prison officers know about individual prisoners, the more they will treat them in an impersonal manner (for example in large institutions). In addition, the more vulnerable prison officers feel, the more they will maintain their distance by means of impersonal relations. Thus prisoners often say that female prison officers place much more importance on following the rules to the letter (and therefore take a more impersonal approach) than male prison officers, since they cannot expect to assert the necessary ascendency by means of physical force. However, a distinction of this kind obviously goes beyond considerations of

\(^{111}\) On this point, see the contrôleur général’s report for 2011, p.

\(^{112}\) Often still referred to as “orientation” in the texts (cf. articles D. 75 et seq. of the code of criminal procedure).

\(^{113}\) Articles D. 521 and D. 521-1.

\(^{114}\) Cf. on this point the images of the film “A l’ombre de la République” filmed at the prison of Bourg-en-Bresse
gender: in reality, each officer, in accordance with their own personality, has their own distinct approach to dealing with prisoners. Such approaches cover a range of possibilities, within which very varied relations may exist. To put it differently, impersonal relations are, amongst other things, a manner of maintaining distance in human relations; differentiated management is a “closer” management style, usually for better, sometimes for worse.\(^{115}\)

For their part, prisoners, like their family and friends as well highlighted by Caroline Touraut\(^ {116}\), demand an approach to their management that is in some respects contradictory: based on strict equality, to the exclusion of any “special treatment”, while taking personal factors and their situation into consideration. Prisoners expose those who receive special favours to public contempt: when inmates see a fellow prisoner obtain a job that they have requested before them, this appears to them to constitute a great injustice. Conversely, one example of the demand for personal factors to be taken into consideration can be seen in the insistence with which certain prisoners request special dietary provisions on health grounds, and in their disappointment when such requests are refused (along with the anxiety to which this gives rise). Moreover, these attitudes are perhaps not as contradictory as they seem: equality of services provided to prisoners is not incompatible with a degree of difference, as long as the latter corresponds to incontestable needs.

The factors that encourage diversity arise, in the first place, from the requirements of security. Small numbers of staff cannot be left for long periods faced with superior numbers of prisoners. The latter therefore have to be split into small groups. Imprisonment is therefore enforced within the framework of these multiple separations (by building, by floor and by wing) dictated by prudence.

Security not only divides into groups of limited dimensions. It also institutes multiple categories, whose character is more or less known and admitted. To the category of “high-security prisoners” are thus added categories that are regional, or specific to particular institutions which, with various epithets, indicate prisoners considered dangerous. The administration moreover has a long memory on this point, applying labels from institution to institution which no longer necessarily correspond to the development of the person concerned. The protection of certain offenders in prison also requires their assignment to particular areas, this distribution of special categories thus increasing the topographical complexity of institutions.

These factors have their origin, as already mentioned, in the need for staff to adapt to prisoners’ different personalities. Members of staff are aided by experience in sorting “polite” and “respectful” prisoners from “demanding” and “unpredictable” prisoners. Officers’ day-to-day decisions, observations made orally and sometimes recorded in the “electronic liaison register” and, above all, informal exchanges between officers as well as their own personal initiative determine the particular attitudes taken towards individual prisoners. However “personality” may also be the result of an act or gesture that is held against a prisoner. Prisoners who send grievances or file complaints can end up being classed in a category held in scant regard by officers.

The latter consists of taking prisoners out of the institutions in which they are imprisoned in order to take them to a hospital, which is usually nearby, in order to undergo examinations or receive treatment there. To this end, after the usual procedure for leaving the institution, which compulsorily includes a “body” search, they are handed over to an escort in charge of driving

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\(^{115}\) On one occasion a prison officer was asked “If you were a prisoner yourself, what would you do in order to get the staff to listen to you?” He replied without hesitation: “I would behave insufferably”.

\(^{116}\) La famille à l’épreuve de la prison (“Families and the ordeal of prison”), op. cit.
them, accompanying them during their stay at the hospital and bringing them back to the institution.

Prisoners are thus transferred according to rules which are precise (although they differ slightly between institutions) and tend towards diversity rather than uniformity. They distinguish between a maximum of four alternative security procedures. The first procedure involves the prisoner being taken to hospital by three prison officers: the head escort, who, in principle, is a senior prison officer (prémière surveillant), the driver of the vehicle and another prison officer, without handcuffs or fetters. The second procedure is identical except that the prisoner is handcuffed (usually behind their back). The third consists of adding fetters to the previous scenario. In the fourth procedure, a police or gendarmerie vehicle accompanies the prison vehicle for heightened security. These four levels of security are often reduced to three, by the merging of two of the described procedures.

In practice, the rules therefore encourage adaptation of the use of physical restraint (‘making fit’ jurists would say) to the risk presented by the person transported to hospital, and to the risk of escape in particular. In other words, in this case the rules do not give priority to uniformity, but to adaptation of prison treatment to the individual.

However, in reality little differentiation is to be seen: in almost all cases in almost all institutions inspected, removal from prison for hospital treatment always takes place handcuffed and fettered, in other words applying the highest level of security. In other words there is no adaptation of security measures to individuals and, in particular, to their level of physical fitness; strict uniformity prevails.

Whatever the age and pathology for which they are taken out of prison, the precautions taken are identical. Occasionally seriously ill or disabled prisoners are not handcuffed. “On the schedule of removals from prison for the first week of inspection”, notes a report from the Contrôleur général concerning a remand prison, “the inspectors observed that the use of handcuffs alone was planned for three prisoners” that is to say in about one case out of five. This means that none of the prisoners was dispensed from physical restraint, in addition to the restraint imposed by the escort. However these provisions themselves are only indications: it is up to the senior prison officer, the head of the escort, to assess the measures to be taken at the time of removal from prison. This assessment invariably tends towards increasing the security measures “provided for”. In addition, although a form is always supposed to be filled in listing the means of restraint used after the event, in several institutions this form is not completed. The need thereof has not been felt, since practices are indeed uniform (and entirely acknowledged).

The drawbacks of such systematic treatment are clear when it is recalled that hospitals are public places in which ordinary people come and go, that casualty departments, where prisoners removed from prison are often taken, are crowded places twenty-four hours a day and that handcuffs and fetters may cause discomfort or worse if they are poorly adjusted or if the journey is long. The cases referred to the inspectorate mention journeys endured with discomfort or difficulty as well as the deep humiliation caused by appearing in public closely accompanied by two persons in uniform, on one either side, and a noisy rattle of chains, which is a source of terror for the persons present. Admittedly, hospitals sometimes have dedicated access routes or separate waiting areas, but this is not always the case. Contact with third parties (apart from medical staff) is practically unavoidable, as is the associated risk, in small towns, of bumping into acquaintances (there is no difference on this point with police custody medical examinations carried out in hospital). The Committee for the Prevention of Torture defines any use of restraint

\[\text{117 It is recalled that fetters are chains which join the ankles together, in order to impede running.}\]
that is not made necessary by a person’s condition as being “degrading”; it uses this term, in particular with regard to the needless use of chains during removal from prison to go to hospital.

Fetters and handcuffs are not only used during transport and arrival at hospital. Very often, they continue to be used, with the continuous presence of the prison officers, during the whole of the stay in hospital, if the latter is for a clinical examination; and in certain circumstances, in cases of hospitalisation for medical treatment (surgical operations for example). Thus, when the patient has to be installed in a ward that does not have a “secure” room (with increased security for the accommodation of prisoners), the Contrôleur général notes in one inspection that “the admission of prisoners… always leads to their being handcuffed to the bed and the presence of two police officers in front of the door”118.

Prisoners are known to refuse medical treatment because of these procedures and the impact thereof, as the Contrôleur général mentioned in its annual report for 2008, in which it published a woman prisoner’s testimony119.

On this point, the Prisons Act of 24th November 2009 appears to fall short of the requirements of treatment in accordance with humanity. Article 52 of the Act provides that “any childbirth or gynaecological examination shall take place without fetters and without the presence of prison staff…” A provision120 of this kind contains two devastating contradictions: it means that although prisoners cannot be fettered, they may be handcuffed; above all, it means that for all other examinations and surgical operations, handcuffs, fetters and the presence of prison officers are lawful, whereas article 45 of the same act specifies that “the prison administration complies with the right to medical secrecy… as well as secrecy of consultation”, which is certainly a bare minimum. It is recommended that other provisions should be made in order to replace the current article 52, stating that: “respect for secrecy under article 45 and of dignity stand in the way of the wearing of handcuffs and fetters and of the presence of prison staff during treatment of any kind administered to prisoners. The required security is ensured by other means”.

The Contrôleur général also means that the use of handcuffs and fetters should be limited to scenarios in which they are absolutely necessary, that is to say that there is a need to return to the diversity provided for in the rules, since the inspectorate has ascertained that, since the beginning of its activity, the procedures in use have not changed in any way whatsoever as far as this point is concerned.

To this end, it is naturally necessary to understand the point of view of the escort staff. Their position provides a simple illustration of the phenomena that lead staff and the administration to prefer uniformity (in this case harshness) to diversity.

When interviewed by an inspector on the procedures used, which corresponded to those which have just been described, one officer involved replied: “Humanity is not recognised, but the slightest incident leads to penalisation”. In its brevity, this expression summarises the most important aspects. It situates methods of action (in this case removal from prison in order to go to hospital) within the framework of relations between escorting officers and their superiors in the prison service (and not within the framework of relations with prisoners). Within the framework thus defined, it separates attitudes which do not, if it is permissible to speak in this manner, produce any advantage, and of which it is unnecessary to make use – humanity – from those which give rise to trouble – the occurrence of incidents. If a choice has to be made between absence of recognition of humanity and absence of trouble, who could hesitate? All the

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118 Inspection report for the remand prison of Nice, p. 40.
120 Justifiably inspired by the account of a parturient woman prisoner who gave birth while attached with chains and “in public”.

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more so since the term used goes beyond criticism, or admonition. Even if one overlooks the legal aspect of the term (“penalise”), the expression shows not so much the fear of harshness from superiors as, even worse, the consequences on career prospects. The administration has a long memory: in the mind of the person making the statement, an “incident” is less important with regard to its immediate repercussions than for its subsequent impact in terms of promotion, choice of post etc. because of a note in the officer’s file that they are “the individual who, on one occasion…”

What is the nature of these “incidents” against which one needs to protect oneself in order to avoid lasting consequences? Of course, some incidents correspond to those which can occur in custody: assault, blows, violence etc. However, these do not constitute the kind of incident in question: in such scenarios, officers are victims; there will be no consequences whatsoever in terms of “penalisation” of their subsequent careers. The possibility in question is, of course, that of flight on the part of the person with whom one is entrusted, the possibility of escape.

As we know, there are very few escapes from French prisons. However, it is true that chances of escape are obviously greater when prisoners are removed from prison in order to appear in court and, above all, in order to go to hospital; either in areas between the vehicle and the destination (getting out of the van), or indeed inside the latter premises (for example during hospitalisation without consent called for by the prefect). Of course, the risk is small, although figures are not available: fifteen to twenty escapes for a number of removals from prison that is not recorded. Many of those which do occur happen for reasons for which the prison staff are not responsible (breaking of a window in a hospital room for example). At the most, there probably remain between five and ten cases annually for which insufficient vigilance on the part of the officers may have contributed to the escape.

This small number does not justify the precautions taken, described above. Discomfort and humiliation for tens of thousands of people and refusal of medical treatment on the part of several hundreds, are a high price to pay for the “penalisation” mentioned by the officer quoted. However this is obviously not the way that the officers concerned see things. For their part, they escort a few hundred people a year. If a single one of them runs away, their career is compromised and there results a feeling of inferiority with respect to colleagues who, for their part, will not have to endure the opprobrium of failure in a professional act.

From this point of view, the officer is right. But what seems unreasonable, and is at the origin of this excess of precautions, which the Contrôleur général cannot approve, is the way in which such thinking can become established.

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121 There were seven escapes in 2010; four in 2011. The rate of escapes in relation to the number of prisoners is one of the lowest in Europe.
122 The number of instances of removal from prison in order to go to hospital varies according to the number of doctors operating in the prison medical consultation and outpatient treatment unit (UCSA) (the more specialists available there, the fewer the instances of removal from prison for hospital visits) and the equipment available in the latter (a high-performance radiology apparatus decreases the number of removals from prison for the purpose of investigations by this means); in one relatively well-equipped remand prison, with around five hundred prisoners, the number of instances of removal from prison in order to go to hospital is in the region of half a thousand per year, that is to say as many removals as there are prisoners. Removals from prison in order to appear in court obviously vary according to the status of the institution: they are common in remand prisons, above all for un-convicted prisoners, and rare in prisons for definitively convicted prisoners. If by way of hypothesis, one were to estimate the number of transfers to hospital in the course of a year as being roughly equivalent to the total number of prisoners (according to the same ratio concerning un-convicted prisoners given above), the annual number of removals to hospital would be in the region of about a hundred thousand. The rate of escape of prisoners thus taken to hospital would therefore be around two in 10,000.
Prison officers assigned to escorts are subject to an obligation to achieve results, as, moreover, are many members of the security forces in their daily lives. In this case, it is an obligation to prevent the escape of prisoners “removed from prison”. If an escape takes place, the escort is of course responsible. But responsibility is not established according to the yardstick of the means used; but rather by virtue of the simple fact that a person has escaped.

This aspect of the situation, which is largely implied, needs to be emphasised. In the case of best-efforts obligations, it is appropriate to verify that the techniques of restraint used correspond to the actual risk, that is to say are proportionate to the nature of the situation (transport time, the layout of the premises etc.) and of the person (physical condition, age, previous escape attempts etc.). This forces officers to adapt their behaviour and the methods used by the escort to these factors. It obliges them to make use of knowledge and judgement. On the contrary, in the scenario of an obligation to achieve results, no circumstance has any importance: the only circumstance that counts is whether or not the prisoner has done a bunk.

Within the framework of these arrangements for removal from prison in order to go to hospital (and probably in many others), the administration clearly makes the choice of an obligation to achieve results, and the officers are obliged to follow it. Their superiors (for example in possible disciplinary proceedings) and their peers will adapt their conduct accordingly.

Questions must be raised as to the validity of this choice, which in practice leads to many people being subjected to needless and sometimes degrading treatments, and possibly endangering their health.

If such practices are to be avoided, it is particularly to be recommended that the obligation to achieve results should be changed into a best-efforts obligation. At a time of widespread enthusiasm for assessments that are sometimes somewhat futile, this change of focus would be worth its weight in gold for persons in custody as well as for officers. It is time to think about this issue.

### 2.4.3 Other observations and recommendations made with regard to prisons

For the sake of convenience, here we will separate factors attributable to short-term phenomena from those which are linked to more organisational management methods, before coming to those which apply to the daily life of prisoners.

#### 2.4.3.1 Effects of short-term phenomena

It is not necessary to return at length to overcrowding, which was the subject of an assessment published in the *Journal officiel* of 13th June 2012, analysed in the first part of this section and to which we will return in the second section. Here it is only recalled that, on the one hand, in spite of the growth of alternative measures to imprisonment, over a period of several decades, including the encouragement given to reduced sentencing in various different forms, in particular in the Act of 9th March 2004 (“Perben II”) and in the Prisons Act, and, finally, the favour found by electronic tagging in the course of the last legislature, the prison population has reached unprecedented levels; on the other hand, this overcrowding seriously calls into question the conditions of existence and work prevailing in the institutions concerned and compromises the role assigned to imprisonment.

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123 This statement is totally applicable to the precautions taken with regard to police custody for example (cf. the taking away of bras, a measure whose futility has already been long since established in the contrôle général’s annual reports: cf. page 42 above as well as note 87 and section 2).

124 With the exception of the periods of the Second World War and the Liberation.
This overcrowding applies exclusively to the “men’s” wings of remand prisons. In a remand prison having been the subject of a report in 2012, the occupancy level was 158%. In another, it regularly stood at 210% or even more. As the Contrôleur général has already had occasion to point out, this fact is not only manifested in a few “mattresses on the ground” (obviously highly prejudicial in itself) as many are often too eager to believe: it also has repercussions on the right to respect of private and family life, on access to work and to various different activities, on the manner in which cells are allocated to prisoners and, therefore, on clashes between different groups of inmates, on existing tensions and, finally, on the chances of ensuring appropriate return to life in society after the release of prisoners. It makes prisons into a deplorable mockery of prison life and facilitates the existence of degrading treatment of persons, as the Contrôleur général once again observed in 2012.

It also noted the increase of budgetary problems within institutions. It does not pertain to the institution responsible for these lines to assess the reasons for these problems. However, it does fall within its responsibilities to denounce certain choices which endanger the health and salubrity of prisons and their occupants. It is unfair to force prisoners – inequalities in whose means are glaring – to buy products themselves which should be supplied by the administration, such as rubbish bin liners; it is also unfair to reduce the allocations intended for the purchase and distribution of items necessary for hygiene and the upkeep of cells, in such a way that shortages of cleaning products are henceforth frequent; it is also unfair to authorise prisoners to buy sheets (from the prison shop or ‘canteen’), for example, without giving them the means to wash them in a washing machine inside the prison (or, of course, to entrust them to a third party outside). Problems of management have appeared in recent months in these areas: they should be resolved.

For reasons of the same kind, various bodies and associations that were once a familiar presence in places of detention are reducing or discontinuing their services. A regular presence on the part of the French national employment agency is becoming rare, in spite of actors on the ground; the AFPA (Association for the professional training of adults) has almost totally disappeared from professional training initiatives. The absence of funds is also leading to the ending of the services rendered by persons who, usually on fixed-term employment contracts, used to contribute to the growth of activities in prisons and, as a consequence, relieved staff of necessary tasks: such is the case for a certain number of “coordinators” whose role consisted of promoting recreational activities.

At the same time, recreational and sports associations, which drew their resources from the rental of television sets, are experiencing a sharp drop in their budgets, due to the drastic reduction of rental charges. Despite the fact that these developments had been foreseeable since 2010, reactions were slow. According to the information collected, the prison administration department made a proposal to these associations that they should change into associations “under ordinary law”, that is to say, one might assume, acting as associations that are third parties in relation to the administration. However, it is clear that this change risks resulting in a reduction in the resources devoted to recreational activities in each institution.

These changes naturally lessen the credibility of the principle, which has already been given a rough ride by the shortage of work in custody, laid down by section 2 of chapter III of title I of the Prisons Act, concerning prisoners’ “obligation to work”.

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126 On this point see article D. 442 of the code of criminal procedure.
127 Until quite recently these charges still stood at thirty-eight euros per prisoner and per month, or even more, they are henceforth eight euros per month in institutions that are entirely publicly run. The new charges will also apply in the other institutions as from 1st January 2013.
Budgetary restrictions, in association with the discouragement manifested in absenteeism, which is probably on the increase, are reducing the necessary staff levels. This applies both for warders (including senior prison officers, who are often in short supply in the institutions) and for prison rehabilitation and probation counsellors. The heavy workload with which many are burdened, by reducing the possibilities for dialogue with the persons in their custody, increases the time required for reactions, reduces the effectiveness thereof and increases the use of automatic or even expeditious solutions, which are a source of discontent and frustrations. In short it creates the conditions for new tensions within the prison system, which give rise to additional problems and new discouragements. A Contrôleur général team has examined the prison rehabilitation and probation service. Conclusions are due to be drawn from this inquiry along with an abundance of lessons that this very sensitive situation offers in many areas.

At the beginning of the year 2012, the prison administration department entered into a new supply contract by means of which it was able to considerably lower the purchase price of essential goods supplied by prison shops, which moreover provoked definite hostile reactions from a prison officers’ professional organisation. It is a method of increasing prisoners’ “purchasing power”, which is obviously extremely low. But this improvement should not allow other observed shortcomings to be overlooked: prices that are not sufficiently in accordance with those recommended for the goods distributed; accounting errors in allocation (recorded in the wrong account); erroneous delivery and absence of delivery; procedures for dropping off goods ordered in cells; impossibility of compensation for mistakes. For goods that are not on the list of those that fell in price in 2012, and for institutions in which these reductions were not passed on to customers, prices are calculated in a manner which hardly stands rational scrutiny and price fluctuations all the more so. Certain suppliers have disappeared without being replaced. “Exceptional” prison shops operate with very variable success. In short, for purely managerial reasons, what should be a source of appeasement in imprisonment still remains, on the contrary, a cause of additional resentments.

2.4.3.2 The persistence of phenomena linked to site organisation

In the course of inspections over the years, the shortcomings of certain choices made are confirmed, with regard to both principles of prison policy, prison architecture and management of prisoners. 

As far as principles are concerned, as has already been mentioned, the gathering together of prisoners in single institutions (which are too large in terms of inmate numbers), referred to as prisons, remand prisons and detention centres (or even “long-stay prison” wings), is progressively pushing the prison system towards a remand centre regime. At the same time, this development has been facilitated (or justified) by the idea of dangerousness which, because it leaves little room for the idea of dynamic rehabilitation and change and, on the contrary, promotes the notion of the engraving of “evil” in the being, leads to a medicalised penal fatalism, which places little importance of the need for sociability between convicted prisoners as one of the preconditions for release. Worrying steps backward are being taken, against a background of new prison institutions. In one traditional detention centre, when the cells are opened during the day inmates are able to freely move around a whole building, including free access to the exercise yard. In recently opened centres, the opening of cells only results in free movement as far as the bars that close off the floor, that is to say movement is allowed within a single wing of a floor of a building: the space made available, marked off by bars on both sides, is barely increased.

129 And without consequences from an economic point of view: the purchasing power of staff obviously remains much greater than that of prisoners.
130 “Prison”, recalls Caroline Touraut quoting numerous works (op. cit.) “impoverishes prisoners and their families alike” (p. 79).
131 Such as the mail-order selling company La Redoute.
Similarly, the separation henceforth maintained between un-convicted and convicted prisoners leads to results of the same nature.

This means that when a prisoner’s “status” changes from un-convicted to convicted, they may justifiably wonder what effects the pronouncement of judgement has with regard to the framework of their existence. Under these conditions, it is more difficult to ask these persons to focus their lives upon the prospect of their release, after their sentence has been pronounced.

Following measures for the “reduction of congestion” in remand prisons, the management of detention centres, to which types of prisoners are henceforth admitted that are very different from those traditionally accommodated, is a cause of concern for staff and prisoners alike. Furthermore, the mixing within the same wing of convicted prisoners serving medium and long-term sentences, who are in general older and capable of following a certain number of rules of collective life, and persons serving shorter sentences, who are younger and inclined to violence and immediate gain (trafficking etc.), compromises the effectiveness with which both groups are dealt with.

The implementation of “sentence enforcement programmes”, confirmed by article 89 of the Prisons Act (first paragraph of article 717-1 of the code of criminal procedure), increases this mixing of groups of prisoners that should be subject to different approaches. Indeed, as already stated, in the main these “programmes” amount to transferring prisoners between a regime in which cell doors are open during the day, to another in which they are only open for a part of the day or to a third in which they remain permanently closed, and vice-versa. As always when different systems are juxtaposed, the most important point is less the actual nature of the regimes than the mechanisms that have been invented for transfers from one to the other. In this respect, practices vary between institutions. In some of them, prisoners may remain for long periods within “closed regimes”. This has every appearance of being a disciplinary measure in all but name, without any protective procedures. In any case, the distinction between these regimes interferes with traditional distinctions between groups of prisoners (for example un-convicted – convicted). Furthermore their implementation therefore increases mixing of prisoners, which is not necessarily satisfactory, as in the case of detention centres mentioned above, with “calm older prisoners” and “young traffickers”.

Institutions are often located in unsatisfactory areas.

In the reports issued in 2012, it was noted on several occasions that some were not served by any means of public transport. For others, public transport comes to and end before the end of the last visits: thus one detention centre in the West of France (said to be one of the largest in Europe), is served by a railway station which is 2km away. However, the train timetable is not convenient for a considerable proportion of visiting room “slots”.

Visiting rooms… The quality of many of them still leaves much to be desired.

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, a measure which should be undertaken everywhere. These variations bear no connection to particular institutions but are attributable to the various different teams that follow on from each other. Many conduct themselves with total professionalism, but others – a minority – do not. The

132 Which is relatively needless, as already pointed out.
133 With the exception of small institutions.
anonymity of the telephone encourages such behaviour (the Contrôleur général has collected many testimonies thereof) although it is true that prison telephones are in general little accessible, except when their management has been entrusted to a private partner: the situation is then quickly sorted out. Do inaccessible telephones and a contemptuous tone come within the prerogatives of the State?

Family life units (UVF / unités de vie familiale) and family visiting rooms (visiting rooms equipped for single families, in general with children) are still too few in number, and use thereof is sometimes too restrictive.

In 2012, the Contrôleur général thus ascertained that the director of one institution, before granting the use of a family life unit (UVF), systematically requested an opinion from the State Prosecutor’s Office and from the judge responsible for the terms and conditions of sentences; such consultations are not provided for in any text. Elsewhere, provision is made for social inquiry reports before the granting of UVF requests: it is very difficult to see what purpose such measures might serve; they should be brought to an end.

Provisions for disabled people often leave a great deal to be desired.

Alongside particularly satisfactory cells (such as in the prison of Saint-Maur), how many others are too small or poorly designed? A report was completed in 2012 on a recent institution in which a small step has been left at the cell entrances, as in many others, which has caused falls for prisoners in wheelchairs. In another, the safety rails are not positioned in a useful manner. In a third, there is neither alarm nor intercom. In a fourth, these facilities are inaccessible to persons in wheelchairs. Erroneous designs of this kind are found in all institutions: the fact of anomalies being very difficult to correct is peculiar to the institutions inspected. For this reason it is requested that precise standards that correspond to needs should be enacted for prison cells intended for persons suffering from disabilities.

In addition, medical treatment facilities (UCSA and SMPR) are often too cramped, and scarcely adapted to the realities of treatment.

While there are successes in certain institutions, there are too many problems attributable to site organisation. It has already been noted here that, the location of UCSAs above ground level in all recent institutions was not a satisfactory choice, above all when combined with the impossibility of using the goods lift. In other institutions, lack of space compromises not only the work of treatment but also its confidentiality: in one institution conversations can be heard from one room to the next; in another, a prison officer’s post is located… inside the treatment room itself. Such confidentiality is also harmed when no mail box is available for individual letters to medical personnel which are, for this reason, frequently read. Moreover, in this same regard, the reader is referred to the details set out above concerning the heavy presence of staff during removals from prison for hospital treatment as well as accessible and open medical records.

The rooms allocated for religious services are used for other activities in many institutions.

As mentioned in the assessment concerning religion in places of deprivation of liberty, one room in every institution should be entirely devoted to religious activity in order to ensure that each person is able to freely exercise their religion.

2.4.3.3 Difficulties of daily life

Family relations are verified beforehand, within the framework of the granting of visiting permits.

See the assessment concerning prisoners’ exercise of their right to correspondence, published by the contrôleur général in the Journal officiel of 28th October 2009.

Journal officiel of 17th April 2011; see in particular part § 8.
These are obviously in the first place those of self-expression.

Mention is often quite rightly made of the difficulties arising in prison because of the presence of an unpredictable part of the inmate population suffering from various forms of mental distress. However, equal mention should be made of the difficulties experienced by a far greater number of inmates, entirely predictable in their behaviour and eager to behave well, whose requests – for items, time limits, procedures, interviews etc. – do not receive sufficient attention. In spite of the humanness that the majority of prisoner officers are able to show, these words which fall without reply into empty space, these forgotten letters, are attributable to insufficient numbers of staff (for example prison rehabilitation and probation counsellors), to the latter being ignorant of the regulations (this is possible in registries), to the circumstance that the responsibility falls to others (case of institutions jointly managed with a private partner), to the shortage of available goods or funds, to the simultaneity of tasks, or to laziness and interests that are well-understood\textsuperscript{\ref{note137}} etc.

The necessary dialogue between prisoners and staff needs to be placed at the centre of practices once again in an operational manner.

The electronic liaison register (CEL), which was introduced into prisons two or three years ago, includes a part intended for recording applications from persons in custody. In many institutions a considerable volume of requests is thus recorded. However, in the first place, this is not the case in all institutions; in the second place, the participation of staff in the required registration procedures is very uneven; in the third place, applications are sometimes selectively sorted, meaning that only some of them are recorded (in particular requests for changes of cell); in the fourth place, many “replies”, mentioned as such by the prison management department or the official concerned, do nothing more than inform the applicant that their request has been passed on to the appropriate department (the latter’s response, if any, not being recorded in any way); finally, the terminals that were supposed to be installed in prisons, in order to allow prisoners to record their applications in the CEL themselves, have seldom been installed or do not work. This means that, at the present time, the CEL still does not provide a response to the frustrations of the prison population with regard to the taking into consideration of its requests and many applications still remain untraceable.

At the same time, nothing has come of the initiatives undertaken by the prison administration department in order to open up channels for forms of collective expression on the part of the prison population, which gave rise to experiments in some ten institutions, amongst which the Contrôleur général identified some unquestionable successes. The causes of this failure should be looked into and put right.

Generally speaking, the bringing into line of prison regimes as noted above leads to social exclusion among prisoners, at the same time as new institutions are built. The isolation suffered by many is reinforced by the threats (violence, rackets etc.) weighing upon a certain number of them, which lead them to choose to remain in their cells in order to avoid walks, which are a source of danger\textsuperscript{\ref{note138}}. In spite of institutions in which prison rehabilitation and probation counsellors take a special interest in prisoners that have no work, in general insufficient attention is given to these phenomena of abstention and withdrawal from collective life. And yet, in prisons of larger dimensions, specific means of investigation, which are rarely implemented (on this point, the CEL does not play the role that was hoped), are required in order to achieve what, in small remand prisons, used to be done by means of day-to-day relations between staff and

\textsuperscript{\ref{note137}} It is obviously very difficult to ask a prison officer to pass on a letter to a prison director that he is able to read and which is very critical of him personally.

\textsuperscript{\ref{note138}} The contrôle général has even met prisoners who refused to go into the common shower rooms and the medical treatment facilities (because of the shared waiting rooms).
prisoners. A process of reflection needs to be conducted on this point, independently of the attention given to the prevention of suicide.

Most usually, as already noted in numerous inspection reports, the telephones installed in institutions do not allow confidential conversations.

Those with a booth guaranteeing discretion are rare. In some institutions (but not all), the private contract-holders entrusted with the prison telephone contract have incorporated a message into the system, which one hears on lifting up the receiver, informing users that conversations are liable to be listened to. Prisoners complain that this measure is unnecessary (indeed, a note in the booklet for new arrivals would suffice\textsuperscript{139}) and costly (the duration of the message is added to the price of the actual call). The Contrôleur général referred this point to the head of the prisons administration who replied that it was not technically possible to change this arrangement. Moreover, the difficulties raised by the Contrôleur général, in its assessment of 10\textsuperscript{th} January 2011 on telephones in prisons and detention centres\textsuperscript{140}, have not yet been resolved. Finally, in certain institutions, prisoners’ “telephone” accounts can only be credited once a week. This means that if they receive money the day after the date set for paying money into their phone account, they have to wait six days before they can telephone family and friends. As emphasised in the Contrôleur général’s report for 2011, work in prison is cruelly lacking.

But what is more, the reading of payslips appears to present special problems for prisoners. In particular, the operation used in order to convert piece-work, whose results are recorded in the workshop, into pay based on an hourly rate, certainly needs to be specified, which should moreover contribute to avoiding certain mistakes made. As also stated in the report for 2011, measures should be taken in order to ensure prisoners the social security cover to which they are entitled, as quickly as possible.

The signature of agreements between the departmental prison service for rehabilitation and probation (SPIP), institutions themselves and the CPAM [state health insurance office] (as well as the CAF, for the payment of certain benefits) should be encouraged. In order to facilitate the SPIP’s work, a model agreement, if not a “standard” agreement, could at least be distributed in order to serve as an example. A simple and rapid procedure for registration and payment of benefits should result therefrom. However, special attention needs to be given to the information provided to these social welfare bodies, as moreover to any third party legal entities. In one institution inspected, personal information concerning new arrivals supplied to the CAF and to the French national employment agency included their prison numbers. This discrimination cannot be justified unless it is impossible to identify the persons concerned by any other means.

In its assessment concerning the remand prison of Villefranche-sur-Saône\textsuperscript{141}, the Contrôleur général recommended that the fight against the inappropriate practices of throwing refuse and “yo-yoing”\textsuperscript{142} should be conducted by means other than the placing of gratings on cell windows, on the grounds that these grilles make it considerably darker inside the cells. The prison administration department made a gesture by widening the mesh size in the gratings, but their installation was continued in a systematic manner, without moreover preventing the throwing of refuse and “yo-yoing”. These gratings, even when widened, create real problems of lighting inside 139 We might add that the latter system is in use in one prison in particular. Is it necessary for prisoners serving long sentences to be played the same message for twenty or thirty years? 140 Journal official of 23\textsuperscript{rd} January 2011. 141 Journal official of 6\textsuperscript{th} January 2009. 142 The passing of objects from one cell to another by means of makeshift wires or strings.
cells, particularly in cells on the ground and lower floors, of which their occupants quite rightly complain.

In numerous institutions (including establishments provided for under the “thirteen thousand” programme) the electrical fittings are not adequate to needs. Reports were issued in 2012 concerning several institutions in which prisoners cannot hope to have the benefit of hotplates for cooking or (in one of them at least) refrigerators. We know that in the absence of hotplates one alternative is provided by “fuel tablets”, which users are strongly advised against using in confined spaces due to carcinogenic risks. In 2012, the Contrôleur général referred the possibility of prohibiting the purchase of these tablets in prison shops to the head of the prisons administration, without receiving an answer to date.

In most cases exercise yards lack toilet facilities or, when they do exist, they are in such a poor state as to be unusable. It is recalled that persons who go down for a walk have to wait until the exercise period is over before returning to their cells. Serious improvement needs to be made on this point.

2.5 Treatment in Hospitals without Consent

2.5.1 Background details

In a situation that has been marked for several years by a considerable increase in measures of hospitalisation without consent\(^1\), the application of the Act of 5\(^{th}\) July 2011, which appreciably reformed procedures in this regard, is still a major concern in 2012.

2.5.1.1 The Scope of the Act of 5th July 2011

In the first place, the Constitutional Council has been able to assess the constitutionality of the law that was made necessary by its rulings of 2010 and 2011. If an illustration were needed of the increased capacity for legal review of the law introduced by the constitutional reform of 2008, which introduced priority preliminary rulings on constitutionality, it could easily be provided by the question of treatment without consent.

Indeed, on a question referred to it by an association, the Constitutional Council gave its verdict on 20\(^{th}\) April 2012\(^2\) on the law of 5\(^{th}\) July 2011 and, more specifically, with regard to three of the provisions thereof, which are here examined in increasing order of importance.

The first concerns scenarios in which judges decide to discontinue proceedings or find an absence of criminal responsibility; the provisions of the law provide that they may, when they consider that the person concerned presents a serious danger for public order due problems of mental health, refer the matter to the departmental committee for psychiatric treatment, on the one hand, and the prefect on the other hand. The latter may, on production of a medical certificate, decide to have the person committed for psychiatric treatment\(^3\). The Constitutional Council censured this provision, on the grounds that it had not been accompanied with adequate guarantees in the Act, in particular insofar as such proceedings were possible whatever the offence committed and its degree of seriousness and that the person subject to trial was not

\(^{1}\) This does not mean that the number of persons hospitalised without consent has increased to the same extent; several successive measures may be taken with regard to the same person.

\(^{2}\) No 2012-235 QPC, Association de réflexion et de proposition d’actions sur la psychiatrie (“Association for reflection and proposals for action on psychiatry”). La semaine juridique, 2\(^{nd}\) July 2012, note Péchillon.

\(^{3}\) Commital for psychiatric treatment at the request of a representative of the State (ASPDRE), this measure was formerly referred to as hospitalisation by court order (hospitalisation d’office).
informed thereof, whereas these proceedings would subsequently mean, in any scenario where withdrawal of the obligation to receive treatment were sought, stricter procedures that those provided for under ordinary law. In other terms, the discrimination thus introduced was not sufficiently justified in the Act.

The second provision concerns another discrimination resulting from the Act with regard to the discharge of orders for treatment without consent concerning persons judged not to be criminally responsible or having spent time in units for difficult psychiatric patients (UMDs). This discrimination was judged unconstitutional, in the absence of adequate details on the patients placed in UMDs. In a parenthetical clause whose practical impact is far from negligible, the Council pointed out that hospitalisation in a unit for difficult psychiatric patients “is imposed without sufficient legal guarantees”. In other words, when patients are placed in UMDs in an expeditious manner, without precise grounds being required, discriminatory treatment cannot then be based solely on the fact of such placement. The authorities are therefore going to have to rapidly elaborate a procedure for admission to UMDs which is far more rigorous than that which currently exists.

Finally, the third provision defines the legal reality of the treatment programme that the Act of 5th July 2011 aimed to implement. Part of this treatment programme may take place in an institution, with the remainder being carried out in appropriate establishments or at home. The question of whether constraint was inherent to such programmes was posed. For example, can constraint be exercised outside of hospital, including at home, in order to ensure that patients are obliged to follow their treatment in practice? This is not a theoretical question: doctors sometimes resort to this approach. The Council very clearly pointed out that the provisions of the law “do not authorise the enforcement of such an obligation [to receive treatment] under constraint” and that “treatment cannot be administered to the [the patients concerned] in a coercive manner, nor can they be lead or maintained by force in order to complete stays in institutions provided for by the treatment programme”. In other words, only full hospitalisation makes constraint permissible. While the verdict is satisfying in its precision, it weakens the scope of the “compulsory treatment programme” intended as an alternative to hospitalisation, with regard to the scope of which ambiguity had until then been maintained.

In any case, the ruling by the Constitutional Council obliges the authorities to review the Act of 5th July, before the date fixed by the constitutional judge at 1st of October 2013. This new deadline raises the question of whether, rather than being used solely for the preparation of amendments to procedures for treatment without consent, the intervening period should not also be used for the elaboration of a “major law” on psychiatry called for by many professionals. However, it is not certain that consensus reigns among the latter with regard to the measures to be introduced.

2.5.1.2 Implementation of the Act

In the second place, the implementation of the Act of 5th July 2011 poses a set of questions with regard to the role of the liberty and custody judge, which may be summarised in three separate questions.

Firstly, a certain number of doctors still consider this judicial intervention to be either “unjustified”, superfluous or counterproductive and are, in short, against the principle of patients appearing before the judge. As we know, the law provides the possibility of the doctor responsible certifying that the patient’s condition makes it impossible for them to appear in court\(^\text{146}\): in such cases, they are represented by a lawyer. In certain institutions, the doctors draw

\(^{146}\) Article L. 3211-12-2 of the public health code (code de la santé publique), second paragraph.
up these certificates in a systematic manner, so that no patient ever appears before any judge whatsoever. It is to be hoped that the thoughts that inspire this inopportune (and totally illegal) resistance will return to their senses. The intervention of the judge in these matters is justified and irreversible.

Moreover, there are questions concerning the role of judges and the nature of the supervision that they exercise over ASPDRE and ASPDT\textsuperscript{147} committal decisions. Many judges interviewed by the Contrôleur général have a clear view: their role is to determine whether the grounds given in decisions or opinions supporting coercive measures indeed justify the latter. However, other judges demand greater precision with regard to their role. Thus, at the time of the annual general meeting of the union of hospital psychiatrists on 2\textsuperscript{nd} October 2012, one of them demanded “legislation on treatment of outpatients under constraint and the possibility for the judge to substitute compulsory outpatient treatment for hospitalisation, rather than having the choice between maintaining the measure and its discharge pure and simple”\textsuperscript{148}. Yet currently, when judges to whom cases are referred order discharge, they can already suspend the effect of their ruling for twenty-four hours (maximum), in order to allow an alternative treatment programme to be prepared.

Similarly, the role of the liberty and custody judge (JLD)\textsuperscript{149} is sometimes disputed. It is considered that their lack of experience of mental health prejudices their role and can cause them to take unjustified decisions: many cases are cited in which rash discharge decisions have been taken, sometimes forcing the professionals to improvise rather unorthodox emergency solutions, in order to keep the beneficiary with them. Calls are made for the judge responsible for guardianship orders to take their place. However, this demand is questionable. If intervention by the judiciary, the “guardian of individual liberty”\textsuperscript{150}, is only justified because committal procedures constitute a deprivation of liberty, it is clear that the role of the JLD is justified by virtue of this logic alone, the latter necessarily being a judge with great experience, if not with regard to mental health, at least in matters of individual liberty\textsuperscript{151}, which is just as important as far as this question is concerned\textsuperscript{152}. In this domain, they obviously sit as civil judges\textsuperscript{153}. The arguments for change in this regard are not convincing.

Finally, questions remain on the procedures adopted. Without here being exhaustive, two factors can be quoted. The first concerns medical professional secrecy and confidentiality of treatment. The details of medical data and behaviour can only be set out to the patient and to third parties, who may possibly be concerned – such as persons having requested ASPDTs – with great precaution, which should be motivated in priority by respect for the dignity of the patient in distress. This consideration should be given priority over any other. This rule is generally applied. However, the inspectors have been led to understand that in certain scenarios this requirement is ignored, at the cost of great subsequent difficulties for the patients in question. The second factor concerns conditions of appearance in court. Under current law three possibilities are open: the hearing may take place in a normal manner at a court of first instance; the judge may however

\begin{itemize}
\item[147] Committal to psychiatric treatment at the request of a third party (formerly hospitalisation à la demande d’un tiers “hospitalisation at the request of a third party”).
\item[148] Speech by Mrs VALTON, vice-chair of the Union syndicale des magistrats (French trade union for members of the national legal service).
\item[149] With regard to whom, because of the role conferred upon them by the Act of 5\textsuperscript{th} July 2011, there are calls from many quarters that their title should be changed to “liberty judge”, which indeed appears natural, and therefore desirable.
\item[150] Article 66 of the French Constitution.
\item[151] Cf. second paragraph of article 137-1 of the code of criminal procedure.
\item[152] It would be paradoxical to exclude judges, with expertise in questions of liberty, on the grounds that they are not specialists in mental health, while maintaining the role of prefects, who are no more expert in mental health than judges, but are rather “specialists” in public order.
\item[153] Article L. 213-8 of the code of judicial organisation (code de l’organisation judiciaire) and first paragraph of article L. 3211-12-2 of the public health code (code de la santé publique).
\end{itemize}
decide to sit in a courtroom specially laid out in a hospital; and finally, the judge may resort to videoconferencing\textsuperscript{154} if the doctor is not opposed to it and if the director of the institution has verified the absence of opposition on the part of the patient. The analyses of the Ministry of Justice show that, so far, the great majority of hearings take place inside courts\textsuperscript{155}.

We have already referred to this information: as the Contrôleur général noted in its annual report for 2011\textsuperscript{156}, videoconferencing is unsuitable for the full exercise of rights to defence under ordinary law which cannot be questioned, and is even less suitable in the case of psychotic illnesses.

Without it being necessary to further expand this point, we here refer the reader to the assessment issued by the Contrôleur général on this question and published in the Journal officiel\textsuperscript{157}. This approach should be used if, and only if, the judge is faced with a situation of force majeure (blizzard etc.). Apart from the fact that the transporting of patients before courts may give rise to journeys that are hardly conducive to the serenity of hearings, it also exposes patients, who are in most cases hospitalised in the geographical area from which they come (therefore, in an institution near to their home), to the view of other people, since all courts of first instance are far from possessing dedicated access routes separated from those provided for the public. The journey to the court, the solemnity of the place and the circumstance of appearing before a court are factors that are a source of confusion for patients. Not to mention the sensitive problems with regard to certain patients accommodated in units for difficult psychiatric patients. Therefore, notwithstanding established habits, it is recommended that the coming law should amend current provisions concerning hearings and reserve the courtroom of the court, like videoconferencing, solely to cases where force majeure prevents the judge from going to the hospital. The other side is obviously that a courtroom fulfilling the necessary criteria (serenity, the public nature of proceedings and, when necessary, confidentiality) should exist in each of these institutions. The funds which are currently used for the installation of costly videoconferencing equipment could be put to better use for the fitting out of such rooms.

\textbf{2.5.1.3 The Limits of the Act}

In the third place, the Act of 5\textsuperscript{th} July 2011 has a far from negligible impact upon the functioning of hospital treatment. Without here returning to the mobilisation of staff necessary in order to hold hearings in hospital\textsuperscript{158}, one can only note that the Act of 2011 gives rise to a great deal of additional red tape, in particular due the increase in the number of certificates for which it makes provision.

In one institution inspected by the Contrôleur général in 2012, five hundred measures relating to placement in treatment without consent gave rise to almost five times that number of instruments. In a context of shortage of public sector psychiatrists\textsuperscript{159}, this increase not only reduces availability\textsuperscript{160} but, more seriously, leads to attitudes that may create doubt with regard to

\textsuperscript{154} Under the conditions provided for under article L.111-12 of the code of judicial organisation.

\textsuperscript{155} The data gathered by the ADESM – the association of directors of psychiatric institutions (association des directeurs d’établissements psychiatriques) – plays down that of the Ministry of Justice, but is based on questionnaires which were not always completed.

\textsuperscript{156} p. 79

\textsuperscript{157} Journal officiel of 9\textsuperscript{th} November 2011, no. 0260.

\textsuperscript{158} In a situation where, as established in numerous inspection reports from the contrôle général, the reduction of levels of staff has the inevitable consequence of reducing the number of outings for patients supervised by nursing staff, often drastically (walks, meals, purchases at the market etc.). Patients will thus no longer go out except in order to go to court...

\textsuperscript{159} On this point see the Report of the Chief Inspector of places of deprivation of liberty for 2011, p. 79-85.

\textsuperscript{160} During the inspection of one UMD, for example, it was pointed out that “the time that psychiatrists are present has been drastically cut due to their being assigned to the carrying out of psychiatric assessments.” Admittedly, a
The effect of the documents thus drawn up. It is becoming increasingly common for certificates to be drawn up without the doctor even having met the patient: what then can be their veracity and significance? And yet, a balance has to be sought between the guarantees necessary for committal to treatment without consent and the maintenance of adequate relations between patients and medical staff. If, in the edifice of the Act of 5th July 2011, the former was given priority over the latter, this is probably less attributable to concerns linked to the deprivation of liberty than, in the context of current preoccupations with security, to fear of “precautionary” hospitalisation being brought to an end too early. This frame of mind is apparent in the treatment that the text reserves for persons having been subject to rulings exempting them from criminal liability or having been placed in units for difficult psychiatric patients – treatment which has been censured by the Constitutional Council, as we have seen.

It would probably be appropriate to return to a better balance. To this end, it would be logical to recommend that the two types of treatment (committal to psychiatric treatment at the request of a representative of the State and committal to psychiatric treatment at the request of a third party) should be combined into a single procedure and, at the same time, that the principle of decision should be entrusted to a judge, as is done in many European counties.

The very existence of a process aimed at establishing appropriate balance between different interests (those of patients and their families and friends; personal interests and those arising from public order) in court, in the course of a hearing whose contours should be subject to precautions, should make it possible to limit the need for medical certificates, whose number is at present manifestly excessive, without any reduction in guarantees for all that. Such is the choice that should be implemented, with adequate preparation time, in the act planned for 2013.

2.5.2 Security and Discipline in Institutions

It is reassuring to note that, in all of the inspections conducted by the Contrôleur général, treatment is always the central concern in the health institutions inspected. However, security concerns quite naturally have to be taken into consideration, due to the reality of what in the jargon of these institutions are referred to as “undesirable events”, which may legitimately give rise to concerns on the part of professionals – hospitals not being exempt from forms of violence – as well as to pressures coming from outside. And yet these concerns, to a far greater extent than the treatment itself, can endanger the fundamental rights of persons.

Here we will limit ourselves to expanding upon a few elements that give a general picture of the subject: they are three in number and are concerned with passive systems of precaution, the organisation of security and, finally, discipline among health workers.

2.5.2.1 “Undesirable Events” and Violence

In the first place, however, it is necessary to have an understanding of the above mentioned “undesirable events”, as listed in the Contrôleur général’s inspections.

In one institution in the Ile-de-France region, 216 undesirable events were reported in 2009 of which 59.7% (129) came from hospitalisation facilities. The majority were reported by nursing staff (more than two thirds), much fewer by doctors (5.1%) and security officers (4.6%), within a short space of time after the events (80% within three days).

\[\text{regulatory measure has decided that assessment time cannot be counted as hospital time; this however carries the risk of severely reducing the availability of experts.}\]

\[\text{The other cases reported came from services outside of hospital.}\]
However, these events do not exclusively involve security problems: just over a fifth (forty-five events) involved the security of property and persons, of which twenty-four are described as physical or verbal assault. Of course, it is possible that not all assaults (in particular verbal assaults) are reported. However, it is impossible to estimate a rate of under-reporting. In any case, these twenty-four assaults have to be placed in the context of the number of patients: in the same year, the hospital in question accommodated a flux of 1,020 patients, of which two thirds were freely hospitalised and 28 % were committed to psychiatric treatment at the request of a third party (the inspection took place prior to the Act of 5th July 2011), while the remainder were hospitalised by court order. The number of assaults in relation to the number of persons accommodated is in the region of 23.5 per thousand.

In another institution inspected in 2011, 124 undesirable event forms were completed in the first half-year of 2010. Out of the fifty-eight forms for the first quarter analysed by the risk detection group set up within the institution, two involved injuries or risks of injury, four involved intrusions or risks of intrusion and two involved thefts. The institution in question has one hundred and fifty beds.

In a third institution in the East of France, accommodating around 2,700 patients every year, between seventy-five and one hundred “undesirable” events manifested in assaults against staff are recorded each year (ninety-nine in 2008; sixty-eight in 2009; ninety-one in 2010). Verbal assaults account for 15% to 20%. The remainder is for the most part made up physical assaults. There was one sexual assault in 2008.

Another approach may be taken by means of industrial accidents, which are carefully recorded in the vast majority of cases. In one unit for difficult psychiatric patients accommodating forty patients (but which in the course of the year in question operated with about twenty patients for a period of five months), thirty-seven industrial accidents were declared in 2008; of which thirty-two were linked to violent acts on the part of patients (that is to say one industrial accident of this kind every eleven or twelve days), for a staff of around eighty persons. However, without playing down the difficulty of the events that caused them, this high frequency of accidents should not be understood to imply dramatic events: none of the accidents led to sick leave. For the most part, they involved scratches or bites occurring at the time of placement in seclusion or when putting on instruments of physical restraint. The low level of seriousness of these injuries was confirmed by the medical officer at the time of the inspection.

In another unit for difficult psychiatric patients, twenty-four industrial accidents were reported in 2011, of which eleven were linked to agitation among patients. In one specialised hospital, this number is between six and twenty-three from 2002 to 2007.

A final approach, presumably the most reliable with regard to situations involving security problems, consists of listing the cases in which staff have had to call for reinforcements (nursing staff from the same or other units). In one institution that accommodates around 3,500 patients a year, the number of “reinforcement call forms” came to 231 in 2006, 285 in 2007 and 350 in 2008. These forms present the advantage of showing the distribution of the occurrence of events between day and night (between a quarter and a fifth of the forms were drawn up for nocturnal events), and according to the causes: the majority of calls are either due to “agitation” on the part of patients or “connected to treatment”. As might be expected, calls for reinforcement more often involve persons hospitalised without their consent than freely hospitalised persons.

However, above all, the forms make it possible to establish that the calls are relatively exclusive to a relatively limited number of patients:

For 240 forms studied, the distribution is as follows:

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162 The most serious consequences reported involve injuries to “the left shoulder” and the “dorsal vertebrae”.
163 Although the categories distinguished in the forms in this regard are somewhat vague (mixing of causes and times).
Patients

Calls

One single patient accounted for ninety-seven calls for reinforcements; on the other hand, fifty-seven patients each provoked a single call. In total, seventy-four patients required a procedure of this kind, a number which remains relatively low, without in any way playing down the obvious risk that situations of this kind can present for professionals.

It should be added that, in the very great majority of institutions, staff say that they work in secure conditions, during the day in particular\(^\text{164}\). Assessments are more qualified with regard to the night, since there are naturally fewer staff present. Moreover, these assessments may, above all, include fears concerning individual patients\(^\text{165}\), in what is often an atmosphere of trust.

2.5.2.2 Practical Means of Security

What are the means used in order to establish security conditions that are considered acceptable?

The most important consists of the establishment of closed regimes in units, a minority of which are still open at the present time (which does not mean without supervision).

It is probable that the establishment of closed regimes in units is not simply a reflection of security concerns. One nurse explained that it was made necessary by the need for sound relations between patients and staff, using the expression “medical care also means constraint”. However, notwithstanding this point of view, closed regimes are also based upon principles of security. It would be useful to have an assessment of the current situation in this regard: the Ministry concerned should supply a comparison of the situation prevailing forty years ago and today. It would probably show a marked increase in closed units, including, it should here be

\(^{164}\) This conviction is important: it reduces the risks of inappropriate recourse to such measures.

\(^{165}\) In particular, patients who are sent to units for difficult psychiatric patients and who subsequently return. It should be noted that the incidents mentioned here are sometimes reported to the State Prosecutor’s Office but rarely give rise to criminal complaints.
repeated, units that only accommodate freely-hospitalised persons, a fact which constitutes a major cause for concern. The establishment of closed regimes rarely takes place solely at the request of psychiatrists and nurses. It is promoted by a whole current of opinion, which leads to its being thought of as inevitable. It is in no way accompanied by any concern for the development of activities within units. As the inspection reports have indeed highlighted, it encourages clandestine behaviours (in particular in terms of consumption of cigarettes, when smoking is no longer allowed outside). It treats patients like children.

In view of these drawbacks, it is difficult to weigh up the advantages of the establishment of closed regimes. As indicated in the Contrôleur général’s report for 2011, analysis of the incidents listed by the Ministry of Health concerning four hundred cases of patients running away, shows that the number of escapes from closed units is equivalent to the number of runaways from open units. As for the opposite effect (limiting intrusions into treatment units), its usefulness has never been stressed by staff in the interviews conducted by the Contrôleur général.

It is true that it is upheld that the establishment of closed regimes in units makes it possible to reduce recourse to seclusion as well as, it is said, physical restraint (where it is used). This is very possible (use of physical restraint has probably decreased in the long-term), but in no way certain. As the Contrôleur général has repeatedly stated, in most institutions there is no means of traceability with regard to the use of these means; and this is all the more the case with regard to their use forty years ago. Therefore, it is futile to hope to establish any irrefutable proof in this respect.

In any case, it would be appropriate for the administrations responsible to now begin a process of reflection, informed by data of this kind, with regard to the advisability or otherwise of the establishment of undifferentiated closed regimes in treatment units.

The development of video surveillance constitutes a second means of security.

However, whereas the vast majority of institutions resort to the establishment of closed regimes within units, they are much more divided with regard to the use of video surveillance. Some of them have made a clear choice not to use such systems. Others, on the contrary, have introduced them extensively: in one institution inspected, twenty-seven cameras had been installed, without their usefulness being immediately obvious; it was all the less so, moreover, in view of the fact that, of this number, eleven were no longer working. Many hospitals limit the use of surveillance to their external surroundings, in order to prevent both running away and intrusions. In one of them, sixteen cameras have been installed, whose monitors are deployed in the reception area and the adjacent security area. Just under half of them film the entrances (two public entrances, the staff entrance, the “deliveries” entrance, the ambulance bay, the bay for other vehicles); the others monitor sensitive areas (underground car parks, the delivery yard staircase, the fire escape etc.). The areas immediately surrounding some institutions are also protected, without any video surveillance system, by alarm systems linked to the security post.

Here we will not repeat what can or cannot be expected from these systems, which has already been indicated in the annual report for 2009, as recalled in the part of this section concerning police custody. Three considerations should be specified however. On the one hand, it would be desirable for the principle of these systems, which can be taken badly by patients, to be discussed among the staff. On the other hand, it should be repeated here that such systems can give rise to a false feeling of security: in one institution, which was the subject of a report in 2012, the installation of cameras in the seclusion rooms provided justification for staff no longer checking on the situation of patients thus secluded with their own eyes more than

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166 Page 33 above.
167 Cf. the conclusions of the inspection report for the institution of Eygurande (Corrèze), 2nd July 2010.
once an hour. Finally, it needs to be recalled that these intrusions can be very problematic with regard to the privacy that patients should be able to maintain: in one establishment inspected, there were two cameras filming the interior of a seclusion room, one of which was installed in the part corresponding to the toilet.

The third means of security does not call for any observations: portable devices for the “protection of isolated workers” issued to staff (PTI), which make it possible to set off alarms in case of agitation or other serious incidents. Most institutions issue as many of these apparatuses as there are persons involved in the treatment service. These apparatuses, which are regularly checked (often every day), are also often backed up by alarm detectors in facilities (by “key activation”) or push-button alarm switches in certain areas, such as consultation rooms. Several levels of alarm are also often distinguished, thus “level 1” alarms are dealt with by the treatment unit alone, while “level 2” alarms involve reinforcements from other units.

2.5.2.3 Mean of Organisation of Security

The first means of organisation of security is obviously the training of health workers.

All institutions put training initiatives in place concerning the conduct to be adopted when confronted with violent situations: “nurses faced with agitation and violence in psychiatric wards” etc. The most common of these appears to be what is referred to as the “Oméga” training programme, which is of Canadian origin (Institut Philippe-Pinel of Montreal).

The second is provided by the passing on of information between the various teams that relay each other in the units.

Either working hours are organised so that those of “incoming” teams overlap those of “outgoing” teams, and common meetings allow them to update each other on patients’ behaviour and any significant incidents; or there is no provision for overlapping of hours, but the passing on of information is organised (for example a morning nurse stays on for the beginning of the afternoon etc.).

The third is constituted by the capacity, which, unfortunately, is shared to unequal degrees by different establishments, to conduct analyses of and reflection about violence (as well as undesirable events as a whole) in order to find solutions thereto.

There are various different forms of working groups in charge of studying reported incidents, sometimes in specific meetings on the subject of violence, as well as ethics committees. Thus in 2009, in one institution, such a group addressed the question of the conduct of searches upon clothing (rarely used) and the possession of drugs by a patient, amongst other issues. In another hospital, a “violence group” analysed an assault upon one patient by another and put forward solutions for the improvement of surveillance by nurses, checks upon patients’ personal cupboards and cooperation between units, in order to keep the protagonists apart.

The fourth consists of the creation of dedicated security teams within institutions.

In general these teams are either composed of administrative officials assigned to these tasks, or of employees of outside companies (often specialised in fire prevention and safety), or both of these at the same time. For example, in one specialised hospital the security department

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168 There are also many false alarms, due to portable devices being set off inopportunely.

169 In one institution inspected, the establishment of an ethics committee had been decided upon in principle, but the institution’s medical committee had not yet appointed the members thereof.
is composed of thirteen officers, one or two of whom are present both day and night; all of them are trained in first aid; their record book (examined at the time of the inspection by the Contrôleur général) includes the whereabouts of patients subject to physical restraint in the various units.

These security teams pose a problem in terms of their role. There are three aspects to this role. Practically all of them are invested with responsibilities for action with regard to fire and first aid, after the model of a local fire brigade. Moreover, when difficulties arise with patients, these teams may provide “logistical” back-up: locking of doors, telephone calls, making the area secure etc. Finally, it has been observed that the members of these teams may come to the aid of medical staff in terms of physical force, in situations such as the placing of patients in seclusion.

It is the latter element which is problematic, while the others are perfectly acceptable. There are two distinct sides to the security of specialised hospitals: the first includes all of the considerations applying to establishments visited by members of the public in general; the other involves the physical protection of both patients and staff. These two roles cannot be confused. In particular, dealing with patients requires a professionalism that only medical workers possess: it is not a matter of winning a trial of strength, but rather of resolving a patient’s agitation. In other words, as tempting as it may be to enlist the help of security teams in order to control and seclude patients in crisis, due to the number of nurses present, at night in particular, the latter should be left to manage these incidents alone. Any other solution is unacceptable. Practices of this kind should be abandoned.

2.5.2.4 Staff Discipline

There are also cases of security being compromised by the behaviour of permanent, or often occasional, members of staff. Let us be clear: incidents of this nature identified by the Contrôleur général are rare in number; the behaviour of the vast majority of staff only calls for admiration for their know-how and dedication, which are clearly visible. Nevertheless, a blind eye should not be turned to the seriousness of certain cases of violence or assault on the part of a few. At the end of hospital inspections, the Contrôleur général has been obliged to make use of the second paragraph of article 40 of the code of criminal procedure, as provided for by the Act of 30th October 2007.

Although its use of this legal provision is not enough to break the inspectorate’s overall good impression with regard to the way in which patients are handled in the hospital environment, it does, however, draw attention to the absence of responsiveness on the part of the institutions in the cases of offences discovered by the inspectorate. This absence of responsiveness can be seen at two levels.

The occurrence in a department of events constituting an offence and involving a member of staff is deeply disruptive, for patients in particular, who by definition are fragile and therefore vulnerable. In response to this disruption, it would therefore be appropriate for the department to collectively organise the elaboration of an appropriate response, including the victim. The immediate response is frequently the opposite: since it is an isolated act, we have to contain it and, for this reason, maintain silence about it. Yet, the patients need clarification, as do the staff, whose professional ethics have been prejudiced. Meetings should therefore be conducted in order to analyse the event, like the initiatives mentioned above for the analysis of

170 “Every constituted authority… which, in the performance of its duties, becomes aware of a serious crime or an offence is obliged to immediately inform the public prosecutor at the district court of first instance thereof...”
“undesirable events”, within the department in which it occurred, in order to prevent any reoccurrence and to provide all concerned with the necessary peace of mind.

In a certain number of cases observed, the directors of the institutions concerned also showed themselves singularly irresolute with regard to the way to handle the situation. Sometimes, persons alleged to have committed offences are advised to make themselves scarce for a while, for example by taking a holiday, and nothing more. Suspensions are little used and disciplinary measures still less. The victim is scarcely taken care of. In a largely established case of rape of a female patient, the latter had to carry out the procedures for the making of a criminal complaint herself, a procedure which is still more painful and difficult for a person with mental health problems, if one may be permitted to speak in this manner, than for persons in good health. The solidarities shown between professionals can be understood. However, the management is there in order to ensure compliance with sound principles of behaviour. There is often too much hesitation to actively participate in the search for the truth, to resolutely remove suspected persons from the department and, once guilt has been established, to take the necessary disciplinary measures. Managers should, on the one hand, make sure that persons are suspended when the acts with which they are charged are liable to recur and, on the other hand, contribute actively to the completion of investigations making it possible to establish the truth. The protection of the fundamental rights of patients can only be secured at this price, which is sometimes high, but which it is important to pay.

2.5.3 Other observations and recommendations made with regard to hospitalisation without consent

Many of the remarks which follow echo those made in previous reports. This persistence is attributable in part to the fact that, so far, few follow-up inspections (second inspections) have been carried out in psychiatric hospitals. The findings of the initial reports therefore predominate. It is, however, to be regretted that the recommendations consistently sent by the Contrôleur général have scarcely received any response from the regional public health authorities and departments of the central administration, notwithstanding the fact that the institutions themselves are often attentive.

2.5.3.1 Patients’ Rights

Notification of new arrivals of their rights of remedy against measures applied to them, along with the concrete resources that can ensure the effectiveness of such proceedings, still leaves a great deal to be desired.

Admittedly the question is difficult, involving patients who often arrive in hospital in various forms of delirious stages\textsuperscript{171}. Again, admittedly, the question has perhaps become less acute since the Act of 5\textsuperscript{th} July 2011, which introduces a mechanism providing for the intervention of a judge in the case of all “full time” hospitalisations without consent, at the end of a period of fifteen days at the latest. It has nonetheless lost none of its importance. The period that may elapse between the time of admission and the moment when the person recovers the means of understanding a notification often makes the latter’s imperative character disappear, all the more so in cases where the patient has been transferred to a different unit in the meantime. It is therefore recommended that notification forms should follow patients in all of their transfers within institutions, as from their arrival, and that these should be jointly completed by the patients as soon as “their state allows” and the staff.

\textsuperscript{171} The law (article L.3211-3 of the public health code) provides that persons shall be informed of their legal position and rights and of the possibilities of remedy open to them “on admission or as soon as their condition allows”.

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Many admission forms remain incomplete with regard to rights and the means of exercising them. In addition, in general hospitals that have psychiatric units, the reception documents are sometimes identical for the somatic and psychiatric departments respectively. The director general for the organisation of treatment at the ministry of health is asked to distribute a circular giving the minimum information that has to be included in the documents (addresses of competent courts) and the material means which have to be at patients’ disposal in order to enable their implementation.

However, whatever their condition, as the law states\(^\text{172}\), patients have rights, which it lists, in particular the right to contact the authorities, a doctor, a lawyer and to be informed of rules and regulations etc. Treatment services and units should take measures to ensure the effective implementation of these rules.

Patients have a right to respect of their private lives, to confidentiality of treatment and to the required discretion with regard to their presence in a psychiatric treatment unit. These aspects are often neglected. For example, telephone switchboard operators should be informed of the presence of particular individuals in one of the departments of an institution. Telephone calls to persons outside the hospital can be listened to by anybody in the vast majority of cases. Personal cupboards with a lock in the rooms\(^\text{173}\) are still too rare, as are real telephone booths and letter boxes.

It should be possible to identify the harshest measures of restraint with regard both to the person who imposes and brings them to an end, and with regard to their duration and frequency. In the institutions on which reports were issued in 2012, too few of these measures are subject to written reports in ad hoc registers (which may be very simple). On this point, as on others, a general incentive measure is earnestly awaited.

The passing on of medical records is done according to deadlines (and sometimes procedures) which vary from one institution to the next. Since the conditions of access of patients to their records have been defined by law for the past ten years, it would be desirable to make sure that in certain cases such requests are made “commonplace”, with the precautions provided for by the texts. It would not be unuseful to record the number of applications of this kind, something which is not always done, and the actions taken in response to them.

Family relations may be limited due to patients’ state of health. However, when this is not the case, provision should be made for appropriate visiting conditions, both with regard to the material setting and the dimensions of the place provided for visits: in one institution inspected, two families could not simultaneously take their places in the visiting lounge and one of them therefore had to converse in totally makeshift conditions. Treatment concerns should not obscure patients’ other rights. The right to the respect of relations with family and friends is, it must be recalled, a fundamental human right.

The volume of activities made available varies between institutions. However, it is henceforth everywhere constrained by reduced budgets. Many contracts for specialised therapists (art therapy, occupational therapy etc.) are threatened or disappearing. Since “adjustment” of the workforce\(^\text{174}\) – as already alluded to in this section – has already very considerably restricted the possibilities of accompanied outings for patients, boredom is increasing in psychiatric institutions, while, at the same time, the average length of stays is increasing. In the course of inspecting one unit, the inspectors discovered that the only existing activities were organised in the corner of a corridor.

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\(^{172}\) Same article.

\(^{173}\) And, of course, subject to – discreet – checks on the part of the staff.

\(^{174}\) As it is elegantly referred to today, i.e. “downsizing”.  

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Finally, as already pointed out, there is a discrepancy between the state of health of patients in custody who are completely hospitalised, on the basis of the provisions of article L.3214-1 of the code of public health, and the measures of constraint used with respect to them. Moreover, for this reason, they usually keep their stay as short as possible, which harms the effectiveness of the treatment given to them.

2.5.3.2 Relations between treatment units and departments

Once again, it should be cause for surprise that, with regard to the rights pertaining to patients, the rules are so different from one unit to the next, with regard to the possession of mobile phones for example. Institutions in which these rules have been standardised by agreement are rare. The necessity of treatment in no way explains such discrepancies, which could be linked to the state of a pathology but hardly to otherwise undifferentiated units.

In many institutions there are henceforth units responsible for dealing with psychiatric emergencies. These should be encouraged, insofar as they are better equipped for carrying out both assessments of the state of health of new arrivals and the procedures involved in the implementation of treatment without consent, in particular as far as complete hospitalisation is concerned. It has even been observed, during the inspection of one institution, that the creation of an emergency psychiatric unit (in this instance in the general hospital of the administrative centre of a French department) considerably reduces the use of ASPDRE and ASPDT, because diagnoses of persons in distress, which are organised within a better framework, are better established. The question remains however of the manner in which admission to emergency units is related to the treatment then provided in traditional treatment units (in principle covering a single sector), both from a therapeutic point of view and with regard to the completion of procedures. In particular, should the length of stays in the unit, in principle relatively short, coincide with the deadlines devised by the Act of 5th July 2011?

The latter Act successfully instituted the obligation for all persons placed in complete hospitalisation without their consent to undergo a somatic examination. The question of the connection between psychiatric and somatic treatment is thus posed once again. The presence of doctors working in somatic medicine in institutions and psychiatric units is very unequally provided for, including in general hospitals which have both types of departments. The requirements of the law of 2011 should be turned to good account in order to readjust this presence where it is inadequate. It would be useful in this regard for the director general in charge of provision of healthcare to distribute some kind of guide to good practice. It should be added that when a single accident and emergency department is devoted to both somatic complaints and mental pathologies, the persons suffering from the latter are in general poorly isolated from other persons and confidentiality is little respected.

Finally, the presence of minors in psychiatric departments is often a sensitive issue. Even when there are units devoted to child and adolescent psychiatry offering day services as well as complete hospitalisation, the difficulties are not resolved for all that. In a general hospital whose inspection gave rise to a report in 2012, the child psychiatry unit was installed within the traditional paediatrics department. As a consequence, on the one hand, this unit operates a selective admission process in order to avoid accepting any cases that are too serious, which would prove impossible to handle in view of the rules applied within the department as a whole;

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776 The existence of the section of the public health code that details the conditions for complete hospitalisation of prisoners without consent should have led to the abrogation of article D. 398 of the code of criminal procedure, which deals with the same subject: this was not the case, and this regulatory text, which is different from the legislative text, is still current.
in some cases, on the other hand, children in crisis, who cannot be maintained in the unit, are moved to a unit for adult patients, a practice which the Contrôleur général strongly criticised. Generally speaking, it is true that certain children with serious pathologies are, at the present time, sent for longer or shorter periods to adult units where they are very isolated in most cases. These practices should be brought to an end and other courses of action found, possibly in a more distant children’s unit, on the condition that the cartography of child and adolescent psychiatric units as a whole be redesigned.

The above questions are almost the opposite of those posed in certain cases of prisoners hospitalised by means of committal for psychiatric treatment at the request of a representative of the State. At least one hospital inspected, that caters for an area in which a prison is located, only accepts prisoners whose address before they were imprisoned (domicile) is in one of the geographical sectors corresponding to the institution’s psychiatric units. For a remand prison, this situation might correspond to that of the majority of prisoners. This in no way applies to prisons for definitively convicted prisoners. Such restrictive rules should be abandoned and, in the case of complete hospitalisation of prisoners, the prison should be deemed to constitute their domicile. On the other hand, this would result in all prisoners being concentrated in a single unit. In this scenario hospitals might decide to divide the prisoners between all of their units. Indeed, in spite of the law and the initiatives for bringing specially equipped hospital units (UHSA) into service, in particular in 2012, it is far from being the case that all prisoners in this situation can be accommodated in such institutions, as article L. 3214-1 (already mentioned) of the public health code provides.

Such are the recommendations that the Contrôleur général des lieux de privation de liberté made and presented to the authorities in 2012.
Section 2

Actions taken in 2012 in response to assessments, recommendations and cases taken up by the Contrôleur général.

Since 2009, date of publication of the first annual report, the Contrôleur général has tried to assess the actions taken in response to its proposals, whether they take the form of recommendations included in the inspection reports sent to the various ministries throughout the year or that of recommendations of a general character published in the assessments issued by the Contrôleur général des lieux de privation de liberté. “Follow-up inspections” of institutions (that is to say second inspections of the same institution, specifically focused on the examination of changes made after the inspectors’ first visit) also provide a means of assessing reactions (or absence of reaction) on the part of the authorities concerned, following recommendations contained in the reports of the Contrôleur général des lieux de privation de liberté.

In 2012, nine follow-up inspections were carried out in various institutions. Similarly, the Contrôleur général’s teams carry out “on-site inquiries” which make it possible to concentrate on particular issues within institutions. These on-site inquiries supplement general inspections of institutions and also make it possible to ascertain the follow-up measures taken in response to recommendations and assessments. In 2012, six on-site inquiries were carried out.

The Contrôleur général would like to emphasise his satisfaction with regard to the consistency with which the ministers to whom inspection reports were addressed gave their points of view concerning the recommendations contained in the reports, sometimes giving answers that went beyond the strict framework of particular institutions in order to state their positions on questions of principle.

In 2012, the Contrôleur général received sixty-nine ministerial replies following on from inspections. He also notes with satisfaction that the directors of the institutions inspected sometimes took immediate measures during the inspection or straight afterwards, whether with regard, for example, to dealing with difficult individual situations, to the opening of registers making it possible to ensure the traceability of certain operations or the distribution of notes

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177 Two assessments were published in 2012: an assessment of 22nd May 2012 concerning the number of persons in custody and an assessment of 26th September 2012 concerning the implementation of the partial release system. Cf. section 1 of this report.

178 These inspections were as follows: the legal procedure unit (unité de traitement judiciaire) of the Gare du Nord in Paris, the remand prison of Reims, the detention centre for illegal immigrants of Palaiseau, the police headquarters of Versailles, the detention facility for illegal immigrants at Choisy-le-Roi, the detention centre for illegal immigrants of Toulouse, the detention centre for illegal immigrants of Rouen, the detention centre of Mauzac and the remand prison of Villefranche-sur-Saône.

179 One inquiry concerning the handling of a person with reduced mobility in a prison, two inquiries concerning access to IT facilities in custody, one inquiry on the procedures for handling a mother and her child within a prison, one inquiry concerning the handling of transsexual prisoners, one inquiry concerning the handling of persons detained for acts of piracy in the Gulf of Aden.

180 Twenty-eight replies from the Minister of the Interior, twenty-five from the Minister of Health, fifteen from the Minister of Justice and one from the Economy and Finance Minister.
enabling the provision of information to persons deprived of liberty. These initiatives deserve to be encouraged since they are still far from being systematic. Finally, it is also necessary to note the consistency which directors of prisons made themselves available in order to reply to the multiple cases taken up with them by the Contrôleur général, following the letters that the latter receives from persons deprived of liberty (the very great majority of which are sent by prisoners). However, although their replies show a desire to shed light upon the situations mentioned, sometimes in detail, and to pass on the whole of the information that the inspectorate needs in order to fulfil its duties, they are not always sent within the strict deadlines, nor are they always satisfactory as far as the contents are concerned.

It is therefore not an easy task to assess the actions taken in response to the Contrôleur général’s recommendations and following the inspectorate’s action on the ground more generally, as well as via the cases referred to the authorities.

The Act of 30th October 2007, article 9 of which instituted the Inspectorate of places of deprivation of liberty, gave the Contrôleur général the right to expressly ask ministers to set out their observations in response to reports on “the state, organisation and operation” of places inspected. He may also put forward proposals for amendments to the applicable legislative and regulatory provisions (article 10 of the abovementioned act). On the other hand, the Act makes no provision to enable requests to be made to the Government for the issuing of reports to the Contrôleur général or to Parliament, which set out the actions taken in response to assessments and recommendations. It should also recalled that, in spite of repeated requests to the various ministries concerned, the circulars and instructions that ministers and their departments adopt, some of which concern subjects taken up by the Contrôleur général, are still not sent to the latter for the purposes of information.

Once again, this annual report provides the occasion to recall that it is necessary for the whole of the official texts concerning places of deprivation of liberty to be sent to the Contrôleur général des lieux de privation de liberté for information.

On five occasions since taking up his post, the Contrôleur général has used the possibility, mentioned under article 40 of the code of criminal procedure, of reporting practices liable to constitute serious crimes or offences to the public prosecutor at courts of first instance. Contrary to the provisions of article 40-2 of the code of criminal procedure, the Contrôleur général has never been informed of the actions taken in response to the cases thus referred to the public prosecutor.

An example of a response of high quality given by the director of an institution, following an inspection that took place in July 2012 (response given in November 2012 after the sending of the findings in October by the Contrôleur général) is given below.

The director of the institution concerned firstly indicated that the findings had been passed on to the various departments involved (SPIP, UCSA, CLE), in order to collect their comments and allow them to follow up the observations made. This practice is particularly positive and should be brought into general use.

In support of the reply, the director of the institution then handed over a table composed of five columns: observations contained in the findings, the institution’s response, planned actions, person in charge of the action, schedule of measures to be taken.

In terms of improving the material conditions of detention, for example, plans for the year 2013 include the installation of pegs on the outer edge of all shower walls, the installation of swing doors in the bathroom areas of cells, the renovation of dilapidated facilities in the
The installation of a water tap on floors where semi-open regimes and regimes of trust operate and application to the DISP (Interregional Department of Prison Services) for the financing of work for waterproofing shower-rooms. These actions as a whole are placed under the aegis of the technical manager of the institution.

Other actions are also planned: bringing the distribution of medicines into line with regulations by means of a memorandum from the head of the prison staff and instructions from the director of the hospital to the personnel of the UCSA, scheduled for the 22nd November 2012; memoranda from the assistant director with regard to use of the CEL and the GIDE within the framework of searches performed on persons and cells; a memorandum from the director of the institution recalling the code of ethics applicable to staff following complaints from prisoners concerning racist comments directed at them.

These actions demonstrate the commitment of the director of the institution and of its teams as a whole to take immediate action in response to the findings contained in the report of the Contrôleur général des lieux de privation de liberté and, above all, to rapidly and tangibly improve living conditions for prisoners.

1. Positive Changes observed following Cases Taken Up and Recommendations

In the year 2012 the Inspectorate was able to ascertain a series of positive changes following cases taken up with departments of the central administration and recommendations made at the time of inspections of institutions. This report provides the opportunity to set out a list thereof.

1.1 Transgressive acts committed by minors

Request for definition and modes of enforcement of “measures for the maintenance of proper order” intended to provide rapid responses that are proportioned to transgressive acts of minor seriousness committed by minors in custody.

The inspection of the remand prison of Hauts-de-Seine, in Nanterre, between 27th and 30th April 2010, gave rise to a certain number of comments and recommendations. The Contrôleur général is very pleased that in 2012 these led to a note from the Minister of Justice of 19th March concerning measures for the maintenance of proper order applied to minors in custody.

In the inspection briefing sent to the Minister of Justice with the inspection report for the institution on 7th July 2011, the Contrôleur général made the following comments: “Families are involved in the detention of their minor children in an entirely original manner, in the form of a monthly meeting. This constitutes a highly positive way of resolving the previously mentioned difficulty of face to face relations between persons in custody and staff. Although it does not necessarily appear to have immediately tangible results, this initiative should be extended, on the one hand, to other children’s wings and, on the other hand, to other groups of prisoners (young adults) that currently present problems.

Similarly, the “mediation – redress” procedure implemented in the same wing for minor breaches of discipline constitutes a successful initiative. It makes it possible to bring the time of sanction of such breaches closer to the moment at which they are committed, while adapting the form of sanctions to the person. In this case, once again, extension of these procedures should be considered, naturally without diverging from the constraints inherent to disciplinary proceedings.
The note from the Minister of Justice of 19th March 2012 makes it possible to respond to the Contrôleur général’s recommendations. It is not only aimed at reducing the current disparities between the practices of institutions but also at making their application possible within places of detention that do not yet use them. The note contains a definition of the transgressive behaviours in question (limitative list) and the nature of the “measures of internal order” likely to provide an appropriate response thereto (limitative list also), while underlining the fact that suspension of educational and professional training activities comes under the sole competence of the head of education, who decides according to the specific rules of the national education system. Finally, the note makes it possible to establish the procedures for implementation of “measures of internal order” (prior interview with the minor, maximum duration of 24 hours, no permanent forfeitures, prohibition of combination with disciplinary measures) as well as the traceability of these measures: nature of information to be recorded, recommended media (CEL module of the GIDE).

The principles laid down in this note make it possible to provide rapid responses to transgressions committed by minors in custody, while continuing to tailor sanctions to individuals and adapt them to the seriousness of the acts committed.

1.2 Maintenance of family relations for imprisoned couples

Request for application of the provisions of ordinary law (articles R.57-8-8 and R.57-8-10 of the code of criminal procedure) for couples imprisoned within the same institution, who wish to obtain internal or family visiting rooms.

On 11th May 2012 the Contrôleur général referred the matter of difficulties encountered by couples imprisoned within the same institution to the director of the prisons administration department, in order to inform the latter thereof and assert the right of such couples to the maintenance of their family relations.

It appeared that certain directors of institutions considered the obtainment of internal visiting permits to be a measure of internal order, subject to the director's discretion, rather than a right whose refusal has to be justified (articles 35 and 36 of the prisons act of 24th November 2009).

In response to the matter taken up by the Contrôleur général, on 26th June 2012 the director of the prisons administration department confirmed that “in the absence of specific provisions for these situations, the general provisions concerning visiting permits shall be found to be applicable”.

This interpretation of the regulations should be widely disseminated among all directors of institutions in order to truly bring an end to the difficulties encountered by persons in couples within the same institution. The Contrôleur général will be vigilant on this point in the future.

1.3 Prisoners’ Voting Rights

Request for implementation of the possibility for prison visitors to be appointed as proxies for prisoners in the proxy forms issued for the various national and local elections.

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.

The Contrôleur général will ensure that the application of these principles by the directors of institutions is verified.

1.4 The Fight against Poverty in Prison

Request for the establishment of a draft circular concerning the fight against poverty in detention.

On 26th April 2012, the Contrôleur général referred the matter of the financial situation of prisoners hospitalised in a unit for difficult psychiatric patients (UMD) to the respective directors of two prisons.

Following this action on the part of the Contrôleur général, meetings were organised between the team of the UMD and the management team of one of the institutions concerned. These meetings made the creation of a local partnership possible, in order to help hospitalised persons lacking adequate resources, by putting a “kit” in place containing hygiene products and the allocation of allowances after examination by the single multidisciplinary committee (CPU).

The Contrôleur général informed the director of the prisons administration department of the positive actions taken in response to the matters taken up and hoped that this local initiative could be brought into general use in all units for difficult psychiatric patients. In reply to the Contrôleur général’s letter, on 20th June 2012, the director of the prisons administration department indicated that a draft circular concerning the fight against poverty in detention was in the course of validation in order to specify the aid in kind and in cash that it should be possible to allocate to persons committed to prison and hospitalised.

At the time of drafting this report in December 2012, the announced circular has still not been published. The Contrôleur général hopes that it will be published in 2013 in order to allow the concrete application of article 31 of the prisons act of 24th November 2009, which provides that persons without adequate resources should be able to have the benefit of aid in kind and in cash.

1.5 Degrading Treatments of Detained Persons

Request for solutions to put a stop to inhuman and degrading treatment suffered by persons detained in a detention centre for illegal immigrants.

A matter of this nature was referred to the Contrôleur général in 2012 on the testimony of a member of nursing staff working in a detention centre, who wanted to react to a specific situation.

Removal of a foreign national from the country not having been possible at the airport, the person concerned had urinated and defecated in their clothes in the course of transport. Consequently, on their arrival at the detention centre for illegal immigrants, his state not permitting the completion of the arrival formalities and security search, the director of the centre took the decision to use an external water tap and a (jet) hose to wash the person. The director explained this decision by pointing out that since the showers were located in the living area, it was thus a question of “avoiding any sanitary risk and avoiding the person being seen in this humiliating situation by the other detainees”. Two days later, a second foreign national, for his part presenting behavioural disorders, stated that he had undergone the same hose down treatment, while being kept handcuffed.
On receiving these testimonies shedding light upon an inhuman and degrading treatment, the Contrôleur général referred the matter to the head of the detention centre for illegal immigrants. In the days that followed, a meeting for consultation took place under the aegis of the head of the prefect's private office, leading to the adoption of the following measures:

- the bringing into service of a shower in a closed area on the ground floor of the CRA;
- the issuing of disposable protective clothing to police personnel;
- the possibility of calling upon health personnel to intervene and persuade the detainee to take a shower;
- training of police professionals in the management of detainees presenting severe behavioural disorders;
- closer relations with other CRAs with a view to identifying measures taken for the management of similar events.

In view of his preventive duties, the Contrôleur général considered that these measures are likely to protect the right to privacy and dignity of detained persons in the future. However, he will not fail to check these factors at the time of follow-up inspections.

1.6 The Prohibition on the Sale of Coffee in Prison Shops

Request for the withdrawal of the prohibition on the sale of coffee in prison shops in remand prisons.

On 22nd June 2012, the Contrôleur général called the attention of the director of the prisons administration department to the note of 1986 prohibiting the sale of coffee in remand prisons. He considered that this prohibition was not justified in view of the sale of other products in prison shops that may present characteristics similar to those of coffee, such as Coca-Cola™ for example.

On 3rd July 2012, a reply from the director of the prisons administration department informed the Contrôleur général that, in view of the case made by the latter, it had been decided to abrogate the note and that this abrogation was to come into force within an allowed time of three months, that is to say in October 2012.

However, at the time of drafting of this report in December 2012, the Inspector has not been informed of the possibility for prisoners in remand prisons to actually buy coffee in prison shops. He will therefore continue to carefully verify this possibility during the next inspections conducted in remand prisons.

At the time of various replies to reports handed over by the Contrôleur général, the Minister of Justice announced that “reflections [were] in course” on three subjects about which the Contrôleur général has already spoken at length in various annual reports:

- the size of prisons ¹⁸¹;
- the presentation of the payslips of prisoners who work ¹⁸²;
- the traceability and systematic character of searches ¹⁸³.

¹⁸¹ See the Annual Report for the year 2010 of the CGLPL available at www.cglpl.fr.
¹⁸² See the Annual Report for the year 2011 of the CGLPL available at www.cglpl.fr.
¹⁸³ See the Annual Report for the year 2011 of the CGLPL available at www.cglpl.fr.
2. Actions taken in 2012 in response to the Public Assessments published in the *Journal officiel*

We will not here return to the reasons for and content of the assessments, which are examined in the first section of this report.

2.1 The Assessment concerning Numbers of Prisoners published on 13th June 2012

Following this assessment, the Law Commission of the French National Assembly created a special fact-finding mission on 25th September 2012, entrusted with the task of considering means of fighting against prison overcrowding “at the origin of a manifest deterioration of conditions of imprisonment, detrimental to the rehabilitation of convicted persons”. This fact-finding mission inspected several prisons and interviewed various actors and experts on criminal policy, including the Contrôleur général des lieux de privation de liberté. The conclusions of the work of this committee are due to be presented at the beginning of the year 2013.

Moreover, in a Cabinet meeting of 19th September 2012, the Minister of Justice presented the circular addressed to Principal State Prosecutors and public prosecutors at courts of first instance, defining the new main lines of the Government’s criminal policy. Point 6 of this circular, which deals with reduced sentencing and enforcement of sentences, contains a paragraph (6.4) concerning “vigilance with regard to the situation of prison overcrowding”. This paragraph commences with the following sentence: “It should be ensured that the modes of enforcement of prison sentences take the state of overcrowding of prisons into account”. The Minister of Justice then advocates the virtues of a dynamic policy of reduced sentencing in close relation with the judges responsible for the execution of sentences and prison rehabilitation and probation departments.

Although the Contrôleur général has had the occasion to express his satisfaction, he will nevertheless remain vigilant with regard to concrete actions resulting from this circular and practices drawn therefrom in institutions.

2.2 The Assessment concerning Partial Release published on 23rd October 2012

On the same day as the publication of the Contrôleur général’s assessment, the Minister of Justice announced that the number of places in partial release and reduced sentencing would be more than doubled in the space of three years. “Within the framework of the three-yearly budget, [it] has decided to include the creation of 803 clear places in wings for reduced sentences [partial release and other reduced sentencing measures]” the Ministry of Justice indicated in a statement.

The Minister of Justice wishes to increase the number of such places in order to improve conditions of execution of cases of partial release, since “partial release wings and open prisons are sometimes too isolated or overcrowded and therefore have difficulty in fulfilling their true function of rehabilitation”. The statement specifies that “most of the places will be created in city centres or in the outskirts of cities and, with regard to those which are not, it is planned to connect institutions to the urban area public transport network”, recalling that “renovation work” on dilapidated facilities is also in progress.

The Minister of Justice stated that she “shared the conviction” of the Contrôleur général des lieux de privation de liberté with regard to the usefulness of partial release, for her part
considering it to be an “excellent measure which makes it possible to enforce sentences while maintaining social integration”.

3. Absence of progress ascertained with regard to certain issues about which continual recommendations have been made

Alongside the positive changes described above, the annual report for 2012 also provides the occasion for recalling difficulties in changing the practices of the administration with regard to certain issues. The following subjects are among those marked by a certain opposition to change and deadlocks of various natures, to the detriment, when all is said and done, of persons deprived of liberty.

3.1 Confiscation of the brassieres of women placed in police custody

Since his annual report for 2008, a constant concern for the Contrôleur général has been to raise the issue of the systematic way in which certain personal items are taken away in the course of police custody, a confiscation which he considers out of proportion to the risks incurred (suicide or assault on staff) and contrary to the dignity of persons placed in police custody.

The annual report for the year 2009 emphasised the absence of directives likely to lead to positive change in this regard. The Act of 14th July 2011 concerning police custody (article 10) and the order (arrêté) of 1st June 2011 marked positive changes in current standards and might have been expected to change practices among the personnel in charge of the implementation of police custody. However, this was not the case, notably with regard to brassieres: throughout the year 2012, the inspectors ascertained that they often continue to be confiscated in a systematic manner, regardless of the current texts.

The observations made by the inspectors on the ground contrast with the replies that the authorities concerned nevertheless gave to the findings sent to them after inspections. Indeed, the general inspectorate of the gendarmerie cites a GEND/OE/SDP]/PJ [gendarmerie, law enforcement and criminal investigation departments] note of 24th June 2011, instituting the implementation of security measures that are divided into three different levels, making it possible to ensure that measures taken are proportionate to the case and guaranteeing the dignity of persons in police custody. According to the general inspectorate this note had made it possible to ensure gendarmes’ “discernment” with regard to the question of brassieres, which were apparently no longer confiscated in a systematic manner since its dissemination. Similarly, the replies of the director general of the French national police force mention a memorandum (no. 94) of 15th June 2011 from the Director of the Central Department of Public Security (directeur central de la sécurité publique) whose implementation also made it possible to make security measures proportionate to the dangerousness of the items concerned and had apparently brought the systematic confiscation of bras to an end.

Although the Contrôleur général is pleased to note the existence of these instructions and memoranda, he nevertheless wishes to emphasise that they alone cannot guarantee any change in

184 The General Inspectorate of the National Gendarmerie and the Director General of the French national police force.
actual practices with regard to the confiscation of items. The latter will only really change as a result of a firm and daily commitment on the part of department heads to ensure strict application of the texts.

3.2 The practice of Religion in Prisons

In her response of March 2011 to the Contrôleur général’s assessment concerning the practice of religions in places of deprivation of liberty\(^{185}\), the Minister of Justice announced that a circular was in the course of elaboration on the subject. To the knowledge of the Contrôleur général des lieux de privation de liberté, the circular has still not been issued at the time of writing of this report in December 2012.

However, difficulties remain with regard to the exercise of religions in prison. The prison administration continues not to approve representatives of certain religions as chaplains, despite persistent requests from the latter who, for all that, belong to religious associations governed by the act of 1905. This situation is a cause of tensions and recently led to the overruling of a refusal of approval of this kind and the condemnation of the State for prejudice suffered due to the violation of religious freedom by the prison authorities\(^{186}\).

The Contrôleur général is also deeply concerned to ascertain the very small number of Muslim chaplains in places of imprisonment, which is radically at odds with the requirements of the prison population and gives rise to legitimate feelings of discrimination, the growth of which is not without effect upon the atmosphere within certain institutions. The Contrôleur général also notes that too many institutions still do not have a room exclusively devoted to religious services. In one recently inspected institution, the activity room, which is also used for religious services, is not available on Fridays because entertainment events are held there. The absence of a Muslim chaplain makes it possible to explain such a use of the room. However, this can only give rise to suspicions and frustrations on the part of prisoners of the Muslim faith, who have long been calling for the presence of a chaplain.

Finally, the Contrôleur général still cannot ascertain any commitment to ensuring that prisons (along with places of deprivation of liberty as a whole) are organised in order to provide food in accordance with the practices of the various religions of persons deprived of liberty. However, the obstacles to such changes are neither organisational nor economic in nature, as the Contrôleur général emphasised in his assessment of March 2011.

3.3 Supervision of Prison Staff

Supervision is the possibility given to officers of discussing the manner in which they accomplish their duties, with complete confidence and within the framework of an equal relationship, in particular when these duties pose difficulties which may even have repercussions on their personal lives, in order to gain a better understanding of the factors involved. Such discussions may take place during or outside of their working hours and at their places of work or elsewhere.

This definition of supervision was given by the Contrôleur général on 17\(^{th}\) June 2011 within the framework of an assessment issued on the subject. Therein he recommended the systematic implementation of supervision of officials and soldiers entrusted with surveillance and security duties.

\(^{185}\) Assessment published in the Journal officiel of 17\(^{th}\) April 2011 and available on the www.cglpl.fr website.

\(^{186}\) Administrative Court of Rouen, ruling of 11\(^{th}\) October 2012.
Since the publication of this assessment, scarcely any progress has been made with regard to the supervision of staff\textsuperscript{187}. He therefore here reiterates the whole of the recommendations made in his assessment of 2011.

### 3.4 The Harmful Use of Fuel Tablets in Prisons

From 2008\textsuperscript{188}, the Contrôleur général, like other institutions before it\textsuperscript{189}, raised concerns with regard to the consequences of the use of fuel tablets on prisoners' health, considering that the risk of overloading of the electricity network, which is often mentioned in order to explain why hotplates are not offered for sale, could be offset by the introduction of hotplates of limited power.

The follow-up inspection of the remand prison of Villefranche-sur-Saône, conducted in 2012, showed that no provisions whatsoever had been made following the first inspection of 2008 in order to remedy the exclusive use of fuel tablets sold in the prison shop as the sole means for prisoners to cook in their cells.

However, by a ruling of 12\textsuperscript{th} April 2012, the Administrative Court of Versailles ordered the State to pay compensation to one prisoner for whom the use of such tablets caused serious respiratory lesions.

Moreover, in the month of July 2012 the Contrôleur général again raised these concerns with the director of the prisons administration department, in order once again to recommend the prohibition of sale of this product in prison shops. At the time of the drafting of this report, the Contrôleur général is still awaiting an undertaking with regard to this issue.

### 4. Subjects which continue to pose major problems

#### 4.1 The Protection of Medical Secrecy in Prison

In his annual report for the year 2011, the Contrôleur général emphasised the importance of the protection of medical secrecy in places of deprivation of liberty and in prisons in particular. This annual report and the inspections of institutions make it possible to report the sensitive nature of the issue of protection of medical secrecy in prison.

At the time of inspections, the inspectors still too often note that rooms for consultations are not always appropriate for the protection of confidentiality and that the presence of prison officers in treatment rooms is quite common. The inspectors also note that when prisoners are removed from prison in order to go to hospital, the virtually systematic presence of prison officers in examination rooms and the lack of dedicated access routes make it impossible to ensure the protection of medical secrecy\textsuperscript{190}. It is not rare for the inspectors to collect testimony from prisoners who refuse to go to hospital in the absence of certainty with regard to the confidentiality and privacy of the conditions under which they receive treatment.

\textsuperscript{187} The uneasiness among staff and directors of prisons is an illustration thereof.
\textsuperscript{188} Inspection report for the remand prison of Villefranche-sur-Saône of 23\textsuperscript{rd} And 25\textsuperscript{th} September 2008.
\textsuperscript{189} Complaints made by prisoners to prison medical services; report of the Toxicovigilance coordinating committee (comité de coordination de toxicovigilance) January 2007, inspection reports of the DRASS (Direction régionale des Affaires sanitaires et sociales [Regional department of Health and Social Affairs]) of the Ile de France – November 2007 and March 2008.\textsuperscript{190} Cf. section 1 of this report.
On the other hand, the Contrôleur général is pleased to note the publication of the interministerial circular of 21st June 2012 from the Ministry of Justice and the Ministry of Health and Social Affairs, concerning the sharing of operational information between health professionals and professionals within the prisons administration and the Judicial youth protection service. This circular makes it possible to establish a list of information which should or may be exchanged between professionals, in order to ensure security in prisons while protecting the medical secrecy guaranteed to persons in custody by article 45 of the Prisons Act of 24th November 2009. However, the Contrôleur général deeply regrets that the issues dealt with in the report for 2011 and recalled above are in no way taken up in the circular, despite the fact that they continue to pose problems in institutions. In addition, he is surprised by the contents of the list of information which “may” be passed on by prison professionals, without therefore any obligation on their part (“non-systematic and non-urgent nature”): it includes information on the family and social background of prisoners, on their behaviour in custody and participation in activities, their personal hygiene and the cleanliness of their cells. Nevertheless, these are essential pieces of information for the provision of high-quality healthcare to prisoners.  

4.2 Provision of medical services for transsexual prisoners

On 30th June 2010, the Contrôleur général published an assessment concerning prisoners suffering from problems of sexual identity. These are persons serving long sentences who report their feeling of belonging to the opposite sex and who encounter difficulties in their conditions of detention and in the medical services provided for them.

The observations highlighted in 2010 by the Contrôleur général remain pertinent in 2012: there are still no guiding principles applicable to institutions as a whole, which leads each director to make decisions on a case-by-case basis (authorisation to wear women’s clothing, possibility of buying beauty products in prison shops etc.). Furthermore, imprisoned transsexual persons do not have access to medical care provided outside of institutions and only one of them has had the benefit (and moreover rather belatedly) of routine access to a specialised team within the national public health institution at the remand prison of Fresnes.

After being questioned about this issue in June 2012, the Minister of Health and Social Affairs replied in October 2012 that hospitalisation at Fresnes could not constitute a general rule to be applied for dealing with imprisoned transsexual persons, pointing out that: “In view of the geographical location of specialised teams, the prison administration should, in coordination with the medical teams, assess the appropriateness of transferring these persons to prisons near towns that possess such teams, so that appropriate medical care may be provided in the course of their imprisonment”.

The Contrôleur général can only be surprised by this reply, which echoes current practices for dealing with transsexual persons that have shown their limits, as recalled in the assessment of 2010. Indeed, it is the absence of structure in the supply of treatment for prisoners that gives rise to difficulties of provision of medical care, slowness in the taking of measures aimed at persons and the heterogeneity thereof according to institutions.

Overall structure of this kind (which could be based upon the recommendations of the Haute Autorité de santé Health Authority in its report published in February 2010) indeed comes within the competence of the Ministry of Health and the responsibility of the prisons administration therefore only extends to organising itself in order to allow access to the healthcare considered appropriate by the medical teams.

Cf. section 5 of this report.
The Contrôleur général must emphasise the great distress in which persons deprived of liberty suffering from disorders of sexual identity continue to live. Apart from the uncertainties to which provision of medical care for them is subject, their life in prison is full of bullying of all kinds and daily problems of living attributable to their difference. These difficulties can lead to suicides, as was the case in August 2012.

4.3 The application of the “Closed Doors” Regime to the Whole of the Prisoners of Long-Stay Prisons and long-stay Prison Wings

On 28th June 2012 the Contrôleur général took up the matter of the closing of cell doors in two wings of a long-stay prison with the director of the prisons administration department. One of these two wings had until then operated for many years under an open doors regime.

The closing of cell doors was begun on the basis of a decision taken in 2003 by the Minister of Justice, aimed at the systematic closing of doors in long-stay prisons.

It emerges from the facts ascertained by the teams of inspectors at the time of inspections of long-stay prisons that the application of this instruction in 2003 was very clearly made more flexible in the interests of both prisoners and staff, who acknowledge that strict implementation of the closed doors regime does not completely fulfil its declared goal, which is to guarantee security, because of the amount of tension that it generates, which increases exponentially with regard to persons serving long sentences. Moreover, the testimonies received show that it results in even greater isolation of vulnerable persons, since the latter inevitably find themselves living as recluses in their cells.

Furthermore, the application of a programme of this kind, which imposes systematic closing of doors, poses questions of legality, in view of the provisions of the Prisons Act of 24th November 2009 in particular.

Although article D.71 of the code of criminal procedure, which results from a decree of 20th March 2003, provides that “long-stay prisons and long-stay prison wings have a tightened security organisation and regime”, article 717-1 of the same code provides that the prison regime for persons in custody “is determined taking their personality, health, dangerousness and efforts in terms of social rehabilitation into account”. This is the legal foundation of differentiated regimes, the principle of which is based upon the adaptation of prison regimes to individuals, establishing them in application of article 89 of the Prisons Act, which means that a single prison regime cannot be collectively applied to a prison population as a whole. No legal provisions exclude the application of these provisions to prisoners in long-stay prisons. The pursued objective of protection of vulnerable persons does not appear incompatible with the implementation of differentiated regimes within long-stay prisons, although it certainly places an obligation upon management and staff for greater vigilance and regular reassessment of the situation of each individual prisoner.

In reply to the Contrôleur général, the director of the prisons administration department pointed out that the doctrine of his administration has remained unchanged since 2003 and imposes the “closed doors” system as the only applicable regime within long-stay prisons. He adds: “Although the rule of systematic closing of doors may be made more flexible in certain cases, my departments are instructed to recall the applicable rules and, if necessary, support the institutions concerned in order to re-establish the closed doors regime”. However, the director of the prisons administration department specified that it is not impossible that the implementation of differentiated regimes may eventually be planned for certain long-stay prisons.

4.4 Renewal of Prisoners’ Residence Permits
In the institutions inspected, the Contrôleur général has long observed that the practices of prefectures differ markedly with regard to the renewal of residence permits for persons in custody. It appears that certain decentralised administrations have reservations with regard to the very principle of issuing permits to imprisoned persons and consider that they should await the end of the term of imprisonment in order to deal with such applications.

However, refusal of renewal renders access to reduced sentencing measures practically impossible for residence permit applicants: it is therefore a source of discrimination in the enforcement of sentences. For this reason the Contrôleur général has put questions to the Minister of the Interior on several occasions with regard to these practices and the possibility of changes to them. He received a reply to the effect that a draft framework convention had been elaborated and validated by the ministerial authority. However, in spite of several reminders, at the time of writing this report, this framework convention has not been passed on to the Contrôleur général and does not appear to have come into force. The difficulties raised by the Contrôleur général in his letters therefore continue in a non-negligible number of prefectures.

4.5 The Use of Information Technology in Prison

In his assessment of 20th June 2011 concerning access to information technology for persons in custody, the Contrôleur général emphasised that access to online IT facilities was all the more important for prisoners insofar as the latter are not at liberty to come and go. A large proportion of information coming from outside, useful in particular for the rehabilitation of prisoners on their release, is therefore only available by means of IT media. It must be admitted that use of IT in prison is still subject to such constraints that prisoners are deprived of a particularly useful tool providing access to information, communication and rehabilitation.

As the Contrôleur général was able to ascertain during an on-site inquiry conducted in a prison in June 2012 (of which details are given in the following pages), methods of control of hardware may lead to the seizure of computers for long periods (several months) without the implementation of disciplinary proceedings or any possibility for prisoners to have their remarks taken into account under article 24 of the act of 12th April 2000 concerning the rights of citizens in their relations with the administrations. The Contrôleur général also ascertained that neither reports on searches performed on computers nor authorisations or refusals with regard to the deletion of data were placed in prisoners’ personal IT dossiers, which prevents the traceability of control measures and their follow-up actions. More generally, the Contrôleur général once again ascertains that the ways in which provisions concerning information technology are applied continue to vary considerably from one institution to the next, to the great detriment of prisoners when they are transferred. In numerous letters received, prisoners report long-term deprival of their computers following changes of institution, without their understanding the reasons for the withholding of equipment that in some cases they had been using for a long time.

Finally, the Contrôleur général also ascertains that the possibility of prisoners gaining access to IT facilities in shared areas does not make up for restrictions placed upon the use of IT in cells. In the institution within which the inquiry was carried out in June 2012, various difficulties of operation, and in particular the ascertainment of breaches of rules in the use of the computer hardware made available, provided justification for the closing of the IT room (the closure had been effective for two years at the date of the inquiry), without any plans to reopen it to date. In this case, the highly regrettable fact should be emphasised that the general restriction of access to IT facilities is based upon the inability of the administration, in view of its resources, to control the use made thereof. The same continues to apply to access to e-mail services in prisons as a whole.
Here is the inquiry report as handed over to the director of the (long-term) detention centre concerned:

“Dear Madam the Director,

In order to gain a better understanding of access to IT for prisoners within your institution, I delegated two heads of inquiry to conduct on-site verifications on the basis of the evidence and to have talks with the assistant director, the local IT systems correspondent and prisoners who own computer hardware.

On 18th and 19th April last they went to your institution and were able to gain access to the documents requested without any difficulties and converse in a confidential manner with all of the people that they wanted to interview.

From the various difficulties raised concerning access to IT facilities, it was possible to ascertain the following:

**Rules of access to IT facilities in the detention centre**

The rules and regulations of the detention centre, which were validated on 11th May 2009 by the interregional department of prison services, specify the terms of access to IT facilities in detention, under section 3 concerning relations. Technical data sheet no. 3, which is annexed to the rules and regulations, specifies the legal framework and deals with the processing of applications for the purchase of IT equipment, hardware (principal authorised and prohibited technologies), exchange of IT media, computer passwords, the placing of seals on cases, physical and virtual searches on computers and data media, and release as well as IT publications. The text refers to the circular of 10th August 2006.

The Contrôleur général des lieux de privation de liberté (CGLPL) recommends that the part of the rules and regulations dealing with the use of IT facilities in the detention centre should be brought into line with current circulars.

In addition to this text, the circular issued by the prisons administration department (DAP) on 13th October 2009 concerning access to IT facilities for persons in custody may be consulted in prisons, in the offices of senior prison officers and accommodation officers.

Since the general search conducted upon IT facilities organised by the Interregional Department of Prison Services of … in January 2012, a copy of the public version of the aforementioned circular, with acknowledgement of receipt, is handed over to every prisoner who requests the acquisition of a computer or the use of an IT tool in their cell.

The local information systems correspondent (CLSI) has occupied his position since 2003. He henceforth works alone, his former colleague having given up their duties within the institution several weeks before the on-site inquiry took place. In addition to managing prisoners’ computer hardware, he is also in charge of the institution’s IT facilities: the computers of prison administration staff and of the activity rooms (library, school centre, IT room and workshops). The CLSI mentioned that he does not have any qualification in the IT field. He moreover specified to the inquirers that prisoners often have greater knowledge of IT than he does himself.

**The CGLPL recommends the recruitment of persons with IT qualifications for CLSI positions. Failing this, the personnel appointed should be able to have the benefit of training leading to the award of qualifications in the field.**

At the time of the inquiry, there were sixty-four\(^{192}\) computers in the detention centre: two of them belonged to persons soon to be released, and were offset by applications for the acquisition of computer hardware from two other prisoners. By way of comparison, at 20th September 2011, fifty-five prisoners possessed computers in the detention centre.

The inquirers were informed that there were seventy-eight games consoles in the detention centre at the time of the inspection. However, it emerges from the – undated – list of games consoles brought to the attention of the inquirers that fifty-six prisoners possess one or several games consoles, that is to say sixty two games consoles divided as follows:

- One of which the nature is not specified;

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\(^{192}\) At the time of the visit, the total population of the institution amounted to 293 prisoners. The proportion of persons possessing computers in detention was then 22% of inmates.
- thirty-seven PS2;
- sixteen PS1;
- eight Game Cubes.

This list, drawn up in the form of a table, includes the prisoner’s prison number and name, the nature of the console and its reference, the date of purchase, the cell number and comments (transfer, placing of items with prisoners’ stored property, restitution, gift etc.).

So-called “new generation” consoles are prohibited in the detention centre, in accordance with the DAP circular of 13th October 2009 concerning access to IT facilities for persons in custody. Prisoners are allowed to have authorised consoles brought in (PS1, PS2 and Game Cube), by means of the visiting rooms, which then undergo IT controls and have seals placed on them.

The institution authorises gifts of games consoles, though not of computer hardware, between prisoners at the time of their release, with the express agreement of the director of the detention centre. Thus, according to the abovementioned list, four prisoners possess games consoles given to them by released prisoners.

“The CGLPL acknowledges the putting in place of these two procedures, which allow prisoners to make up for the impossibility of purchasing new games consoles and thus have the benefit thereof in detention. However, in the absence of confirmed risks for the security of institutions, the CGLPL recommends that prisoners should be left the possibility of acquiring second hand games consoles and so-called “new generation” games consoles.”

The purchase of games for consoles is managed by the property office whereas the CLSI is in charge of peripherals (joysticks).

The institution authorises the purchase of computers for playing games in cases where it is not possible to find a games console that corresponds to the security criteria issued by the prisons administration department circular of 13th October 2009 concerning access to IT facilities for persons in custody. The inquirers were informed that games distributed free of charge by magazines or requiring activation via Internet are placed with prisoners' stored property.

The CGLPL recommends that the CLSI should carry out the activation via Internet connection of games and software – authorised by the DAP circular of 13th October 2009 – supplied with specialised magazines.

An “IT Department” letter box has been installed in the detention centre for two months, in order to receive requests from prisoners: applications for authorisation of gifts between prisoners or for the restitution of computer hardware, various questions (state of progress of orders, lateness etc.). The CLSI then sends a reply to the prisoner by letter, including the requested information. The installation of a terminal was scheduled for 23rd April, in order to begin putting an electronic liaison register (CEL) in place. It is nevertheless specified that in case of dispute, copies of both the request and the reply are made and placed in the personal IT dossier of the prisoner concerned. The inquirers were able to ascertain that certain requests had indeed been included in the dossiers consulted on-site.

The placing of a letter box at prisoners’ disposal, which is reserved for the IT department, is a positive measure.

According to testimonies gathered by the inquirers and requests sent to the Contrôleur général, prisoners experience difficulties in being granted interviews with the staff in charge of IT facilities in the detention centre. It was not possible to verify these assertions. The latter declares that within the framework of his activities he moves about the passageways of the accommodation buildings on a daily basis and replies to requests from prisoners who speak to him.

**Procedures for acquisition and use of computer hardware**

A personal dossier is opened for each prisoner, either at the time their arrival in the institution in cases where they already own computer hardware, or at the time of the acquisition of such equipment.

The minimum content of this dossier is an application form “application for acquisition or use of computer hardware and games consoles in cells” completed by the prisoner. In particular, the latter has to set out the prisoner's reasons for wanting to use or acquire such
equipment. A summary of the rules and regulations is included with this document in order to inform the person of the regulations concerning authorised equipment and use thereof. It thus sets out the conditions of purchase, licit technologies, prohibitions linked to data media, procedures for control of computer hardware and content, the sealing of cases, procedures for searches in the course of detention and at the time of release, acquisition of IT publications and removal of any items attached to the latter, as well as the legal framework for the above provisions.

At the time of the inquiry, the institution had recently undergone a search organised by the Interregional Department of Prison Services (DISP) of … at ministerial request in January 2012. Some of the personal IT dossiers, which had been consulted by the teams of the DISP of …, were not present in the filing cabinets provided for this purpose. Indeed, a certain number of personal dossiers were still retained in the search files made up by the interregional department and certain documents had been removed from personal dossiers.

Subject to the exception of the documents retained by the interregional department within the framework of the Ministerial search, it is absolutely essential that personal IT dossiers be kept up to date.

For a total of sixty-four computers possessed by prisoners at the time of the inquiry, the inquirers were able to collect and consult fifty-eight (91%) of the IT dossiers. Out of this sample, it appears that the application form for acquisition or use was absent from nine (16%) of them. The forty-nine forms present included twenty-one (43%) applications for acquisition and twenty-six (53%) applications for use, while two (4%) did not give any information making it possible to determine the origin of the application. In the light of the other documents present in the personal IT dossiers, it appears that out of the nine dossiers in which the forms were absent, one originated from an application for acquisition, three from applications for use and five remain unknown.

The possession of computers has to be justified with a view to plans for training or rehabilitation (work, professional training, education or leisure activities), in application of article D.449-1 of the code of criminal procedure. The inquirers were able to ascertain that the reasons for applications were principally the desire to follow training courses in IT and various other subjects (twenty-three applications) and the fact of having acquired equipment in previous institutions (twenty-one applications); while seven applications were unexplained.

The CGLPL recommends that the possibility of acquiring computers by prisoners should not be subject to any particular justification.

The inquirers were informed that, in general, applications for acquisition or use are not refused. A single case was encountered, due to the profile of the applicant, who had been convicted for acts of computer hacking. The inquirers were also able to ascertain that one application for acquisition had been granted on the condition of enrolment on an IT course. An enrolment certificate dated June 2010 was included in the dossier and acquisition of the computer had been allowed in October of the same year. In the absence of dates on acquisition application forms, it is not possible to determine the average time required for the issuing of responses, on the part of the authorities concerned (RLE, CPU and the management of the detention centre), to applications submitted by prisoners.

The CGLPL recommends that dates of signature of documents should be systematically given in order to allow traceability of the time elapsed between initial applications and supply of equipment, thus providing information on the course of events.

According to the procedure laid down within the institution, applications for acquisition or use of computer hardware made by prisoners have to be stamped by the single multidisciplinary committee (CPU) and the director. The opinion of the Local Teaching Manager (RLE) may also be requested. Out of the forty-nine applications consulted, seven mention approval on the part of the RLE (14%), six on the part of the CPU (12%) and twenty-eight from the director of the institution (57%). Finally, nine (18%) applications had not been stamped and only three (6%) had received approval from all of the authorities (RLE, CPU and the director).

The CGLPL recommends that approval on the part of the CPU should be systematically established by means of a stamp placed upon applications for acquisition or use of computer hardware, when the situation of the person concerned is examined within this framework.
An “undertaking to comply with the rules concerning prisoners’ access to IT facilities” should also be signed by the prisoner, setting out the obligations and sanctions and the legal framework for these rules. Among the fifty-eight dossiers consulted as a whole, eleven (19%) did not contain any written undertaking. Out of the forty-seven written undertakings present, only two were dated and one had not been signed.

It would be desirable to date the whole of the documents signed by prisoners, and undertakings to comply with the rules in particular, in order to make it possible to prove that prisoners have been informed of the prohibitions linked to the use of computers, from the moment that the latter are handed over to their owners.

Following transfers or purchases, certificates attesting that computers are in proper working order are systematically drawn up at the time of their receipt, after their central processing units have been opened. This should also be signed by the owners of the equipment, following the completion of the physical search. Among the fifty-eight dossiers consulted, forty-five certificates (78%) were present, but seven of them had not been signed.

The dossier may also contain the IT data record, which gives the dates of inventory and handover of equipment, of the opening of the IT dossier, of the undertaking to comply with the rules concerning prisoners’ access to IT facilities and of the certificate attesting that the computer was in proper working order after the CLSI checks, at the time of arrival in the institution. This document also gives the number of the seal placed upon the hardware and the findings recorded after it had been searched. It is stamped by the director of the institution. Out of the fifty-eight files consulted, it was only possible to find nineteen data records (33%).

Since the general search conducted in the month of January last, organised by the DISP of ..., the version of the circular of 13th October 2009 that is available to the general public, concerning access to IT facilities for persons in custody, is handed over to prisoners, who are asked to sign an acknowledgement of receipt thereof. However, no documents concerning issue of the circular were found in the dossiers consulted as a whole. However, it was specified that this circular had been issued to all owners of computers when hardware was withdrawn during the general search. Testimonies gathered from prisoners confirmed their receipt of the circulars.

The CGLPL is pleased with the practice of placing the DAP circular of 13th October 2009 at the disposal of owners of computer hardware, which enables real access to the regulations that apply to them. He recommends that this practice should be continued for prisoners who become owners of computers in the future and brought into general use for prisons as a whole.

The IT dossiers also contain copies of invoices proving ownership of equipment acquired in detention. Out of the fifty-eight dossiers consulted, forty-four (76%) contained invoices for equipment.

Moreover the inquirers ascertained that personal IT dossiers are relatively rarely exchanged between prisons. Thus, out of the twenty-eight dossiers concerning persons who acquired their equipment in previous institutions, only twelve (43%) had initial inventories or invoices proving prior purchases.

When equipment is purchased within the detention centre copies of the invoices are handed over to the persons concerned; when personal IT dossiers are not transferred between institutions, it is difficult to prove the market value of certain pieces of equipment in scenarios where applications for indemnification might be envisaged, because of loss or damage to the said equipment.

The inquirers were informed that it is difficult to obtain previously established personal IT dossiers and that when prisoners who own computers are transferred to other prisons, the whole of their personal IT dossiers are sent to the new institutions receiving them.

The CGLPL recommends that in case of transfer of prisoners who own computers, the institutions from which they depart should systematically send their personal IT dossiers to the institutions receiving them. As a minimum, initial inventories and certificates attesting proper working order of equipment, as well as copies of invoices should be passed on.

Prisoners are not authorised to have computer hardware sent out of prison during their detention. Exchanges and gifts of computer hardware between prisoners are prohibited. This
The provision of the DAP circular of 13th October 2009 is recalled in a note from the Interregional Department of Prison Services of … dated 6th August 2010.

In the absence of valid grounds pertaining to the security of the institution, the CGLPL recommends the putting in place of a procedure to authorise and supervise gifts of computer hardware between prisoners, subject to control by the CLSI and deletion of data.

Suppliers

At the detention centre of …, one single supplier of computer hardware is approved by the Interregional Department of Prison Services:

Z Informatique, a local company. An agreement was signed between the institution, the said company and the Interregional Department in 2009. However, at the time of the inspection, the inquirers were able to point out that the document was not dated. In response they were informed that the elaboration of a new agreement was in course, for the year 2012.

Exchanges between the CLSI and Z Informatique principally take place by means of e-mail. It should be noted that the CLSI goes to the shop from time to time in order to apply warranties on hardware and check the stock.

The inquirers were informed that neither the institution nor the supplier has the benefit of a profit margin.

A second supplier of computer hardware is currently being sought. Verification of criminal records among the staff of one of the companies identified did not make it possible to follow-up the procedure.

The prisons administration department circular of 13th October 2009 concerning access to IT facilities for persons in custody specifies that “in order to guarantee the homogeneity of IT facilities, offer the best conditions of purchase and above all ensure application of the security rules on this issue, one or several binding agreements may be drawn up between prisons and local, regional and national direct or mail order selling suppliers of computer hardware, specifying the terms of acquisition of this hardware by prisoners”.

A second company, Pearl, whose catalogue is available to prisoners (in this instance on each floor of the detention centre for reference consultation or borrowing), also offers computer hardware. However, this company is not considered to be a supplier – under the terms of the DAP circular of 13th October 2009 - since, according to the information passed on to the inquirers, it had refused to sign the agreement or even supply a list of equipment authorised by the aforementioned circular. Thus, prisoners do not have the possibility of buying computer hardware from this company, although the purchase of “small consumables” is apparently tolerated by the institution. According to the information provided to the inquirers, the latter are above all peripherals and consumables that do not pose any difficulties in terms of security, for example mice, diskettes, paper and ink cartridges.

The Pearl Company was contacted by telephone in order to find out its reasons for refusing to formalise the existing partnership with the detention centre. It emerged from this exchange that the company had not made any refusal. The inquirers are not therefore in a position to be able to establish the real reason that no agreement has been signed, in view of the contradictory nature of the evidence.

The CGLPL recalls the terms of the assessment of 20th June 2001 concerning access to IT facilities for persons in custody, according to which prisoners should be free to purchase the necessary equipment from any supplier whose company name is clearly identified, by mail order or online, and subject to prior control by the administration for the sole purpose of verifying that the chosen equipment meets the conditions mentioned under point 8 of the aforementioned assessment.

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193 Point 8: “Prisoners should be able to have the benefit of a share of computers in their cells that corresponds to their needs, as well as the data storage capacities that they consider useful, and finally of any peripheral and any so-called “external” IT programme (software etc.), as long as – and on the sole condition – that they compromise neither their rehabilitation, nor proper order within the institution, nor the interests of victims, and that the place of detention possesses the necessary electrical installations and space”. 

95
Computer hardware is acquired by means of external purchases. For this purpose, prisoners have to fill in order forms and hand them over to the CLSI before the 5th of each month.

The supplier Z Informatique offers six models of computers that meet the criteria specified in the DAP Circular of 13th October 2009 concerning access to IT facilities for persons in custody, for purchase prices of between 249 and 799 euros (PC Z Info 1 for a total of 249 euros, PC Z Info 2 for 295 euros, PC Z Info 3 for 429 euros, PC Z Info 4 for 459 euros, PC Z Info 5 for 659 euros and PC Z Info 6 for 799 euros). The Windows 7 Home Edition operating system is offered with this package for 119 euros and LCD screens come as an option (119 euros for a 19-inch screen and 169 euros for a 22-inch screen). It should be noted that licences for the Windows 7 Home Edition operating system can be purchased on the market – in particular via online sales – for prices starting at 89.99 euros.

The inquirers were informed that, in cases where prisoners want to purchase spare parts, requests for estimates are sent to the company in order to inform purchasers of the price charged. The latter then decide whether or not to confirm their orders. The accounts department then freezes the amount in the prisoner’s personal account. However, it was specified to the inquirers that prisoners must imperatively include the word “estimate” on their order forms, failing which the request is considered to be confirmation of the order. When the note “estimate” is not marked, the items are thus purchased without the prisoner first being informed of the price charged. This rule, which is apparently specified orally at the time of the initial interview, has never been taken up in any motion concerning the rules and regulations and has never been made formal by a memorandum to inmates within the institution. As a result, certain prisoners expressed incomprehension concerning purchases made without their agreement and without them having been able to receive prior notice of the price charged.

The prisoners as a whole should be informed of the procedure for purchases of computer hardware – specifying the distinction between orders and estimates – by all useful means making it possible to bring the matter to their attention.

Moreover, it emerges from examination of the order forms that certain prisoners, having sent purchase applications on the basis of the detailed descriptions and prices contained in the Pearl catalogue, apparently did not receive any reply specifying that they should lodge new applications with the CLSI. Thus, the hardware identified in the Pearl catalogue appears to have been automatically ordered from Z Informatique, at a higher price.

In addition, according to the testimonies collected, it appears that the reasons given to prisoners for the impossibility of purchasing hardware from Pearl are unclear and subject to various different interpretations. Thus, some of them were informed that hardware from the catalogue was less reliable, less high-performance or not guaranteed. Finally, the inquirers were informed that certain prisoners had purchased peripherals from Pearl, whereas others found themselves obliged to buy them from Z Informatique.

The following can be ascertained from examination of the Pearl order forms for the year 2011 and the first quarter of 2012:

- purchase of HDMI cables was systematically authorised, with the exception of two order forms completed in September and October 2011, in which the necessity of applying to the CLSI is mentioned;
- the purchase of keyboards was authorised for order forms completed in the months of April, May, June and July 2011, but was refused for orders placed from the month of October 2011 onwards;
- it was possible to purchase mice until May 2011; subsequently order forms were refused on the grounds that they had to be ordered through the CLSI;
- from October 2011 to February 2012, detainees no longer had the possibility of buying mouse mats via this company; an order form of March 2012 mentions the purchase of this consumable.

The inquirers also found inconsistencies in the authorisations granted. Thus, on 27th September 2011 a purchase of an HDMI cable was authorised via Pearl, whereas a similar request dated 28th September was refused on the grounds that they had to be ordered “by the intermediary of CLIs, not from Pearl”.

96
The inquirers examined two identical but contradictory order forms, completed by the same detainee for the purchase of a speaker system on 4th July 2011, but apparently signed at different dates: one implied approval of the purchase whereas the other contained the crossed out reference indicating refusal of the order. Finally, an order form dated 4th September 2011 and completed by another person authorised the purchase of the same product.

The CGLPL recommends that clear and precise information should be given to explain the real grounds on which the prison administration cannot grant applications for purchase of computer hardware from Pearl. The IT consumables that prisoners may purchase from this catalogue (ink cartridges, reams of paper etc.) should also be listed in order to avoid any dispute or unequal treatment.

The inquirers were able to consult the orders placed with the supplier Z Informatique by the IT department for the year 2011:

- January 2011: twenty-one items without prices being specified;
- February 2011: sixteen items for total amount of 934 euros;
- March 2011: twenty-five items for total amount of 2,718 euros;
- April 2011: thirteen items for total amount of 2,215 euros;
- May 2011: no order forms;
- June 2011: nineteen items for total amount of 1,559 euros;
- July 2011: ten items for total amount of 499 euros;
- August 2011: no order forms;
- September 2011: nineteen items for total amount of 3,528 euros;
- October 2011: twenty-two items for total amount of 2,758 euros;
- November 2011: no order forms;
- December 2011: twenty-six items without prices being specified

For the year 2011, seventeen computers were purchased by prisoners. According to the abovementioned information, the total amount of orders placed with Z Informatique for the year 2011 amounts to 14,211 euros.

Control of computer hardware

The DISP of … recommends that two searches should be conducted upon the whole of the computers every year. The CLSI informed the inquirers that, apart from searches conducted on arrival and departure from the institution, the computers as a whole are in practice analysed at least once a year.

At 11th January 2012, out of a total of sixty-three computers, the hardware control follow-up document for persons in custody indeed shows that the whole of the computers has been controlled at least once a year, for the last three years. Excluding search operations carried out on arrival or attributable to recent purchases of computers in the detention centre, it appears that fourteen computers were controlled three times in the same year and thirty-six of them twice in the same year. This document also lists the seal numbers and passwords of computers. Two computers were seized within the framework of these controls: one had been handed over to the Interregional Department following its seizure on 17th December 2011 and the other was placed in storage, awaiting repair following its seizure on 6th May 2011.

It appears regrettable that no search reports are included in the personal IT dossiers, nor any certificates attesting that computers are in proper working order, nor any authorisations of deletion of data. The CGLPL recommends the centralisation of the whole of these documents within the personal IT dossiers of prisoners who own computer hardware.

The CLSI physically and virtually controls computer hardware at the time of arrivals within the institution, before placing new seals upon it. He draws up search reports, diagnoses and inventories of new arrivals’ computer hardware. After going to wing for new arrivals, the persons are called to the property office in order to reboot their equipment in the CLSI’s presence. A
certificate attesting that the computer is in proper working order is then signed by the prisoner, which is placed in their personal IT dossier.

The CLSI is faced with practices that differ from one prison to another as far as authorisation for placing computer hardware among prisoners’ stored property is concerned and with regard to the storage capacities of internal hard disks. In this regard, complaints have been brought to the CLSI’s intention, as shown by certain written applications appearing in the personal IT dossiers.

In accordance with the terms of the assessment of 20th June 2011 concerning access to IT facilities for persons in custody, the CGLPL emphasises the prejudice caused by the considerable differences in the way that provisions concerning the use of IT facilities in prison are applied from one place of imprisonment to another and recalls that limitation of the storage capacity of hard disks cannot be justified with regard to the maintenance of order and security.

The Contrôleur général des lieux de privation de liberté recommends that a specific list should be drawn up of computer hardware that is to be placed among prisoners’ stored property.

When prisoners are released, their computer hardware is inspected and the personal data is deleted. The equipment is taken by the CLSI one or two days before the date of release, in order to carry out this inspection, which may take up to a day, according to the quantity of data present on the hard disk of the computer.

The CGLPL recommends that prisoners who own computers should be able to keep their personal data when they are released.

When prisoners are transferred, checks are once again made in the person’s presence in order to confirm that their equipment is in proper working order, before they are sent to the new institution.

In addition to general searches, the CLSI also carries out unannounced inspections of computers in cells and carries out checks twice a year on the IT facilities accessible to the inmate population, including about forty computers dedicated to educational activities and about twenty placed in the workshops. In particular, these checks include verification that the seals are intact. The CLSI is also in charge of the inspection of around 120 computers. However, the inquirers were informed that the IT room had been closed for six months due to the discovery of signs of connection of USB keys at the time of a search of the computers and of a few Internet connections.

The CGLPL requests the reopening of the IT room as quickly as possible in order to allow prisoners who do not own computers to have the benefit of access to IT facilities.

The general IT search conducted last January required the presence of a team of six officers from the IT department of the DISP of … for three weeks.

The whole of the computers present in the detention centre were searched; signs of USB keys and connection to Internet were discovered in about ten of them. Interviews were conducted by the head of the IT unit of the DISP and the head of the detention centre with the owners of the computers concerned, in order to identify the possessors of these storage tools. According to the testimonies collected by the inquirers, it appears that certain prisoners were able to keep the whole of the data contained on their hard disks, in exchange for disclosure of the identity of the owners of USB keys. Threats of withdrawal of computer hardware and additional sentences were also apparently used for this purpose. However, the inquirers were not in a position to be able to confirm the truthfulness of such declarations. In any case, illicit data was deleted, after obtaintment of written agreement from the persons concerned, in accordance with the DAP circular of 13th October 2009 concerning access to IT facilities for persons in custody.

Examination of the dossiers of the IT search shows that the nature of the files deleted is not specified in authorisations for deletion of data contained in internal hard disks of computers. Thus, personal documents, music (of which the originals were among the prisoner's stored property) and training software such as the Encarta encyclopedia were apparently deleted. Similarly, it appears that artistic creations prepared with a view to shows put on for prisoners – in liaison with the prison rehabilitation and probation department – were deleted.
The CGLPL recommends that special attention should be paid to the preservation of prisoners’ personal data contained in the hard disks of their computers.

The CGLPL also recommends that the deletion of illicit data should compulsorily be subject to prior written agreement from the owners thereof, after they have been given an exhaustive list of the data concerned and informed of the reasons for which it has to be deleted, in accordance with article 24 of the act of 12th April 2000.

The inquirers were informed that at the end of the general IT search of January last, disciplinary proceedings were considered against certain prisoners on whose computers signs of USB keys had been found, of which the use was contrary to the DAP circular of 13th October 2009 concerning access to IT facilities for persons in custody. Moreover, one of the computer owners had to appear before the disciplinary committee on 24th February last.

Two computers were not restored to their owners: one for which legal proceedings have been instituted by the public prosecutor at a court of first instance due to the presence of photographs and videos of child pornography, and the other because of the prisoner’s refusal to authorise deletion of the data on the internal hard disk of their computer.

At the time of the inquirers’ arrival, no proceedings had been instituted against the latter computer owner: there had not been any disciplinary measures or any implementation of article 24 of the act of 12th April 2000 with regard to the confiscation of this hardware. The inquirers examined the prisoner’s personal IT dossier; the confiscation of this computer is not established in any document. The DAP circular of 13th October 2009 concerning access to IT facilities for persons in custody specifies that “if prisoners refuse to sign because […] they do not authorise the deletion of prohibited files, they state this in the report. In this case, confiscation of the equipment for conservatory reasons makes it possible to have a more detailed inspection carried out by competent third party personnel.”

The CGLPL would like to obtain clear information on the reasons for the confiscation of this computer and its legal basis in view of current texts.”
Section 3

Discipline and Sanctions in Places of Deprivation of Liberty.

Do the principles set out in the Declaration of the Rights of Man and of the Citizen of 26th August 1789 stop at the threshold of places of deprivation of liberty, as far as the punishment of breaches of internal order within these institutions is concerned? In other terms, does the rule of law have its place there and, if so, what is the precise boundary thereof? These are fundamental issues with regard for respect for captives’ rights: in the first place with regard to prisons, though after more than four years of inspections, the experience of the Contrôleur général des lieux de privation de liberté has shown that they also concern all other places of deprivation of liberty.

The principle of the lawfulness of offences and punishments sometimes appears far removed from places of deprivation of liberty. Nevertheless, it must be recalled that the general principles of the laws of the French Republic, as well as the provisions of the European Convention for the Protection of Human Rights, cannot be subject to any limitations in their field of application.

Here we intend to examine the application of the rules, whether written or otherwise, that are used to punish behaviours considered wrongful within communities of captives.

Due to the shortness of their stays in such places, persons placed in police custody or in the jails of law courts are excluded from this examination.

In the course of the completion of their duties, the inspectors have become convinced of the existence of considerable differences between types of institutions with regard to discipline and sanctions.

Since the Hardouin et Marie ruling made by the French Council of State in 1995194, disciplinary measures in the prison environment are no longer considered to be simple measures of internal order and are henceforth subject to ex post facto control on the part of administrative judges.

For its part, the European Court of Human Rights (ECHR) has been led to pronounce on the definition and contours of such internal order within places of captivity on numerous occasions. It laid down several principles in the ruling Ezeh and Connors vs. United Kingdom195 delivered by the Grand Chamber on 9th October 2003: although it considers that disciplinary actions do not come within the scope of article 6 of the ECHR, in particular with regard to the need to respect the principles of fair trial, on the other hand the Court itself reserves the right to define the respective contours of the criminal and disciplinary fields.

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Moreover, the ECtHR ruled against France on three occasions in 2011, due to the absence of effective remedy against disciplinary measures.

Two requirements appear to have been laid down through these rulings: on the one hand, the right to effective remedy against sanctions imposed by disciplinary authorities; on the other hand, guarantees with regard to conditions of detention within punishment wings.

Although these rulings concern the conditions of exercise of disciplinary regulations in prisons, one can only note that no similar case law exists with regard patients hospitalised without their consent, children in young offenders’ institutions and foreigners in detention.

Thus, in the absence of formal disciplinary regulations meeting the requirements of the European Convention for the Protection of Human Rights, the human imagination, which is very fertile in this respect, has invented a whole range of disguised, unlawful and clandestine sanctions within institutions where their presence is unexpected, in particular with regard to committal to hospitalisation and patients who are prison inmates.

While the disciplinary regimes within other institutions, such as detention centres for illegal immigrants (CRA) and young offenders’ institutions (CEF), have poorly-defined contours and might be described as being “in their embryonic stages”. Provisions exist, however they remain very inadequate, allowing a non-negligible proportion of arbitrariness to remain.

Prisons, on the other hand, unquestionably possess real disciplinary regulations subject to codified rules, though much room for improvement nevertheless remains. Indeed, the existence of sanctions that are indirect, or devoid of any legal and statutory basis, is a reality and certain practices, which resemble the absence of law, are similarly not exempt from arbitrariness.

1. Empirical Disciplinary Practices built upon Legal Uncertainties

1.1 Misuse of Therapeutic Practices for Disciplinary Purposes within Health Institutions

Do practices which might resemble disciplinary management of patients exist within health institutions such as units for difficult psychiatric patients (UMD), public mental health institutions (établissements publics de santé mentale / EPSM), interregional secure hospital units (unités hospitalières sécurisées interrégionales / UHSI), specially equipped hospital units (UHSA) and secure hospital rooms? Can disciplinary regimes apply insofar as the notion of fault cannot exist within psychiatric institutions? How should certain practices, and physical restraint and placement in seclusion in particular, be interpreted?

1.1.1 Within Mental Health Institutions

Disguised sanctions can affect very concrete aspects of patients’ daily lives. Officially, these involve “treatment measures taken in the patient's own interest”.

Indeed, the notion of a “framework of treatment” sometimes appears to serve the purposes of the organisation of departments and of discipline, rather than strictly therapeutic aims, including as far as the administration of neuroleptics - sometimes referred to as “chemical straightjackets” - is concerned.

196 ECtHR, 20th January 2011, no. 19606/08, Payet vs. France; ECtHR, 3rd November 2011, no. 32010/07, Cocaing vs. France; ECtHR, 10th November 2011, no. 483337/09, Plathey vs. France.
In medical vocabulary, the “framework of treatment” encompasses:

- the treatment objectives of each patient taken individually;
- collective projects (occupational therapy workshops, support groups, cultural outings etc.);
- the therapeutic theories and concepts in reference to which individual care and treatment is considered and elaborated;
- the rules of life within hospitalisation units within which patients are accommodated.

Attending interviews with psychiatrists, taking the prescribed treatment, complying with the rules of operation of workshops, eating meals, either in common or individual rooms, complying with times for siestas, visits and going to bed: all of these form part of the “framework”.

The inspectors were able to ascertain that the framework of treatment is too often stressed in order to justify measures that do not fall within the therapeutic field. Thus, taking a shower every day provides its own justification, since it is a rule of hygiene; on the other hand, it is difficult to justify the impossibility of receiving visits from one’s family on Fridays by simply citing the “framework of treatment” elaborated in the patient’s own interest.

The presence of minors in units for adults should also only be justified by therapeutic criteria, to the exclusion of any other consideration.

The “framework of treatment” is elaborated and modified in a unilateral manner, by the medical team. Patients have no decision-making power with regard to this “framework” nor any control over its application.

For the most part, these major restrictions of fundamental freedoms are not traceable in any way whatsoever. No ad hoc registers have been established. It is sometimes asserted to the inspectors that these prescriptions appear in the medical records, to which the Contrôleur général does not have access. Patients therefore have no remedy against arbitrary decisions that they may legitimately consider to be wrongful, insofar as they are, by definition, unexplained and unwritten.

In the first place, this is the case with regard to the denial of patients’ rights to meet family and friends for limited periods, “in their own interests”; in a certain number of hospitals inspected, this denial is even established as a principle at the end of the first week of admission.

This is also the case with regard to denial of the right to make or receive telephone calls. Certain institutions have decided to impose the principle that persons committed to hospital cannot have access to the telephone for the first week of their hospitalisation. The length of telephone conversations may also be limited.

Patients may also be barred from correspondence with friends and family. In one institution in the North of France, certain letters may be intercepted “in the patient’s own interest and placed in their record”, without the existence of any procedure or traceability in this regard.

None of the institutions inspected have put registers in place, in order to ensure the traceability of letters sent by patients to the administrative and judicial authorities. This violation of freedom and confidentiality of correspondence is once again held to be justified by considerations of a therapeutic nature.
However, the existence of real proportionality between this restriction of a fundamental right and medical grounds, as required by article L. 3211-3 of the public health code, is not always established. In the absence of written procedures, the suspicion of disguised sanctions may legitimately weigh upon these practices.

Very often, the framework of treatment is adapted according to day-to-day events. In reaction to individual acts, measures are taken which change daily life for the patients as a whole. As a nurse in a UMD explains: “A clash with a nurse will often lead to [a coercive framework] being built to the detriment of the others”.

Indeed, some of the letters received by the Contrôleur général make it possible to shed light upon the existence of these collective sanctions within medical institutions. By way of example, one of these letters reported the instructions given by a doctor to the medical staff as a whole, in terms of measures to be applied to patients, following four incidents in which fires had been started, for which the person responsible had not been identified: “the unit no longer allows patients to go outside, including into the garden; no more tobacco or lighters and those that remain in the possession of patients are to be taken away; withdrawal of mobile phones, telephone calls and visits. For all patients until further notice”. When this issue was taken up with the director of the institution by the Contrôleur général, the former pointed out that “these kinds of conservatory measures [can be taken] when the security of patients and medical staff is endangered, which was manifestly the case. The measures taken concerning lighters, cigarettes and the closing of rooms were intended to prevent another fire in the unit.” In reply, the Contrôleur général emphasised that, although the removal of lighters and tobacco could be understandable as a precautionary measure, “withdrawal of mobile phones, prohibition of telephone calls and visits and denial of the right to go outside, including into the garden, do not appear to fall within the bounds of security measures. Indeed, these involve fundamental rights, restriction of which can only be enforced with regard to the patient’s mental condition and implementation of the required treatment, in application of article L.3211-3 of the public health code”.

Although precautionary measures may be taken in the interests of patients and staff, no sanctions, and a fortiori no collective sanctions, should be applied against persons hospitalised without their consent. Health institutions are places of treatment and not of punishment.

The inspectors also ascertained a general lack of openness and traceability with regard to decisions of placement of patients in seclusion rooms and under physical restraint, apart from any information which might be included in medical records, to which inspectors do not have access.

Protocols governing placement in seclusion rooms and under physical restraint exist in most of the health institutions inspected. However, the inspectors were informed that ad hoc files are still not included in patients’ medical records.

Moreover, the inspectors very often came up against difficulties in obtaining information concerning these placements. In one institution located in French overseas territories, the medical staff very clearly asserted that the seclusion room was used as a “punishment cell” in order to sanction certain patients. Moreover, one patient, who had been found not to be criminally responsible on the basis of article 122-1 of the penal code, found himself in this situation. He had

197 Of which the paragraph in question provides that “when a person suffering from mental disorders is subject to psychiatric treatment in application of the provisions of chapters II and III of this part, or is transported with a view to such treatment, any restriction upon the exercise of their individual liberties shall be adapted, necessary and proportioned to their mental state and to the implementation of the required treatment. In all circumstances, the dignity of the person shall be respected and their rehabilitation sought.
been placed in seclusion for fifteen days “for having had sexual relations with a female patient, and in order to prevent him from meeting her again”. Placement in seclusion for therapeutic reasons was never mentioned by the medical staff that the inspectors met in this institution.

Yet, placement in isolation rooms leads to the application of a particularly strict regime: the room is bare and is simply furnished with a securely fixed bed, on which a fireproof mattress is placed, with a cover and sometimes a sheet. In most cases, patients are allowed nothing else other than a pillow. They are not allowed access to the toilet or to a sink, in an adjoining room, without authorisation. In the vast majority of cases, visits are prohibited.

Treatment of this kind is not subject to any control since it is officially “treatment carried out for the good of the patient”.

Moreover, at the time of their inspections of mental health institutions, the inspectors ascertained that, in most cases, hospitalised prisoners are systematically placed in seclusion rooms, this situation not being dictated by therapeutic reasons. It was clearly asserted to the inspectors that these are security measures imposed in order to prevent escape. It was also revealed that this measure is sometimes required by the prefectural authorities.

1.1.2 Within Interregional Secure Hospital Units (UHSI)

The situation within specially equipped hospital units (UHSA) cannot be examined here, the Contrôleur général only having inspected one of the two institutions currently open.

UHSIs exclusively accommodate persons in custody.

Under the terms of article D.395 of the code of criminal procedure, “prisoners admitted to hospital are considered as continuing to serve their sentences or, in the case of unconvicted prisoners, as being on remand. Prison regulations remain applicable to them insofar as possible”. Therefore, after their return to prison, prisoners undergoing somatic treatment and care (UHSI) may be subject to disciplinary proceedings for all of the faults listed under articles R.57.7.1 to R.57.7.3 of the code of criminal procedure.

According to the staff interviewed by the inspectors, hospitalised prisoners are rarely subject to disciplinary proceedings on their return to the prison environment, it being understood that no sanctions are pronounced, and a fortiori applied, during periods of hospitalisation.

Other practices exist, apart from these seldom implemented statutory procedures. The inspectors were thus informed that, within one UHSI a prisoner had apparently been handcuffed to their bed on the initiative of prison staff; contrary to current regulations, this handcuffing had lasted for about thirty minutes without being reported to the interregional department of prison services (DISP).

In order to take the phenomena of agitation and refusal to obey on the part of patients within UHSIs into account, protocols (in some cases not signed or dated) have sometimes been elaborated. In one UHSI inspected, a document of this kind exclusively concerns cases of physical restraint that do not fall within the scope of medical treatment but which constitute, according the very terms used within the text, “corrective treatment”; oddly enough, actions of this kind are prescribed by doctors but responsibility thereof falls to the prisons administration.

In another unit, the rules and regulations lay down the conduct to be followed in case of incidents committed by hospitalised prisoners: “In cases of serious breaches of the teaching hospital’s (CHU) rules and regulations committed by prisoners, the managing director of the teaching hospital may in particular have them removed from the hospital as a disciplinary
measure, according to the hospitalised person’s state of health and after a medical opinion from the doctor in charge of the UHSI”.

The inspectors thus ascertain that the respective roles of medical staff and prison officials are not always clearly defined as far as the question of reacting in the face of incidents of a disciplinary nature is concerned.

1.1.3 Secure Rooms in Hospital Complexes

During inspections of secure rooms in hospitals, it was asserted to the inspectors on several occasions that “the rules applied to patients are those of police custody”. These comments, which were openly expressed by police officers in charge of guarding hospitalised prisoners, reveal confusion with regard to the role of staff responsible for guarding prisoner-patients.

With a few rare exceptions, no protocols exist with regard to the way in which prisoners hospitalised in secure rooms are handled. The respective roles of police officers and medical staff are not formalised, which leaves room for arbitrary practices that could be classed as inhuman or degrading treatment.

For example, the inspectors have indeed noted that, within certain hospitals, police officers systematically confiscate all personal effects and items from hospitalised patients. This applies in particular to toiletries: towels, flannels, razors, shaving foam, soap, toothbrushes and toothpaste. It was even asserted to the inspectors that patients’ glasses were taken away. Books, journals and magazines are not authorised, with a few exceptions: “everything depends upon whether or not the police officers want to show a minimum of humanity”. In certain secure rooms inspected, prisoners were systematically placed under physical restraint on arrival and thus maintained throughout their stay within the rooms.

Police officers have the greatest latitude with regard to the manner in which they perform guard duties within hospital secure rooms. Everything depends upon their personality and personal opinions and, certainly, on whether or not it is appropriate to “sanction” the patient’s behaviour. In most cases, there are no memoranda or texts indicating the manner in which surveillance is to be organised. The greatest vagueness and the greatest arbitrariness reign in this respect. Police officers have even been known to ask a nurse to carry out a search upon a female patient, in the absence of a woman in the guard team. One of the reasons given by police officers was apparently the absence of disclosure on the part of the prisons administration of information concerning hospitalised prisoners’ personalities: in application of a form of undifferentiated precautionary measure, maximum security rules were then applied.

Because of the extremely difficult conditions of stay imposed by certain police officers upon patients, permanent tensions exist within certain departments.

Thus within one hospital, the inspectors were informed that one police officer had had to be calmed down by a colleague and medical staff, because he was attempting to ill-treat a female patient. On her return to the remand prison the day after the altercation, the latter was prescribed the wearing of a surgical collar by a doctor of the UCSA. It appears that the police headquarters was informed of the incident; the police officer involved subsequently continuing to guard the hospital secure unit, apparently without changing his attitude.

At one site in the Parisian region, the nurses declared to the inspectors they “regularly witness verbal or even physical assault between patients and guards”. In this hospital, they are led to carry out actions to which they are opposed, such as, for example, administering an injection

198 On this precautionary application of maximum security rules, see the details set out in section 1 concerning removal of inmates from prison in order to go to hospital.
of a tranquiliser to a patient firmly held down on their bed by several police officers. They declared that they are very unhappy to experience this type of situation.

These situations, discovered in the course of inspections and clearly inappropriate, sometimes lead prisoners to refuse to be taken out of prison because of the harsher conditions imposed upon them in secure rooms, which it should be recalled are first and foremost places of medical treatment.

1.2 A Disciplinary Regime with Poorly-Defined Contours in Detention Centres for Illegal Immigrants

Virtually all of the detention centres for illegal immigrants (CRA) inspected possess one or several rooms, which are referred to in a variety of different manners: solitary confinement room, exclusion room, secure room. This uncertainty with regard to the name of these places is indicative of transgressions ascertained with regard to the allocated role and use thereof. Finally, this situation shows that, although use of these rooms is often limited, both in duration and volume, it nevertheless remains on the edge of legality.

1.2.1 Places of Exclusion and Surveillance thereof

Almost all of the centres inspected have rooms of this kind. In cases where they do not formally exist, this is because another area fulfils their role. In one case, one of the exercise yards fulfils this role: “The yard looks similar to the punishment wing of a prison (covered with wire mesh above, concrete, tarmac). Its dimensions are however much larger”. The inspection report for this CRA notes that: “It would be desirable for the yard intended for exercise by persons in detention to be laid out in such a manner as to fulfil its role and without having the appearance of a punishment area”.

Elsewhere, persons subject to exclusion measures were taken to custody facilities at the police station where they were kept under the surveillance of police staff.

The ten CRAs inspected in the 2011-2012 period, have rooms presenting various different characteristics (surface area, furnishings, layout of facilities etc.), in the absence of established norms.

They are sometimes located outside of the accommodation area, in close proximity to the guard-room, with security doors and peepholes, which are only lockable from the outside. They are cramped, comfortless, painted in dark colours with inefficient lighting and bear a strong resemblance to prison punishment cells.

One of the characteristics of these rooms is that they are often placed under video surveillance, cameras with metal protective covers being positioned in corners between wall and ceiling, in front of the bed. Alongside these cameras, also with protective metal covers, are positioned image intensifiers, which allow cameras to function even when ceiling lights are switched off. This surveillance still does not allow the privacy of persons who are placed there to be protected, despite the fact that certain changes were noted at the time of follow-up visits.

The permanent presence of an officer nearby persons placed in solitary confinement, or the existence of frequent patrols, remains exceptional.

1.2.2 Traceability of Placement in Solitary Confinement
In most centres, measures are subject to entry in the detention register in accordance with the instructions given by the Minister for Immigration, Integration, National Identity and Development Solidarity in the circular of 14th June 2010, which followed-up numerous recommendations made in inspection reports issued by the Contrôleur général.

On the other hand, contrary to the instructions contained in this circular, the reasons for placing persons in solitary confinement are not always given. The State Prosecutor’s Office is only informed of these measures when they have lasted for a sufficiently long time, without this period of time being subject to a more precise definition.

Placements in solitary confinement may also be entered in the daybook kept by staff working in CRAs, but notes of this kind are often difficult to find. Sometimes, such registers do not exist and the IT daybook serves as the only substitute for entries in a detention register.

These difficulties of traceability render assessment of the lengths of time for which detainees are placed in solitary confinement a complex task. The information given is often purely declaratory, mentioning a time of between two and three hours. However, periods of up to seven days have been ascertained.

It is rare to find CRAs in which a specific procedure exists, fixed by a memorandum and recalling the exceptional character of physical exclusion, which has to be justified by disturbance of public order or threat to the safety of other detained foreigners.

There are different reasons for placement in exclusion: insults and threats, involvement in fights between detainees, feigned sickness etc. In certain CRAs inspected it was also noted that exclusion may be used as a way of dealing with concerns related to health: when detainees show behavioural disorders, when they have attempted suicide, for example. Indeed, behavioural disorders and disturbance of public order are the two reasons most frequently cited in order to justify physical exclusion.

Although the ministerial circular of 14th June 2010 specifies that “this procedure [of placement in solitary confinement or exclusion] should not have any disciplinary character and should in no way worsen the conditions of detention of illegal immigrants”, it is reported that throughout the whole period of such confinement, meals are not eaten in common with others, visits are suspended and mobile telephones are, if necessary, confiscated.

Nevertheless, in one centre an internal memorandum indicates that: “use of means of physical restraint during exclusion shall be strictly limited in time, in the presence of a very agitated detainee and pending a different method of dealing with them (medical for example)”.

According to the minister in charge of immigration, the legal basis of placement in exclusion is drawn from article 17 of the standard regulation worked out in application of article R.553-4 of the Code for Entry and Residence of Foreigners and Right of Asylum. This article only resolves the question of the legal basis of standard regulations and not that of their content. It therefore leaves the question of the disciplinary regime to be put in place unresolved. Provision needs to be made for the latter in the Code for Entry and Residence of Foreigners and Right of Asylum, as the Contrôleur général has been requesting for several years.

It is on this tenuous basis that the rules and regulations of detention centres, which include provisions concerning security and discipline, are approved by prefects.

Like all directors of institutions, heads of CRAs have police powers. In this capacity, they may carry out any police measures or have such measures carried out, in order to maintain or re-establish internal order. However, these measures can only be implemented under the control of a judge.
With regard to measures of a disciplinary nature, it should be pointed out that, contrary to the situation within prisons, detainees do not have any possible remedy against such exclusion decisions. Furthermore, although, previous to the act of 16th July 2011, case law allowed cases to be referred to the liberty and custody judge within a deadline of five days, it has not yet become stable in this respect.

1.3 Discipline in Young Offenders’ Institutions: a Heterogeneous Construction

In CEFs, contraventions committed by minors may be of three types.

On the one hand contraventions considered serious and giving rise to a criminal complaint – assaults on staff, violence and more generally any act that may be criminally classified. In virtually all CEFs, protocols have been established between the institution and the State Prosecutor’s Office, providing for immediate judicial responses to such offences, in order to avoid the development of a sense of impunity.

On the other hand, contraventions described as significant incidents, because they constitute violations of obligations of judicial supervision or probation orders, to which minors are subject. This type of contravention gives rise to notification of the judge in charge of the case, who may revoke the measure, resulting in imprisonment of the minor. The statement of objectives (worked out by the Minister of Justice at the time of creation of the CEFs) mentions the handling of these significant incidents;

Finally, less serious breaches, which are dealt with internally: incivilities, verbal assault, damage to property, insulting behaviour, any behaviour harming the internal order of the CEF and which calls for a response. The latter category is not subject to any regulatory control or recommendation in the statement of objectives.

However, internal management of contraventions by minors applies to their daily lives. Insofar as it regulates relations within communities inside institutions, discipline, and its corollary of sanctions, constitutes one of the fundamental aspects of the “containing” framework that is supposed to characterise CEFs and their educational role.

Moreover, in the absence of a legal basis and instructions within the statement of objectives, each public or associative CEF has therefore elaborated measures for the punishment of breaches of their rules and regulations by means of successive experiments.

The variety of disciplinary systems and methods of implementation corresponds to the great diversity of objectives within institutions, not to say their individual histories and the difficulties that they have gone through. There are as many different ways of managing discipline as there are CEFs. However, two major trends appear to be discernible.

Indeed, in the majority of CEFs sanctions are neither defined in the rules and regulations, nor in the booklet for new arrivals. The arguments justifying this vagueness make reference to the need for individualisation of sanctions according to the personality of the minor and the desire to avoid punishments having an automatic character, any “scale of sanctions” being indiscriminately considered equivalent to a “behaviourist” idea of discipline. In these institutions, the inspectors ascertained that although young people end up with an overall knowledge the sanctions incurred, the absence of formalisation and, therefore, the lack of clarity of the disciplinary regime gives rise to a feeling of arbitrariness and injustice.
The sanctions used vary widely: being sent to bed early, eating lunch or dinner alone, picking up cigarette ends in the yard, cleaning premises and facilities, picking up dead leaves, washing up duties under the supervision of a duty tutor, repair of damage, notification of judges etc.

This first method of management has its excesses: absence of clarity sometimes conceals difficulty in establishing a position on the part of professionals, or even lack of thought on a difficult subject which is often subject to disagreement within teams. Indeed, discipline crystallises the contradiction – which is particularly acute inside CEFs – between education and coercion. In the absence of formalised and shared rules, the management of prohibitions behaviour and limits laid down for minors may damage the cohesion of adults and their consistency in the face of young people, creating weaknesses of which the latter will not be slow to take advantage.

A smaller proportion of institutions have chosen to “systematise” discipline by displaying a list of proscribed behaviours and the responses punishing contraventions. In most cases, this method is accompanied with a points system, often referred to as a “points licence”, of which there are several different versions.

In this system, the behaviour of each minor is assessed by tutors, giving rise to the allocation of points, which are noted down regularly. When no breaches have been reported, the minor is awarded points. In the opposite case, points are taken away according to the nature of the incident: fight, reprehensible behaviour, insults, damage to property etc.

At the end of the month, if the young person has accumulated the required number of points, they have the benefit of a reward, whose content is fixed with them in order to take their sources of interest into account. Rewards may consist of a trip to a restaurant, a recreational activity or the placing of convenience items (such as a radio-alarm clock etc.) at their disposal. The reward may also consist of an additional weekend with their family. Alongside the granting of points, this system is sometimes also used, on the one hand, in order to fix the pocket money for the week and, on the other hand, to determine the sanctions in case of bad behaviour.

Another CEF inspected has elaborated a disciplinary system and the sanctions are listed in the booklet for new arrivals handed over to young persons on their arrival. There are six of them in order of increasing seriousness of the act committed:
- reprimand or warning;
- letter of explanation and apology;
- written work enabling thought about the actions;
- additional school work;
- community service work within the CEF (sweeping the yard, cleaning premises, repair of damage etc.);
- application to be summoned before a judge.

Each sanction applied is explained within the framework of an interview between the tutor concerned and the minor, who may make an appeal to the head of department against the sanction. It may then be modified if necessary in the course of a three-way meeting: the head of the department, the minor and the tutor. Active listening and dialogue here guarantee the pertinence of the sanctions applied. Exchange of views enables the minor to progressively think about their actions and encourages the development of their individual responsibility.

However, this second method of management of discipline is also open to excesses: in two CEFs directed by the same association, breaches or incidents systematically give rise to the
awarding of a negative grade to the minor, whose behaviour is assessed on a daily basis. This grading leads to the attribution of levels, which result in bonuses or, on the contrary, automatic forfeiture of certain facilities: weekly money allowance, telephone calls, MP3, radio-alarm clocks, ironing and – a fact which constitutes a violation of minors’ fundamental rights – restrictions concerning the possibility of undertaking external training or the terms of family visits etc.

Contrary to the previous example, in this case the approach taken to minors appears merely to consist of grading them. This “behaviourist” approach reduces minors to their behaviour and leaves little room for their individuality and personal issues to be taken into account. The automatic nature of sanctions limits the space available for dialogue between adults and the minor.

Moreover, in a few CEFs, certain disciplinary sanctions violate minors’ fundamental rights. This is the case of sanctions that consist of restricting contact between young persons and their families: limitation of telephone calls, withdrawal of weekends outside the institution and visits. Similarly, confinement in a room – as opposed to temporary exclusion, accompanied by an adult, in order to calm down – as well as collective sanctions (closing of a television room for fifteen days), are practices which cannot be tolerated. Whether sanctions take the form of making up for breaches or the withdrawal of privileges, they should not violate minors’ fundamental rights. As recommended by the Havana Rules, restrictions or prohibition of contact with families, for whatever reason, should be excluded from disciplinary measures.

Sanctions should therefore be clearly defined in order to ensure fairness towards minors and consistency between adults. Professionals should be able to refer to a scale of sanctions for guidance, while being able to adapt them to the individual requirements of the minor in question. And all disciplinary measures should be subject to the possibility of remedy on the part of the young person.

Each CEF should have internal rules and regulations and a booklet for new arrivals, setting out their rights and obligations, in a manner that is clear and accessible to minors (Cf. section 3 access to defence rights).

Collective sanctions and confinement of minors for disciplinary reasons should be prohibited. The latter practice is harmful and dangerous for the person concerned who, in their isolation, may be tempted to commit serious acts.

Moreover, the circular of 11th December 2006 prohibits the use of tobacco in institutions accommodating minors remanded in custody. In reality, the majority of CEFs turn a blind eye to the use of tobacco without, for all that, offering specialised care for the purposes of progressively giving up the smoking habit. This tolerance presents “secondary advantages” from the point of view of the institutions: the management of tobacco is in this case closely associated with discipline. Thus in one CEF inspected in June 2012, restriction of the daily number of cigarettes (which was already limited to six per day) was established as a sanction and was, in reality, the most commonly applied sanction.

Apart from empirical disciplinary practices and legal uncertainties, in one CEF inspected in June 2012 it was ascertained that behaviours constituting mistreatment on the part of adults – mild assaults, blows on the nape of the neck, pulling of ears, jabbing keys in minors’ ribs, various acts of brutality – were used as sanctions against minors. These behaviours, which signal a total absence of professionalism, are unacceptable in all cases, and all the more so within the framework of educational duties. Any sanction should recall the primacy of the law and not be the expression of brutal domination on the part of adults.

200 Circular JUSA 600415C.
2. Prison Discipline: Perfectible Law and Questionable Practices

Throughout the 19th and 20th centuries, political authority above all strove to begin to codify the unenviable lot of prisoners subjected to various different cruel punishments and, after the Liberation, to alleviate their situation and make it less inhuman.

It was not until the time of the Liberation that measures were finally implemented in order to make discipline more human: in 1947 the “discipline room” (marching in step wearing clogs) was abolished, in 1974, the maximum duration of placement in punishment wings was reduced from 90 to 45 days, the decree of 26th January 1983 abolished the obligation for prisoners placed in punishment cells to wear prison uniform (a measure whose application was moreover extended to the prison population as a whole); punished prisoners were henceforth authorised to smoke in punishment cells.

The principle of “the lawfulness of offences and punishments” applied to disciplinary matters in the prison environment is of very recent creation.

For the first time in 200 years, a major reform of the disciplinary regime in the prison environment was put in place with the Hardouin and Marie ruling delivered by the French Council of State in 1995 and the decree of 2nd April 1996.

Breaches of discipline and sanctions in prison were henceforth clearly defined by means of classification according to their seriousness and listed in the code of criminal procedure. Moreover, the practice of systematically confiscating items of bedding from prisoners placed in punishment cells during the day and restrictions concerning correspondence were brought to an end. Judicial remedy is henceforth open. However, it is subject to compulsory prior appeal to a higher administrative authority (RAPO / recours administratif préalable obligatoire), that is to say appeals against decisions by directors of prisons must be referred to regional directors of the prisons administration. “Disciplinary committees” were created in replacement of the “prétoire” (prison disciplinary court for offences committed by prisoners serving sentences). Chaired by the director of the institution and composed of two assessors: a member of the managerial staff and a warder. Finally and above all, before cases are brought before the disciplinary committee, an inquiry has to be conducted by a graded officer and a rank and file officer, in order to enlighten the director of the institution with regard to the appropriateness of instituting proceedings against the prisoner before the disciplinary body and enabling them to have all of the facts at their disposal, as well as information on the prisoner’s personality, at the time of pronouncing sanctions.

Then, in application of the act of 12th April 2000 concerning the rights of citizens in their relations with public administrations, a lawyer was henceforth admitted in order to take care of the defence of prisoners brought before disciplinary committees. Whatever their financial resources, prisoners can have the benefit of legal aid if they apply for it.

Finally, the act of 24th November 2009, referred to as the prisons act and its implementing decrees introduced major changes with regard to discipline: since 1st June 2011, the second assessor within disciplinary committees has been selected from among persons exterior to the prisons administration, empowered by the presiding judge of the regional court of

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202 Decree (Décret) no. 296-87 of 2nd April 1996 concerning the disciplinary regime for prisoners.
203 Cf. access to defence rights in section 3 of this report.
first instance. For the first time a deadline has been established, after which disciplinary proceedings cannot be brought nor sentences enforced: disciplinary actions cannot be instituted more than six months after the discovery of the acts with which prisoners are charged. Nor can they be enforced more than six months after they are pronounced. Moreover, the law establishes the possibility for punished persons to make telephone calls in the course of the enforcement of their punishment, at the rate of one call per seven-day period, and to meet with family and friends once a week during visiting times. Finally, the quantum of applicable sanctions has been reduced: the length of stay for adults in punishment cells cannot be greater than twenty days for first degree disciplinary offences, fourteen days for second degree offences and seven days for third degree offences; this length of time may however be increased to thirty days for acts of physical assault.

Moreover, within the framework of an action plan concerning suicide prevention, prisoners placed in punishment wings have been able to use radio sets in punishment cells since the end of the year 2009.

2.1 Disciplinary Regulations that are specific, while leaving room for improvement

2.1.1 Implementation of Disciplinary Proceedings

The following procedure has been applied in disciplinary matters since 1996: the member of prison staff who witnessed or was involved in the incident writes an incident report by electronic means in the GIDE (computerised prisoner management in institutions) software application. A graded officer (a prison “major” or a senior prison officer) or an officer is then responsible for deciding whether or not it is appropriate to open an inquiry.

In the vast majority of institutions inspected, every incident report was systematically followed-up with an inquiry. Only reported acts which manifestly do not constitute breaches of discipline are ruled out at this stage. Large prisons even have a special officer in charge of conducting these inquiries; in institutions of smaller capacity, the duties of inquirer fall in turn to rank and file or graded officers.

However, it should be noted that when there are officers specialised in the tasks of inquiries they do not, in most cases, have the benefit of any specific training and the inspectors have ascertained that the inquiry reports are often poor, incomplete and vague. Information concerning the personality of the prisoners concerned does not always appear in the inquiry documents. Face to face comparison of evidence was rarely organised between all of the persons involved and above all, “the word of the officer concerned could in no case be called into question”. Lawyers have declared that “the inquiry reports were, in most cases, so inadequate, that they could not lead to conviction before a court or any other disciplinary authority”.

After having examined the inquiry report, the management or an officer decides whether or not to institute proceedings against the prisoner before the disciplinary committee.

In large prisons, these decisions are often taken by an assistant of the director of the institution, to whom detention matters are referred; in those of medium or small capacity, decisions of this kind fall to the director, to their assistant or to the head of detention. The authority instituting the proceedings and the decision-making authority are effectively the same.

The inspectors ascertained that the percentage of decisions in favour of transferring cases before the disciplinary authority varies greatly between different institutions (ranging from 50%
to 100%). A minority of directors of institutions have implemented the principle of “zero tolerance”: all acts constituting breaches of discipline are laid out before the disciplinary committee. On the other hand, certain directors of institutions only inform the committee of the most serious acts. The majority of decision-makers select cases in what they describe as “sensible” manner. Prison officers have frequently complained to inspectors “of the laxity” of the management “which most often file cases away without pursuing them”. Moreover, prisoners are rarely informed when incident reports against them are filed away without being pursued.

When proceedings are instituted, the deadline for appearance before the disciplinary authority varies greatly from one institution to another. These deadlines may thus vary, ranging from periods of a few days to several months. Sanctions taken too long after the commission of the act no longer have any sense.

Since 1st June 2011, assessors taken from civil society – who are therefore exterior to the prisons administration – sit on disciplinary committees.

Indeed, members of the managerial staff no longer take part in the disciplinary committee, which is thereby deprived of an essential source of information on imprisonment. In June 2012 the Contrôleur général chose to meet with voluntary assessors in order to discuss their experiences with them. According to them, effective implementation of this reform was difficult: the presiding judges of regional courts of first instance have not shown great initiative in this regard, with a few rare exceptions; very often, the directors of the prisons concerned have had to contact “potential” candidates themselves.

These new assessors do not, in most cases, have the benefit of any training provided by the prisons administration prior to taking up their posts, although it should be noted that most of them have had the opportunity of spending half a day meeting the director of the institution and visiting the prison. However, they are not always informed of the internal rules and regulations. Some of them complained that they are “not always consulted by the chair of the committee”. However, most of them acknowledge that they “have their full place within the committee and have been very well received by the prison officials”. They spoke of the “great humanity of the staff, far removed from the negative image portrayed by the media”.

It is not unknown for disciplinary committee sessions to be held in the absence of the external assessor or, exceptionally, for certain external assessors never to be called to attend.

2.1.2 Disciplinary Committee Procedures

During their inspections, the inspectors ascertained great heterogeneity with regard to the places where disciplinary committee sessions are held. With a few very rare exceptions, the committees always actually sit within punishment wings, in particular in very recent institutions.

In old institutions, a former cell is fitted out as a committee room in most cases. The available surface area does not facilitate the serenity of hearings: the chair, the two assessors, the prisoner and the lawyers are “a bit cramped”. Due to lack of room, a table cannot be placed at the defence’s disposal.

Because of lack of available space or the unsuitability of existing premises, committees sometimes even hold their sessions in a corridor (such is the case in a detention centre in the West of France) or in the visiting room (in a remand prison in the North of France). Committee rooms may be “mixed” facilities, insofar as they are sometimes also used as places for holding interviews with the prisoners of the institution.
The layout of the room also differs greatly from one institution to another: the members of the committee sometimes sit on a platform; the prisoner often stands in a dock. Sometimes, the spot where the prisoner has to stand before the members of the committee is indicated by a mark on the floor.

In the vast majority of cases delegation authorisations from the director of the institution are displayed in the room, concerning the chairmanship of the committee and placements in the punishment wing pending hearings.

In most institutions, prisoners called to appear before the disciplinary committee are expected to pack their affairs beforehand, with a view to possible placement in the punishment wing.

In certain institutions, this procedure is justified by reasons of safeguard of the person’s property, several prisoners often occupying the same cell. However, it is perceived as bullying in cases where prisoners have individual accommodation. Generally speaking, this practice is tantamount to judgement in advance.

Prisoners called to appear before the disciplinary committees sometimes undergo different search procedures: frisk searches before appearances followed by strip searches in case of pronouncement of punishment cell sanctions, or a single strip search before appearance and placement in the punishment wing. Sometimes, two strip searches are ordered: one before the appearance, the other at the time of entering the punishment cell.

The frequency of disciplinary committee meetings differs from one institution to the next.

Within institutions of large capacity, two specific days are devoted to disciplinary hearings; generally speaking, twice a week. A third hearing may be scheduled according to requirements or if a prisoner has been placed in the punishment wing pending appearance before the disciplinary committee. On the contrary, in small remand prisons and in long-term detention centres, whose prison population is considered “calm”, there are no specific days allocated for the holding of hearings; they take place according to need.

The office of secretary of the committee is either held by the assessor taken from among the warders, or by a prison official who is not a member of the committee. In the first scenario, the assessor is completely absorbed by writing tasks, which prevents them from actively participating in the proceedings. In some cases the prison officer assessor is also responsible for keeping order during the hearing.

It is not usual for face to face comparison of evidence and collection of testimonies to be organised during disciplinary committee sessions; moreover, such procedures should have already taken place at the inquiry stage (see above). The inspectors met several lawyers who complained bitterly of the absence of real debates and comparison of testimonies. Moreover, the inspectors ascertained that video surveillance recordings are very rarely used as means of evidence during disciplinary committee sessions and that no monitors are installed in committee rooms.

The circular from the director of the prisons administration department dated 9th June 2011 makes express provision for the presence of an interpreter during disciplinary hearings. However, the inspectors have never noted the presence of any interpreter in disciplinary committee sessions. When prisoners who do not understand the French language appear before disciplinary committees, if any translation is carried out it is generally done by a prison official or, if necessary, by a fellow prisoner. These solutions are not satisfactory. In at least one institution

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206 Circular JUSK 1140024C.
inspected, whatever the reality, the box in the form indicating that the person appearing before the committee “understands French” was systematically ticked.

Depending on the institutions concerned, the inspectors noted that lawyers appointed by disciplinary committees to take care of the defence of prisoners called to appear before them did not systematically travel to the institutions, and even more rarely in the case of counsels for the defence chosen by their clients. When the Contrôleur général took this issue up with the director of one detention centre, the latter supplied the following figures: “for the year 2011, out of 281 prisoners called to appear [before the disciplinary committee], 167 requested the assistance of a lawyer, while lawyers only came to 56 hearings”, one third therefore. At the time of inspections, the majority of lawyers encountered declared themselves to be satisfied with the conditions in which they performed their duties within prisons, with regard to the quality of their reception in particular (Cf. section 3 access to defence rights).

### 2.1.3 The Scale of applied Sanctions

As a consequence of the application of the Prisons Act of 2009\(^\text{207}\), sanctions have been codified under articles R.57-7-33 and R.57-7-34 of the code of criminal procedure: seven sanctions are in general use and may be pronounced whatever the nature and circumstances of the fault\(^\text{208}\); seven sanctions are specific and their pronouncement is linked to the circumstances in which the fault was committed\(^\text{209}\).

On the basis of a sample made up of twelve institutions inspected in 2011 and in the first quarter of 2012, involving institutions of various different kinds (remand prison, long-term detention centre, long-stay prison, prison with sections incorporating different kinds of prison regime) and of all dimensions (capacities of between 50 and 600 places), a list of disciplinary measures pronounced by the disciplinary committees was compiled.

The results of this study show that placement in punishment cells remains the most commonly pronounced sanction:

- the proportion taken by placements in punishment cells among sanctions pronounced as a whole ranges from 34% in the institution that made least use of this measure and 75% in the institution where, on the contrary, it is pronounced the most. In four other institutions, placements in punishment cells represent more than half of sanctions pronounced as a whole;

- suspended placements in punishment cells represent 6% of the sanctions pronounced in one institution and 53% in another. Between these extremes, the percentage of suspended punishment wing sentences varies between 16% and 32%, the latter in the same institution in which fixed placement orders are pronounced the least;

- the number of warnings is between 4% and 9%;

- the proportion of acquittals is in general between 5% and 18%, except in two institutions where it is only 1% and a third in which it was as high as 23% of the decisions taken by the disciplinary committee. The latter is also the institution with the lowest level of placements in the punishment wing;

\(^{207}\) Cf. implementing decree no. 2010-1634 of 23rd December 2010.

\(^{208}\) These are warnings, withdrawal of the right to receive allowances, forfeiture of the right to make purchases in the prison shop subject to certain reserves, forfeiture of an appliance, forfeiture of an activity, confinement in an ordinary individual cell and placement in a punishment cell, of which the duration was considerably limited by this reform.

\(^{209}\) These are the suspension of employment or training, dismissal from employment or training, withdrawal of access to visiting rooms without a partition divider and the performance of cleaning work.
Four of the twelve institutions of which the study sample is composed do not make use of the sanction of confinement in ordinary individual cells. Only three institutions show numbers of confinements – between 39 and 47 – that demonstrate the effective existence of this punishment in the scale of sanctions. In two cases, confinement accounts for less than 10% of the sanctions pronounced, whereas it represents 30% in the final institution.

In its annual report for 2010, the European Committee for the Prevention of Torture (CPT) points out that solitary confinement ordered for disciplinary reasons constitutes the harshest disciplinary measure and that for this reason, in acknowledgement of the dangers inherent to this sanction, countries specify the maximum duration for which it may be imposed. The CPT recommends that the prisons administration should be authorised to pronounce this sanction for a given maximum period, while the possibility of imposing longer periods should be reserved to courts, within the limit of a statutory maximum.

2.1.4 Placement in Punishment Wings pending Hearings and use of Means of Restraint

In case of urgency, prisoners may be placed in punishment cells or in confinement in ordinary individual cells without waiting for the disciplinary committee to meet, as an exceptional measure pending inquiry and hearing, in order to maintain internal order within the institution.

The cumulative conditions of implementation are determined by whether the measure which, as the circular of 9th June 2011 recalls, should be “the sole means of bringing an incident to an end or preserving internal order at the time when the decision is taken” is proportionate to the seriousness of the fault. Such measures should only be considered when other means of bringing disturbances to an end have failed or are inadequate.

Punishment cell placement decisions are subject to supervision by the judge empowered to rule on abuses of power. On the basis of the Prisons Act, which introduced the option of imposing confinement pending inquiry and hearing, as an alternative to placement in punishment cells, the above mentioned circular recommends that such placements in a punishment cell should only be used as a last resort, if confinement in an ordinary individual cell is not possible. This new provision remains a total dead letter in the institutions inspected in 2012.

Though not always restricted to the framework of cases of urgency nor always having an exceptional character, placement in punishment wings pending inquiry and hearing did not, for all that, appear to be in majority use within the institutions inspected. In institutions of large dimensions, placement pending inquiry and hearing is widely used, in particular following refusals on the part of prisoners to “return to” their cells, in most cases due to difficulties with the other person or persons who also live there. In institutions of more modest dimensions, the management methods used by staff – which are connected to their better knowledge of the prison population – ensure that placement pending inquiry and hearing is more exceptional. By way of illustration, during the half-year preceding the inspection of one remand prison of about one hundred places, with a population of around 250 persons, nine placements pending inquiry and hearing had occurred, that is to say an average of one every three weeks; in the course of the same period, the institution’s disciplinary committee had ordered forty-six punishment cell...
placements, without any (partial or complete) suspension of punishment, placements pending inquiry and hearing therefore only taking place in less than one fifth of cases.

Generally speaking, the chairs of disciplinary committees appear attentive as far as compliance with the legal framework is concerned and aware of their responsibility in this regard. Thus, in the presence of the inspectors during a hearing, the chair of one disciplinary committee, the director of a remand prison of medium dimensions, found that it was not possible to prove that a placement in a punishment cell pending inquiry and hearing had been necessary in order to bring the incident to an end or to maintain internal order within the institution, since it had occurred more than 2 hours and 40 minutes after the commission of the act. The person was acquitted on the grounds that the placement in a punishment cell pending inquiry and hearing was unlawful.

On the other hand, in another institution it appeared that, in the mind of the managers, cases of placement pending inquiry and hearing did not exclusively correspond to criteria fixed by the law, but also came within the scope of other considerations. Thus, a memorandum, signed by the director of one institution recalled to members of the middle-ranking managerial staff (graded officers) that power to impose placements pending inquiry and hearing was delegated to them and lamented the fact that this power was not used in response to certain incidents having “an impact both on the inmate population, creating a sense of impunity, as well as on the staff who do not feel supported”.

Handcuffs – which numerous senior prison officers always carry on their belts in most institutions – are frequently used when placing prisoners in punishment wings pending inquiry and hearing. On the other hand, a procedure for recording such measures has still not been put in place and the interregional department of prison services is not everywhere informed immediately, or even subsequently, of the use of means of physical restraint, as is nevertheless provided for under prison regulations.

The conditions under which prisoners are placed in punishment wings pending inquiry and hearing – “being put in the cooler” – is a recurrent subject in the inspectors’ interviews with prisoners, who sometimes describe the use of brutal or even violent methods.

Certain actions take place after staff have put on protective clothing, with helmets and shields. Some institutions have adopted the practice of filming all actions of this nature, with a view to control and education within the framework of training.

2.1.5 Confinement and the procedures thereof

Confinement involves the placement of prisoners in ordinary cells, which they have to occupy alone, for the same period of time as for punishment cell sanctions. Confinement can be enforced in the cell of the person concerned, in cases where they already occupy it on their own; this applies for persons placed in solitary confinement.

As already stated, disciplinary confinement is pronounced relatively rarely. In remand prisons, this is explained by the situation of overcrowding, which makes it difficult to find a cell in which to enforce this sanction. Moreover, it may appear paradoxical that prisoners are not able to have the benefit of the right to be placed in an individual cell – as provided for by law – except within the framework of the enforcement of disciplinary measures…

Certain institutions reserve one or several cells for confinement within a single sector. In one institution inspected, it was explained that the decision to create clearly identified confinement cells had been taken following a certain number of mistakes committed by floor
managers, who tended not to differentiate persons confined in their wings from the other prisoners, and therefore had not applied the expected disciplinary regime. One remand prison had decided to reserve three cells in the wing for “prisoners soon to be released” for confinement. In one prison, cells devoted to confinement are referred to as “exclusion cells”.

Elsewhere, confinement cells resemble punishment cells: in one remand prison, the final cell before the gate giving access to the punishment wing is used for confinement. It presents the same state of dirtiness and deterioration (walls covered in graffiti, panes of the window broken) as the punishment cells.

The sanction of confinement has automatic consequences: suspension of access to sports, cultural and recreational activities, suspension of employment, professional training and education, suspension of the possibility of making any purchases in prison shops other than hygiene products, necessary items for correspondence and tobacco.

Disciplinary committees may incidentally accompany confinement with forfeiture of any appliances bought or rented through the administration, throughout the duration of enforcement of the sanction (confiscation of televisions and computers). Thus, in institutions where specific confinement cells have been created, in general they are not equipped with television sets. However, this provision is often little known and, in one remand prison inspected, cells reserved for confinement, unlike other ordinary individual cells, are not equipped with televisions and refrigerators, whereas withdrawal of these appliances is in principle dependent upon a decision by the disciplinary committee. At the time of one inspection, it was ascertained that withdrawal of a television had been decided upon as an incidental sanction and mentioned in the proceedings, without however being indicated in the disciplinary committee’s decision, causing incomprehension on the part of the prisoner concerned and leading to a verbal altercation with the prison officer responsible for applying the measure on their floor.

Confinement does not in principle involve any consequences with regard to correspondence, use of the telephone, visits and the practice of religion.

Persons sanctioned with confinement have the right to an hour’s exercise in the open air every day, of which the conditions vary according to different institutions: they may remain unchanged as compared to normal, take place in a time slot with other prisoners (workers in particular) or indeed individually in special exercise yards, or even in punishment wing and solitary confinement yards.

In principle, medical supervision of persons in confinement conforms to the same rules as applicable in cases of placement in punishment cells. In general, the doctor is informed on a daily basis of the list of persons in this situation, who have to be seen twice a week. At the time of one inspection carried out in a large remand prison, neither the UCSA nor the SMPR were thus informed.

Disciplinary confinement is used as a disciplinary measure more frequently in institutions where the lifting of a large number of punishment wing sanctions is ordered by doctors. This circumstance often leads to confusion between the two sanctions, the use of confinement measures being perceived as a mitigated mode of enforcement of punishment cell sanctions.

2.1.6 The Role of the Medical Services

According to current regulations, the UCSA and the SMPR (where it exists) are informed of placements in punishment cells on a daily basis.

212 In application of the provisions of article R.57-7-31 of the code of criminal procedure.
At least twice a week, and as often as they consider useful, a doctor visits each punishment wing in order to examine all prisoners there. Outside of UCSA working hours, a doctor is on call from the Urgent Medical Aid Service call centre (centre 15).

Information on any placements in punishment wings is usually provided directly or by telephone. In order to preserve a trace of the passing on of this information, certain institutions inform the medical service by means of fax and hand over the daily list of prisoners placed in punishment, solitary confinement and confinement cells by the same means.

On each visit, the doctor stamps the punishment wing register. Generally speaking, examination of the register makes it possible to prove that doctors have come in accordance with the statutory obligation of two visits per week. However, this is qualified by the two following reserves:

On the one hand, it is not always established that the visit was made by a doctor and not by a nurse. Thus, in one institution inspected in 2012, the individual record of medical care and treatment in the punishment wing mentioned twelve visits by a member of staff of the UCSA over a period of fourteen days, but only two visits by a doctor, the others having being made by a nurse. The frequency of visits by the doctor was not therefore in compliance with legal obligations.

On the other hand, the examination provided for by law is sometimes reduced to a cursory visit by a doctor, which ends with a signature of the register. The practice of certain UCSA staff consists of remaining in the background and leaving it to the warder to ask each prisoner whether they wish to be seen, from the security door of the cell and with the grating closed. One person encountered in the punishment wing of a long-stay prison thus declared to the inspectors that, despite having declared a health problem – a problem connected to the action having led them to the punishment wing – they had only been able to have the benefit of an initial examination eight days after their placement: on the preceding days the health staff had not entered their cell.

When doctors consider that maintenance in a punishment cell is likely to compromise a person’s health, they draw up a medical certificate, which they send to the director of the institution, the latter then has to order suspension of the measure and removal of the person from the punishment wing.

The medical report is binding upon the director of the institution. Similarly, in accordance with the circular of 9th June 2011213 “the sanction can only be recommenced in compliance with a medical opinion”. In this respect, the medical practices ascertained vary greatly from one institution to another.

In general, removal of prisoners from the punishment wing by medical order appeared to be rare in the institutions inspected – sometimes coming after an episode of a suicidal nature or giving rise to a more medically-oriented approach to the prisoner (placement in the SMPR, hospitalisation in a mental health institution) – and bore no relation to a perception on the part of certain warders, which propagates the idea of “impunity” of prisoners with medical “complicity”. Conversely, during the inspection of one large long-stay prison it was ascertained that punishment cell sanctions were only rarely enforced. However, contrary to widespread belief within this institution, the early lifting of these punishment cell sanctions did not arise from medical certificates of incompatibility, but from the initiative of the heads of detention themselves, after having informed the medical department of their fears of the risk of suicide attempts.

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213 Circular JUSK 1140024C.
The Contrôleur général’s attention was brought to the situation of one person placed in a punishment cell who, two days later, had received a medical opinion judging their state to be incompatible with maintenance in the punishment wing. The person concerned was then removed, before being taken back to a punishment cell seven days later. The next day, another doctor, in turn, judged their condition to be incompatible with maintenance in a punishment cell. However, the person concerned was once again returned to the punishment wing three days later. When the matter was taken up with the director, the latter justified these successive placements by the fact that, according to him, “this certificate [did] not have permanent value and only suspended a sanction”.

Intervention by medical staff in the disciplinary process is a sensitive subject. It comes up frequently during inspection visits and reflects the special position of doctors in prisons. Indeed, doctors working in the prison environment act in the capacity of prisoners’ personal doctors and have to create the same relation of trust as in “free life”.

In its annual report for 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) mentions that it is important to ensure that relations of trust between doctors and their patients are preserved, such relations being essential in order to protect the health and well-being of prisoners.

However, at the time of the inspection of one remand prison, the following unacceptable facts were ascertained: prior to and on the same day as appearances before the disciplinary committee, each prisoner had a consultation with the general practitioner, who informed the management of whether or not their state of health was compatible with placement in a punishment cell. This consultation was obviously perceived, by both prisoners and the prison administration, as an examination of fitness for placement in the punishment wing. When this point was taken up in the findings, the director of the institution indicated in their response that, following these remarks from the Contrôleur général, prisoners were no longer taken to the UCSA prior to appearances before the disciplinary committee.

### 2.1.7 Rules and Regulations in Punishment Wings and Punishment Cells

In principle, prisoners have the possibility of speaking with a member of the managerial staff on the same day as their placement in a punishment cell. At this time, a document entitled “punishment wing rules and regulations” or “rights and obligations of adult prisoners placed in the punishment wing” is often handed over to them. The issuing of these documents is sometimes subject to written acknowledgement. Certain institutions also hand over an order form, with a list of prison shops authorised in the punishment wing.

The rules and regulations of the punishment wing are displayed – sometimes in very small letters – on the interior side of punishment cell doors. In others, a copy is only handed over on request.

It was ascertained that the rules and regulations of punishment wings were sometimes obsolete, dating from before the coming into force of the Prisons Act, and, for this reason, were incomplete: in particular they did not contain any mention of the possibilities of using the telephone, enjoying rights of access to visiting rooms and of having the benefit of a radio set and religious works and objects. It appears that loan of a radio set is not automatic in certain institutions, in which it is necessary to fill in an application form.

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214 Cases can also arise where, after removal from a punishment cell due to a medical decision, the same person is returned there following the “discovery” of a new fault (prohibited item found in their usual cell for example) leading to a new appearance before the disciplinary committee and a new punishment, or else a solitary confinement measure (cf. § 2.2.7 below).
One document read in a remand prison inspected thus mentions “what is authorised: five books from the library and perishable foodstuffs bought in the prison shop before placement in the punishment wing; and what is prohibited: razors in cells, sugar lumps and salt”. Another mentions that the possibility of being visited by representatives of the Défenseur des droits [ombudsman, independent administrative authority charged with defending citizens’ rights in relation to public authorities] and by the Contrôleur général des lieux de privation de liberté is maintained during stays in the punishment wing.

In the oldest institutions, punishment accommodation areas are often located in places of imprisonment with limited access to natural light and ventilation – sometimes in basements –, which can make them unfit for habitation.

Punishment calls are cramped, all the more so since a part of them is used as a security entrance between the door and the grating. The security entrance in general comprises a smoke detector and a lighting unit, which is sometimes the only one in the cell. The grating of the security entrance often contains a hatch in order to allow the person to use an intercom device (or a call button) and the electric switch, when the latter is not exclusively controlled by staff from the exterior. Sometimes the security entrance grating is so thick that it practically prevents visibility of the interior of the cell due to a “wall effect”, which prison officers carrying out night patrols consider to be problematic.

Toilets are also sometimes visible from outside via the peephole, which is contrary to respect for the privacy of persons.

As for the windows, they are often small, with bars equipped with plates of expanded metal. To repeat the comments made by one person held in a punishment cell in a remand prison, “you do not see daylight inside” due to the security fittings placed around the window and a plastic canopy placed on the external façade, in order to avoid any contact via the widows of the floors above. The windows are not always equipped in order to allow them to be opened from inside the cell; when they are so equipped the mechanism is difficult to use or only opens the window a few centimetres. The electrical lighting is often weak, something about which the persons present complain, in particular when they wish to read.

In this type of old institution, the heating system operates by means of pipes, under the same conditions as in the rest of the prison. People placed in these cells suffer all the more from the cold since, in general, they spend twenty-three hours a day there.

In more recently built institutions, the surface area of cells is in general in the region of 10 m². More natural light enters these cells and the ventilation is better, thanks to sliding windows equipped with panes. In some cases, blocks of glass are used as opaque window panes so that, although light can filter through, it is impossible to see outside. As in the other sectors of the prison, punishment cells also have gratings placed outside. The view from inside the cell may be of a roll of concertina wire placed directly below the window.

Although most of them have been refitted in recent years, in general disciplinary cells are equipped in a rudimentary fashion on the basis of standardised norms: a bed which is securely fixed to the ground, covered with a fireproof mattress, a piece of furniture consisting of a shelf and a metal bench, which is also securely fixed, a stainless steel unit comprising a toilet and sink with cold (sometimes hot) water and a switch-controlled cigarette lighter.
Certain wings have retained older fittings: concrete “furniture” including a bed board, a concrete shelf at the base of the wall, stainless steel squat toilets and a cement block serving as a seat… or as a table, the person then only being able to eat their meals while sitting on their bed.

Except in more recent institutions, most cells lack showers, shelves and sometimes electric sockets. Where showers are present, in general they are situated between the security entrance grating and the toilets, making it necessary to step over the latter in order to gain access to them. Showers, unlike toilets, are not visible from the peephole.

At the time of inspections in certain institutions, it was ascertained that greater attention had been devoted to fitting out punishment cells on the part of the administration: wall lights have been fitted at the head of the beds; a roll of toilet paper and a small piece of soap are distributed in a regular manner; a procedure is in place organising the placing of cleaning equipment and products at prisoners’ disposal while they clean their cells.

Nevertheless, as a general rule, the paint in on the walls is often the worse for wear and covered in a great deal of graffiti; certain cells are strikingly dirty, despite the fact that they are intended to be available to receive persons at any time. The persons encountered frequently declare that they had to clean them from top to bottom on their arrival.

Whatever the type of institution, the areas around windows are often full of refuse. They are rarely cleaned.

It is increasingly common for inventories and statements of the state of repair of cells to be drawn up in the presence of the parties involved on prisoners’ arrival and departure. In general, these procedures are properly carried out when staff are permanently assigned to the wing. Where such procedures exist, they are often accompanied with an inventory sheet of the cell facilities and of the package of items handed over on arrival in the punishment wing. By way of example, one institution, which opened in 2010, distributed the following items in a net: sleeping (blankets, sheets, pillowcase) and toilet necessaries (towel, flannel), a “kit” of hygiene and cleaning products (shampoo, shower gel, soap, toothpaste, toothbrush, shaving foam, diluted bleach, scouring cream), toilet paper, a serviette and a small radio set.

In most of the institutions inspected, plates and cutlery are systematically taken back by staff after meals. Similarly, blades are taken away by prison officers immediately after prisoners have shaved.

2.1.8 The Regime Applied in Punishment Wings

Persons placed in punishment cells are allowed at least one hour of exercise per day in an individual yard provided for this purpose. In general, this provision is everywhere respected.

The same cannot be said with regard to a “recommendation” made in the circular issued by the director of the prisons administration department cited above, which advocates the “putting in place of at least two exercise periods per day, one in the morning and the other in the afternoon”. In certain institutions in which the same exercise yards are shared by the solitary confinement and punishment wings, only persons in solitary confinement have the benefit of a walk in the morning and in the afternoon. In most institutions, the exercise periods commonly take place in the morning – sometimes very early, between 7 and 8 o’clock in one remand prison inspected – and are sometimes moved to the afternoon, according to circumstances, in particular on days on which disciplinary committee sessions are held.

Exercise takes place in yards of an average surface area of between 20 m² and 30 m², usually completely surrounded by walls and totally covered over.
with wire mesh. Some of them are covered with bars surmounted with expanded metal and concertina wire. In general, exercise yards do not offer any horizontal views.

Most of the yards lack any facilities: shelter, bench, water tap, urinal; in some cases the angle formed between parts of buildings is used by way of an exercise yard. The ground is in general covered in concrete. One inspection report recalls an exercise yard thus: “The whole is exclusively composed of stone and metal”.

At the time of its inspections in France in 2006, the CPT described the exercise yards of the long-stay wing of one prison as being “like cages used for walking areas”. The inspection conducted in this same institution in 2012 by the Contrôleur général found the situation unchanged.

Conditions of hygiene are very different from one place to another, in particular with regard to the state of cleanliness of the showers. The privacy of persons is not everywhere respected since, in at least two institutions inspected in 2012, the door of the shower room had a window in it, rendering the person inside visible from the corridor.

In most cases, persons placed in punishment cells are subject to the same regime as persons in ordinary detention and can only have the benefit of three showers per week. However, the issues generally raised with regard to ordinary detention – shortage of shower rooms, lack of available time on the part of staff – do not in general apply to punishment wings; moreover certain institutions allow persons placed in solitary confinement and in punishment cells to have access to showers every day, after the exercise period in particular.

As already stated, punishment cells are not equipped with a piece of furniture for storing personal linen. Personal possessions are sometimes stored in locked premises, of which the key is in the possession of the staff, without the prisoner having access thereto. Certain institutions have installed a cupboard at the door of each cell from which prisoners can, in particular, take a warm item of clothing before going out for an exercise period. Elsewhere, personal items may be piled in cardboard boxes.

It was ascertained that old practices are still in use here and there, such as the prohibition on wearing shoes, which are then left in front of the door of each punishment cell.

The maintenance of family connections and relations with the outside were taken into account in the Prisons Act and its implementing regulations. However, the principle according to which no restrictions should be placed upon the right to correspondence would be better guaranteed if letter boxes were everywhere installed in punishment wings.

Access to the telephone is more limited: In principle it is not possible for prisoners to call family and friends more than once a week, for a duration of twenty minutes (ten minutes in one institution inspected), with the exception of communication with their lawyers and what are referred to as “humanitarian” numbers. For this purpose, prior registration with the warden for the next day is sometimes compulsory. The location of the telephone may also be problematic: in one institution inspected, the only telephone available for the punishment and solitary confinement wings was installed in a room reserved for interviews with lawyers and was therefore only accessible in a sporadic manner; in others, it was in the corridor of the wing itself, to the detriment of the confidentiality of conversations, something which moreover poses problems of organisation for prison staff.

One visit per week is authorised from family and friends. In general it takes place in a visiting room without a partition divider. In one institution inspected, persons who do not receive visits from family and friends may see a prison visitor, a fact which signifies the existence
of restrictions concerning the latter, contrary to current regulations which do not provide for any such restrictions with regard to prison visitors, lawyers, consular representatives, representatives of the Défenseur des droits ombudsman and members of the Contrôleur général des lieux de privation de liberté.

While placement in a punishment cell often leads to isolation which is sometimes difficult to bear, access to the possibility of reading often proves to be problematic. Current laws are not at issue: deprivation of reading cannot constitute a disciplinary measure; persons placed in punishment cells are allowed to have the various books that they keep in their cells, or in the property office, handed over to them and to continue to receive publications to which they subscribe. However, in reality, it was ascertained that if prisoners have not packed their books before being placed in the punishment wing, it is difficult for them to gain access to them subsequently.

Above all, difficulties arise with regard to the choice of books, newspaper and periodicals that the administration should offer them. In general, punishment wings contain a few books which appear to be forgotten, unless the meals service provides an opportunity of gaining access to them, as is the case in one institution inspected, where the lower shelf of the meal trolley was filled with books and magazines.

In principle, the possibility of receiving a radio set in a punishment cell has now existed for a few years. Certain institutions spontaneously place them at the disposal of persons placed in the wing; in others, they have to be requested. In most prisons, the number of sets is insufficient because they have apparently been destroyed (and not replaced) or because of the lack of a stock of batteries, despite the fact of a deliberate choice having been made to purchase this sort of equipment.

2.1.9 Means of Remedy

Remedy against disciplinary measures is no more than potential to a large extent.

In most cases, decisions are delivered immediately by the chair of the disciplinary committee and are given in writing. The inspectors were in a position to ascertain that the existence of the procedure for compulsory prior appeal to a higher administrative authority (RAPO\(^{216}\)) before the interregional director of prison services is almost systematically mentioned.

This provides that any prisoner who wishes to dispute disciplinary decisions against them shall refer the case to the director of the interregional department of prison services within a deadline of fifteen days as from the day of notification of the decision, before any possible recourse to the courts.

It emerged that most of the institutions inspected in 2012 were not in the position of being able to provide any information with regard the number of appeals to higher administrative authorities lodged against decisions made by their disciplinary committees. Admittedly, this results from the fact that persons refer cases to the interregional director by letter, in a sealed envelope. Nevertheless, institutions should be able to procure this information insofar as the interregional department then sends requests to them to pass on the documents pertaining to disputed disciplinary cases.

Similarly, no special note is made of any proceedings pending before administrative courts, nor is there any list of court decisions delivered with regard to disciplinary disputes.

\(^{215}\) For an overall study of prisoners’ rights to defence cf. section 3 of this report.

\(^{216}\) Article R.57-7-32 of the Code of criminal procedure.
Unlike the procedure of compulsory prior appeal to a higher administrative authority, the possibility open to prisoners of requesting immediate suspension of sanctions by jurisdictional means is never mentioned by the chairs of disciplinary committees.

In fact, other means of jurisdictional remedy, which are intended for urgent situations, are very widely ignored. On the one hand, emergency appeals to an urgent applications judge for the suspension of disciplinary sanctions (référé-suspension)\(^{217}\) can be exercised without waiting for a decision from the interregional director by simply proving that a compulsory prior appeal to a higher administrative authority has been lodged. On the other hand, emergency appeals to an urgent applications judge for release from disciplinary sanctions (référé-liberté) – whose admissibility is not dependent upon a principal appeal against the substance of a ruling – may be lodged in case of violation of a fundamental liberty\(^{218}\).

It is true that the circular from the director of the prisons administration department of 9th June 2011\(^{219}\) only indicates the sole obligation that “the prisoner shall be clearly informed, in a language that they understand, of the compulsory nature of appeal to a higher administrative authority, prior to any possible recourse to the courts”. Nevertheless, in reality, article 91 of the Prisons Act, which expressly provides that “when prisoners are placed in punishment wings, or in confinement, they may refer the case to the urgent applications judge, in application of article L.521-2 of the code of administrative justice (code de justice administrative)” appears to be ignored.

The consequences of appeals on the substance of rulings lodged by prisoners are limited if not practically non-existent because, as far as the harshest sanction is concerned, the applicant is no longer in a punishment cell when the judge is led to make a ruling on their case. Indeed, such remedies are not suspensive whereas decisions delivered by disciplinary committees are immediately enforceable. However, ECtHR case law establishes that appeals should be brought before the judge in a manner that is sufficiently fast to be deemed efficacious\(^{220}\).

For this reason, the French Senate introduced a presumption of urgency in the first reading in Parliament, considering that placement in a punishment cell constitutes a situation of urgency in itself, liable to seriously infringe prisoners’ fundamental rights. In the end this proposal was not adopted.

In addition to the rulings made against France by the ECtHR, the annual report for 2010 from the CPT issued the following recommendation: “an effective remedy procedure should exist making it possible to re-examine verdicts of guilt and sanctions imposed, within a period of time that allows all the difference to be made in practice.”

### 2.2 Misapplication of Statutory Provisions as an Indirect Means of Discipline.

#### 2.2.1 Organised Exclusion within “Differentiated Regimes”

The Prisons act ratified the principle of “differentiated regimes”, article 89 providing that the prison regime for persons in custody “is determined taking their personality, health, dangerousness and efforts in terms of social rehabilitation into account. The placement of prisoners under harsher

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\(^{219}\) Circular JUSK 1140024C.

\(^{220}\) ECtHR, 3rd April 2001, Kennan vs. the United Kingdom.
prison regimes cannot infringe the rights mentioned under article 22 of

Long-term detention centres – and “long-stay detention” wings of prisons - are
everywhere organised according to a differentiated prison regime with different rules for different
accommodation areas, which in most cases are constituted by the various floors of the same
building. Long-stay prisons and remand prisons may also be subject to this type of internal
organisation, on an experimental basis, at the initiative of the director of the institution.221

In most cases, differentiated regimes are applied with three different
arrangements:

First arrangement: the “trust” or “improved” regime, with longer time slots for the
opening of cells, allowing persons to have the benefit of freer access to the telephone, the
exercise yard and the activity room of the wing where, if the need arises, meals may be eaten in
common.

Second arrangement: the “common” or “ordinary” regime, with shorter time slots in
which the doors of cells are open.

Third arrangement: the “controlled”, “strict” or “closed” regime, often located on the
ground floor of the building, is the only one in which prisoners are never given the key to the
“comfort lock” of their cells and therefore never control the opening thereof. The “closed”
regime is the regime traditionally applied in remand prisons and long-stay prisons.

The assignment of prisoners to particular regimes and changes of allocation are
sometimes decided upon by the managerial staff of the wing and subsequently validated by the
single multidisciplinary committee (CPU). The situation of persons placed under the closed
regime has to be reviewed at regular intervals. Nevertheless, it was noted that prisoners could
sometimes be kept under this regime throughout the entire duration of their stay inside an
institution.

The reasons for placing prisoners under particular regimes are not always set out in the
rules and regulations. When they are, it is sometimes in general and unspecific terms: “general
day-to-day behaviour of the prisoner”; “protection of vulnerable persons”, “involvement in
projects of preparation for release”, “attitude incompatible with an open door regime” etc.
Certain cases referred to the Contrôleur général show that these assessment criteria, which are
extremely broad, give rise to assignment to closed regimes on grounds such as the “impatient
character of one, the state of agitation of the other” etc.

Moreover, the aforementioned circular form the prisons administration department of
20th July 2009 specifies that “it goes without saying that the differentiation of regimes cannot in
any case be used in response to behaviour liable to constitute a disciplinary fault”.

The vagueness surrounding the grounds and procedures for assignment to
particular regimes reinforces the suspicion of being a victim of a disguised
sanction on the part of prisoners placed in closed regimes.

This impression may prove to be justified in certain cases.

Numerous testimonies from prisoners report almost systematic placement in controlled
regimes after disciplinary sanctions, as one prisoner thus recounts: “on 15th November 2011, I
had a fight with a prisoner (I was defending myself), I went to the courtroom with the other
prisoner, he was given 15 days in the punishment wing (QD), I was given 10 days’ confinement

221 Prisons administration department circular of 20th July 2009 concerning the methods of implementation of
differentiated regimes within prisons.
because they understood that I was defending myself, and today they want to keep me in a closed cell despite the fact that I behaved well throughout my confinement in a cell”.

In one institution inspected, prisoners subject to incident reports are assigned to the closed regime until their appearance before the disciplinary committee, which may take place several weeks later, or sometimes after an even longer period.

In another prison, they may also be placed under the closed regime following incidents, when it has been decided not to follow the latter up with disciplinary proceedings for the time being. In the following case, ascertained at the time of another inspection, one person had been placed under the closed regime since their early removal from the punishment wing on the basis of a medical certificate. Moreover, they had been told that they would remain there throughout the duration of deferment of the sanction.

Nevertheless, by way of a guarantee to ensure that the differentiation of regimes is used outside of a disciplinary framework, the circular explicitly specifies that “automatic assignment to the (most restrictive) controlled regime on removal from punishment wings should be prohibited” and that “after enforcement of punishment cell sanctions, prisoners should be reassigned to their original wings”.

The feeling that differentiated regimes may serve as disciplinary tools is sometimes further reinforced by the fact that certain institutions use them for the purposes of collective sanctions.

This one person reported to the Contrôleur général that the whole of the sector within which they were accommodated had suddenly changed to a “closed doors” regime following a fight between two prisoners, passageway “squabbles” between two others, a theft of tobacco from one cell to another and trafficking of medicines and cannabis. In thus misusing the statutory application of differentiated regimes for disciplinary proposes, this practice also violates the very spirit of differentiated regimes, which implies the principle of tailoring sentences to the needs of individual offenders.

Furthermore, to a still greater extent than simple restrictions upon coming and going, assignment to the controlled regime involves restrictions in terms of access to activities and work, in spite of the provision of the circular of 20th July 2009 which specifies that “this system does not lead to any restrictions with regard to the provisions of ordinary law and whatever the regime applied”.

Situations of this nature have been referred to the Contrôleur général on numerous occasions, as in the following case: “I was suspended on 21st March but, in reality, I was dismissed from my employment out of hand on Friday 23rd, from the moment that I was obliged to change from one building to another, which is, moreover, in the closed sector, subsequently confirmed by the committee on 26th March. I am now subjected to a double punishment!”

This situation is applied with even greater harshness in penal institutions for minors, in which punishment wings are infrequently or even never used, but changes from one regime to another are commonplace. “In the minor’s own interest”. However, none of the guarantees of disciplinary procedure apply: there is a total absence of both defence and means of remedy.

### 2.2.2 Changes of Cell and Searches in Cells

The criteria should also be examined that justify the placement of prisoners in “special cells”, in which a hybrid regime of “exclusion” reigns, which is somewhere between confinement and solitary confinement, for a limited
period, but without application of the procedures provided for by the regulations.

At the time of one inspection in a remand prison, the staff heard by the inspectors did not hesitate to justify these assignment measures, taken outside of any written procedure, in the following manner: “they are unbearable in collective life and, lacking any resources, they tend to extort money from their fellow prisoners”. One of them had been placed alone in a cell under this special regime for two months.

In another remand prison, it was also noted that prisoners were frequently placed in former punishment cells, rearranged as traditional cells, in order to avoid detention in punishment cells, considered to be anxiety-inducing and liable to lead to suicidal acts.

The punitive character of assignment to this type of cell is therefore concealed offhand, insofar as it constitutes an alternative to placement in a punishment cell. Yet it was specified that assignment to these special cells could also be justified by demands for separation between prisoners issued by judges, or on medical grounds at the request of the UCSA.

It is therefore appropriate to be particularly vigilant with regard to the assignment of prisoners to this type of cell. Indeed, it may at first sight appear to be a “benignant” alternative to placement in punishment cells. In reality, the lack of formal character involved in this measure may make it harmful to persons in custody in terms of length of placement, access to remedy etc.

Finally, the Contrôleur général is regularly informed of successive assignments of individual prisoners to different cells over short periods of time. This practice, which may be explained by various different reasons connected to the management of the prison, is nonetheless sometimes a disguised sanction. A similar phenomenon is encountered when searches of cells are carried out in a very frequent manner and may then be felt to be a form of sanction.

2.2.3 Confiscation of Clothes on the grounds of Prevention of Suicide and excessive use of Emergency Allocation of Protective Clothing and Blankets (DPU)

Article D. 273 of the code of criminal procedure is invoked in certain institutions as the basis for decisions to confiscate clothes, as a security measure, in case of identified risk of suicide.

The inspectors ascertained that certain institutions frequently resorted to this practice with regard to persons placed in punishment cells. In these cases the decision is then taken by the management, which refers the matter to the medical service. In one prison inspected, an examination of the documents completed after each use of this measure shows that, over a six-month period, personal clothing was taken away and emergency protective clothing (DPU) allocated on twenty-nine occasions – for average periods of between twenty-four and forty-eight hours. Subsequently, in the course of the five following months no such measures were taken. During the latter period, the procedure was suspended because the institution was unable to procure new, less resistant clothes, the prison administration having ascertained that four suicides had occurred by means of the clothes initially used. In the course of these five months, the institution did not record a higher number of attempted suicides in the punishment wing.

However, this undressing and its automatic consequences, the handing over to the person of so-called “emergency protection allocation” clothes (DPU, composed in particular of pyjamas made of tearable paper, which are extremely uncomfortable to wear), should be subject to the provisions of the memorandum of 10th February 2011, which provides that “use of this kit is reserved to prisoners in an acute state of suicidal crisis, or presenting the imminent risk of a suicidal act”. 

128
The DPU measure is not therefore to be systematically applied to all persons presenting risks of suicide. In any case, it cannot be systematically used for all prisoners placed in punishment wings.” This memorandum also emphasises that DPUs should be limited in time; by way of information, it mentions an average period of use of between one and forty-eight hours.

Analysis of the practice raises questions: indeed, it appears that most of the confiscations of personal clothes were decided upon after the disciplinary committee session held on Fridays, for implementation over the whole of the weekend, and that they concerned persons the majority of whom had expressed their disagreement with sanctions by making suicide threats.

The Contrôleur général was also informed of the case of one prisoner, placed in a punishment cell and allocated with this kit throughout the duration of the sanction, that is to say seven days (168 hours). In addition, in the course of this placement, the person concerned had to spend their exercise period clothed solely in the tearable pyjamas, at 6 p.m. in the middle of December, that is to say one hour after sunset, in temperatures varying between 5 and 9°C. From exchange of evidence between the Contrôleur général and the director it emerged that this prisoner was not in a state of suicidal crisis, the DPU having been solely justified by the prevention of a fire risk, due to an incident involving a mattress fire that had occurred two months previously. This measure therefore appears to resemble a disguised means of punishment rather than real prevention of suicide.

2.2.4 Conditional Granting of Allowances depending upon Prisoners’ Behaviour

In a more sporadic manner, cases of withdrawal of financial aid as a means of punishing behaviour have been brought to the Contrôleur général’s attention.

Such was the case, in particular, of one person who suffered the withdrawal of a cash allowance, which they were nevertheless entitled to claim in view of their absence of resources. From an examination of the reports of the single multidisciplinary committee (CPU) meetings which considered this person’s situation, it appears that their behaviour alone was emphasised in order to justify the possible suspension and subsequent withdrawal of the allowance. Thus, a briefing indicates that: “the CPU notes that you had requested work or general service. Your behaviour in prison is disagreeable. We therefore ask you to pull yourself together quickly. The poverty allowance is granted but make a real effort”. The following month, on the contrary, the CPU granted an allowance to the person on grounds of unfitness for work due their “psychological profile”. One month later, this aid was refused on the following grounds: “you are making no efforts whatsoever in prison, you are letting yourself go and are involved in the various sorts of trafficking within the building” On this occasion, it has been decided not to grant you the poverty allowance”. The following month, the decision was maintained, specifying that: “you are doing nothing whatsoever in detention, you are letting yourself go completely. Refusal of the poverty allowance”.

However, the memorandum from the prisons administration dated 3rd February 2011 concerning the granting of aid to persons lacking resources provides that “exclusion from cash allowances is […] possible when the prisoner has refused to undertake paid activity offered by the CPU” but explicitly specifies that “neither behaviour, nor choices made by prisoners in terms of activities can constitute grounds for exclusion from allowances.”

When the unsuitability of these grounds in relation to the memorandum was taken up with the director, the latter replied that “it is very useful that mention is made of behaviour, since this explains the denial of employment. The refusal to grant the allowance is not therefore directly connected to behaviour, but to the idleness of the person concerned in the period in question”.

129
Nevertheless, it appears that the withdrawal of the cash allowance, based on an assessment of the behaviour of the person concerned, is indeed constitutive of a disguised sanction.

2.2.5 Transfers as Order and Security Measures

The circular issued by the director of the prisons administration department on 21st February 2012 concerning the placing of prisoners authorises “transfers as order and security measures” insofar as it states that “requests for changes of assignment [issued by the director of the institution] may be justified by the behaviour of convicted-prisoners in custody”. Article D. 301 paragraph 2 of the code of criminal procedure adds that: “as far as unconvicted prisoners are concerned, they may only be transferred with the agreement of the judge to whom judicial investigation of the case is referred.”

Nevertheless, the circular specifies that such decisions should reconcile the imperatives of security for institutions and persons with respect for fundamental liberties and rights. The director of the institution therefore has to take into account a number of factors affecting the person concerned including, in particular, their family situation, any training commenced, any planned reduced sentencing measures, their health and their rights to defence before asking for the transfer.

However, an examination of the letters received by the Contrôleur général shows that administrative transfers are very often decided upon outside of the abovementioned criteria. Many of them, which follow incidents in prison, resemble transfers for disciplinary purposes.

“Disciplinary transfer” decisions of this kind may be taken as principal measures (due to grievances but outside of any disciplinary procedure), in a temporary manner (that is to say alongside a disciplinary procedure and pending a disciplinary committee hearing) or, more commonly, in addition to disciplinary measures already enforced. The principal figures of this misapplication of procedure are persons showing an anti-authority profile or psychiatric frailties regularly provoking incidents who, for this reason, go on a “Tour de France” of prisons, which creates the greatest degree of difficulty with regard to the maintenance of their family relations.

By way of example, the Contrôleur général noted the case of one person whose transfer to an institution near to their family home had been planned and agreed upon. Finally, however, following a disciplinary procedure and sanction, they were assigned to an institution far from their family home. When questioned as to the reasons for this transfer, the DISP declared that “the central administration decided to send [the person concerned] to another institution. Thus, on 12th December 2011, the reassignment of [this person] that had been confirmed on 13th September 2011, was cancelled and replaced with reassignment to another institution considered to provide more suitable supervision. […] The latter may subsequently seek a new change of assignment, in order to be imprisoned within an institution close to the place of residence of the members of their family, on the condition of showing appropriate and more stable behaviour”.

The practice on the part of the prisons administration of using transfer measures as a disciplinary tool to punish behaviours which it considers inappropriate is here clearly shown. However, the lack of precision of the notion of “behaviour” may leave room for arbitrariness.

The use of these methods was also ascertained within the course of inspections. During the inspection of one remand prison in the South of France, which accommodated 129 prisoners at the time of the inspection, the staff of the institution continually repeated to the inspectors
that “numerous prisoners are transferred to this remand prison from other institutions by means of order and security measures”. The inspectors indeed ascertained that this assertion was correct. This remand prison has the reputation of being an institution “where discipline is firmly maintained. Therefore, and quite naturally, prisoners whose behaviour is continually bad are sent there”. Disciplinary assignments of this kind account for one fifth of the inmate population of this institution.

2.2.6 The Solitary Confinement Regime

Article 726-1 of the code of criminal procedure and the circular issued by the prisons administration department on 14th April 2011 concerning the placement of prisoners in solitary confinement state that such placements may only be made “on the grounds of protection of the person concerned or maintenance of the security of persons and of the institution. Such decisions shall be based upon serious grounds and objective and corroborating elements justifying fear of serious incidents on the part of the prisoner or directed against them”.

Decisions to place prisoners in solitary confinement cannot therefore be taken for reasons related to disciplinary considerations, that is to say as a replacement for disciplinary sanctions or as an extension thereof.

Nevertheless, placement in solitary confinement following disciplinary measures is a common practice within certain penal institutions. Indeed, under the guise of protection of persons, a double sanction is imposed. Such is the case, in particular, when placement in solitary confinement is justified on grounds similar to those for which the prisoner has already been placed in a punishment cell.

In particular, the Contrôleur général was informed of the situation of one person who, after being placed in a punishment wing, was granted a deferment of this measure by medical decision. However, on the same day, a search performed upon the person’s cell led to their placement in the solitary confinement wing. It therefore emerges that the repeated application of these measures in very close succession led to the substitution of a solitary confinement measure for placement in the punishment wing, which had become impossible. This constitutes misuse of the procedure for placement in solitary confinement wings.

2.2.7 Misuse of Article 24 of the Act of 12th April 2000222

“With the exception of cases where decisions are taken on request, individual decisions, which shall be justified in application of articles 1 and 2 of Act no. 79-587 of 11th July 1979 concerning the justification of administrative acts and the improvement of relations between the administration and the public, shall only take place after the person concerned has been put in a position to present written remarks and, if necessary, at their request, oral remarks. This person may enlist the assistance of an adviser or be represented by an agent of their choice.”

The circular 9th May 2003 issued by the prisons administration department in application of the above article 24 specifies that disciplinary proceedings fall within the field of application of article 24, while conforming to special procedures. Consequently, in this section we will speak of two distinct procedures that, for the sake of clarity, we will refer to as “disciplinary proceedings”

Disciplinary proceedings are the procedures that have been described so far in this section and are strictly limited to providing a response to acts which correspond to the notion of “fault”; for its part, implementation of article 24 of the act of 12th April 2000 applies to a much larger field, necessarily distinct from the notion of “fault”, and leads to measures such as the suspension or withdrawal of visiting permits, denial and withholding of correspondence, withholding of publications, withdrawal of previously granted authorisations, suspension or dismissal from employment, exclusion from sports activities for reasons of security etc. Amongst these measures, only dismissal from employment and suspensions of visiting permits may be enforced in a temporary manner, that is to say pending the inter partes hearing imposed by article 24.

The inspectors ascertained that there is sometimes confusion with regard to the distinction between the implementation of disciplinary proceedings – particularly controlled under the law in its current state – and the use of article 24 – less formal and therefore potentially less protective of fundamental rights.

Numerous domains come within the scope of the implementation of article 24 of the Act of 12th April 2000 and therefore stand to be affected by any confusion that may arise between the latter and disciplinary proceedings: dismissal of prisoners from employment and training, placements in solitary confinement, suspension of visiting permits, withholding of possessions etc.

2.2.7.1 Dismissal from Employment and Training

There are three forms of dismissal of prisoners:

Disciplinary dismissals, which can only be pronounced in order to punish faults relating to employment, are subject to traditional disciplinary proceedings: appearance before a disciplinary committee, possibility of gaining access to the file and enlisting the assistance of a lawyer etc.

Dismissals pronounced as non-disciplinary measures – that is to say in cases where persons granted employment show difficulties in adapting to their work or prove to be incompetent at performing the required tasks – for their part, have to comply with the inter partes proceedings provided for by article 24 of the Act of 12th April 2000: prior notification of the prisoner of the decision liable to be taken against them, possibility of presenting written and oral remarks, possibility of enlisting the assistance of a lawyer and of consulting their file etc.

Finally, dismissals pronounced as temporary administrative measures do not fall within the field of application of article 24 of the Act of 12th April 2000. The persons concerned simply have to be notified of them, as is the case for all individual administrative decisions.

However, numerous prisoners have called the Contrôleur général’s attention to dismissals affecting them which were not enforced in accordance with the respective principles pertaining to each of the procedures.

Thus some were subject to disciplinary dismissal for acts that can unquestionably be considered disciplinary faults unrelated to their professional activity. By way of illustration, the Contrôleur général was apprised in particular of the case of two prisoners within the same institution, who had been granted employment as floor assistant helpers. Following a search of the sector, they were enjoined to clear their cell and place some of their personal possessions in the property office. In spite of repeated requests to the warders, they were not able to obtain
boxes to carry out this task. The next day, they were notified of a decision to place them under the closed regime as a punishment for their failure to comply with the cell-clearing instruction. The two assistant helpers, aware that their placement under the closed regime would inevitably lead to dismissal from their employment, refused to submit to this change of assignment. Their refusal to comply was punished by the disciplinary committee by means of an eight-day punishment cell placement and dismissal from their assistant helper position.

This situation raises two major issues – the use of differentiated regimes, on the one hand, and disciplinary dismissals from employment for faults that are unrelated to professional activity on the other. The Contrôleur général therefore took up this issue with the director of the prisons administration department who, in response to this second point, asserted that “a memorandum [would] soon be distributed to interregional directors in order to call their attention to the conditions for pronouncement of the disciplinary measure of dismissal from employment and to ask them, within the framework of their power of direction and control over subordinates within the organisational hierarchy, to withdraw sanctions that have been pronounced for faults that were not committed in the course of or during the employment in question”.

Certain persons also informed the Contrôleur général of dismissals from employment on anecdotal grounds, not constituting disciplinary faults or inaptitude in their work: for example a floor assistant helper was dismissed for having shouted at a nurse from a passageway, supposedly thus damaging the necessary trust between the prison administration and assistants; another person was dismissed from their position in the workshops on the grounds that they had gone to a sports activity during a period of sick leave, in order to talk with fellow prisoners, this constituting, in the eyes of the prison management a double disciplinary fault: “the fact of not going to the workshop hindered the business due, in particular, to a drop in production harmful to the objectives of the companies employing prisoners, when his state of fitness was such that he was able to go to sport. Mr A. specifies that he went to sport in order to talk, a practice which disturbs the sports activity”. One might add that the DISP set this decision aside.

Instances of misuse of article 24 of the Act of 12th April 2000 have also been brought to the Contrôleur général’s attention. Certain persons indicated that the inter partes hearing concerning their dismissal from employment had been held two months after the single multidisciplinary committee had taken the disputed dismissal decision, and that this was done in order to “dress up” an unduly taken decision with a semblance of legality; others reported dismissal with neither a hearing in the presence of the parties involved nor any appearance before the disciplinary committee. The truthfulness of these allegations has been verified by the Contrôleur général.

Finally, situations were referred to the Contrôleur général in which placement in the punishment wing was systematically used as grounds for dismissal from employment. One person in particular reported their experience in this respect: this person, after waiting for eleven months and making numerous requests for work, was granted employment in the workshops by the CPU, on the condition that they follow a training course beforehand. However, the day after this decision, they were called to appear before the disciplinary committee which, because of an incident having taken place two weeks earlier, revoked the deferment of an eight-day sanction. At the time of commencement of the training, the person concerned was therefore placed in the punishment wing, thus preventing them from attending. Nevertheless, no dismissal procedure was initiated, the director considering with regard to the person concerned that since “they were not present on the day of commencement of their training, the implementation of a dismissal procedure is not therefore rendered necessary by the need to take evidence”. However, the circular concerning discipline of 9th June 2011 provides that in the absence of specific arrangements (enforcement of sanctions in instalments, deferment or dispensation), the sanction
of placement in a punishment cell is automatically restricted by “the suspension of employment, professional training and education in which the prisoner participates”. From this mention of the solely suspensive nature of such placements it can therefore be affirmed that dismissal from employment cannot arise from the sole fact of placement in the punishment wing.

2.2.7.2 Forfeiture of Use of Appliances and Withholding of Correspondence

A final area of confusion sometimes arises between implementation of article 24 of the Act of 12th April 2000 and disciplinary proceedings: this concerns the procedure to be followed in case of withholding of property.

Several procedures for forfeiture of the use of appliances (computers, TV sets etc.) are provided for in particular by the regulations, according to circumstances.

The circular from the prisons administration department of 13th October 2009 concerning assess to IT facilities for persons in custody sets out the procedure according to which a first type of forfeiture may occur: “The director of the institution has the possibility of withdrawing previously granted authorisations to possess computers. The prisoners concerned shall be notified of such withdrawals of authorisation and of the reasons thereof after implementation of inter partes proceedings as provided for under article 24 of the Act of 12th April 2000 concerning the rights of citizens in their relations with public administrations.

For its part, paragraph 3 of article D.449-1 of the code of criminal procedure specifies the framework within which this withdrawal procedure may take place: “Any IT equipment belonging to the prisoner may, moreover, be withheld, only being returned to them at the time of their release, in the following cases: for reasons of order and security [and] in case of impossibility of accessing the IT data, due to a deliberate act on the part of the prisoner”.

And paragraph 4 of article R.57-7-33 of the code of criminal procedure institutes the possibility of enforcing the withdrawal of IT equipment as a disciplinary sanction; in this case such withdrawal cannot continue for longer than one month. The circular from the prisons administration department of 9th June 2011 specifies that “forfeiture of an appliance […] is a [disciplinary] sanction which may […] be pronounced independently of the circumstances in which the fault was committed”.

Withdrawal of IT equipment by virtue of article 24 of the Act of 12th April 2000 may therefore be found to apply, under strict conditions, in a permanent manner; on the contrary, disciplinary withdrawal can apply for a precisely limited period, though on a broader range of grounds. It is therefore incumbent upon the managements of penal institutions to choose between these two procedures, according to which is most appropriate to the situations encountered.

However, several prisoners have brought unjustified use of the withdrawal procedure, resulting from the implementation of article 24 of the Act of 12th April 2000 in lieu and place of disciplinary proceedings, to the Contrôleur général’s attention, a circumstance which permanently deprived them of their IT equipment.

For example, following the discovery of enlarged images of children’s bodies on the computer of one prisoner, which had been extracted from a DVD purchased in prison shops, disciplinary proceedings were initiated against them and they were sentenced to confinement. Fifteen days later, the person’s computer was confiscated, after an inter partes hearing, within the

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223 Circular JUSK 1140024C.
framework of implementation of the Act of 12th April 2000. When the Contrôleur général took this matter up with the director of the institution, the latter pointed out that the computer had indeed been withdrawn according to this procedure, since the person had used it in a manner not provided for under the law, which presupposes that the computers are solely used for purposes of rehabilitation (paragraph 2 of article D. 449-1). Yet paragraph 3 of this same article specifies, on the contrary, that withdrawals pursuant to article 24 of the Act of 12th April 2000 can only be carried out within the framework of impossibility of verification of the appliance or as order and security measures. The withdrawal was therefore unlawful with regard to these texts, whereas withdrawal on disciplinary grounds could have been applied in all validity.

In certain cases, the choice of using article 24, which is restrictive and sometimes unlawfully used, can resemble a measure of a disciplinary nature.

Other testimonies collected by the Contrôleur général mention cases of withholding of letters sent to third persons – in particular in cases where insults and threats against prison staff are mentioned – carried out outside of the provisions of article 24 of the Act of 12th April 2000. Nevertheless, it should be recalled that the circular of 9th May 2003 concerning application of article 24 of the Act of 12th April 2000 for the prisons administration explicitly mentions the obligation to make use of such inter partes proceedings when mail is prohibited and withheld. Moreover, in the case cited as an example, the DISP had declared the withdrawal decision to be invalid, on the grounds that it had not complied with the terms of article 24.

2.2.8 Restoration of Former Privileges and Compensation

The issue of restoration of former privileges arises in particular when unfavourable temporary administrative measures taken against prisoners are not subsequently confirmed by the disciplinary committee, or when disciplinary measures are set aside after remedy.

Indeed, the Contrôleur général has ascertained on numerous occasions that the quashing of such sanctions or measures has not led to the reestablishment of former rights and privileges (sentence reduction credits, additional sentence reductions etc.).

In their letters, certain persons thus reported order and security measures involving transfers, which had been enforced when the incidents that caused them had been dropped without proceedings or had led to acquittal. Nevertheless, in spite of their requests, these persons were unable to obtain reassignment to their institutions of origin.

Similarly, certain persons reported their dismissal from employment as a temporary administrative measure before being acquitted by the disciplinary committee, without for all that being able to return to their former professional positions.

Certain others mentioned placement under the closed regime due to incidents that were nevertheless dropped without proceedings.

Finally, others reported having made requests of compensation in vain for unjustified sanctions, whether with regard to the duration of placement in the punishment wing pending inquiry and hearing following incidents for which they were acquitted, loss of employment following dismissals pronounced as temporary measures or loss of earnings caused by the use of one procedure rather than another, within the framework of dismissals pending inquiries and hearings etc.

It emerges from these numerous letters received by the Contrôleur général that once decisions withdrawing remission credits, denying additional remission and refusing reduced sentencing and permission to go out have been delivered by judges responsible for the execution of sentences (JAP),
the latter do not in general re-examine the situation of the persons concerned with regard to new elements that nevertheless weigh in their favour: discontinuance of proceedings, acquittals, quashing of decisions by the DISP etc. This absence of restoration of former privileges with regard to the execution of sentences would be felt extremely unfair by the persons concerned. In addition, they find themselves devoid of any effective remedy within this framework, the JAP’s order having become final in the meantime.

2.3 Unlawful Practices for the Purposes of Punishment

2.3.1 Access to Activities and Consideration of Applications

Arbitrary management of access to recreational, professional and training activities is probably one of the disguised sanctions most frequently described to the Contrôleur général.

The cases taken up by the Contrôleur général have continually made it possible to ascertain that certain prisoners encounter difficulties in gaining access to activities, sports in particular, officially on the grounds that “the processing of applications requires more or less time”.

The director of one of these penal institutions, to whom the Contrôleur général referred these matters, ascertained that the required times could vary according to the level of occupancy of the institution and management errors. Nevertheless, it emerges from the letters that these “management errors” were largely to the advantage of certain persons and systematically to the disadvantage of others. The five persons concerned, having referred their cases to the Contrôleur général independently of each other, and at different times, unanimously emphasised that applications for access to activities were not dealt with in chronological order.

2.3.2 Daily Bullying

Deprivation of activities, exercise and even meals is regularly denounced to the Contrôleur général.

By way of example, one case was referred to the Contrôleur général involving a person who declared that they had confrontational relations with the warders. This person sent the Contrôleur général a sheet summarising the distribution of meals within the wing to which they are assigned. It emerges from an examination of this sheet that over a fifteen-day period this person had received meals that were totally inappropriate to their physical condition. Indeed, and despite the fact that the distribution of special meals has to be expressly requested from the administration and justified by medical certificates, the person concerned had variously received meals reserved for persons with no teeth, for persons suffering from diabetes, and for vegetarians. He sometimes received no meal at all, his name effectively not appearing on the list of meals distributed.

Similarly, another situation denounced to the Contrôleur général involved a prisoner who, after having lodged several appeals against decisions by the management of the institution before the director of the interregional department of prison services, apparently suffered reprisals of the same kind and was given meals consisting of blended foods, despite the fact that this type of diet is normally allocated to persons with precise medical symptoms. Although it is difficult to establish a definite causal connection between the measures taken against prisoners and desire for reprisals on the part of staff with whom confrontational relations may exist, this type of
behaviour is felt to be personal revenge which only worsens the feeling of arbitrariness and injustice that certain prisoners may harbour.

Letters sent to the Contrôleur général denounced unacceptable behaviours on the part of certain members of prison staff: moral harassment (racist remarks, intimidation etc.), unusually frequent changes of cell, brutal searches of cells etc. The prisoners concerned explain in their letters that, once again, these are reprisals arising from confrontational relations with prison staff or from the grounds for their imprisonment (homicide of a police officer, for example). Consequently one prisoner reports that: “I have now been [...] in the solitary confinement wing (Q1) for one month and one week [...] the screws are making life hell for me [...] changes of cell every week, every day they change my fridge, television and mattress. My linen is scanned every day and my cell continuously left in a mess.”

From the letters received by the Contrôleur général it emerges that some persons, victims of threats on the part of a warder, apparently had their electricity cut off on several occasions, the supply only being put back on in the best of cases thanks to the intervention of another warder. These types of practices, far from being isolated, appear to constitute an effective means of pressure. Furthermore, with the exception of scenarios in which a prison officer might denounce a colleague, it is impossible to prove these acts, creating on the one hand a feeling of impunity and on the other a strong sense of injustice.

The Contrôleur général has moreover been informed that one of these episodes apparently rapidly degenerated into a physical assault upon the prisoner by the prison officer, the latter attempting to “cover” himself by drawing up an incident report. By return of mail from the DISP, it was possible to determine that the prisoner had indeed received blows, something which was moreover confirmed by the declarations of a colleague of the prison officer responsible for the assault.

Other acts of a degrading nature were denounced. Indeed, prisoners have brought strip searches and vigorous searches of cells to the Contrôleur général’s attention, both of which were carried out following protests presented to the head of detention. One of the prisoners specified having been informed that they had “annoyed the boss” and that one therefore “had it in for them”. The fact was brought to the attention of the director of the institution that disciplinary responses of this kind, decided upon by warders without incidents being recorded, were apparently frequent. By return of post, it was pointed out that these searches were not identifiable since, at the time of commission of the acts in question, they were not automatically traced, making any verification impossible with regard to the reasons for and conditions of the searches and therefore leaving them entirely at the warders’ discretion.

A very large number of other letters express great outrage with regard to behaviours considered discretionary. Thus some did not understand why certain persons can exchange items with their fellow prisoners accommodated in another cell while they themselves cannot; others wonder why they are “forgotten” in waiting rooms; yet others note with a suspicious eye the fact that certain persons are authorised to have particular items (for example a certain type of jacket) whereas the same request on their part had been refused; finally, others wonder what margin for manoeuvre is left to warders with regard to access to showers etc.

2.4 The impact of Prison Disciplinary Sanctions upon Court Decisions

2.4.1 Plurality of Prison and Court Sanctions
In the first place, disciplinary sanctions are in practice often followed by court proceedings, dismissal from employment, transfer and placement under the closed regime, as mentioned above, in a more or less lawful manner.

In the second place, and in accordance with law, disciplinary sanctions are brought to the attention of the judge responsible for the execution of sentences (JAP), who then decides whether or not the benefit of remission credits and the granting of additional remission are justified in view of the latter. The existence of incidents and disciplinary sanctions also has an influence on the criteria for assessment of the appropriateness of reduced sentencing. Numerous testimonies received by the Contrôleur général report these repercussions, which simultaneously punish the persons concerned in several different ways.

For example, one prisoner on partial release mentioned receiving a death threat from the person sharing their cell. In spite of having informed the warders and management on numerous occasions, nothing had been done in order to assign them to a different cell. Therefore, one evening, feeling still heavier with fear, they returned to the institution after the imposed time, with a telephone and in a state of inebriation. “On 20th May, I appeared before the JAP to examine the problem. The result thereof was the revocation [of my partial release] […] On Monday 6th June, I was summoned before the director who gave me a suspended sentence of 42 days in a punishment cell for alcohol, failure to return to detention and possession of a telephone! Between 8th May and 4th June, there was enough time to try this matter. […] In the following month, in July 2011, the JAP refused me the three months of additional remission (RPS) on the same grounds. Before this assault, I had spent 18 months without any problem. I […] appeared […] before the JAP again on 17th August for the granting of reduced sentencing and she […] punished me […] [again] by barring me from lodging [another request for] reduced sentencing for six months, without even examining my file. Since the month of May, I have been denied work, making me destitute […]. The story continues on 29th September when the JAP […] took away 45 days of remission credits (CRP) from me for the same events”.

In legal terms, the JAP’s assessment is based upon the behaviour of the prisoner in detention and disciplinary sanctions do not automatically involve the withdrawal of remission credits. In practice, the situation is very different, since judges responsible for the execution of sentences rely on disciplinary proceedings to place objective elements at their disposal enabling them to assess the prisoner’s behaviour.

2.4.2 Plurality of functions in reference to article 6 of the European Convention on Human Rights

Disciplinary committees are chaired by the head of the institution or by a person having been delegated authority by the latter and the same also applies, prior to procedures, to decisions to institute proceedings and open inquiries.

For this reason, certain provisions of prison disciplinary procedure do not appear to offer guarantees of a fair trial, as defined by the ECtHR in its case law with regard to the impartiality of disciplinary authorities, which is based, in particular, on separation of the powers of instituting proceedings and judgement224 and on rights of defence225.

Indeed, although the ECtHR considers that disciplinary sanctions do not in themselves contravene article 6 of the Convention, which guarantees the right to fair trial, since they

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224 ECtHR, 12th April 2005, Witfield vs. United Kingdom.
225 ECtHR, 9th October 2003, Ezeh and Connors.
constitute a simple “aggravation of the conditions of detention”\textsuperscript{226}, on the other hand it considers that article 6 should apply when disciplinary sanctions result in additional deprivation of liberty by prolonging the duration of imprisonment.\textsuperscript{227}

Such seems to be the case with regard to withdrawal of remission credits, of which the connection with disciplinary sanctions is obvious, to such an extent that they are sometimes made to correspond to the number of days for which prisoners are placed in punishment cells. The application of this type of “scale” is ascertained in most of the institutions inspected.

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As we have just seen, certain disciplinary practices were constructed in an empirical manner on the basis of legal uncertainties.

Thus, in the absence of formal disciplinary regulations meeting the requirements of the European Convention for the Protection of Human Rights, the human imagination, which is very fertile in this respect, has invented a whole range of disguised, unlawful and clandestine sanctions within institutions where their presence is unexpected, in particular with regard to committal to hospitalisation and patients who are prison inmates.

While the disciplinary regimes within other institutions, such as detention centres for illegal immigrants (CRA) and young offenders’ institutions (CEF), have poorly-defined contours and might be described as being “in their embryonic stages”. Provisions exist, however they remain very inadequate, allowing a non-negligible proportion of arbitrariness to remain.

Prisons, on the other hand, unquestionably possess real disciplinary regulations subject to codified rules, though much room for improvement nevertheless remains. Indeed, the existence of sanctions that are indirect, or devoid of any legal and statutory basis, is a reality and certain practices, which resemble the absence of law, are similarly not exempt from arbitrariness.

For this reason the Contrôleur général des lieux de privation de liberté here formulates a set of recommendations.

1/ With regard to the management of discipline and sanctions in health institutions

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The Contrôleur général recommends:
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- that from the moment that a prohibition of a patient committed to hospitalisation in a mental health institution from making telephone calls or engaging in written correspondence can be justified on purely therapeutic grounds, the prohibition decision should be taken in writing, specially justified and recorded in a specific register presented to all inspecting authorities at the time of inspections within the institution;

- that a specific register should also be opened concerning correspondence sent to the administrative and judicial authorities.

Moreover, the Contrôleur général recommends, in each health institution:

- that an ad hoc register should moreover be opened listing each placement in seclusion rooms and under physical restraint, in addition to their entries in patients’ individual files;

\textsuperscript{226} \textit{ECHR}, 20th January 2011, Payet vs. France.

\textsuperscript{227} \textit{ECHR}, 28th June 1984, Campbell and Fell.
and that, in accordance with the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its annual report for 2010, this register should record “the time of commencement and ending of the measure, the specific circumstances of the case, the reasons for which the measure was used, the name of the doctor who ordered and approved it and, if necessary, an account of the injuries suffered by patients or members of staff”. This register should be presented to all inspecting authorities;

With specific regard to hospitalised prisoners, the Contrôleur général recommends:

- that prisoners hospitalised by court order in mental health institutions should not be systematically placed in seclusion rooms throughout the entire time of their stay, on grounds solely connected with security and discipline and not for therapeutic reasons;

- that an interministerial circular (Justice/Health/Interior) should be taken concerning the care and treatment of prisoners hospitalised in secure rooms in hospitals and the handling of incidents;

- finally, that a clear and precise definition of the respective authority and allocated roles of the health authorities and the prisons administration with regard to the settlement of disciplinary incidents should be added to each UHSI protocol drawn up in application of article 5 of the order of 24th August 2000 concerning the creation of UHSIs 2/ With regard to detention centres for illegal immigrants.

3/ With regard to the management of discipline and sanctions in detention centres for illegal immigrants

While noting the practice of using exclusion rooms for disciplinary purposes, the Contrôleur général recommends:

- on the one hand that a disciplinary procedure within detention centres and the procedures for its enforcement should be set out within a legal framework while, in particular, fixing a maximum duration for the placement of detainees in solitary confinement;

- on the other hand, that a register should be opened, specifically devoted to such placements in solitary confinement, which mentions, as a minimum, the grounds, time of commencement and end of the placement as well as the authority carrying out the measure – the judicial authorities should be notified immediately – while also making provision for exclusion supervision procedures (frequency of patrols, medical care and treatment, use of means of physical restraint).

4/ With regard to the management of discipline and sanctions in young offenders’ institutions

The Contrôleur général recommends that the Minister of Justice should enact a general normative framework, which could take the form of a decree, concerning disciplinary rules in young offenders’ institutions. In order to ensure fairness towards minors and consistency between adults, professionals should be able to refer to a scale of sanctions for guidance, while being able to adapt them to the individual requirements of the minor in question.

This norm would rule out certain sanctions:

- on the once hand restrictions upon or prohibition of contact with families, for whatever reason, as recommended by the United Nations resolutions, referred to as the Havana Rules;
- and, on the other hand, the management of tobacco for disciplinary purposes.

Moreover, and in a general manner, the Contrôleur général would desire that all violence – even minor – by adults against minors should be systematically brought to the attention of State Prosecutor’s Offices; this violence, prohibited by the law and by the Convention on the Rights of the Child of 20th November 1989 (article 19), cannot in any case whatsoever constitute a response to contraventions.

5/ With regard to the management of discipline and sanctions in penal institutions

The Contrôleur général recommends to the Minister of Justice that changes should be made to disciplinary regulations in penal institutions by statutory means, according to the following principles and lines:

**With regard to the implementation of disciplinary proceedings**, this reform should specify:

- that inquiry reports leading to the opening of disciplinary proceedings should be drafted in a sufficiently clear, specific and detailed manner (cf. above). For this purpose, the Contrôleur général recommends the putting in place of specific training in the conducting of inquiries and command of the written procedures involved for officers and graded officers in charge of drafting reports;

- that at the inquiry stage face to face comparison of evidence should be organised and any possible witnesses heard, including at the time of the disciplinary hearing;

- that all decisions to take no further action with regard to incident reports should be brought to the attention of the prisoners concerned;

- that the allowed time between the commission of the offence and appearance before the disciplinary authority should be as short as possible and should not, in any case, be greater than fifteen days.

**With regard to the conduct of disciplinary hearings**, new provisions should specify:

- that disciplinary committee sessions should be held in a specifically dedicated and equipped place, outside of punishment wings; a place conducive to the solemnity and equanimity of *inter partes* proceedings and that the Declaration of the Rights of Man and of the Citizen should be displayed there;

- that prisoners occupying cells on their own should not have to pack their affairs prior to appearing before the disciplinary committee;

- that it is incumbent upon directors of institutions to specify the procedures for searches upon prisoners called to appear before the disciplinary committee, in accordance with article 57 of the Prisons Act of 24th November 2009, in such a manner as to avoid the implementation of two strip searches in succession;

- that the secretaryship of disciplinary committees should be entrusted to a member of prison staff who is not an assessor; the prison officer-assessor should not simultaneously be responsible for keeping order in the hearing.
- that disciplinary committee sessions should be compulsorily held in the presence of an assessor from civil society, failing which the sanctions pronounced shall be invalid. For this purpose, the Contrôleur général recommends that initial and continuing training should be implemented for assessors from civil society. He also recommends that the Minister Of Justice might facilitate a meeting of assessors in order to take advantage of their experience in the reforms that she needs to conduct;

- that all video surveillance recordings of incidents should be viewed in disciplinary hearings by means of monitors installed in each disciplinary committee room;

- that at the time of disciplinary hearings and even prior to the inquiry stage, the prisons administration should organise face to face comparison of evidence and hear witnesses;

- that for prisoners who declare that they do not understand French, a special procedure should systematically be put in place, with the appointment of an interpreter, chosen from the list approved by the court of appeal, by the head of the institution.

With regard to placement in confinement and placement in disciplinary wings pending disciplinary committee hearings, these changes should specify:

- that the suspension of educational, teaching and professional training activities should not be included among the restrictions resulting from the sanction of confinement, which remains a disciplinary measure in its own right;

- that placement in punishment wings pending disciplinary hearings should be strictly limited to cases of urgency, in accordance with the Prisons Act of 24th November 2009, apart from any other grounds or any other consideration;

- that whenever means of physical restraint are used at the time of placement in punishment wings pending disciplinary hearings, this should be systematically recorded by means ensuring the traceability thereof;

- that actions wearing protective clothing undertaken in order to carry out placements in punishment cells pending disciplinary hearings should be filmed insofar as possible and the images placed at the disposal of the authorities responsible for inspecting institutions.

With regard to the regime applied in punishment wings, these new laws should specify:

- that in view of the harshness of the sanction of placement in a punishment cell, the latter should only be pronounced as a last resort and envisaged in case of failure of compensatory sanctions and mediations;

- that medical opinions diagnosing unfitness for stays in punishment wings should revoke this mode of enforcement of a disciplinary measure and not suspend it pending a medical opinion to the contrary;

In this respect, the Contrôleur général recommends that medical staff should not take part in decision-making processes leading to disciplinary sanctions; the practice of obliging doctors to certify whether or not prisoners are fit to be placed in the punishment wing
hardly being conducive to the establishment of relations of trust between doctors and their patients.

- that an inventory of fixtures and statement of state of repair should be drawn up in the presence of the parties involved at the time of each arrival and that the whole of the items and products necessary for a stay in the punishment wing should be handed over to the prisoner;

- that, in view of their presence in a cell twenty-three hours a day, persons punished should have the benefit of two daily exercise timeslots, in the morning and in the afternoon. To this end, the Contrôleur général recommends the possibility of leaving several persons in the same yard, which would solve, if necessary, the difficulty of procuring a sufficient number of available yards;

In this respect, France should follow and extend to punishment wings the recommendation concerning solitary confinement wings made by the European Committee for the Prevention of Torture (general report 2010) which consists of “rethinking the design of exercise yards in solitary confinement wings in all institutions that are to be built or renovated. These yards should be sufficiently spacious and equipped in a manner allowing prisoners to practice physical exercise rather than merely pacing up and down a closed area” and have facilities making it possible to shelter from climatic vagaries.

- that persons placed in punishment wings should be able to take daily showers and have their spare changes of clothes in their cells, for the same reasons of hygiene;

- that persons placed in punishment cells should have effective access to varied reading (since it is essential that they have the benefit of stimulation that helps them to maintain their mental well-being as recalled by the European Committee for the Prevention of Torture in its annual report for 2010).

With regard to remedy available to persons punished by placement in punishment wings, this circular should specify:

- that appeals to higher administrative authorities and actions for judicial remedies lodged against decisions taken by disciplinary committees, as well as decisions delivered, should be recorded by means enabling the traceability thereof, in order to place this information at the disposal of the authorities responsible for inspection.

- that existing remedies should be brought to the attention of persons sanctioned by disciplinary committees at the time of the hearing, in particular for persons placed in punishment or confinement cells who have the possibility of requesting deferment of these measures;

To this end, the Contrôleur général desires that remedies effectively available to prisoners should be implemented in order to allow the latter to have the benefit of real guarantees. Placement in a punishment cell should be acknowledged to be a situation of urgency opening the right to judicial remedy by means of emergency appeal to an urgent applications judge for the suspension of disciplinary sanctions.

In addition to these statutory amendments, and more generally, the Contrôleur général recommends that the rules and regulations of punishment wings should be brought up to
date with the Prisons Act in penal institutions as a whole, in particular with regard to items authorised and handed over to prisoners at the time of their placement in punishment cells.

Moreover, he asks the prisons administration to take punishment cells of cramped dimensions out of service, in accordance with the recommendations of the European Committee for the Prevention of Torture (annual report 2010), which fix the minimum surface area of living space at 6 m². Improvement work should be undertaken in order to ensure that each punishment cell has adequate access to natural light, possesses a smoke detection and smoke extraction system and is equipped with means of communication with the staff.

Similarly, the Contrôleur général wants the facilities of punishment cells to be brought into line with norms; greater vigilance should be given to the maintenance of these premises whose state is sometimes an affront to human dignity.

Finally, the Contrôleur général recalls, as he had already recommended in his annual report for 2010 with regard to the maintenance of family relations, that the family and friends of prisoners placed in the punishment wings should not suffer any special restrictions connected to the imposition of disciplinary treatment, with regard to their visiting and relations by means of telephone and letters.

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With regard to “disguised” sanctions imposed through misuse of statutory provisions for disciplinary purposes within penal institutions, the Contrôleur général recommends the establishment of a joint circular from the prisons administration department (DAP) and the judicial youth protection service (DPJJ), specifically fixing the modes of application of these provisions in institutions for minors (EPM).

Moreover, the Contrôleur général recommends that, by means of two memoranda for decentralised departments, the prisons administration department (DAP) should establish:

- a first reminder note explaining the imperious need to distinguish the fields of application, on the one hand, of article 24 of Act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with the public administrations and, on the other hand, of the disciplinary proceedings resulting from the DAP circular of 9th May 2003 established in application of the said article 24, in order to bring an end to the confusion which reigns in the implementation of these two measures, in particular with regard to decisions concerning dismissals from employment and training, placements under the solitary confinement regime and withdrawal of appliances and correspondence;

- a second reminder note specifying that the assignment of prisoners to “closed” sectors, within the framework of differentiated regimes, should not in any case be used as a sanction, this practice being contrary to the spirit of the Prisons Act of 24th November 2009;

Moreover, the Contrôleur général requests that occasional use of the following as disguised sanctions should be brought to an end:

- changes of internal assignment and searches of cells;
- confiscation of personal clothing and use of emergency allocation protective clothing (DPU); these measures should only be decided upon within the exclusive framework of prevention of suicide, as stated in the memoranda concerning the use of the DPU;

- withdrawal of financial aid for persons lacking adequate resources on grounds of bad behaviour, in accordance with the circular from the prisons administration department (DAP) of 3rd February 2011 concerning the granting of allowances to persons lacking resources;

- changes of institution for punitive purposes, apart from transfers justified by order and security measures in the interest of the actual persons concerned, in order to avoid recurring incidents with the staff;

- automatic dismissal based upon placement in punishment wings, in accordance with the circular from the prisons administration department (DAP) of 9th June 2011 concerning the disciplinary regime for adult prisoners.

Finally, the Contrôleur général asks the Minister of Justice to initiate reflection as to the possibility of re-examination of cases by the judge responsible for the execution of sentences for any persons concerning whom favourable decisions (acquittal, dropping of proceedings, successful appeal to a higher administrative authority or successful recourse to the courts etc.) are delivered after unfavourable decisions with regard to the execution of sentences. This reflection should be accompanied by a study concerning the putting in place of measures for compensation by the prisons administration of persons who have been unfairly treated.

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With regard to unlawful practices used for punitive purposes, the Contrôleur général firmly recalls:

- that the processing of applications and effective access to activities and employment cannot in any case be conducted in a discretionary and discriminatory manner;

- that discriminatory treatment of prisoners in the management of the concrete aspects of their daily lives such as deprivation of activities, exercise and even meals, moral harassment (racist remarks, intimidation etc.), unusually frequent changes of cell, brutal searches of cells etc. cannot be tolerated.

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With regard to the plurality of sanctions suffered by persons convicted by disciplinary committees, the Contrôleur général recommends that the legislature should make an amendment of article 721 of the code of criminal procedure devoted to remission credits and the role of the judge responsible for the execution of sentences (JAP), in order to clarify the respective fields of jurisdiction of the prisons administration and of the courts in disciplinary matters.

Thus, in the first place, it would be appropriate to build a system which complies with the following principles:

- inquiries, necessarily conducted by an officer or a graded officer specialised in this task, should be conducted in an *inter partes* manner. Inquiries should be carried out including incriminating and exonerating facts, on the basis of testimonies, evidence collected by
means of face to face comparison of evidence and video recordings. Inquiries should also include information on the personality of the prisoner. From the moment that a disciplinary fault is formed, the inquiry report constitutes the step in the proceedings which refers the prisoner for appearance before a disciplinary committee with reformed competence.

- The acts at the origin of the proceedings are examined by the disciplinary committee, at the end of an inter partes hearing. The officer or graded officer having conducted the inquiry is serves as reporting official to the disciplinary committee. The committee includes (as currently) an external assessor. It is chaired by one of the assistants of the head of the institution specially designated for this purpose. The prisoner appears assisted by a lawyer or a specially-appointed representative [if they have so requested].

- After having heard the reporting official followed by the representative and the prisoner, who speaks last, the committee deliberates and issues a decision, which sets out its reasons and is made public, read at the time of the hearing before the disciplinary committee, delivers a verdict with regard to guilt and puts forward a sanction. This decision is immediately handed over to the head of the institution who has to make a decision within twenty-four hours of receipt. They may follow the decision, reduce or increase the sanction – in which case they give the specific reasons for their decision – or demand a new examination of the proceedings.

In the second place, in order to clearly dissociate disciplinary measures from measures for the tailoring of sentences to the needs of individual offenders, the system of remission credits should be given a purely administrative character and, therefore, the head of the institution should be invested with a power of withdrawal connected to the pronouncement of disciplinary sanctions, according to a pre-established scale and with remedies defined by law. On the other hand, the criteria on which the JAP relies within the framework of additional remission decisions should be broadened in order to take the prisoner's behaviour into account, without being bound by disciplinary decisions in any way whatsoever;

Finally, the Contrôleur général desires that reflection should be initiated by the Minister of Justice, in order to surround the particular prerogatives of heads of institutions with the necessary guarantees and introduce systematic control by the liberty and custody judge whenever punishment cell sanctions of more than five days are pronounced, in order to check the conditions of enforcement of disciplinary measures.
Section 4

Access to Defence Rights for Persons Deprived of Liberty

Defence rights traditionally means the prerogatives that a person has bring legal proceedings, both at the stage of taking of evidence and at the judicial examination and judgement stages.

Article 6 § 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, thus acknowledges in particular the right of every person charged with a criminal offence: to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

For persons encountered in places of deprivation of liberty, defence rights mean, in the first place, the right to apply to the courts of competent jurisdiction to set aside the decisions, whether court rulings or administrative decisions, which ordered their captivity.

It emerges from the inspections conducted by the Contrôleur général des lieux de privation de liberté that the conditions of operation of these places can also lead, according to circumstances, to the express or tacit deprivation of other rights.

Access to defence rights is adversely affected in particular by the conditions of operation of places of detention, if this is understood to mean – beyond lawsuits and trials – not only the right to defence against custodial sentences themselves but also the right of appeal against decisions – whether necessary or contingent – brought about by deprivation of liberty or living conditions in places of imprisonment. Safeguarding of rights and access to defence rights for captives, whose living conditions are greatly affected by decisions on the part of the authorities, are two sides of the same issue.

At the very least, exercise of defence rights presupposes knowledge of them. However, although persons deprived of liberty understand the measures to which they are subject – although this may not always be the case for hospitalised mental health patients or minors placed in young offenders’ institutions – they are not always aware of the legal, judicial and administrative nature thereof, the remedies against them and their effects as a whole.

Although persons deprived of liberty are informed by the authorities that special rights are attached to their situation (to be examined by a doctor, to be assisted, to inform a close relation etc.), they are little aware of the scope and purpose of a number of these rights. They

228 According to the meaning of act no. 2007-1545 of 30th October 2007 instituting a Chief Inspector of places of deprivation of liberty.
rarely consider the impact that the exercise of these rights could have upon the measures to which they are subject.

For many captives, the assertion of rights requires an understanding of the language in which they are set out, as well as the vocabulary used. In places of deprivation of liberty it is rare to encounter persons who have a command of the legal and administrative language used to inform them of their rights and of the procedures that have to be implemented in order to exercise them.

Moreover, the recent coming into force of new laws and the increasing attribution of the status of rulings to the applicable procedures further complicates the task of staff and reduces understanding of their rights on the part of those concerned.

Finally, applications for remedy, whether to a court or even to the same administrative authority for the reconsideration of its decision, require material and human means to which, ipso facto, captives do not have free access.

The inspections conducted over a period of more than four years have shown that, beyond the diversity of places of deprivation of liberty, of their mode of operation and of the measures and proceedings which lead them there, persons deprived of liberty all come up against obstacles of the same nature in defending their rights.

1. Access to Information: an Essential Precondition for any Defence

In most cases, those whose role is to inform persons deprived of liberty of their rights find themselves in a paradoxical situation: convinced of the need for the custodial measure, they nevertheless have to give objective information which may lead the person concerned to dispute the principle or terms thereof.

Furthermore, although, as a general rule, detention decisions and the rights attached thereto are notified automatically, the content of the said rights and of their scope is, in most cases, only explained at the request of the person concerned. In a certain number of cases, in the absence of requests on the part of persons deprived of liberty, access to defence rights remains theoretical.

In order to ensure the best possible access to defence rights for persons deprived of liberty, the legislature has specified to whom information should be provided and what the content thereof should be.

1.1 Informing Persons Deprived of Liberty of the Existence of their Rights is a Priority

1.1.1 The information should be personally issued to persons deprived of liberty

Notification of rights means that when a person is subject to a custodial measure, they should be individually informed of their rights and of the consequences thereof.
The information is given directly and immediately or, in the case of hospitalised patients, as quickly as possible\textsuperscript{229}. Indeed, patients who arrive in a state of crisis in emergency psychiatric wards, for example, are not in a condition permitting their immediate notification. In this case priority is given to treatment and the notification is carried out within 24 or 48 hours.

The person is only informed if their condition makes this usefully possible, that is to say if they are capable of discernment and of expressing their wishes.

In practice, the inspectors have sometimes wondered about the discernment of certain patients admitted to psychiatric care with their consent, upon whom detention is in reality imposed and who, due to their status as freely-hospitalised patients, do not have the benefit of information as comprehensive as that issued to patients committed to psychiatric care without their consent.

1.1.2 The information is shared with a third party in certain specific cases

In certain cases, third parties are also notified of the rights of persons deprived of liberty at the same time as the person concerned, in order to enable use of this information to assert the rights of persons not able to do so.

1.1.2.1 Third Parties who must be informed when persons are placed in Police Custody

Notification of a close relation

The law provides that persons placed in police custody may request the issuing of notification of this measure by telephone to a person with whom they usually live, a blood relation, one of their brothers and sisters or their conservator or guardian\textsuperscript{230}. In practice, the close relation – partner or companion; more rarely, brother or sister – is informed by telephone, very quickly, in general in less than three hours following the request.

Nevertheless, it emerges from the reports made by the inspectors that in most cases, the designated person is informed by means of a message left on their answerphone, which does not guarantee that the information will reach them. In a police station in the Paris region, it was specified that: “We have a best-efforts obligation, not an obligation to achieve results; this practice has never been called into question by judges”. Moreover, this formality, which was sometimes subject to a separate official record appended to the police report, is henceforth recorded by a line or two added to the body of the official record of notification of rights, generally without any details making it possible to verify the terms thereof.

Finally, although the law provides that medical examination of persons in police custody is de jure if a member of the family so requests, it does not provide for systematic notification of the family of this possibility at the time of notification of police custody measures. Thus, in practice, it is exceptional for close relations to be informed of this right.

With regard to minors

The inspectors have ascertained that special attention is given to the situation of minors. In most cases the State Prosecutor’s Office is notified by telephone, including at night, in addition to being sent the police custody slip by fax or e-mail. The parent with whom the child resides\textsuperscript{231}, the person or service constituting the child’s “guardian” are systematically and quickly

\textsuperscript{229} Cf. article L.3211-3 of the Public Health Code.
\textsuperscript{230} Cf. article 63-2 of the Code of criminal procedure.
\textsuperscript{231} The law provides for the notification of “the parents”. 
informed of the measure. Contrary to procedures applied to adults, police officers or gendarmes are often sent to the family home if it has not been possible to speak with anybody directly by telephone.

These procedures should draw the consequences of the provisions of article 4 of the statutory instrument of 2nd February 1945 concerning juvenile delinquency, which confers upon “legal representatives” the right to appoint a lawyer for their child if the latter has not requested one and to request a medical examination for minors over sixteen years of age: at the time of contacting parents, police officers or gendarmes should inform them of this right. However, it has been ascertained that the latter is rarely implemented. However the absence of details with regard to requests for lawyers and doctors in both official records and police custody registers does not make it possible to determine to whom this situation is attributable and, above all, to verify that such information has indeed been issued to the legal representatives.

### Notification of employers

The notification of employers provided for under article 63-2 of the code of criminal procedure enables the latter to bring professional documents to persons in police custody, which they can cite in the police report concerning them.

When requested, this notification is sent in a very short space of time, under conditions comparable to those governing the notification of close relations. Nevertheless, in practice the inspectors have rarely ascertained notification of an employer in addition to that issued to the family, as henceforth provided for by law; in view of the police reports, it appears that in most cases persons in police custody either inform a member of their family or their employer, without it being possible to determine if this is really the result of conscious choice or whether the full information provided for by law was not issued to them.

### Notification of guardians and conservators

Senior law-enforcement officers (OPJ) affirm that they systematically question persons placed in police custody with regard to the existence of legal protection measures, but that they only rarely encounter situations of this kind. The official records handed over to the inspectors do not make it possible to verify the reality of these assertions. Above all, from the comments made by OPJs it emerges that they do not have a detailed knowledge of legal protection measures and of the effect thereof. In fact, the software application which they use for the notification of rights does not provide for the questioning of persons placed in police custody on this point.

The law provides, as in the scenario mentioned in the preceding section above, that notification of guardians and conservators can be combined with that issued to employers, but not with the possibility of informing a close relation. This restriction is regrettable, close relations and guardians having different roles with regard to adult wards.

The law does not attribute a special role to guardians; at this stage, in practice, the latter simply take note of the measure; sometimes they may be interview subsequently, if the OPJ considers this to be useful. In reality, the difficulties of persons protected by wardship – impairment of physical or mental capacities – and the position of guardians responsible for their protection, should lead to the latter being granted the possibility of requesting medical and, if necessary, psychiatric examinations.

### Notification of consulates

232 Minors under sixteen years of age are automatically subject to medical examination.

233 Act no. 2011-392 of 14th April 2011 concerning police custody, article 4.
When they are notified, consular authorities can, insofar as necessary, provide proof of identity of the person concerned. Such notification is formally given at the same time as that issued to persons eligible to be informed of the measure as a whole. In practice, the majority of OPJs declare that they have never had occasion to implement requests of this kind. Since certain persons placed in police custody confided to the inspectors that they were never informed of this possibility, it is permissible to think that they were formally notified of this right, amongst others, in a manner such that they were not able to “understand”.

1.1.2.2 Compulsory notification of a close relation of persons placed in court cells

The law only provides for cases in which persons brought before the public prosecutor at courts of first instance at the end of their police custody are detained in specially equipped premises belonging to the court, referred to as the “dépôt” or “temporary jail”, for a maximum period of twenty hours, since it is not necessarily possible for them to appear before the judge on the same day.234

Thus, article 803-3 of the code of criminal procedure lists the rights of persons placed in temporary jails of courts of law, which include the right to inform one of the persons mentioned under article 63-2 of the code of criminal procedure by telephone.

At the time of the inspection of the temporary jail of the court of first instance of Paris,235 it was ascertained that close relations were very quickly informed, that is to say within less than twenty minutes of the request at the most.

1.1.2.3 In other places, notification of third parties is based upon the initiative of staff or even upon that of persons deprived of liberty themselves.

Notification of the families of imprisoned persons

In accordance with article D.284, paragraph 2, of the code of criminal procedure, every prisoner should be enabled to inform their family of their imprisonment immediately.

In most prisons inspected, one or two sheets of blank paper, a pre-stamped envelope and a ball-point pen are handed over to prisoners on their arrival, enabling them to quickly send a first letter. Moreover, in general they are offered a free telephone call of around five minutes, to be made within the first twenty-four hours of imprisonment. Beyond this deadline, prisoners have to apply for the registration of authorised phone numbers on their telephone account under the usual conditions. It was ascertained that new arrivals were in most cases accompanied to the telephone, in order to explain its operation to them.

When prisoners are under eighteen years of age, the head of the institution informs their family as well as the judicial youth protection service of their imprisonment, even in the absence of initiative on the part of the person concerned.236

Notification of the parents of minors placed in young offenders’ institutions

Notification of measures of placement in young offenders institutions (CEF) is issued to minors and to their parents by the judge or court; notice is given of judicial supervision and

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234 On the other hand, no legal provisions exist for cases where persons are brought before courts under other circumstances and detained in the jails in a more exceptional manner.
236 Cf. the aforementioned article D.284 of the Code of criminal procedure.
237 Cf. articles 5 and 10 of statutory instrument no. 45-174 of 2nd February 1945 concerning juvenile delinquency.
probation orders as well as of correlative obligations to comply with CEF placements and the rules and regulations of the institutions concerned, subject to the revocation of any measures ordered without such notification.

On the other hand, no legal provisions provide for the issuing of express notification of their rights to minors placed in CEFs, or to their parents, at the time of their arrival.

Nevertheless, Act no. 2002-02 of 2nd January 2002, reforming social and medico-social initiatives, promotes the right of users in departments and institutions of the judicial youth protection service in particular. This Act, which is applicable to CEFs, confers the position of “indirect users” upon parents, insofar as they have not lost parental authority from the sole fact of the measure. By virtue of this Act, the rights pertaining to minors placed in CEFs are those of users rather than captives.

In reality, the minor's parents or legal representatives may receive a dossier for new arrivals, including the rules of operation of the CEF and the booklet for new arrivals. The charter of rights and liberties of persons committed to the institution is sometimes also attached to the rules and regulations.

Although the family is sometimes received from the time that the minor arrives in the CEF, with the documents being handed over to them directly, in practice the relation between minors and their families is often restricted, in particular for the first days following their arrival. Minors do not receive any visits and, in principle, do not communicate either by telephone or letter with their parents. Initially, the information given to the latter on the rights of their child and on the functioning of the CEF is often kept to a minimum.

It was ascertained that these rules and regulations – which are designed to be signed by minors after their arrival – are not always countersigned by their parents. At best, parents are asked to give an opinion on the individual plans established by and for their child and informed of serious events concerning the latter. However, they are rarely placed in a position to make real decisions concerning them, including with regard to the organisation of their penal defence. No information is passed on to them by the staff of CEFs.

Increment of the legal representatives of patients hospitalised in psychiatric wards

In the case of minors – apart from the scenario of committal for psychiatric treatment at the request of a representative of the State – their legal representatives are responsible for treatment (and discharge) decisions; in which they should involve the child insofar as possible.

As far as adults are concerned, if they are not in a state to express their wishes, their family, a close relation, or their guardian have to be informed of committal decisions and placed in a position to have their remarks taken into account throughout the duration of the hospitalisation.

The law makes an obligation to notify adult wards incumbent upon court-appointed conservators238. In practice, within the care and treatment frameworks encountered by the inspectors, conservators hardly ever go to hospital wards and rarely ask to see doctors. They do not therefore place themselves in a position to comply with their obligation of notification with regard to adults placed under their protection.

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238 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”.
Similarly, in case of compulsory referral to the liberty and custody judge, legal representatives, guardians and conservators are notified, have access to the proceedings and can speak in the hearing. In one court, the inspectors ascertained that a judge asked guardians to send a written opinion of the condition of adult wards and of the usefulness of the measure.

Guardians and conservators do not intervene to choose lawyers, pass on information to or meet the latter before hearings.

Adults may also appoint a “trusted legal representative”\(^{239}\) in order to take part in medical interviews and help them to make decisions. The doctors encountered almost unanimously affirm that “this institution is not suitable for psychiatry”. They implicitly acknowledge that they do not always give this information to the patient but nevertheless receive third parties, family, trusted legal representatives, when the patient’s interest – as assessed by themselves – so requires and the patient agrees to the interview.

1.2 The use made of the information provided depends upon its content and the way in which it is passed on

Persons deprived of liberty must be notified of their rights in order for the time allowed for appeal to begin to run. This notification has to be supplemented by the provision of information on the effects of the measure and the rights appertaining thereto. This information may be given orally, by means of posting on noticeboards or handed over in the form of written documents, forms, rules and regulations or booklets for new arrivals.

According to the facts ascertained by the inspectors, this information is in most cases provided in accordance with legal requirements, in terms of form and deadlines, but proves to be inadequate in practice.

1.2.1 Stereotyped content of information in fast procedures

1.2.1.1 Limitations of time and content with regard to provision of information under police custody procedures

If the place of arrest is far from the police station or gendarmerie, or investigations have to be conducted on the spot\(^{240}\), initial notification is carried out at the actual place of arrest, usually orally, but sometimes by means of a standard printed form. In the opposite case, notification of placement in police custody and of the rights appertaining thereto occurs on return to the gendarmerie or police station, unless the person’s state – in most cases inebriation or difficulty in understanding the French language – justifies postponement of the notification of their rights.

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\(^{239}\) The appointment of a trusted legal representative does not concern adults in the care of guardians or minors, in accordance with the provisions of article 1111-6 of the public health code according to which: “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”.

\(^{240}\) For example a search.
Oral notification which is rapid, but often incomplete, thereby reducing its scope

When notification takes place at the gendarmerie or police station, it is given orally, by the senior-law enforcement officer (OPJ) who took the placement decision, and either occurs in security area premises – which are often noisy and little suitable – or in the OPJ’s office, while the latter enters the person’s identity information into a computerised procedure form; sometimes the operation consists of getting the person to read the formal notification. In any case, this notification gives rise to the signature of the official record, which is written with the assistance of a software application for the drafting of police reports and is formally in compliance with legal requirements in most cases.

This software is described as being cumbersome to use by numerous officers encountered. It is designed to provide for the majority of scenarios and obliges OPJs to fill in each section before going on to the next, which renders adaptation to individual situations difficult.

At the time of the inspection of a gendarmerie in the Paris region, it also became apparent to the inspectors that certain notes were not always deleted, while others appeared twice, adding to the overall confusion.

An examination of the official records of notification of rights shows that this operation sometimes takes less than five minutes.

In fact, it was observed that notification of placement in police custody and of rights is regularly carried out in a rapid, incomplete manner, which is not very accessible to the person concerned, and that the official record is not always reread by the person concerned.

Difficulties of interpretation

When persons placed in police custody do not understand French, OPJs have to hand a form over to them, containing the notification of rights written in a language that they understand.

This formality which, in itself, does not guarantee that the person has properly understood their rights, is followed by notification by an interpreter. In practice, interpreters are often reluctant to come because of the long period required for payment of their services. For this reason they often therefore work by telephone, in particular for languages considered rare, another circumstance which is not conducive to guaranteeing proper understanding of rights. The inspectors also ascertained that OPJs sometimes resort to “local networks”, ranging from local shopkeepers to “a colleague’s wife”: it is not certain, in the latter scenario, that the taking of an oath is sufficient to guarantee the interpreter’s professionalism and impartiality.

Furthermore, understanding of the language can be difficult to assess. OPJs sometimes prefer to demand interpreters as a matter of course, in order to avoid difficulties for judges in understanding persons brought before them and consequent criticism of the investigators for not having made use of them. Nevertheless, the inspectors have also had occasion to read the following in an official record of notification of rights: “We notify him in the French language, which he understands a little…”

Nevertheless, the intervention of an interpreter has the merit of enabling captives to ask questions that they might not venture to ask representatives of authority and to receive more detailed answers.

241 On this point, for foreign detainees, see section 1 of this report.
Rights which are often deferred when persons placed in police custody are under the influence of alcohol

The inspectors have noted differences in practice with regard to the deferment of rights due to the person’s behaviour: certain OPJs rely on outward and manifest signs of inebriation, which they describe in their police reports, others measure the quantity of alcohol on arrival at the police station, but not always at the time when the person concerned is assumed to have regained their senses.

It is rare to find formal instructions – memoranda issued internally or by the State Prosecutor’s Office – specifically fixing a level of alcohol above which notification of rights should be postponed and, correlativelv, the level within which it should take place.

Once the person concerned has been notified, they are placed in a cell without being allowed to keep the media used for this notification. Moreover, if they do not request to exercise their rights at the time of notification, they can only rely upon their memory, assuming that they have actually understood what was explained to them and that they are aware that they can exercise these rights at any time.

1.2.1.2 The deadlines and diversity of procedures for bringing persons to court do not enable detailed provision of information

Although article 803-3 of the code of criminal procedure lists the rights of persons brought before courts, it does not oblige the officers in charge of their supervision to notify them thereof.

Nevertheless, in courts that possess temporary cells, such as the Regional Court of Créteil for example, notification takes place: persons brought before the court are informed of their rights orally by one of the police officers in charge of surveillance of the cells, as well as in writing by means of a notification form that they are asked to sign. At the Paris Regional Court, this form exists in twelve languages.

In other scenarios where persons are brought before a court, in the absence of legal provisions as explained above, their acknowledged rights vary according to the court, although most courts proceed by analogy with the system provided for under article 803-3 of the code of criminal procedure, in particular with regard to the right to eat and be examined by a doctor in order to be in a state to take care of their defence.

In certain law courts, not only have rules and regulations been worked out, but they are also brought to the attention of persons deprived of liberty. Thus, the inspectors ascertained that the “rules and regulations of the temporary detention cells of the Regional Court” were displayed in a locked, glass-fronted noticeboard at the entrance of the central passageway leading to the cells and visible from some of them.

1.2.1.3 Provision of information to foreigners placed in detention centres for illegal immigrants is limited to the handing over of documents

Notification procedures and media

When people are placed in detention centres for illegal immigrants (CRA) after being held in police custody, orders imposing the obligation to leave French territory (OQTF) and

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244 This has been unlawful since the decision of the first civil division of the Court of cassation of 5th July 2012, unless justified by breaches of the law concerning foreigners.
placement in detention (APR), drawn up by the prefecture, are passed on to the services involved, who give notification thereof to the persons concerned before taking them to the CRA. When the person does not understand French, the interpreter who acted during the period of police custody translates the terms of the order.

The inspectors were informed that at this juncture, the services involved also notify the person concerned of their rights in detention245. In general, they are set out in the detention order (APRF); notification of the placement measure therefore leads to notification of the associated rights. On the other hand, the departments involved do not keep any notification registers. Examination of official records of the end of police custody makes it possible to verify that the persons concerned were notified of measures placing them in detention, but no information on notification of rights, or on any translation by an interpreter, ever appears.

The persons are then taken directly to the detention centre. Depending on the CRA, they may then be notified of their rights in detention once again.

In order to provide information to detainees, CRA registries have forms for the notification of rights in several languages, which usually contain a standard phrase: “he (the foreigner) acknowledges having been informed that he has the possibility of requesting the assistance of an interpreter, a doctor and a lawyer, that he can communicate with his consulate or with a person of his choice and that he has been informed of the rules and regulations of the CRA”. This method of translation is used in the vast majority of cases in Metropolitan France.

When the foreigner does not know how to read, or if the CRA does not possess any forms in the language that they understand, an interpreter has to be called upon, though this is exceptional.

For example, during the inspection of the CRA of Palaiseau246, the inspectors were informed that an interpreter had been called upon on one single occasion since the opening of the centre in October 2005. In the latter case, the interpretation had been done by telephone, by Inter service Migrants247. Exceptionally, if the centre is located near to the police custody facility and the interpreter is still there, they sometimes come to translate the act of notification of rights.

The opposite situation applies in French overseas departments: it was ascertained that an interpreter systematically came to the centres of Rochambeau (French Guiana) and Morne (Guadeloupe).

Finally, it became apparent to the Inspector to whom a case was referred by an association, that in certain cases, in certain waiting areas, the police officers completed the forms for the notification of rights beforehand, ticking the box “I want to leave as quickly as possible” in particular.

| Notification content and procedures |
| Notice is given of rights in detention and of the right to apply for asylum. Exceptionally, the possibility of referring the case to court is recalled, as at the CRA of Geispolsheim248 but without the purpose and usefulness of such referrals being specified. Yet, defence rights for detainees above all involve the possibility of applying to set aside the decisions that led to their placement. These rights are distinct from the “rights in detention” whose notification is provided |

245 Cf. article L.551-2 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA).
247 Inter Service Migrants (ISM) is a non-governmental organisation, created in 1970, whose purpose is to encourage communication between migrants and the public services. It offers interpretation (in 102 languages and dialects), translation and letter-writing services and legal information etc.
for by article L.551-1 of the CESDA. They include the right to be assisted by a lawyer and provision of information on the existence of a legal aid association.

It is up to the foreigners themselves to understand the connection between the legal aid to which they are entitled and the exercise of a remedy against the placement decision. However, the inspectors have often witnessed astonishment on the part of foreigners when they are informed of their right to be assisted by a lawyer: “Why? I am not an offender!”

Certain centres notify detainees of their rights whatever their situation. Others draw a distinction according to whether the person was arrested for questioning in the department where the CRA is located or in another. In the latter CRAs the officers only give notification of their rights to detainees arrested in other departments, asserting that notification of rights in detention was effectively carried out at the same time as notification of the detention placement order (APR). This practice is ascertained in the CRA of Toulouse for example, with regard to persons arrested for questioning in Haute-Garonne.

The notification operation consists of getting the person concerned to sign the notification form drafted in the language that they read, which includes a standard phrase setting out their rights. They also sign another form indicating that they have been informed that they have a five-day period in order to apply for asylum following the placement.

There are nevertheless cases in which the information issued to detainees is purely formal, without any real notification; thus in the CRA of Mayotte, the staff contented themselves with a signature in one of the columns of the so-called APRF register. No notification of rights with regard to asylum was made. The prefect’s decision was handed over without any other comment.

When interpreters intervene, they read both documents.

In any case, the inspectors have ascertained that the duration of the notification procedure is no greater than five minutes, and that in most cases it hardly takes three. In the CRA of Palaiseau, the inspectors ascertained that a Russian, who did not understand French, was notified of his rights in a period of less than three minutes; in another CRA, they reported that a person refused to sign the document of notification of the right to apply for asylum “because she did not want to apply for asylum”, while another was under the impression that signing the latter would give them the right to asylum…

When foreigners whose residence papers are not in order are taken to detention facilities for illegal immigrants (LRA), they are notified of their rights before their arrival at the LRA by the service involved, usually the border police, or more rarely by the gendarmerie or another police department. Indeed, LRAs never have registries. On the detainee’s arrival at the LRA no new notification is issued and no mention of any notification setting out their rights is entered in the detention register.

Other media for provision of information

Article R.553-4 of the CESEDA provides for the existence of rules and regulations which recall “the rights and obligations of foreign detainees, as well as the practical terms of exercise of their rights by the latter” in each CRA. These rules are posted on noticeboards in shared areas in the most commonly used languages: English, Spanish, and Mandarin Chinese etc. This information may make up for the rapidity of the initial notification, on the condition that the person concerned speaks and reads one of these languages and that they have easy access to the shared areas where the rules are displayed, which is not always the case.

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In certain centres, provision is made for foreigners to be issued with the version of the rules written in the language that they speak. In the CRA of Rochambeau it was ascertained that this copy of the rules was not directly handed over to the person concerned, but placed with their stored property after their completion of the registry formalities, and therefore without their knowledge. In another CRA, the extract from the register indicated that a copy was handed over to detainees. However, according to the facts ascertained this was never actually the case, since this measure “would be too costly”.

More explicit documents are sometimes provided for and placed at detainees’ disposal: in certain detention facilities a form is handed over to the persons concerned setting out the administrative remedies – both applications to the same administrative authority to reconsider its decision and applications to higher administrative authorities to review the decisions of lower administrative authorities – and judicial remedies available, including deadlines and corresponding postal addresses; in the CRAs of Lille Lesquin\textsuperscript{251} and Plaisir\textsuperscript{252}, a memorandum detailing the various remedies is displayed. Moreover, a legal aid association (France terre d’asile) has elaborated an information guide, translated into eight languages, reminding detainees of the rights open to them with regard to administrative and judicial remedies and the lodging of asylum applications.

Thus, at the time of their arrival in detention, foreigners are at best informed of their rights in the CRA and of the right to apply for asylum. The right to refer cases to court is rarely mentioned. Admittedly, the right to appeal against placement in detention and removal from the country appears in the decisions themselves, and the presence of a legal aid association is mentioned in prefectural orders, but it is exceptional for persons who do not read French to be notified of these rights in any other manner. Moreover, detention centres rarely retain these documents. Translation by telephone deprives foreigners of explanations, for which they would be able to ask interpreters who were actually present.

In conclusion, it appears that when captivity results from fast procedures, the persons concerned are very rapidly notified of their rights. These rights are rarely explained. When, on top of this, the notification is issued to them without their being able to keep any material medium containing the information, it is difficult for them to subsequently assess the significance thereof.

1.2.2 Personalised notification as a part of new arrivals procedures

1.2.2.1 Provision of information to prisoners as part of new arrivals procedures is supplemented by a legal information and advice protocol

Prisoners are led to exercise defence rights involving the various decisions that punctuate their time in prison.

Most penal institutions have a wing devoted to new arrivals, of which some are officially certified\textsuperscript{253}. The latter have the benefit of a formalised new arrivals procedure, providing in

\textsuperscript{251} Inspection of 2\textsuperscript{nd} and 3\textsuperscript{rd} June 2009. Report available at www.cglpl.fr.
\textsuperscript{252} Inspection of 24\textsuperscript{th} and 25\textsuperscript{th} September 2008. Report available at www.cglpl.fr.
\textsuperscript{253} The official label, issued by AFNOR Certification or Bureau VERITAS, constitutes a guarantee of strict compliance with around thirty European prison rules, which are decisive for prisoners and stated in the frame of reference “reception of newly arriving prisoners” part.
particular for two individual interviews, one with the head of the institution or one of their immediate subordinates (in practice, this interview is carried out by an officer or graded officer), the other with a member of the prison service for rehabilitation and probation (SPIP). In particular, these interviews make it possible to explain the functioning of the institution to newly imprisoned persons, while informing them of the principal bodies to which they can apply and how to refer matters to them.

Sometimes these individual interviews are complemented – in particular in remand prisons – by a collective information session for new arrivals carried out by the director. In one remand prison inspected, this meeting was held in the presence of the manager of personal accounts, a nurse, a registry clerk and a prison officer. In the course of this meeting, of about half an hour in duration, the following subjects in particular were presented: the roles of the judge and of the director; disciplinary policy; remission, temporary release, reduced sentencing etc.

Several written documents were also handed over to prisoners: the booklet for new arrivals specific to the institution, which usually contains extracts from the rules and regulations, as well as the “guide for newly arriving prisoners” published by the prisons administration department (DAP).

In another institution inspected by the inspectors in January 2012, an “arrival booklet” was also handed over to new arrivals containing information on the new arrivals programme, initial useful information, conditions of access to information and outside relations, provisions for access to healthcare and rights and extracts from the rules and regulations, as well as a glossary; the DAP pamphlet concerning “representatives of the Défenseur des droits” ombudsman; and an interregional department of prison services information pamphlet on violence in prison, including a Freephone number.

However, in a very large number of institutions it was ascertained that the rules and regulations were not up to date. Moreover, these documents are not always at prisoners’ disposal.

Indeed, the inspectors ascertained that few libraries have copies of these documents. Similarly, they are rarely found in registries or in the offices of officers, graded officers and floor warders. They are not always displayed in the common rooms of open prisons and wings. Only rules and regulations specific to the punishment wings of penal institutions are generally handed over to prisoners and displayed near the disciplinary committee room.

On the other hand, these documents are displayed in detention, in general by their posting on noticeboards in spaces dedicated to the bar rolls of counsels entitled to practice in the jurisdiction and pamphlets concerning the Défenseur des droits ombudsman. Unfortunately, it was ascertained that the noticeboards were so laden that it was often difficult for prisoners, who a fortiori have to know how to read, to find this information.

Certain legal works, such as the penal code and the code of criminal procedure, may also be consulted in the libraries. However, in most cases, there is only a single copy of each, whose year of publication is moreover distant from the current year. Nevertheless, in one remand prison inspected in June 2012, a computer at prisoners’ disposal enabled them to consult the code of criminal procedure and the Prisoner’s Guide published by the prisons administration.

Provision of information in ordinary imprisonment is organised through a legal information and advice access point.

Most departmental committees for legal information and advice (CDAC / conseils départementaux d’accès au droit) have entered into agreements with the penal institutions and SPIP.

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254 Cf. article D285 of the Code of criminal procedure.
255 Act no. 91-647 of 10th July 1991 concerning legal aid, reformed by act no. 98-1163 of 18th December 1998 concerning legal information and advice and amicable settlement of disputes, provides for the establishment of a
of their department and with the regional courts and bars of the jurisdiction, as well as, if necessary, with the departmental judicial youth protection service (DPJJ) and, in general, an association.

On the one hand, these agreements have made possible the creation of “legal information and advice point (PAD / points d'accès au droit) in a certain number of penal institutions. These places are open to prisoners who have to face up to legal or administrative problems without charge, providing them with a source of information at the prison level.

The PADs operate according to three means of action: at the direct request of the persons concerned or through regular advice sessions held within institution themselves (moreover the PAD adviser is sometimes also a public letter-writer) or even, in certain institutions, by means of a videoconferencing terminal, directly linked, for example, to a legal advice centre. Thus, in one remand prison inspected in November 2011, once the telephone call had been commenced, the person in charge left the room, unless the prisoner wanted their assistance. The advisers answered the telephone and directly answered the questions asked by the prisoner or else called the departments concerned themselves in order to obtain the requested information, immediately if possible.

These agreements may also provide for the putting in place of a free legal advice service for prisoners, by lawyers from the bars of the judicial district concerned. In general this legal advice is provided for the purpose of answering all requests for legal information in all legal fields “with the exception of information concerning investigation proceedings in progress, cases in which authorisation for inspection of the documents has to be issued by the public prosecutor’s department at a court of first instance, as well as any cases for which a lawyer has already been appointed by the client or by means of ex-officio appointment of counsel and with the exception of cases which have been referred to a court. In scenarios where the lawyer present at a legal information and advice point ascertains the existence of a situation of this kind, it is incumbent upon them to inform the prisoner that they cannot grant the legal advice”.

In practice, it was ascertained that prisoners rarely make use of these free legal consultations. It has been suggested that the impossibility of dealing with cases in progress as well as with possible difficulties of enforcement of sentences perhaps constitutes a brake upon use of the service.

Moreover, prisoners can have access to the representatives of the Défenseur des droits ombudsman, who are active in penal institutions. In most cases, they take action concerning cases referred to them by prisoners or their families, and sometimes concerning cases submitted by the SPIP. More exceptionally, they sometimes hold regular sessions, of one half-day per week within particular institutions.

1.2.2.2 The initial interview and the content of the booklet for new arrivals take the place of provision of information to minors placed in young offenders’ institutions

In all young offenders’ institutions (CEF), minors take part in an interview on their arrival, bringing together a representative of the management and one of the tutors concerned, if they are present on the site. The presence of parents at this meeting varies according to the CEF. In one institution inspected in September 2012, a first visit by parents to the CEF was compulsory,
whereas in another institution inspected in June 2012, the information was issued both to parents and to the minor at the same time as the notification.

In principle, the terms of committal orders are explained to minors orally in the course of this interview, as well as their legal position and the obligations incumbent upon them. The rules of operation or rules and regulations are explained to them, as well as the booklet for new arrivals if necessary. They are asked to sign both of these documents, of which a copy is handed over to them. In case of refusal, the principal judge is informed.

The rules of operation and the booklet for new arrivals set out the rights and obligations of minors during their placement. However, the language used is so administrative that certain young persons encountered by the inspectors admit that they understand very little thereof. However, the tutors are there to explain the contents to them.

The charter of rights and liberties of persons committed to the institution is not always attached to the rules and regulations. In certain institutions, there is a system of allocation of rights and penalties, referred to as a “points licence” system, of which the practical details are also passed on at the first interview. In one institution, the Declaration of the Rights of Man and of the Citizen of 26th August 1789 was included in the booklet for new arrivals.

Nevertheless, in practice, it became apparent that the rules and regulations and the booklet for new arrivals were not systematically signed by minors, or if they were, that no signed copy appeared in their administrative files consulted by the inspectors. Moreover it was ascertained that minors are rarely notified of the penalties incurred in case of breach of the rules and regulations and that there rarely exists a precise definition of prohibited behaviours nor a specific scale of applicable sanctions, still less a definition of proceedings, the whole being assessed at the tutor’s discretion.

Beyond the information that may be given to minors concerning their rights, they need to understand exactly how they can assert them in practice, which is rarely the case.

In one of the institutions inspected, the booklet for new arrivals nevertheless specified that: “If you think that some of your rights are not respected, you may send a complaint to a department head and/or to the Director of the institution. If you consider that you are not listened to within the institution, you may also contact: the managing director of the association; or your PJJ tutor; or the judge who committed you.

Minors very rarely have access to sources of legal information concerning them: no codes are accessible to them in paper or IT format. Nevertheless, in one institution the young people had access to the Junior Dalloz code, as well as to the code of criminal procedure, though only the 2010 edition at the time of the inspection in June 2012. In a third institution, in the name of the right to be informed, the young people nevertheless had access to the Internet in the presence and under the supervision of a tutor; although access to IT facilities is often possible, it does not systematically include Internet access.

Neither bar rolls of counsels entitled to practice nor telephone contact numbers for bar associations are ever displayed in the CEFs inspected. Similarly, no information concerning the Défenseur des droits ombudsman and the Contrôleur général des lieux de privation de liberté is passed on to minors committed to the institutions or to their parents.

The minors do not necessarily therefore have access to any third party likely to provide them with useful legal information, in particular for the preparation of their criminal defence: minors are committed to the penal environment, in response to multiple acts of delinquency, without the provision of any serious assistance for the organisation of their defence.
Furthermore, tutors have rarely had the benefit of any introductory legal training before taking up their posts, after the example of one institution in which none of the twenty-seven tutors had followed any such training.

On the other hand, in another institution, the booklet for new arrivals mentions twenty-three helpline call numbers: medical (SOS-médecins), child abuse (Allô enfance maltraitée), alcohol, cannabis and suicide (SOS suicide) helplines etc.

1.2.2.3 The law henceforth organises provision of information to patients committed for treatment in psychiatric hospitals without their consent

The law provides that persons subject to psychiatric care and treatment without their consent are informed of the committal decision and of the grounds justifying it, of their legal position, their rights and of the remedies and guarantees provided for them as quickly as possible and in a manner appropriate to their condition. Insofar as possible, the person’s opinion has to be sought and taken into consideration with regard to the practical details of the treatment.

For the most part, the provision of information concerning the rights of patients hospitalised without their consent falls within the scope of notification of the committal decision; it may be supplemented by the information contained in the institution’s booklet for new arrivals.

The inspectors have noted various different practices with regard to the notification of committal decisions according to different institutions and, within the same institution, depending on the teams.

In certain institutions and, in particular in one institution inspected in October 2011, the information is issued on the patient’s arrival within the treatment unit, even if this means that it has to be subsequently repeated; this notification is carried out in the doctor or nurse’s office or in the patient’s room: “The doctor or the nurse carry out the notification, according to their respective availabilities. The explanations are given orally and issued to all persons whatever their state of mental health. No distinction is made according to the assumed ability of the patient to understand”.

In other institutions and in one inspected in January 2012 in particular, patients’ rights are listed orally to them by the doctor, as their stay progresses, taking their capacity to understand into account: “In concrete terms, the patient’s clinical state determines the moment of issue of information”. This method does not make it possible to trace the actual completion of the notification, or the patient’s understanding thereof, except perhaps by means of their medical record.

Patients are also sometimes notified of the committal decision on the first day, with more detailed explanations being given at a later time, though only if they take the initiative of requesting them. Thus in one institution inspected in March 2012, it was stated that a psychiatrist meets patients on their day of arrival, in the presence of a member of nursing staff. The doctor explains to them that they have been committed to the institution within the framework of treatment without consent and that, if they do not agree with the decision, it is incumbent upon them to request a meeting with the healthcare management, without any special formalities. “Very few dispute the committal decision; and amongst the rare patients who do ask for an interview of this kind, a quarter do not pursue their request”. In case of interviews with patients, the healthcare manager explains to them that they have the right to dispute the decision by writing to the liberty and custody judge, the administrative judge or the departmental committee for psychiatric treatment. The healthcare manager does not hand over any documents, but

256 Article L.3211-3 of the Public Health Code.
dictates the address of the authorities to which a letter may be sent; on request, he may write it on an envelope.

The inspectors have noted reservations among certain doctors with regard to the granting of authority of this kind to health staff: “these notifications entrusted to the doctor or to the nurse are necessary in order to inform persons of their legal situation and of their rights; however, treatment duties and administrative duties then become blurred. Far from facilitating understanding, these notifications lead to confusion in patients’ minds. The role of health worker needs to be clearly separated from that of administrator”.

The inspectors have also encountered doctors who, on the contrary, set out the following position in their reflections: “doctors decide neither the time when patients arrive nor the time when they leave; this is conducive to therapeutic cooperation between patients and doctors. We therefore encourage all means of remedy. The point of view of a third party tends to legitimate the doctor’s action in the eyes of the patient “moreover: “the possible lodging of multiple appeals may have a beneficial effect if, by dint of explanations given, the patient makes progress in understanding and begins to distinguish between the roles of each of the institutions, their progress may be ascertained and taken into account in our assessments of their condition. The procedure may be formative and awaken better awareness”.

The traceability of notifications is supposed to be ensured by the handing over of a copy of the committal decision, attested by acknowledgement of receipt; however, this procedure is not always followed. In principle, a copy of the psychiatric treatment committal decision is passed on to the patient by internal mail; accompanied, in most cases, with a document informing them of the various means and modes of appeal. In general, these documents are indeed passed on to patients by the doctor or the healthcare manager of the unit to which they are admitted; the latter are supposed to explain the decisions, issue information to patients on the means of appeal and guarantees provided by the intervention of the liberty and custody judge and, more generally, inform them of their rights, hand over a copy of the decision to them and collect their signature by means of an acknowledgement of receipt.

In practice, the decision is not necessarily handed over to the patient: “It depends upon their condition… We do not always give it to them but we explain it… Some of them tear it up… Others ask us to keep it in their file”.

In another institution inspected, psychiatric treatment committal decisions taken by representatives of the State are sent directly to the patients concerned by the hospital, in a sealed envelope, the staff not exercising any control over the actual receipt of information with regard to this decision.

Patients are not always in a condition to sign the acknowledgement of receipt, sometimes they refuse to do so. In certain institutions, or certain units, a doctor and a member of nursing staff then stamp the acknowledgement of receipt, attesting to the fact that the patient is not in a condition to sign, or refuses to do so. This practice is not shared everywhere.

In any case, in one hospital the inspectors were informed that the rate of return of acknowledgements of receipt is in general very low, in the region of 17%.

The content of information passed on is often vague.

Generally speaking, the staff encountered showed themselves to be relatively vague with regard to the content of information passed on concerning the rights enacted by article L.3211-3 of the public health code: patients are apparently orally informed of the fact that their hospitalisation without consent involves restriction of their liberty to come and go; they are

257 This information is also included in the committal decision itself.
informed that they may lodge an appeal before the administrative judge, refer the case to the JLD or to the departmental committee for psychiatric treatment and contact the committee for relations between public health institutions and users thereof; certain staff inform the patient of the possibility of contacting a lawyer.

The existence of intervention ipso jure on the part of the JLD within a deadline of fifteen days is not systematically mentioned. The idea was voiced before the inspectors that patients do not understand the judge’s intervention and that “speaking about it earlier would harm relations”. Certain staff even admit that: “We do not mention it, we wait for the summons”.

Most staff also admit that they do not pass on information about the possibility of appointing a trusted legal representative in accordance with the act of 4th March 2002; patients are considered to be incapable of understanding the significance thereof and the institution itself is described by staff as being inappropriate to psychiatric hospitals (cf. above).

The possibility open to patients of having their remarks taken into account with regard to planned decisions concerning them is rarely mentioned as a patient’s right but rather as a practice of doctors; in general it is not formalised. At best, as was ascertained in one hospital group in October 2012, the certificates, which are moreover included in keeping with the tone of the law, contain a standard phrase at the end worded thus: “the patient has been informed in a manner suitable to their condition, on (date) …, of the planned continuation of psychiatric treatment and has been placed in a position to have their remarks taken into account by any means suitable and in a manner appropriate to their condition”.

Finally, the generally shared feeling among health teams with regard to their capacity to pass on information seems to be summed up in the remarks made by a doctor encountered in an institution inspected in June 2012: “Specifically informing patients of all of the legal implications of their committal is not among a medical team’s immediate concerns, especially at a moment when they are not ready to receive this information”. Moreover, booklets for new arrivals, which are intended to inform patients as a whole with regard to their rights and living conditions in hospital, do not always make up for lack of information at the time of notification of committal decisions.

In several institutions inspected in the course of 2012, i.e. more than six months after the coming into force of the Act of 5th July 2011, the rules and regulations had not been updated; some dated from several years before the new law and, for this reason, could not serve as effective media for the provision of information to patients.

Certain institutions tried to resolve this difficulty by displaying notices in living areas or by drafting documents setting out a list of the rights appertaining to persons hospitalised without their consent and mentioning the various bodies that act in support of them, as well as the role of the JLD. It was noted that, where these documents exist, they are often incomplete and, in particular, do not give precise addresses for the institutions to which cases may be referred.

The fact remains that the Contrôleur général regularly receives requests for discharge from treatment and “restoration of liberty” on the part of patients, which suggests inadequate provision of information to the persons concerned. However, interpretation of the cases referred in terms of insufficient explanation to patients should be treated with the reserves called for by the particular grounds of hospitalisation.

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258 Act no. 2002-303 of 4th March 2002 concerning patients’ rights and the quality of the health system, still referred to as the “Loi Kouchner”.
259 Provided for by article L.3211-3 of the public health code.
260 Act no. 2011-803 of 5th July 2011 concerning the rights and protection of persons subject to psychiatric treatment and the practical details of their care and treatment.
2. Effective Exercise of Defence Rights

Provision of information is not enough, persons deprived of liberty also need to be placed in a position to be able to effectively exercise those of their rights which may contribute to their defence and, in the first place, the assistance of a lawyer, as well as the right to be examined by a doctor and, for persons in police custody, the right to remain silent.

The case of police custody is typical in this respect. Because the time of placement is relatively short, the exercise of certain rights is formally effective, but actually implemented without persons in police custody understanding the exact consequences thereof.

The right to remain silent provides an example of this. The right to remain silent may have a special importance due to the possible consequences of remarks made by persons in police custody at the time of their questioning. However, although formal notice of this right is given along with the person's rights as a whole, it is not necessarily recalled at the time of questioning and, although this right is easy to implement, in fact it is seldom used.

In the official record of notification of rights produced by the software application used by the national gendarmerie for drawing up police reports, it appears that the right to remain silent is mentioned after the paragraph concerning assistance by a lawyer and that this information constitutes simple notification; since, according to the evidence collected, the question is not as such posed to persons in police custody.

In police reports drawn up by police officers, in addition to the other rights, the following note is included in the official record of notification of police custody: “I take note that I have the right, at the time of my questioning, after having given my identity, to make declarations, to answer the questions that I am asked or to remain silent”. Nevertheless, in one police report examined by the inspectors, in one police station inspected in May 2012, a police report examined by the inspectors recorded that an officer had asked the following question, prior to the actual questioning: “Do you agree to answer my questions?”

Moreover, the conditions under which medical examinations are conducted do not always guarantee that all of the investigations that they require have been carried out. In addition, the time required for a doctor's arrival after being called is variable and can take up to several hours; certain OPJs having informed the inspectors of their difficulty in finding doctors who agree to come, particularly at night.

It was moreover noted that examinations – and, more specifically, the duration of doctors’ presence in the police custody facilities – were short, often less than fifteen minutes.

Finally, medical examinations, which often take place in the same office as the interview with the lawyer, are not carried out under optimal conditions: in the absence of suitable premises and an examination table, the bodily examination is not always detailed; while the presence of an officer on guard, not far from the door, hardly promotes the freedom of exchanges.

These factors as a whole contribute neither to facilitating the detection of any marks that may have resulted from the arrest itself, nor that of any possible injuries that may be signs of violent acts having taken place before the latter; defence rights may thus prove to be directly affected.

2.1 The technical nature of defence before a judge places persons deprived of liberty at a disadvantage
There are two places in which the necessary technicalities of organisation of defence rapidly become an obstacle to the effective exercise thereof: places of detention of illegal immigrants and of treatment without consent.

Admittedly, it is always possible to write one’s appeal or application for legal remedy oneself. Nevertheless, few detainees are capable of drafting a sufficiently grounded application for remedy on their own, whereas the admissibility thereof depends upon the exact content of the grounds.

Moreover, detained foreigners cannot ipso facto lodge applications for remedy themselves, and have to make use of a lawyer, or a legal aid association or have them passed on by the detention centre registry. Recognition has been accorded to the importance of a lawyer’s assistance, as a guarantee of the exercise of defence rights, through the institution of a system of legal aid for natural persons whose resources are insufficient to claim their rights in the courts.261

Moreover, the effectiveness of action on the part of lawyers or associations depends upon their understanding of the language of the person concerned. The intervention of an interpreter is decisive in this respect.

Interpreters may be legal experts registered on the lists of courts of appeal or on the list of the Court of cassation. However, in case of difficulty in contacting an interpreter and/or in case of urgency the authorities sometimes resort to local networks, ranging from the local shopkeeper to “a colleague’s wife.”262 In the latter scenario, it is by no means certain that the swearing of an oath is sufficient to guarantee the interpreter’s professionalism and impartiality.

The exercise of defence is equally complex for patients hospitalised without their consent. The patient’s position before the judge is more often that of a defendant rather than that of a petitioner.

Nevertheless, in one health institution inspected, provision was made for systematic provision of information to patients on the content of the aforementioned Act of 5th July 2011, two days before appearances before the JLD, by the hospital social worker, who also explained the issues involved in the hearings, as well as the role of the lawyer. This systematic assistance, which is desirable in practice, nevertheless presented a disadvantage: the hospital social worker was unqualified and untrained in legal issues and had made a number of mistakes in the interpretation of legal texts, which were sometimes prejudicial to patients.

Summons issued by the JLD expressly mention that patients have the possibility of consulting their records within the institution and of enlisting the assistance of a lawyer. In practice, summons are sent to the management of the hospital and passed on to the wing concerned very shortly - in general between one and two days - before the hearing. Patients – who are informed rather belatedly of the date and to whom the summonses are not always passed on – do not, in fact, have any means of preparing their “defence”: at this stage, they do not have access to the record, to a lawyer or to any other trusted legal representative or assistance likely to help them to state their case.

In the scenario where a patient makes an appeal, they may, if necessary, find limited assistance in the person of the healthcare manager who, as in the case of an institution inspected in March 2012, “rereads the application but does not correct anything”. In practice, such applications for remedy against committal decisions are therefore exceptional.

261 In accordance with the provisions of article 10 of act no. 91-647 of 10th July 1991 concerning legal access, legal aid is granted in non-contentious and contentious proceedings, as plaintiff (petitioner) or as defendant (respondent) before any court as well as at the time of procedures for hearing minors provided for by article 388-1 of the Civil Code and for procedures involving appearance in court after prior admission of guilt.

262 Read in a police report in a police station located in the Champagne-Ardenne region.
2.1.1 Legal assistance is necessary for the defence of persons deprived of liberty

When the assistance of a lawyer is requested by persons deprived of liberty, it is granted without any formal reluctance. For all that, the effectiveness of this assistance comes up against numerous obstacles encumbering the course of action.

2.1.1.1 The choice of a lawyer and the duration and time of the interview

Provision of information on this point is uneven.

Persons deprived of liberty do not necessarily understand that “an adviser” may be a lawyer and that the latter’s fees are not payable by themselves, this detail rarely being brought to their attention.

The bar roll of counsels entitled to practice is not always displayed in places of deprivation of liberty, which is all the more detrimental in CRAs, as well as in LRAs, where no legal aid association is present. However, when LRAs are located within police stations, the detainees may have the benefit of the displayed notices intended for persons in police custody.

When bar rolls are displayed, thus allowing captives to appoint a lawyer, they do not give any information on the specialisations of the professionals listed in them.

In addition, as far as chosen lawyers are concerned, and except when persons placed in court cells or in detention have the name and contact details of their counsel among their property placed in storage, no information is given as a matter of course. Such information is only passed on by police officers or gendarmes, or even by the principal judge, in response to a request.

However, all bars, regardless of their size, put specific hours in place for the holding of surgeries enabling persons transferred or brought before courts and foreign detainees, whether minors or adults, to enlist the assistance of an official defence counsel.

To a very great extent, the time that these lawyers spend on the case and with the person deprived of liberty depends upon the organisation of these surgeries. For example, cases sometimes arise where, for all of the referrals to court and all of the hearings of the day, there is only a single lawyer on duty; the latter, in fact, rapidly becomes unavailable in terms of time; in case of conflict of interests they are obliged to call out a colleague, but do not always do so.

The situation for foreign detainees is fragile with regard to defence rights.

The small number of lawyers trained in the law relating to foreign nationals constitutes a difficulty for the defence of the latter, for which certain bars have made provision: for example, in Nantes, a surgery of specialised lawyers is held. In Metz, training courses are organised, in one of which a judge of the administrative court of Strasbourg is involved, including coverage of each new development in case law.

This situation is all the more detrimental in that the time allowed to foreigners in order to enter an appeal against an obligation to leave the territory is very short: they have forty-eight hours as from the notification of detention placement decisions to apply to the presiding judge of the administrative court for the setting aside thereof, as well as to apply for the setting aside of decisions having led to the placement. Therefore, if the detention commences with placement in an LRA before the person is taken to a CRA, the period of forty-eight hours allowed for entering an appeal has already expired on their arrival at the CRA, before they have even been able to consult a lawyer.

261 Cf. article L. 512-2 of the CESEDA.
For hospitalised patients due to be presented before the JLD, surgeries are in general held at the court by volunteer lawyers.

Some of them have received training in cases of this kind, essentially concerning the legal aspects thereof. The lawyers encountered by the inspectors mentioned their difficulty in gaining access to the case-files before hearings; some of them only being able to gain access to them on the same day, at the same time as meeting their client\textsuperscript{264}. The premises do not always make the confidentiality of interviews possible. The lawyers testify that they experience some awkwardness in adopting a position in this type of case, due to the difficulty of obtaining a precise mandate from their client, lack of knowledge of this kind of client and the novelty of the proceedings, and sometimes because of the conviction that committal to treatment needs to be continued. In any case, at this stage it is rather late to ask for proof of accommodation, medical certificates and any other evidence in support of the patient’s position, in order to back up applications for discharge.

Finally, in practice, in scenarios where patients do not wish to be assisted by a lawyer, they are not placed in a position to consult the case-files (neither are representatives or parents in the case of minors).

\textit{2.1.1.2 The conditions under which lawyers work}

In police custody, examination of the official records of the end of custody do not show any lateness in the notification of the right to enlist the assistance of lawyer, or in the tasks carried out by police officers for the implementation of this right, generally within a period of no more than thirty minutes after the request.

Yet, without making any claim to representativeness of the police reports consulted, it appears that such requests are only made in less than or hardly more than half of procedures.

Certain OPJs explain this relatively low level by the scepticism of the persons concerned (“What’s the use of that?”), a scepticism which they seem to share, or even convey. Several OPJs describe lawyers who do not take part in questioning sessions or who only make a few comments at the end of the questioning, contenting themselves with disputing the record of their client’s remarks, in procedures concerning local delinquency in particular. Certain OPJs also bemoan the fact that the presence of a lawyer delays questioning and changes their interrogatory practices\textsuperscript{265}: renunciation of use of the form “\textit{tu}” and certain types of argument “before, we used to speak about the elder brothers while smoking a cigarette”.

Difficulties in contacting chosen lawyers are also mentioned, in particular at night and at the weekend. Examination of the police reports shows that, though chosen, lawyers nevertheless do not systematically come to the station or that, having come for the interview with the client, they do not stay for the questioning of the person in police custody. In certain cases the duty lawyer is proposed for the rest of the procedure.

The times required for the intervention of a lawyer vary widely, according to their availability and distance from the place of police custody. This is particularly the case in French overseas departments and territories.

Although their relations with police officers are described as good overall, the general conditions under which lawyers work are given an uneven assessment by the bars: some report simultaneous questioning sessions, making it necessary to mobilise several lawyers, and denounce commencement of questioning before the end of the two-hour deadline and cancellation of

\textsuperscript{264}The case-files are consultable at the registry, in general one or two days before the hearing.

\textsuperscript{265}The existence of these facts was reported by officers working in a large police station in the South East of France and others, from one of the central squads/gendarmeries located in Paris.
questioning without notification of the lawyer. Others, on the contrary, say that they negotiate the time of questioning with the OPJs and successively carry out the initial interview and take part during the questioning, in order to avoid unnecessary journeys. Several OPJs declared that they agree to this kind of organisation – in investigation departments in particular – even when it delays questioning by more than two hours. This kind of agreement may effectively lead to depriving persons in police custody of the support of a lawyer during the first hours of the custody measure.

No provision is made for the organisation of interpretation during lawyer’s interviews with persons who do not speak French. However, the interpreter is sometimes made available when the interview is grouped together with the questioning.

The material conditions of interviews are not always satisfactory. Often, there are no rooms reserved for lawyers, who may then meet their clients in ordinary offices, vacated for the occasion by their usual occupants, under conditions of security requiring the presence of an officer nearby if need be. Sometimes the meeting takes place in a police custody facility, under conditions which do not always ensure confidentiality; thus it was reported that an office equipped with a perforated communication panel was provided for interviews which, on top of the fact that the door did not close properly, obliged the persons speaking to raise their voices in order to hear each other. For this reason, they were heard by third parties.

Nor do lawyers have a specific place at their disposal allowing them to study the official records, to which the law gives them access, under adequate conditions.

Finally, it also appears difficult for lawyers to ensure the continuity of their assistance in case of renewal of police custody measures: they explain that the freelance nature of their profession prevents them from guaranteeing their availability beyond forty-eight hours and report the difficulty, in case of extension of police custody measures, of participating in the questioning of persons that they have never interviewed.

The situation is identical in law courts.

Certain interviews take place in the public lobby, in hallways, in the courtroom as well as in the court cells themselves, in view and within earshot of escorts, other persons deprived of liberty and the public.

When ad hoc offices exist, they are often not soundproofed. In one court inspected December 2011, a room had been specially equipped for this purpose. However, its means of separation from the hallway consisted of a door and a partition wall, both of which were glass panelled, and with a space of five centimetres left between the floor and the door. Everything said inside could be clearly heard from the corridor and the neighbouring rooms.

Sometimes and even often, these offices are shared with other actors: for example, with investigators charged with conducting inquiries into the character of accused persons and producing rapid pre-sentence reports for production at the hearing. This means that lawyers may be led to conduct their interviews elsewhere and, in particular, in the corridor near the office.

However, there are sometimes dedicated premises, exclusively reserved to lawyers and ensuring the confidentiality of exchanges. Thus, in one court inspected in the month of March 2012, a double area was reserved for lawyers composed of an empty soundproofed room, which

266 Comments made by lawyers of a bar in the Paris region.
267 As in a case that occurred in a Parisian police station, of which the inspectors were informed.
268 Thus, in a certain number of gendarmeries, the windows of OPJs’ offices do not have bars. For this reason, the shutters are closed during interviews and officers remain nearby, close to the office door or, in certain cases, the window.
269 Including in a central Parisian gendarmerie.
served as an antechamber, and an office, which was also soundproofed. The antechamber was separated from the internal passageway of the law courts by means of a door. Another door meant that the office could be shut off from the adjacent room. The latter door was equipped with a single visibility window. However, in certain set-ups, for reasons of security, lawyers are reluctant to use the closed, dedicated premises, which are far from the posts of the officers in charge of surveillance.

Finally, the existence of special security measures may drastically complicate access to interview premises or to the court cells, for example because of the need to have a magnetic swipe card. Thus in a Regional Court of the South West of France, inspected in December 2010, the chairman of the bar had been granted 200 swipe cards for 1,200 lawyers registered on the bar roll. However, they only gave access to the appeal court departments. In addition, in order to be issued with a swipe card, lawyers had to leave a professional document in exchange. After the hour of closing of the offices in the evening, it was impossible to return swipe cards and reclaim identity documents. “This situation prevents lawyers from going to the court cells by the normal route; they are obliged to make detours and, in spite of this, may find themselves before a closed door, to which they do not have access, which obliges them to gesticulate until somebody opens it for them”. It was explained that, “The lateness to which this gives rise sometimes leads to the cancellation of planned interviews with detained persons”.

In penal institutions, interview rooms are, in principle, reserved for lawyers; with the occasional exception, these ensure the confidentiality of exchanges.

Nevertheless, in one long-term detention centre inspected in July 2011, no room was reserved for lawyers and legal experts. In one remand prison, it was noted that neither the conditions of interviews between prisoners and their lawyers, nor the conditions of inter partes proceedings satisfied the minimal requirements of dignity and confidentiality: indeed, lawyers had no other choice but to meet their clients in the premises intended for storage of property. Moreover, in small remand prisons these interview rooms are often shared with other actors (prison visitors, representatives of associations, external actors etc.).

Nevertheless, lawyers may be weakened in their resolve to go to penal institutions by their geographical distance and the expenses occasioned for them by such journeys. One prisoner thus reported to the Contrôleur général that the lawyer appointed by the legal aid office had refused to make the journey on the grounds that “coming in order to defend me is not financially attractive”.

It should also be added that prisoners can telephone their lawyers and that their conversations with them should not, in principle, be either listened to or recorded by the prisons administration. However, it was ascertained that these numbers were not always listed as such and in practice, “These conversations can therefore be listened to”. In certain cases, staff have not been trained in the operation that makes it possible to ensure the confidentiality of conversations held. As the Contrôleur général specified in his assessment of 10th January 2011 published in the Journal officiel of 23rd January 2011 concerning the use of telephones by persons deprived of liberty, “The institutions should therefore make sure that call numbers (lawyers, Contrôleur général etc.) which trigger the disconnection of the monitoring and recording circuit are registered in the procedures”.

Lawyers rarely travel to CRAs and only exceptionally to LRAs.

At the time of inspections conducted in the CRAs of Lille, Marseille, Metz, Nice and Palaiseau, it was ascertained that no lawyers go to them. They give three reasons in explanation of this practice.

270Cf. article 727-1 of the Code of criminal procedure.
On the one hand, they do not see the point of making a journey to the CRA when they can inspect the case-files in the court registries and meet their clients before the hearing.

Furthermore, the distance of these detention centres from the law courts is also dissuasive when the lawyer’s remuneration covers neither the travel expenses nor the time spent there.

Finally, as we have seen, in many cases lawyers can only converse with the clients through an interpreter. However, since interpreters are called to hearings, they might just as well translate the interviews which take place before the latter.

In fact, the inspectors ascertained that the confidentiality of exchanges is rarely respected. In the CRA of Metz, for example, an intercom in the office reserved for lawyers enabled the guard to hear conversations held there.

To date, no more provision is made to arrange places for lawyers in psychiatric hospitals than in CEFs.

2.1.3 Legal aid bodies

Action by legal aid associations in CRAs is provided for by article R.553-14 of the CESEDA: “In order to allow effective exercise of their rights by foreigners held in detention centres for illegal immigrants, the minister in charge of immigration enters into an agreement with one or several corporations whose role is to inform foreigners and help them to exercise their rights”.

However, this provision is not complied with in all CRAs. Thus, no associations were active in the CRA of Morne (in Guadeloupe) at the time of inspection.

Moreover, no provision makes the possibility of access to an association mandatory in LRAs. No agreements are entered into with associations for action in the latter. Sometimes the telephone number of an association is nevertheless provided to detainees and representatives thereof come at their request, or at that of their family, if the LRA is not too distant. At Soissons, Tours and Cercotte, representatives of the Cimade visited the LRA, though they did not go to Modane or to Niort.

Specific details of the existence and role of associations are rarely mentioned at the time of notification of rights, and all the more so when notification is made through an interpreter.

Exercise of their duties within CRAs by the associations often depends upon their relations with officers in the centre.

This is the case, for example, in order for them to meet detainees. The associations always have premises at their disposal inside the detention centres; their representatives are then responsible for going to meet detainees in order to explain their role to them. However, in most cases, the representatives do not have free access to the detention area any more than detainees are allowed free access to the association’s office: they therefore have to request access to the detention area and be taken there by an officer. Access to the association therefore depends upon officers’ availability. Such was the case in Mesnil-Amelot, Marseille and Nîmes. On the other hand, in the CRA of Nice free access to the association, as well as to the medical department and

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271 Article L.554-4 of the CESEDA provides that “in each place of detention, an area allowing lawyers to speak confidentially with detained foreigners is provided for. To this end, except in case of force majeure, it is accessible in all circumstances at the lawyer’s request”.

the OFII\textsuperscript{273}, was allowed during the hours of opening of the exercise yard; the rest of the time, persons who wished to meet the Cimade had to knock on the door of the detention area until the OFII employee or an officer of the border police (PAF) came to open it for them, provided that the Cimade was available.

Moreover, in order to provide useful assistance to detainees, the association needs access to their administrative files. However, these documents are not left in the possession of detainees, who therefore have to request them in order to meet a representative from the association. Once again, access to the administrative files of the persons concerned, which are kept at the registry, depends upon relations between officers and the association: in the CRAs of Mesnil-Amelot and Sète, such access was granted without any difficulty.

The effectiveness of the association’s action is often encumbered by the impossibility of understanding captives on the part of its representatives. Although detainees can request for the assistance of an interpreter, this option is difficult to implement at the exact time of their interview with the association. On top of this, provision is made for an interpreter, as for a lawyer, for the submission of appeals against decisions having led to detention, but not for exercise of the right of asylum. However, the associations do not have budgets at their disposal enabling them to make use of interpreters, and of the services of the Inter Service Migrants association in particular.

Moreover, the times of availability of the associations are not always sufficient. They are on duty on site within working hours from Monday to Friday, and on Saturday mornings in some large centres. Thus detainees who arrive at the end of the day on a Friday are often unable to meet the association before Monday morning. The deadline of forty-eight hours at their disposal for the submission of appeals before the administrative court has by then expired\textsuperscript{274}.

2.1.2 Legal aid is not always sufficient to compensate for all of the concrete difficulties of applications for remedy before the judge

2.1.2.1 The conditions of availability of case-files weigh upon the organisation of defence for persons in police custody, detainees and prisoners

In case of appearance in court immediately after police custody, lawyers do not necessarily possess their own copies of the case-file. They then work upon the judge’s copy, examining it before the commencement of the hearing, which sometimes obliges them to cut short interviews with clients in order to avoid delaying the time of commencement of the proceedings, since the copy has to be returned.

In order to file appeals against detention placement orders (APR / arrêté de placement en rétention) or against decisions forming the basis thereof, foreigner detainees need to have the rulings themselves – on which the remedies and therefore the addresses of the courts are shown – at their disposal, as well as copies of these rulings, which must compulsorily be attached to their applications. These documents are often placed in the file of the person concerned or in their property placed in storage. They can only gain access thereto through the CRA officers, and after

\textsuperscript{273}Office Français de l’Immigration et de l’Intégration (French agency in charge of migration and welcoming foreign people): State public administrative institution which comes under the supervision of the Ministry of the Interior, it has four principal roles: the management of alongside and on behalf of prefectures and diplomatic and consular authorities; reception and integration of immigrants authorised to stay in France on a permanent basis and signatories for this purpose of a reception and integration contract with the State; the reception of asylum seekers; aid for return to and reintegration of foreigners in their country of origin.

\textsuperscript{274}By virtue of the provisions of article L. 512-1 III of the CESEDA, “In case of decision of placement in detention or under house arrest in application of article L.561-2, the foreigner may apply to the presiding judge of the administrative court for the setting aside thereof within forty-eight hours of its notification”.

172
the time required by the latter for the granting of requests to hand over documents. The admissibility of their appeal therefore depends upon the diligence of the officers present.

**Detainees** have the right to confidentiality of personal documents that they may entrust to the registry, with which they are obliged to deposit all documents mentioning the grounds for their committal, pursuant to article 42 of the prisons act of 24th November 2009\(^{275}\) and the circular of 9th June 2011 issued in application of this article.

However, not all penal institutions apply these provisions.

The following difficulties were mentioned: absence of premises, or even of “space for the setting up of new cabinets “in order to preserve these documents; absence of officers available to the registry; the fact that certain prisoners, in particular convicted prisoners serving long sentences, were on the contrary “proud” to keep their legal documents in their cells; and the small number of requests made. It was sometimes explained that, “The cost-benefit ratio of this arrangement was limited”

Moreover, no information is provided to the inmate population on this subject and to new arrivals in particular. Neither, in general, are booklets for new arrivals and the rules and regulations of institutions modified with regard to this question.

Furthermore, the statutory texts concerning life in detention, and circulars in particular, are not systematically placed in files specially established for this purpose and accessible in the libraries of institutions.

As a result, prisoners are often unaware of how to gain access to statutory texts, as well as to personal and legal documents which they may need to in order support applications for remedy.

In scenarios where procedures for the consultation of prison files have been put in place, they provide that requests should be sent in writing to the detention management office (BGD / bureau de gestion de la détention). A room or cell is then placed at the prisoner’s disposal for consultation of the files in paper format. When the file is consultable on a CD-ROM, a computer – which in some cases is specially dedicated for this purpose – is placed at the prisoner’s disposal. On the other hand, BGD officials no longer systematically request written authorisations from the judges concerned; very often, a simple telephone call is sufficient.

2.1.2.2 Absence of knowledge of the law is an unjustified hindrance to applications for judicial review of administrative actions

As is well known, in 1995 a change in the case law of the French Council of State reduced the scope of the notion of “measures of internal order”, against which appeals cannot be referred to administrative judges. This change therefore correlativety increased the latters’ control over the management of imprisonment, as shown in recent years, and all the more so since the Act of 30th June 2000, which reformed emergency appeal procedures, increasing the possibility of (provisional) rulings on situations of short duration (in disciplinary matters for example\(^ {276} \)).

Prisoners can therefore dispute measures to which they are subject before the judge – and moreover without a lawyer – without coming up against questions of admissibility or of deadlines.

\(^{275}\) According to this article, “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”.

\(^{276}\) See section 3 above.
However, the application of this system remains incomplete. Indeed, although, by definition, the persons concerned are able to be informed of individual measures to which they are subject (the transfer of a prisoner, dismissal from an activity etc.), subject to uncertainties with regard to the moment at which the time allowed for appeal begins to run, caused by various difficulties involved in notification, described above, this is not the case with regard to statutory measures, whether they originate from the central administration, regional managers or heads of institutions. The latter have memoranda displayed on noticeboards reserved for this purpose (e.g. with regard to Christmas prison shops), which prisoners are expected to examine. However, not all memoranda are so displayed and, as we have seen, the rules and regulations are far from being up to date, on the one hand, and accessible, on the other. The difficulties are even greater with regard to regional regulations (of which, it is true, few are directly implemented) and, above all, with regard to national rules, in the form of circulars in particular. No provision is made to place them at the disposal of prisoners in each institution: for example, the circular of 14<sup>th</sup> April 2011 on the controversial question of searches, which is directly applicable to prisoners, was sent to the heads of institutions through the usual official channels, but without their being obliged to inform the inmate population thereof. The memoranda of application of this circular were intended solely for officers and were not displayed on the noticeboards. Thus neither the circular nor the memoranda were open to referral to the judge, though various different assessments of their lawfulness have been put forward.

Conditions of imprisonment do not make the usual channels of information (French government publications giving information to the public about new laws etc., official listings of new laws and decrees and online websites etc.) accessible to prisoners. It is therefore important for the administration to make up for this impossibility, without excessive formality or procedure.

This is all the more important in that failure to do so may render appeals to the judge without consequence, in certain areas of activity, since the prison environment, like all places of deprivation of liberty, is the domain of the circular <i>par excellence</i> and, more generally, of profusion of rule-making at lower levels.

2.1.2.3 Hearings before the judge remain poorly adapted to the stating of their defence by patients committed to hospitalisation without consent

The conditions of their presentation before the liberty and custody judge for the purpose of examination of the merits of measures of committal to psychiatric treatment was subject to heated debate between hospital staff and judges, even before the implementation of the Act of 5<sup>th</sup> July 2011<sup>277</sup>.

Pointing out the need to protect patients from anxieties created by the journey to court, hospital staff want hearings to be held in hospitals, which are better adapted to the state of health and personality of patients, thus allowing them to express themselves more freely. In the course of their inspections, the inspectors ascertained that several institutions have equipped a room for this purpose.

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<sup>277</sup> Article L3211-12-2 of the public health code provides that liberty and custody judges make rulings at the bench of the regional court of first instance; they may also hold their hearings in a specially-equipped room in the hospital, ensuring the clarity, security and sincerity of the proceedings and enabling the judge to rule publicly; the judge may also decide to resort to the use of audio-visual means of communication, under certain conditions – a medical certificate testifying that the patient’s mental state does not prevent this and the absence of objection on the part of the patient.
For their part, judges point out the symbolic impact of hearings held in the courthouse; they also emphasise their workload\(^{278}\), as well as the protection of their independence and impartiality, which are liable to be tested when they are “received” within hospitals.

On the whole, doctors are opposed to the use of audio-visual means – videoconferencing\(^{279}\) – and, although not all judges consider it to be necessarily inappropriate, most of them do not appear to demand this mode of interview.

At the time of drafting this report, most hearings were, in practice, held in court. It is not impossible that problems of a purely material nature – transport and accompaniment in particular – contribute to increasing the difficulties of medical staff and patients alike.

Great scepticism is shown among medical staff with regard to the capacity of judges to assess the grounds for the continuation or bringing to an end of measures of commitment to psychiatric treatment without consent, and even with regard to the legitimacy of such assessment. In certain departments inspected, this scepticism is not unconnected to the large number of medical certificates declaring patients not to be “in a state” to be heard by the judge. Only patients who request to appear in court are then taken there; in the absence of such requests, certificates are drawn up by the head of the department specifying that they cannot make the journey: “This constitutes the majority of cases”.

Concrete difficulties in terms of staff and access to the law courts – despite the latter having made provision for special hours, access routes and waiting areas for these litigants – are also mentioned in order to justify the absence of appearance before the judge.

The hearings are almost systematically held in court chambers, in the name of the respect of privacy. In most cases, medical staff accompanying patients are invited to attend the proceedings; after a period of uncertainty, their opinions are apparently no longer requested.

The practices of liberty and custody judges (JLD) vary. Nevertheless, in the name of respect of the audi alteram partem principle and therefore of defence rights, they often consider that they have to inform patients of the content of medical certificates and recall the context of hospitalisation; they ask patients for their opinion of the treatment undertaken, their experience of hospitalisation and their plans. When lawyers are present, they rarely speak before the final address, in which they try to represent their client’s point of view, sometimes without great conviction.

The vast majority of rulings involve continuation of the measure. Although they reserve the right to call for an expert opinion, it appears to judges that the content of medical certificates, and sometimes the behaviour and words of patients at the hearing, hardly make it possible to envisage any other decision.

The decision is sent to the hospital a few days after the hearing. In general the patient is informed thereof by the medical staff, under conditions similar to those described above with regard to committal decisions.

Patients who wish to lodge an appeal find themselves in the same isolation as before the hearing; the inspectors have not been informed of any lawyers intervening at this stage to explain

\(^{278}\) Liberty and custody judges are also in charge of court proceedings concerning remand as well as foreigners, in which they are obliged to rule within restrictive deadlines; in numerous courts, they also take care of other tasks: participation in criminal hearings and in the family court etc. They sometimes intervene in several psychiatric hospitals.

\(^{279}\) On videoconferencing cf. the assessment of the Chief Inspector of places of deprivation of liberty of 14th October 2011 concerning use of videoconferencing with regard to persons deprived of liberty published in the Journal Officiel of 9th November 2011.
the ruling to the patient and assess the appropriateness of an appeal with them. Action of this kind on the part of lawyers is very rare.

2.2 Though apparently more straightforward, defence before the administration is no less difficult to exercise

2.2.1 Applications for remedy on the part of prisoners are not always dealt with

All claims submitted by prisoners to the administration of the institution in which they are imprisoned have to take the form of a written application.

In numerous penal institutions, prisoners complain that their applications are not dealt with, or do not reach the person to whom they are intended. Indeed, it became apparent to the inspectors that applications are not always registered and that they do not systematically receive a response, whether favourable or otherwise.

Nevertheless, in one prison, applications sent by prisoners to the director and to officers were passed on directly to the BGD (detention management office) which registered them, issuing acknowledgement of receipt and dealing with them within three days of their arrival. On the other hand, other applications were not registered and a fortiori did not receive any acknowledgement of receipt; in most cases, replies to the questions asked in these written documents were given orally, and not necessarily by their addressees.

In the absence of being able to keep some proof of submission, prisoners cannot claim that their applications have been implicitly refused and, a fortiori, cannot apply for remedy against such refusal.

2.2.2 Inter partes proceedings against unfavourable individual decisions are rarely implemented in prisons

When the administration makes unfavourable individual decisions which have to be justified in application of the act of 11th July 1979, it has to implement the procedure provided for under article 24 of act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with the public administrations, transposed under articles R57-6-8 et seq. of the code of criminal procedure.

However, the administration has to allow the person concerned to consult the case-file, submit written and oral remarks and enlist the assistance of, or have themselves represented by, a lawyer or representative of their choice, within the framework of inter partes proceedings.

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For a detailed examination of applications for remedy against punishment cell placement decisions, cf. section 4 of this report.

With the exception of cases where rulings are made on claims, individual decisions, which shall be justified in application of articles 1 and 2 of Act no. 79-587 of 11th July 1979 concerning the justification of administrative acts and the improvement of relations between the administration and the public, shall only take place after the person concerned has been put in a position to present written remarks and, if necessary, at their request, oral remarks. The person may enlist the assistance of an adviser or be represented by an agent of their choice. The administrative authority is not bound to satisfy requests for hearings which are unreasonable, in particular due to their recurrent or systematic nature.

The provisions of the preceding paragraph are not applicable:

1° In case of urgency or exceptional circumstances;

2° When their implementation would be of a nature to compromise public order or the conduct of international relations;

3° To rulings for which legislative provisions have instituted special inter partes proceedings.

The modes of application of this article are fixed when necessary by decree of the Council of State.”
In one remand prison inspected in November 2012, this procedure had been implemented for several months with regard to decisions involving dismissal from employment and had then been extended to decisions concerning professional training and sport; the extension of the procedure to socio-professional activities and education was envisaged for 2013.

Similarly, in one prison inspected in September 2011, after three “breaches” on the part of operators at work, the officer in charge then proposed their dismissal; a date for an interview with the management of the institution was then proposed to the operator, who could enlist the assistance of a lawyer. Dismissal decisions were taken at the end of this procedure. Between 1st January and 31st August 2011, it was implemented seven times for operators in workshops and once for an operator working in the general service. The procedure had not led to the establishment of a specific register.

However, these examples are rare and, in practice, despite the compulsory nature of this procedure, it is rarely implemented in the penal institutions inspected. Moreover, the procedure is little known and, unaware of its existence, no prisoners demand the application thereof.

2.2.3 The procedure for obtaining the right to asylum is complex and little respected

The right to apply for asylum is not a direct right of defence against placement decisions or the refusal of residence permits. However, it is a fundamental right and, insofar as persons with refugee status are entitled to stay on another basis, exercise of the right of asylum constitutes a de facto remedy against placement in detention.

In a ruling of 12th November 2009\(^{282}\) concerning the second extension of detention based upon article L.552-7 of the CESEDA, the first civil division of the Court of cassation recalled that since the lodging of asylum applications is constitutive of a right, its exercise cannot constitute deliberate obstruction of removal from the country on the part of foreigners.

The right has to be exercised within five days of notification thereof in detention centres. Applications are examined in priority proceedings by the French Office for the Protection of Refugees and Stateless Persons (OFPRA – Office français pour la protection des réfugiés et apatrides). In order to be issued with the application file provided for by the OFPRA, foreigners have to state their intention to apply for asylum. It is rarely explained to them that the whole asylum application file has to be sent to the OFPRA within five days, and not simply the request thereof. In this case, once again, the effectiveness of the exercise of rights is dependent upon the clarity of their notification.

Applications that are not written in French are inadmissible. However, no provision is made for free assistance from an interpreter. In such scenarios, the assistance of an association or lawyer remains essential.

The Office gives a ruling within a deadline, which is rarely complied with, of ninety-six hours (R.723-3 of the CESEDA). During this period, the applicant cannot be removed from the country (L.742-6 of the CESEDA).

If the intervention of a lawyer or association enables the asylum-seeker to complete the application and provide the supplementary documents, they are dependent upon the registry officers for the preparation of the other documents (photographs and fingerprints). Similarly, the sending of the application by fax and Chronopost™ – an operation which proves that the

\(^{282}\) No. 08-18051, unpublished in the Bulletin.
application is admissible *ratiōne temporis* (when the fax is sent within the deadline) – is dependent upon these officers.

Indeed, article R.553-16 of the CESEDA provides that authorities entrusted with applications record in the detention register the date and time at which asylum applications filed by foreigners are handed over to them. The second paragraph states that these authorities immediately refer asylum applications to the director of the OFPRA, as handed over to them by the foreigner. However, it was ascertained (in particular at the CRAs of Sète and Toulouse) that when deadlines fell at the end of the week, applications were sent on the Monday morning or first working day thereafter, the registry officers affirming that “the prefecture agreed” to this practice.

It was also ascertained that when asylum-seekers handed their applications over to registry officers after the expiry of the five-day period, the latter refrained from sending them to the OFPRA on the grounds of lateness.

In both cases, the CRA administration takes the position of judge with regard to the exclusion of claims for not being lodged within the appointed time. However, none of the legislative or regulatory texts indicate that authorities entrusted with applications can refrain from passing them on due to lateness in hand-over.

This practice is not without impact upon the rights of foreign detainees. Indeed, as long as the OFPRA has not given a ruling on asylum applications referred to it, measures of removal from the country cannot be implemented. If applications are not passed on, not only do such measures become enforceable, but asylum-seekers are deprived of the possibility of applying to an authority independent of the CRA to examine whether this loss of rights for failure to observe the time-limit is imputable to them, despite the fact that they are dependent upon the diligence of the registry both in order to obtain the application for completion and for sending it to the OFPRA.

In principle, acknowledgement of receipt of asylum applications should be issued, which (as in the CRA of Rochambeau) is not always the case. In case of leaving the centre, this means that the foreigner is unable to follow-up the application procedure in the proper manner, to apply for the temporary right to stay— or dispute refusal thereof on the part of the prefect — or to have the benefit of the accommodation provided for when eligibility to stay has been accepted.

As we have just demonstrated, beyond the diversity of places of deprivation of liberty, their modes of operation and the measures and procedures which lead to placement in them, persons deprived of liberty all come up against obstacles of the same nature in defending their rights. However, it is often the case that, although persons deprived of liberty understand the measures to which they are subject, they are not always aware of the legal, judicial and administrative nature thereof, the remedies against them and their effects as a whole.

It is therefore important to consolidate the provision of information to persons deprived of liberty in order to enable them to have a knowledge of the whole of the rights to which they are entitled, thus enabling them to exercise the latter effectively and defend themselves against placement decisions and the terms of their implementation, as well as against decisions that infringe any of their fundamental rights.

For this reason the Contrôleur général issues the following recommendations:
1/ With regard to the protection of persons subject to psychiatric treatment and the terms of their care and treatment

The Contrôleur général recommends that the Ministers of Health and Justice should issue a joint circular, which could be a circular of application of the act of 5th July 2011283, recalling a certain number of rights at the disposal of patients committed to psychiatric treatment without consent. Thus:

- notification of decisions ordering committal to psychiatric treatment without consent is mandatory; it should occur as quickly as possible and in a manner appropriate to the state of the patient. The handing over of a copy of the decision should be a priority;

- traceability of notification of decisions of committal to psychiatric treatment should be systematically organised, in order to make it possible, both for the administrative departments of hospitals and authorities likely to inspect these health institutions or intervening at any particular stage of the procedure, to verify that such notification has indeed been issued;

- this notification should not exempt professionals from written, specific and updated provision of information, on the various possibilities of remedy and on the authorities to which cases can be referred, with information on the latter’s status and full contact details as well as a description of their principal areas of competence; provision of this information could be carried out by means of the posting of noticeboards as well as by the handing over of specific documents and information booklets distinct from booklets for new arrivals, or indeed booklets for new arrivals specially dedicated to psychiatry;

- posting on noticeboards, in all psychiatric institutions and in all treatment units, of the charter of rights and liberties of persons admitted, mentioned under article L.311-4 of the social action and family code (code de l'action sociale et des familles);

- posting on noticeboards of the bar roll of counsels entitled to practice for the jurisdiction concerned, as well as telephone contact details for dedicated surgeries when they exist;

- that article L.1111-6 of the public health code concerning the appointment of trusted legal representatives should be implemented in psychiatric hospitals;

- that the principle of hearings held by a judge outside of the ordinary bench of the court within health institutions should be recognised as the usual practice, as already stated by the Contrôleur général in the assessment concerning the use of videoconferencing with regard to persons deprived of liberty, published in the Journal officiel of 9th November 2011284.

2/ With regard to the rights of minors placed in young offenders’ institutions

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283 A circular of this kind is called for by numerous staff encountered. No directive has been issued since the summer of 2011.

284 In this assessment it is recalled, as provided for by the public health code with regard to psychiatric treatment without consent, that when it proves impossible for the person appearing before the court to make the journey, any decision to resort to videoconferencing should be in keeping with the possibility for the judge to hold the hearing outside of the ordinary bench of the court. The latter should be viewed as an alternative under ordinary law to hearings at the court, to a far greater extent than videoconferencing.
The Contrôleur général recommends that the Minister of Justice should issue a circular recalling that minors placed in young offenders’ institutions (CEF) remain entitled to rights of which it is essential for them to be informed. Thus:

- the minor’s legal situation should be subject to more detailed explanations on the part of one of the members of the CEF;
- these explanations should be provided both to the minors and to their parents;
- minors committed to institutions and their parents should be systematically provided with information on the Défenseur des droits ombudsman and the Contrôleur général des lieux de privation de liberté;
- it would be appropriate to ensure that minors personally sign any notification sent to them by courts or authorities, so that they are able to fully exercise their rights;
- all tutors should have the benefit of introductory legal training, in order to be in a position to completely fulfil their duties towards young people.

3/ With regard to the rights of persons placed in police custody

The Contrôleur général recommends that the Ministers of justice and of the Interior should enact a new circular concerning the rights of persons in police custody making it possible to sum up the developments in case law that have occurred since the coming into force of the act of 14th April 2011. Provision could also be made therein for the handing over to persons in police custody:

- of a document detailing their rights and the display of notices of this kind in police custody facilities;
- of a document including a list of the lawyers of the local bar and an explanation concerning the role of lawyers in police custody;
- of a copy of the official record of notification of their rights as well as the official record of the stages of police custody and of the end thereof.

Persons brought before law courts at the end of periods of police custody should be reminded of their rights, whether or not within the field of application of the provisions of article 803-3 of the code of criminal procedure; on the other hand, the elaboration of rules and regulations and the display thereof should be a requirement, in all places containing jails.

As far as minors are concerned, police and gendarmerie departments should be reminded that when notice of police custody measures is given to their legal representatives, they should be systematically informed of their right to appoint a lawyer for their child, if the latter has not requested one, as well as of the possibility of calling for a medical examination for minors over sixteen years of age (cf. article 4 of the statutory instrument of 2nd February 1945).

Moreover, the Contrôleur général recommends that the legislature should amend the articles devoted to police custody rights in the code of criminal procedure and the statutory instrument of 2nd February 1945 concerning juvenile delinquency. Thus:
- article 63-2 of the code of criminal procedure should specify that when notice of a police custody measure is issued to a member of the family, the latter should be systematically informed of their right to request a medical examination, in the scenario where neither the person in police custody, nor the public prosecutor at the court of first instance, nor the senior law-enforcement officer has made such a request;

- article 63-2 should also impose the issuing of notification of police custody measures to guardians or conservators, in addition to a close relation and the employer of the person concerned;

- article 63-3 should provide for the possibility for guardians and conservators to appoint a doctor, as for the member of the family;

- article 63-3-1 should mention that interviews with lawyers take place through an interpreter, when the person in police custody does not speak French;

- the provisions of article 803-3 of the code of criminal procedure concerning the referral of persons in police custody to court and their placement in “court cells” should be supplemented by a note on the obligation to notify them of their rights on their arrival at the court jail.

4/ With regard to the rights of prisoners

The Contrôleur général recommends that a memorandum from the director of the prisons administration department to the directors of penal institutions should recall the need:

- to update the rules and regulations of institutions and to place them at prisoners’ disposal, along with up-to-date versions of the penal code and code of criminal procedure, if necessary in IT format or else by providing for access to legal websites in the libraries of institutions;

- that statutory texts concerning life in detention, and circulars in particular, should be systematically placed in files specially established for this purpose and accessible in the libraries of institutions.

- to organise the traceability of prisoners’ applications for remedy and to systematically reply to them, or at least to acknowledge receipt thereof;

- to implement the provisions of article 24 of Act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with the public administrations, transposed under articles R57-6-8 et seq. of the code of criminal procedure, in case of unfavourable individual decisions taken by the prisons administration, making provision for model forms and summons to inter partes hearings if necessary;

- to ensure the confidentiality of exchanges between lawyers and their detained clients, by systematically providing for dedicated soundproofed interview premises and making sure that the telephone numbers of legal advisers are indeed excluded from monitoring and recording.

5/With regard to the rights of detainees

The Contrôleur général recommends:

- that the legislature make an amendment to article L 552-1 of the CESEDA in order to exclude the duration of temporary stays in LRAs, as well as days when registries are
closed in CRAs (in general Saturdays and Sundays), from the calculation of the allowed time of forty-eight hours for entering appeals against decisions involving removal from the country and placement in detention;

- that the Interior Minister should issue a circular concerning the functioning of detention centres for illegal immigrants which, on the one hand, should plan free access to legal aid associations and to the services of the Inter Service Migrants association and, on the other hand – with regard to the procedure for the obtainment of the right of asylum – should establish an obligation to draft and distribute explanatory leaflets concerning the asylum application procedure, in several languages, for detainees, as well as a model for staff, and registry staff in particular; it should mention the mandatory nature of the duty to pass on asylum applications to the OFPRA, even when they are submitted late; asylum application files in several languages; and the placing of an interpreter at the disposal of asylum-seekers in order to help them with the procedures.

- that the associations or the OFII should be accorded the right, appointed as representative for this purpose by the asylum-seeker, to the possibility of passing on asylum applications directly to the OFPRA, without going through the registry, the latter henceforth only being competent for incidental formalities (the taking of fingerprints for attachment to the application for example).
Section 5

Deprivation of Liberty and Access to Health Care

Access to health constitutes a fundamental right, derived from the right to life, which should be guaranteed to all persons deprived of liberty, whatever the place in which they are found and the pathology they show.

However, one can only note that the organisation of health care continues to vary greatly between different types of places and sometimes even between institutions of the same nature. Provision of health care can sometimes be very uneven; it does not always measure up to the standards that our society is entitled to expect. At the time of inspections, the Contrôleur général des lieux de privation de liberté places great importance not only on verifying the effectiveness of access to health care for persons deprived of liberty, but also upon the architecture of places of treatment as well as the nature of the facilities that contribute to the physical and mental well-being of persons and therefore to their health.\textsuperscript{285}

It is necessary to distinguish access to health care according to the duration of deprivation of liberty in the various different types of places of imprisonment. Although in police custody and detention centres for illegal immigrants the question of access to a doctor is indeed the essential issue, in mental health institutions and prisons, which can become places of living for persons accommodated in them for long periods, it is rather the question of care and treatment of chronic pathologies and long-term conditions that needs to be studied.

Although hospital facilities such as psychiatric hospitals provide satisfactory health care on the whole – although a lack of general practitioners in certain institutions is to be regretted -, the same does not apply in penal institutions, where serious gaps continue to exist, in particular with regard to the treatment of chronic pathologies and loss of autonomy. Indeed, although prison medical consultation and outpatient treatment units (UCSA) have succeeded in improving the provision of treatment for acute medical conditions, they still have difficulty in taking long-term treatment into account.

In any case, it is neither possible nor desirable to design and implement a system of treatment in places of deprivation of liberty without considering the conditions of imprisonment as a whole. Access to health care is inseparable from the concrete living conditions of persons deprived of liberty.

1. Access to Health Care in Places of Short-Term Deprivation of Liberty

1.1 Access to Health Care in Police Custody Facilities

Persons placed in police custody are guaranteed the right to be examined by a doctor under the conditions fixed by article 63-3 of the code of criminal procedure in order to determine, in

\textsuperscript{285} "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". Definition of the World Health Organisation (WHO) 1946.
particular, whether their state of health is compatible with continuation of police custody. The article provides that in case of extension of the police custody measure the person can be examined a second time.

The consultation with a doctor has to occur within three hours of the request at the latest. The medical examination should take place without being seen or overheard by any third party, in order to ensure respect for dignity and professional secrecy.

In the absence of a request on the part of the person in police custody, a medical examination is “de jure” if requested by a member of their family; the doctor then being appointed by the public prosecutor at the court of first instance or the senior law-enforcement officer, who can also appoint a doctor without any consultation.

1.1.1 Background details

The conditions under which medical examinations take place during police custody were greatly modified by the reform of medical jurisprudence set out in the circulars of 27th and 28th December 2010. Thus, from January 2011 the territorial network of medical jurisprudence units (UMJ / unités médico-judiciaires), administratively attached to public health institutions, should have enabled the implementation of a system placing forensic medical examiners on call enabling them to go to police stations and gendarmeries in order to carry out medical examinations to determine the compatibility of the state of health of persons suspected of crimes with stays in police custody.

The way in which this reform is applied on French territory varies greatly. In numerous French departments, either the forensic medical examiners do not make journeys (or only within very restricted hours) or the concrete conditions under which they carry out their duties make it difficult to implement the principle of examining the patient in the police custody facilities themselves. Thus, for example, a Medical Jurisprudence Unit (UMJ) in the Parisian region had to improve its organisation in the space of a few weeks, without having the ambulances at its disposal necessary for journeys throughout a particularly large and congested department. Moreover, for budgetary reasons, it is very rare to find UMJs in which it is possible to allocate a driver to the doctor who carries out the examinations.

In addition, the difficulties for doctors in travelling at night in zones which are unfamiliar and sometimes felt to be dangerous, have led to night time examinations no longer being carried out in police stations and gendarmeries, but in most cases in the casualty departments of hospitals, which presents two major disadvantages: on the one hand, the police have to escort persons in police custody to the hospital, where no provision is made for “secure waiting” and, above all, in practical terms, doctors are totally unable to ascertain the material conditions of police custody in the place where the person is held.

The aforementioned circulars provided for the possibility for State Prosecutor’s Offices of courts, which are administratively attached to dedicated UMJs, to make use of so-called “local” networks “in a dispensatory and permanent manner, either outside of the working-days and times of the UMJ, or when special circumstances, such as geographical distance or transport times, so require”.

The inspectors have ascertained that what should have been an exception has, in fact, remained the usual practice in numerous departments, where the examinations in police stations

286 Circular NOR: JUSD1033099C and NOR: JUSD1033764C concerning the implementation of the reform of medical jurisprudence.
and gendarmeries are still frequently conducted by doctors’ associations such as “SOS Médecins” and private doctors. However, this mode of organisation presents a real financial disadvantage. Indeed, this dispensatory recourse to local general practitioners is not covered within the fixed-rate payment framework and is charged on a fee-for-service basis as legal costs of the court to which the police station is administratively attached. Moreover, the use of private doctors does not guarantee the promptness of medical examinations, general practitioners being constrained by the obligations of their practices.

During their inspections, the inspectors have collected numerous testimonies concerning these difficulties in the organisation of medical examinations. Thus, in numerous gendarmeries it was reported that the doctors of the town only rarely came and, because those that did so were often advanced in years, it would be difficult to replace them when they reached retirement.

In the face of this situation, medical examinations are carried out in the casualty departments of hospitals, some of which are not located in close proximity. In addition, no priority is given in these health institutions to the examination of persons in police custody, who are escorted by gendarmes and very often do not follow dedicated access routes that are out of view, but use the same access routes and the same waiting rooms as the general public.

Waiting times are reported as varying from 45 minutes to 2 hours 45, although waiting times of more than four hours are not unknown. These waiting times are the same as those for the general public. However, time is a decisive factor with regard to the situation of persons kept in police custody for 24 hours.

In certain gendarmeries, the reform of medical jurisprudence has not changed the situation, examinations continuing to be conducted at the hospital. The inspectors have even been informed that “depending on the sensitiveness of the case”, the waiting time can also be spent “in the gendarmerie vehicle” as a precautionary measure…

1.1.2 The distribution of medicines

The distribution of medicines raises difficulties for persons suffering from chronic illnesses, who need to take courses of treatment.

During inspections, the inspectors have frequently been informed that asthmatic persons in possession of Ventoline®, for example, have had their courses of treatment confiscated on the grounds that the police officers could not be certain that the medicine had not been replaced or mixed with illegal substances. Admittedly, it is possible for the person’s family to be contacted in order for them to bring the medical prescription and the necessary medicines. However, in certain police stations it is necessary to wait for the doctor to arrive, in order for the latter to attest to the obligation to follow a course of treatment by means of a prescription. Doctors carry and issue some of the most common medicines. Otherwise, when the person in police custody has their French national health care electronic insurance card (Carte Vitale), police officers go and buy the medicines from a pharmacy retailer; in the absence of an electronic health insurance card, they go to the dispensary of the local area hospital or requisition the medicines from a pharmacy retailer.

In this instance, medical secrecy is not entirely respected. Although doctors are careful to place the medicines in an envelope in the patient’s name, with instructions for the doses and times when they should be taken, the police officers in fact play the role of medical auxiliaries, which does not come within the scope of their duties.

1.1.3 Material conditions of access to health care
Finally, it is necessary to take a look at the material conditions of examinations in police stations and gendarmeries, which are not without frequently posing problems in terms of respect for the dignity of persons in police custody.

Indeed it is very rare for these places to have a room devoted to medical examinations. When doctors come, they very often have to carry out their consultations in common premises shared with the lawyer or in the office belonging to officer in charge of investigations, which has been made secure beforehand by the removal of any dangerous objects, or even directly in the police custody facility on view to all. Moreover, even in recently renovated police stations, the inspectors have ascertained that although a room has indeed been provided, it has not been fitted out with the installation of any facilities. In addition they have witnessed their extreme brevity of the consultations, which in general only last a few minutes and therefore do not enable a real medical assessment.

1.2 Access to Health Care in Detention Centres and Facilities for Illegal Immigrants

From the time of their placement, foreigners have the right to request the assistance of a doctor as provided for under article L.551-2 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA). The same applies in waiting areas, in application of article L.221-4 of the CESEDA.

The public hospital service is responsible for fulfilling these needs in application of the provisions of article L.6112-1 of the public health code.

The rule is as follows: in each detention centre for illegal immigrants (CRA), one or several rooms provided with medical equipment are reserved for the medical service; the premises and resources should be appropriate to requirements and the practical details thereof have to be fixed by an agreement between the regional prefect and a public hospital.

For detention facilities for illegal immigrants (LRA), only an emergency dispensary is required. However, the inspectors ascertained that the latter did not always exist. Police officers and gendarmes call upon doctors under the same conditions as for persons in police custody (cf. §1.2). In waiting areas and, in particular, in large airports, use of the platform health services is the rule; elsewhere, private doctors are called.

Medical care and treatment of detainees in CRAs is specifically defined in a circular of 7th December 1999.

The norms set out are for information only; accordingly they vary depending upon the capacities of the centre. Moreover, the Contrôleur général, who has inspected all of the detention centres for illegal immigrants, has ascertained great heterogeneity in the application of this circular.

Indeed, the recommended staff levels are not always respected and can vary considerably for institutions of comparable size. The doctors who conduct consultations in them are present at regular intervals provided for in the circular, between three and ten half-days a week according to the size of the centre.

In concrete terms, in institutions of less than one hundred places, nurses are not always present on working days and during working hours and are only rarely present at weekends and on bank holidays, whereas the circular recommends that they should be present for at least eight

\[287\] Cf. articles R.553-3, R.553-6 and R.553-8 of the CESEDA.
hours per day. Thus, in one centre inspected of twenty four places, the nurse only provided a 60% service. On the other hand, in another institutions of thirty-two places, the presence of a nurse was provided for Mondays to Fridays from 8:30 a.m. to 4:30 p.m., and from 10 a.m. to midday on Saturdays, Sundays and bank holidays.

In institutions of more than one hundred places, the treatment units are open seven days a week, throughout the year, in general from 8 a.m. to 6 p.m. and later still in a few cases; however, the number of nurses can vary.

In general no provision is made for medical staff on-call outside of the days and hours of opening of the medical units. In case of emergencies a call to the Urgent Medical Aid Service call centre (centre 15) enables police officers to obtain a rapid response.

Medicines should be exclusively distributed by medical staff in accordance with article 18 of the model rules and regulations appended to the order (arrêté) of 2nd May 2006. However, the inspectors have frequently ascertained that although the medicines were prepared by nurses, who put them in named envelopes, with instructions for the doses and times that they should be taken, they were indeed distributed by police officers, which offers absolutely no guarantee of the medical secrecy inherent to this type of act.

The premises for medical consultations are of variable nature and surface area according to the centres. Thus, in one centre of twenty places a room of 20 m² is provided for nursing care along with an examination room of 7.65 m² whereas in another, of fifty-five places, a single room of 13 m² has to be shared by the doctor and the nurse.

In addition, the set-up of the premises does not always guarantee the necessary confidentiality. Police officers are present in the area around the treatment premises, both to ensure the security of health workers and to put their minds at rest, while the doors of offices and treatment rooms are sometimes left open, due to their weight (security door) or in order to give priority to rapid intervention in case of need.

The terms of treatment can also vary, although notification of the right to be examined by a doctor is issued on admission. The same applies to the systematic examination of new arrivals. In certain centres, the latter is solely carried out by a nurse, who then presents persons in need of more detailed examinations to the doctor. Elsewhere, only persons who so request, persons showing a known pathology and those taking courses of treatment are seen. Nurses have explained to the inspectors that they prefer not to summon persons to attend an examination – which would be felt to be an additional constraint at a time of great anxiety – but to make less formal contact when in the detention area.

To this is added the difficulty sometimes encountered by medical staff of gaining access to the list of new arrivals: “we keep watch for new faces” the medical staff of one centre stated.

Access to consultations is provided in several different manners according to the centres. Those which, like one institution in the East of France, possess a letter box enabling detainees to contact the medical unit directly are rare. It is equally rare to find centres in which the treatment premises are directly accessible to detainees. In general, requests are made verbally through the police officers or the representatives of the various partners, at the risk of being lost, or are made to nurses directly at the time of distribution of medicines. The installation of a letter box was

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rejected by certain medical departments which call their effectiveness into question on the grounds that “detainees have an oral culture and would not make use of them”.

When non-French speaking patients are examined, the inspectors ascertained that health professionals call upon a compatriot of the person concerned. This solution does not protect the confidentiality of treatment; moreover nurses are wary of it, fearing that certain of these “interpreters” may take advantage in order to push the detainees to ask for medicines that they can collect from them later.

In general, any specialised treatment is provided outside of the centre. Such is the case for dental treatment, for which private dentists are used. Unfortunately, cases of treatment of this kind are few in number and one can only note that solely situations of urgency are treated, even though this type of health care corresponds to a major need among detainees.

In a few centres, psychiatrists and psychologists carry out a limited number of consultations. Paradoxically, one centre accommodating fifty-five people has the benefit of the presence of a psychologist one morning per week whereas another, with a capacity of 136 places, explains its choice not to have a psychologist on site as follows: “too brief a time of stay not making therapeutic work possible”; “when personal suffering is connected with detention, it can only be resolved by leaving the centre”; “one of the doctors has received training in psychiatry and nurses have been trained in listening”.

One can only note that as a general rule the level of provision of care and treatment is very low with regard to mental distress linked to detention, to the breaking of family ties and to the possibility of being removed from the country, and is essentially based upon the listening capacities of the nurses.

At the time of inspections by the contrôle général, detainees have regularly spoken to the inspectors about their anxiety: “if you are ill, you either get better on your own or you are seen when you are almost dead”; “they just give tablets to calm us down, to send us to sleep”.

The quality of relations between medical staff and police officers and gendarmes is therefore an essential element with regard to compliance with health care measures and the prevention of violations of detainees’ rights.

However, the latter relations between staff working in CRAs should make it possible to protect medical independence, with regard in particular to the issuing of medical opinions about obstacles to removal from the country on the grounds of the detainee’s state of health.

Paragraph 11° of article L.313-11 of the CESEDA provides for the possibility of maintenance in French territory of persons “whose state of health necessitates medical care and treatment, the absence of which would lead to consequences of exceptional seriousness for [them], subject to the absence of suitable treatment in [their] country of origin”.

However, it became apparent during inspections conducted by the Contrôleur général des lieux de privation de liberté that doctors were reluctant to request such maintenance on French territory for medical reasons. Moreover, they do not all interpret “consequences of exceptional seriousness” in the same manner: some limit these to conditions which endanger the patient’s life in the short term, while others take a broader approach. Although the inspectors have met doctors who regularly make use of this measure, in one of the institutions inspected the health staff were unaware of the very existence of this text.

Finally, this sensitive issue raises the major and central question of the precise position of medical staff within CRAs.

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289 *The terms of implementation are fixed by direction DGS/MC1/R12/417 of 10th November 2011*
Are medical staff present in CRAs essentially in order to ensure continuity of previously implemented care and treatment (treatment in progress) and to deal with somatic problems of low intensity, or do their duties rather consist of systematically undertaking investigations aimed at detecting pathologies in order to enable rapid care and treatment and leading, if need be, to the withdrawal of measures of removal from the country?

The sole phrase concerning the definition of the duties of medical staff in the circular of 7th December 1999 indicates that “[t]he doctors take care of the medical acts of diagnosis and treatment as well as primary health care”. This does not make it possible to remove the ambiguity. Added to means for dealing with detainees’ treatment requirements which are sometimes inadequate, due in particular to difficulties of recruitment, vagueness with regard to their duties could lead staff to content themselves with treating pathologies detected beforehand, an approach that is likely to call fundamental rights into question.

Difficulties concerning respect for this independence have been referred to the Contrôleur général: in this respect the circular could make provision for measures to consolidate the conditions of independence of doctors practicing in CRAs, the protection of medical secrecy being directly connected to this issue, as well as the traceability of medical acts and diagnoses established.

2. General Health Care in Prisons

2.1 Background details

In 1951 the prisons administration department 290 began raising questions concerning its competence with regard to the provision of health care for prisoners.

In the nineteen sixties attempts at the specialisation of certain penal institutions appeared. However, the lack of allocation of financial resources to the medical sector remained chronic.

In 1977, a decree removed psychiatrists from the prison managerial hierarchy, in 1984 inspection duties in turn were transferred from the prison service inspectorate to the General Inspectorate of Social Affairs (IGAS / inspection générale des Affaires sociales) and in 1986 the Regional Mental Health Departments for Prisons (SMPR / services médico-psychologiques régionaux) were created.

In the nineteen-eighties, the sudden emergence of AIDS in prisons 291 obliged the prisons administration to begin to introduce autonomy for certain sectors of medicine such as HIV (human immunodeficiency virus) consultations and the presence of human immunodeficiency information and treatment centres (CISIH / centre d’information et de soins de l’immunodéficience humaine).

In 1990, health duties in the prisons of the “13,000 programme” were entrusted to private operators, health staff no longer came under the control of the prisons administration.

The report of the High Commission on Public Health (haut comité de santé publique) made it possible to give concrete expression to the act of 18th January 1994. Its implementing regulations, the decree of 27th October 1994 and the circular of 8th December 1994, transferred health care for prisoners from the public prisons service to the public hospitals service.

290 Annual report for the financial year 1951 (p. 114) Conseil supérieur de l’administration pénitentiaire [Higher Council of the Prisons Administration] Charles GERMAIN.

291 Along with the ascertainment of major difficulties in the organisation of prevention and treatment for prisoners.
Public hospitals thus became responsible for the organisation of health care in prisons.

The transfer of responsibilities came up against numerous difficulties, the prison population not being considered to be a population of patients and only being known for the management of emergencies and short-term hospitalisations. A real mission of public health and education commenced for public hospitals.

A large proportion of new institutions in France’s prison system were established in remote parts of France where the provision of health care was already in difficulty and the small number of staff made it necessary to maintain teams in place without the reinforcements recommended by the act.

In August 2000 the act of 18th January 1994 was complemented by a national system for the hospitalisation of prisoners. This was followed by the Act of 9th September 2002, which specified that all hospitalisations of prisoners for psychiatric reasons, with or without their consent, would be carried out in specially equipped hospitalisation units (UHSA). In addition, article 48 of the prisons act of 24th November 2009 specified that: “neither acts devoid of connection with the treatment and protection of the health of prisoners, nor expert medical opinions may be requested from doctors and nursing staff working in the prison environment”.

Thus the tools of access to health care: the SMPR, UCSA, UHSI and UHSA were henceforth in place.

However, considerable lateness has occurred in the implementation of these measures, the last UHSI having opened its doors in the second half of 2012 and only four of the seven UHSA provided for by the act having opened, three of them since 2012.

2.1.1 The theoretical organisation of health care according to three levels

Access to somatic and psychiatric treatment is henceforth defined by law and the facilities are in place, comprising three levels of treatment:

“Level 1 treatments” (UCSA/SMPR) cover treatments within the field of outpatient consultations and medical acts. However, the inspectors have ascertained that certain UCSA do not have premises at their disposal enabling the accommodation of all prisoners.

“Level 2 treatments” correspond to care and treatment within the framework of part-time hospitalisation, and more particularly day hospitalisation. They enable patients to have personalised, intensive treatment and care and/or all-round examinations given during the day. They are organised in the hospital environment as far as somatic treatments are concerned. Psychiatric treatment is organised within health units in the prison environment. Thus, when somatic treatments are provided for outpatients at the hospital administratively attached to the prison, they have to be combined with secure, medically adapted rooms.

“Level 3 treatments” are provided for somatic health care in secure rooms within the administratively attached health institution, in the case of hospitalisations of less than 48 hours, and within Interregional Secure Hospital Units (UHSI). Psychiatric treatments are provided within Specially-Equipped Hospitalisation Units (UHSA), as well as within health institutions authorised for psychiatry within the framework of hospitalisations governed by article L.3214-3 of the public health code (pending the end of the UHSA completion programme); and within Units for Difficult Psychiatric Patients (UMD) when the clinical criteria so justify. However, it

\[292\] Seven Interregional Secure Hospital Units (UHSI) were created by an order of 24th August 2000.
\[293\] The specially equipped hospitalisation units, intended for the accommodation of persons suffering from psychiatric disorders, were put in place by an order of 20th July 2010.
should be noted that access to hospitalisations in UHSIs is subject to the availability of escorts, prison health staff often therefore being obliged to cancel outpatient consultations in order to organise hospitalisation, a point to which we will return. The organisation of transfers for UHSAs comes under the authority of the prison administration.

The third methodological guide concerning health care for prisoners did not deal with medical staff workforce levels, leaving complete discretion to hospitals. In 1996, staff levels were thus determined according to the theoretical number of places in institutions. Sixteen years later, the number of medical staff is unchanged, whereas the prison population has increased from 57,000 to its current level of 67,000 prisoners.

2.1.2 The state of health of the prison population continues to give cause for concern

Few epidemiological studies exist assessing the somatic state of health of the prison population.

Two inquiries by the French department for research, studies, assessments and statistics (DREES / direction de la recherche, des études, de l’évaluation et des statistiques) were conducted in 1997 and 2003. They assess the somatic and psychiatric state of health of prison entrants.

Although their health had somewhat improved overall (80% were assessed as being in a good general state of health in 2003, as compared with 77% in 1997), their poor state of oral health (50% required courses of treatment, while 2.7% required emergency treatment) is the consequence of factors of risk frequently found among disadvantaged populations: absence of prevention, poor oral hygiene, unhealthy diet, consumption of tobacco and toxic products. In 2003, 42% of prison entrants had not had a medical examination in the twelve months preceding their imprisonment.

A PREVACAR prevalence study, conducted by the Directorate-General for Health (DGS / direction générale de la santé) between 2008 and 2010, studies the proportion of seropositive patients within the prison population with regard to HIV, HCV and HBV.

A study directed by the French National Agency for AIDS Research (ANRS / agence nationale de recherche sur le SIDA) PRFDE study group was conducted from 2009 to 2011, aimed at estimating the infectious risk in French prisons by means of an assessment of the accessibility of the preventive measures recommended in the legislative texts.

Two other, more limited studies have been conducted: “Réduction des risques et usages de drogues en détention: une stratégie sanitaire déficitaire et inefficace” [“Risk reduction and drug use in prison: an inadequate and inefficient health strategy”] and “Maintenir l’autonomie, un enjeu de la prise en soins des détenus âgés” [“Maintaining Autonomy, a factor in the care and treatment of elderly prisoners”].

Numerous studies and publications are devoted to the assessment of prisoners’ psychiatric health. In 2003 and 2004, the DREES conducted as assessment of the state of mental health among prisoners. 271 prisoners out of every 1,000 receive mental health treatment, the corresponding ratio being 25 to 1,000 among the general population. A quarter of prisoners are

294 Interministerial circular of 30th October 2012 concerning the publication of the methodological guide on provision of care and treatment for persons in custody.
295 Hepatitis C virus.
296 Hepatitis B virus.
297 Olivier Sannier, La presse médicale 2012.
298 Olivier Sannier, Soins gérontologique 2011.
affected by psychotic disorders; 7.3% of the prison population suffers from schizophrenia.

2.1.3 Organisational difficulties in access to health care

The insecure social position of prisoners has a direct impact upon their state of health. Thus:

- lack of information and education leaves them ignorant of primary preventive actions, as shown by neglect and ruin of dental health and lateness in vaccinations;

- high-risk behaviours are more prevalent than for the general population, the various drug addictions (a third of prison entrants consume illegal products, a third consume alcohol in excess) are responsible for a prevalence of HIV and HCV that is five times greater than on the outside; traumatic accidents requiring the putting in place of osteosynthesis devices are more numerous;

- access to health care is dependent upon patients’ movement within places of detention and transport to external health care organisations. All consultants note levels of absenteeism from consultations of around 30%, without being able to determine whether these are caused by refusal of consultation, failure to open the prisoner’s cell, being held in detention, or the existence of other activities such as meetings with lawyers or receiving visitors.

Moreover, the involvement of hospital services is uneven. Remand prison doctors are insufficient in number due to three factors in particular. The first factor is the allocation of medical staff positions according to the theoretical number of places in prisons rather than actual inmate numbers. The second factor is the appointment of smaller numbers of medical staff than the theoretical workforce levels contained in the agreements between health institutions and the prisons administration. The third factor is the difficulty of recruitment in regions where health services are in short supply

Surgeries can be organised differently according to the size of the establishments; they may involve surgeries held by two or three UCSA doctors as seen in a long-term detention centre in the East of France or the private healthcare surgeries of the town in which the institution is established or the Centre 15 urgent medical aid call centre. Certain institutions have not applied the recommendations of the second methodological guide enabling imprisoned patients to speak directly with the Centre 15 call centre doctor by telephone, thus facilitating the assessment of their situation and limiting the number of removals from prison to hospital at night.

None of these modes of organisation provides an entirely satisfactory service in view of the specific characteristics of prisons: security constraints, solitary confinement cells without call systems, absence of health staff on the sites etc.

Almost twenty years have thus passed without the establishment of well-balanced relations between doctors and prisons having really been possible. Questions of urgency and medical secrecy continue to be burdened by contradictions between the imperatives of health and security. Removal of prisoners from penal institutions for reasons of health remains problematic.

2.2. The Principal Points Reported by the Contrôleur général des lieux de privation de liberté

300 For an examination of the practical details of such removals from prison in order to go to hospital, see section 1.
Conditions and terms of access to health care for prisoners are regulated by the interministerial circular of 30th October 2012 concerning the publication of the methodological guide on the care and treatment of persons in custody.

Moreover, article 46 of the prisons act of 24th November 2009 specifies that: “Quality and continuity of health care are guaranteed to prisoners under conditions equivalent to those enjoyed by the population as a whole”.

### 2.2.1 Effective Terms of Access to Health Care for Prisoners

#### 2.2.1.1 Arrangement of Medical Appointments

Although, on their arrival, prison entrants systematically have the benefit of a medical consultation conducted by a nurse and a doctor from the prison medical consultation and outpatient treatment unit (UCSA), the inspectors frequently ascertained difficulties in gaining subsequent access to consultations during the period of imprisonment.

In the first place, prisoners have to apply for health care. They thus have to write in order to ask for an appointment.

In general (but not always), this correspondence is placed in specific UCSA letter boxes and collected on a daily basis. It still remains necessary for the letters to reach their addressees, which unfortunately cannot always be relied upon, a circumstance that the contrôle général has denounced on several occasions.

Prisoners who do not know how to write can call upon a public letter-writer, if there is one within the institution. When no public letter-writer is present, they often ask fellow prisoners to write for them, a solution which may have serious consequences since in some cases, as the inspectors have been informed, the latter demand payment for their services. Finally, in certain institutions documents are handed over to new arrivals containing pictographs to be ticked, showing consultations with the general practitioner, dentist, psychiatrist, nurse etc.

Appointments may also be made either orally or by handing a letter over to the nurse at the time of distribution of medicines – this is only possible, however, if the person concerned already has the benefit of a course of treatment – or to a prison officer in order to contact the UCSA and inform them of a medical problem, in the hope that the letter will indeed be passed on without its content being read.

Once the stage of applying for an appointment has been completed, the latter should be obtained.

However, the inspectors have ascertained that too often calls to attend appointments sent by the UCSA are not always passed on to prisoners; that patients are not always taken to the UCSA on the day fixed for their appointments by prison offers, who then report “refusal of consultation”. However, in these cases it is very difficult to determine whether the prisoner did not go to the appointment because they indeed refused or because the staff did not take them. For this reason, certain UCSAs have put in place a “refusal slip”, which has to be completed by the warder and signed by the person concerned. They give the reason for cancellation of the appointment: exercise, visiting room, removal from prison in order to go to hospital or refusal. This solution is more satisfactory: it in no way constitutes an absolute guarantee.

Finally, it is not rare for health incidents to occur at night: calls to the centre 15 Urgent Medical Aid Service call centre for sicknesses, consultations with the emergency department of the local hospital. In these cases, one can only note that UCSA staff are rarely informed of such...
incidents on their arrival at the institution the next morning, and thus cannot ensure continuity of treatment.

Finally, treatment given by the UCSAs is complemented by paraclinical examinations and specialist consultations carried out in the administratively attached hospital. For this purpose prisoners have to be taken out of prison.

The conditions under which prisoners are taken out of prison in order to go to hospital are set out in numerous texts including the memoranda issued by the prisons administration department of 19th October 2010 concerning the standardisation of “escort” orders, conduct and regimes (CCR / consignes-comportement-régime).

However, numerous prisoners refuse being taken out of prison, consultations and certain explorations, due to the humiliating and degrading conditions in which they take place: inappropriate use of means of physical restraint, absence of dedicated access routes in hospitals and failure to respect the confidentiality and privacy of persons during consultations.

2.2.1.2 The Necessary Coordination between Medical and Prison Staff

The question of relations and coordination between health professionals and prison staff is essential for proper medical care and treatment for prisoners. To what extent should information be shared?

A response to the question of sharing of information is provided by the participation of health professionals in the single multidisciplinary committee (CPU)\textsuperscript{302}, which is chaired by the head of the prison and whose objective is to assess the manner in which prisoners serve their sentences in the course of their imprisonment.

However, fear of failure to comply with medical secrecy led the national committee of the French national professional association for doctors (conseil national de l’ordre des médecins) to send a letter to the doctors of UCSAs and SMPRs (Regional Mental Health Departments for Prisons) on 19th January 2011.

In this letter, the doctors’ professional association did not specifically refuse effective participation of health staff in CPUs, but clearly recalled that “UCSA and SMPR doctors [who remain under the authority of the head of the hospital to which the unit is administratively attached] called to attend CPU meetings cannot be asked or expected to pass on information concerning the health, care and treatment of prisoners in their care.” This position also applies to management of the tools of traceability in prisons, in particular the electronic liaison register (CEL), which health staff are asked not to complete in case of information falling within the scope of medical secrecy.

Thus medical secrecy is absolute and should be complied with by both health staff and prisons administration staff as, moreover, is specified under article 45 of the prisons act of 24th November 2009.

The conditions of this such sharing of information were subsequently set out under article L.6141-5 of the public health code\textsuperscript{303} and in an interministerial circular of 21st June 2012\textsuperscript{304},

\textsuperscript{302} As well as in meetings of the multidisciplinary team in institutions accommodating minors.

\textsuperscript{303} Amended for this purpose by the Act of 25th February 2008 concerning procedures for the placement in secure medical jurisprudence centres of prisoners having served sentences for serious crimes but presenting very high risks of recidivism due to personality disorders (rétention de sûreté).

\textsuperscript{304} Interministerial circular DGS/MCI/DGOS/DAP/DPIJ/2012/94 of 21/06/2012 concerning national recommendations with regard to the participation of health professionals working in the prison environment in CPU meetings and the sharing of operational information between health professionals and those of the prisons administration and of the judicial youth protection service.
which specifies that “health professionals are asked to participate [in CPU meetings] according to
the agenda and provide information making it possible to handle prisoners who are patients in a
more appropriate manner, thanks to better coordination between professionals in compliance
with medical secrecy”.

The law therefore upholds the principle that health staff should take part in
CPU meetings, while maintaining strict and absolute compliance with the
medical secrecy incumbent upon them.

However, the inspectors have frequently ascertained that although health staff take part in
“suicide prevention” meetings of the CPU in a consistent manner, their participation in “arrivals”
meetings (dealing with newly arrived prisoners within the institution) and “poverty” meetings
(dealing with prisoners who lack sufficient financial resources) was much rarer. Moreover, such
participation in meetings concerning the granting of employment and sports activities is almost
non-existent.

2.3 The Highly Variable Quality of Provision of Health Care to Prisoners in
General

2.3.1 Distribution of Medicines and Misuse Thereof

Medicines are prescribed by the UCSA general practitioners, by psychiatrists
and specialists working within the institutions, during consultations that take
place in hospital and at the time of discharge from hospitalisation.

In prison medicines are in general distributed in cells by the UCSA nurses, sometimes
with the assistance of the SMPR nurses.

It was ascertained that the time of distribution varies from one institution to another; in
any case, it should be fixed between the various different health and prison workers in order to
ensure that the objectives of this health care action are fulfilled in the best possible manner: the
presence of prisoners in their cells, availability of warders and medical staff, ensuring that the
issuing of medicines is secure etc.

Methods of distribution also vary depending on the establishment and medicines may be
issued every day or once, twice or three times per week, with several possible combinations.
Moreover, in some cases patients are called to the UCSA or the SMPR every day in order to
receive medicines or take them in the presence of a nurse

The mode of distribution is selected by the prescribing doctor, according to the patient’s
profile and the type of medicine. For example, a course of treatment for an HIV infection can be
handed over in an anonymous manner every day at the UCSA, in order to avoid fellow prisoners
knowing the nature thereof. Similarly, patients affected by mental pathologies rendering them
incapable of properly taking their courses of treatment go to the SMPR on a daily basis, in order
for the most important medicines to be administered in orally dispersible from, thus ensuring
that they take them in a regular manner.

As far as opioid replacement therapy is concerned, there are three different types of
medicine: methadone, high-dose buprenorphine (Subutex®) and a buprenorphine-naltrexone
combination (Suboxone®).

These treatments can be initiated in the course of imprisonment. Depending on the penal
institution, methadone is prescribed by psychiatrists and UCSA hospital doctors, while Subutex®
and Suboxone® are prescribed by general practitioners, although other combinations are
possible.
In some cases prisoners who were following opioid replacement therapies before going to prison are offered drug withdrawal treatment on their arrival, either because it is difficult to contact the prescriber of the opioid replacement medicine or, in the case of Subutex®, in order to avoid an increase in trafficking. Indeed, certain pharmaceutical products have “a price” on the market constituted by the prison and, for this reason, are subject to trafficking. If patients mention difficulties in keeping their personal courses of treatment, due to pressures from other prisoners, they may be offered distribution of the medicine on a daily basis, since it should be the patient’s condition that takes priority and dictates the doctor’s prescription, rather than trafficking. However, the inspectors have encountered general practitioners who did not prescribe certain products in prison because of the risk of trafficking, justifying this position by their “liberty of prescription”.

Contrary to high-dose buprenorphine, which can be issued in a package in cells, following the example of other medicines distributed on a daily basis or several times a week, methadone is administered in the form of syrup on a daily basis (including Saturdays, Sundays and bank holidays) and has to be taken in a place of treatment, at the UCSA or at the SMPR and in the presence of a UCSA or duty nurse taking care of psychiatric services within the institution. The flasks of methadone have to be drunk by patients in the presence of a member of health staff due to the risk of death in case of ingestion by persons whose level of dependency is low. They cannot in any case be left in cells in the absence of the person for whom they are intended. It therefore falls to the UCSA to organise a system that takes these constraints into account and enables continuity of treatment.

Patients who were on methadone before their imprisonment receive follow-up care from the Centre for the Treatment, Support, Prevention and Study of Addictions (CSAPA / centre de soins, d’accompagnement et de prévention en addictologie) or from the general practitioner who authenticates the prescription. Certain CSAPAs even go to see persons in police custody, in order to administer the methadone and thus avoid interruption of courses of treatment.

In any case, care and treatment for persons dependent on psychoactive substances should not be limited to the prescription of courses of treatment, but should be conducted with psychosocial support.

As far as the medicines are concerned, a difficulty became apparent with regard to special products that doctors need for the health care of prisoners and for which official approval has not been granted to local authorities. Indeed the managers of the dispensaries of the administratively attached hospitals are not authorised to have these medicines. Furthermore so-called “comfort” drugs do not appear in the medicines register of health institutions.

2.3.2 Dental Care

The state of prisoners’ teeth is a good indicator of social precarity. The factors of risk of an inadequate state of oral health are well-known and include the person’s level of education, socioeconomic background and general state of health and their consumption of alcohol, tobacco and opiates, as well as immunodeficiency and HIV infection in particular.

Dental care has been one of the principal sources of dissatisfaction with regard to health care for prisoners for a great many years. This is demonstrated by a very large number of letters sent to the Contrôleur général des lieux de privation de liberté. While probably underestimating previous absence of concern for their teeth, though not exclusively, many of the writers complain

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of the proclivity of certain dentists to carry out dental extractions, while on top of this replacement by means of false teeth is difficult in both practical and financial terms.

Oral health is characterised by the absence of oral and facial pain, oral infection and lesions, periodontal disease (condition affecting the gums), receding gums and loss of teeth limiting a person’s ability to bite, chew, smile and speak, and therefore their social well-being.

Good oral health requires access to knowledge of oral hygiene, preventive care and the treatment of cavities and other dental pathologies. It also requires a sufficient number of dentists working in the prison environment, since waiting times are often excessive. Finally, fixed or removable dentures enable the preservation of good ability to chew. For patients sent to prisons for convicted prisoners, the placing of implants should be possible in the administratively attached hospitals.

### 2.3.3 Ophthalmic care

Like dental care, ophthalmic care is one of the most problematic points in the provision of healthcare in the prison environment.

Ophthalmic practitioners are too few in number and it is not rare to have to wait several months for an appointment in everyday life. In prison, these waiting times are always longer; the deprivation of liberty should not lead to deprivation of health care.

However, certain pathologies cannot be treated by the general practitioners of the UCSA and require the attention of an ophthalmologist. This is the case of emergencies such as glaucoma and foreign bodies, as well as disorders of visual acuity. Moreover, as is well-known, glasses or contact lenses are not always worn at the time of arrest. Thus, beyond accommodation disorders – blurred distance vision – as an immediate consequence of imprisonment, the absence of glasses enabling proper vision can only increase the anxiety of imprisonment.

Once an appointment has been obtained with an ophthalmic practitioner and a corrective prescription has been issued, the waiting time for the obtainment of the worst glasses is directly linked to the prisoner’s financial capacity and to the agreements that the institution may or may not have entered into with a local dispensing optician. If the person has the financial capacity to pay an optician and the institution has entered into an agreement, their glasses will be ready in a few days, whereas persons lacking sufficient resources have to wait for months, the institution in this case calling upon the French Defence Health service for the manufacture of the glasses.

Persons suffering from loss of visual acuity very often do not have glasses and only wear contact lenses. This use should be subject to strict rules of hygiene in order to avoid the occurrence of complications of an infectious nature such as keratitis. Quite apart from the washing of hands, these precautions involve regular and in most cases daily renewal of cleaning solutions and of the contact lenses themselves, at daily, weekly or monthly intervals. However, the Contrôleur général is too often informed that the products necessary for the maintenance of contact lenses are not placed at the disposal of prisoners who, for all that, have the means to finance them.

### 2.3.3 Physiotherapy

The methodological guide concerning the care and treatment of prisoners indicates that the team in charge of somatic health care may include physiotherapists, according to requirement.

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100% of adults have tooth decay, which often leads to pain and feelings of discomfort.

However, a manifest absence of physiotherapy treatment was noted by the contrôle general in the majority of prisons at the time of inspections, whereas absence of mobility and exercise for prisoners can make such services essential. Indeed, institutions have to face up to the lack of physiotherapists whatever the type of institution: prisons with sections incorporating different kinds of prison regime, remand prisons, long-term detention centres.

Several reasons are given to explain this absence. In the first place, a shortage of physiotherapists in certain regions; the location of certain prisons in areas that are rural or difficult to reach not facilitating visits by specialists; the unattractive nature of the area as a place for exercising the activity, as well as the regulations and the amount of the fees. Thus, at the prison of Ducos in Martinique, for example, the administratively attached hospital is unable to recruit a physiotherapist who agrees to travel to the institution, despite the provision of medical time in the agreement; the absence of applicants at the prison of Mont-de-Marsan, despite a vacancy for a position of physiotherapist appointed and budgeted by the UCSA. The unsuitableness of the premises and their use for many different purposes is another reason mentioned.

Nevertheless, when the volume of activity within an institution does not justify the establishment of regular specialised consultations, occasional services should normally be provided. This is the case in certain institutions inspected where a physiotherapist provides occasional services within the institution, in case of need and according to prescriptions. Similarly, in one remand prison close to the Toulouse urban area, physiotherapy duties are entrusted to a private physiotherapist, present on a daily basis, for whose services the invoices are sent to the administratively attached hospital. Elsewhere, physiotherapy services, in general consisting of five consultations in the morning and five in the afternoon, are provided on Tuesdays and Thursdays and on one Monday in every fortnight.

However, in certain institutions the inspectors noted that, in the absence of a physiotherapist providing services on the site, prisoners had to be removed from prison in order to have the benefit of physiotherapy care and treatment at the administratively attached hospital. Thus in one long-term detention centre in the East of France, prisoners were removed to hospital for physiotherapy treatment on sixty-two occasions between January and June 2011.

2.3.4 Access to paramedical equipment

Products and services that appear on the officially approved list provided for under article L. 165-1 of the social security code (CSS / code de la sécurité sociale), more generally referred to as prostheses or surgical appliances, are invoiced to the French national health insurance bodies. They are financed on the basis of the approved rates, in accordance with article L. 165-2 of the CSS.

A first problem arises when prisoners are hospitalised and it becomes apparent that they require a surgical appliance. During one inspection of a prison in the South-East of France, the inspectors were told that when such pieces of equipment are not included among those listed in the surgical appliances contract it is very difficult to obtain them with the costs covered.

A legal point needs to be clarified. Certain specific medical expenses can be financed under the allocation for services of public interest and aid for the introduction of contracts (MIGAC / dotation de missions d'intérêt général et d'aide à la contractualisation). Indeed, the intention of the legislature was to maintain sources of financing outside of the general principle of the setting of official financing rates according to the volume of activity (tarification à l'activité) for all public and private institutions, whether or not they are profit-making organisations.
Article L.162-22-13 of the social security code sets out the nature of the activities that fall within the scope of financing by means of the MIGAC allocation and explicitly cites “activities of care and treatment given to certain specific populations” such as prisoners. The MIGAC allocation is regularly reviewed for each hospital and it would be appropriate to specify whether certain prostheses and surgical appliances for prisoners can be financed within this framework.

If prostheses are among the equipment listed in the contract, the hospital invoices the prison for the proportion of the cost not reimbursed by the social security authorities.

The financing of costs in excess of the approved rates is particularly difficult for surgical appliances and prostheses.

Indeed, the financing of excess costs is dependent upon whether or not the prisoner has supplementary health insurance.

CMU-C supplementary universal health cover takes care of excess costs not covered by the French national health insurance system, within limits fixed by order.

Furthermore, if prisoners have CMU-C health cover with a mutual insurance company, the latter finances excess costs not covered by the French national health insurance system according to the terms of the contract or subscription.

The health and social action funds of the French national health insurance system and of the prisons administration can be allocated according to circumstances and on top of other financing.

Several members of paramedical staff have attested to the inspectors of the usefulness of creating a specific budget to enable the financing of surgical appliances which do not appear on the standard lists of hospitals. It frequently happens that prisoners’ families finance small surgical appliances, such as lumbar support belts for example, from their personal budgets.

As far as hearing aids are concerned, the principal difficulty lies in the fine tuning of the apparatus, since specialists in hearing aids who travel to prisons are rare. The obtaining of one or several temporary releases for medical reasons often remains problematic, above all when it is a question of going to an isolated professional premises and not to the hospital.

It should be recalled that the rate of reimbursement of surgical appliances is 60% for hearing aids, dressings, accessories, and small surgical appliances, and orthopaedic appliances in particular, and 100% for large surgical appliances.

Several letters have referred the difficulty of obtaining hospital beds in prisons to the Contrôle général. These requests were only satisfied after formalities of several months in duration due to the multiplicity of actors to be mobilised and the need to carry out rearrangements of furniture in cells, which were not designed to contain such wide beds. In addition, once installed, hospital beds often hinder movement in the cell since they are proportionally oversize. The same difficulties occur at the time of replacement or repair of electric wheelchairs.

However, although certain aspects have recently been improved, such as for example in one institution in the South of France where it has been possible to include crutches on the list of surgical appliances available at the hospital administratively attached to the UCSA, security requirements still remain a considerable obstacle.

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308 The Contrôle général’s annual report for 2011 (cf. p. 133) emphasised the difficulties of access to CMU-C health cover for prisoners.

309 For further details on access to welfare rights for prisoners, see the Contrôle général’s annual report for 2011 at www.cglpl.fr.
2.3.5 Alternative Medicine and Patients’ Associations

Alternative medicines which have recourse to nature or traditions such as energy therapies (acupuncture, qigong, shiatsu etc.) and homeopathy, as well as osteopathy, are not represented in public hospitals and thus cannot be provided in prisons.

However, the care and treatment of chronic illnesses, whether discovered in prison or continued during imprisonment, should not be solely organised by the general practitioner of the UCSA and the specialist concerned. It should involve psychological follow-up care and the assistance of specific associations for each pathology, as is the case for patients treated outside of prison.

With regard to psychological assistance, the psychiatric team or that of the SMPR, when the latter exists within the institution, should offer psychological support in the form of regular interviews with a psychologist and, if need be, psychiatric follow-up care from a psychiatrist when treatment proves necessary. Practices are variable according to the institutions in this regard.

3. Daily Life in Prison for the elderly and persons suffering from disabling pathologies

The population made up of prisoners who are elderly and/or suffering from disabling pathologies raises the question of putting specific institutions and wings in place intended to accommodate them.

The facts ascertained at the time of inspections tend to plead in favour of this approach since the situation of these prisoners varies so widely, while being on the whole unfavourable.

Cells for persons with restricted mobility exist in numerous institutions but are often ineffective in design (cf. § 2.5.1). Outside the cell their movement is hindered by the existence of steps and staircases, which often complicate access to visiting rooms, activity rooms etc. Moreover, in recently constructed institutions, although cells for persons with restricted mobility are located on the ground floor of one of the detention wings, the UCSA has often been placed on the first floor. Medical follow-up care is not easy to organise within this set-up. In older institutions the very presence of persons moving around in wheelchairs is simply impossible. They are therefore sometimes imprisoned within another institution.

The situation of elderly prisoners gives equal cause for concern. The rhythm and organisation of life inside the institution are sources of anxiety for this population.

At the time of inspections, fear is a word that the inspectors often hear: fear of being confronted with violence, fear of a population composed for the most part of young people, fear of going to the exercise yard. Boredom also common, since professional activities are no longer accessible to them and the activities put in place are not appropriate to their age.

One possible response to these problems is the creation of specific institutions or wings grouping these prisoners together in an area whose architectural design is specifically adapted to their pathology, with living conditions organised in an appropriate manner. The way in which these prisoners are dealt with could thus be improved. This choice would have serious consequences.
The creation of specific wings or institutions can only give rise to limitation of the number of facilities. The aspect of maintenance of family ties would be greatly affected. An additional handicap would emerge for this vulnerable population. Moreover, what can be said of the image given by “old people’s home prisons” or those composed solely of persons with restricted mobility? These persons would experience a kind of double exclusion, one arising from imprisonment and the other from their age or health.

A more ambitious idea is that of maintaining these prisoners in normal prisons while adapting these places to the presence of persons whose physical mobility is limited.

This would also involve taking the fact into account that life in prison can be organised differently according to the age or state of health of prisoners.

It would also involve implementing the laws which facilitate access to employment for disabled persons within institutions, with the obligation for the contract-holders, the industrial management of penal institutions and also the State to provide suitable employment for disabled persons within the framework of common general services.

These persons need to be protected while avoiding their exclusion from life within a social group which resembles life outside of prison, with all of its diversity, which in most cases is a source of enrichment.

It will involve more active promotion of the integration of these persons into the system for dealing with prisoners under existing law, managed by the councils of French departments. Progress also needs to be made in the organisation of medical care and treatment within institutions. In some cases it has not adapted to changes in the prison population, in particular with regard to the ageing thereof.

The question of the place of these persons in prison is of still greater importance.

Very often the dangerousness of these persons is at the very least dulled. The risks of disturbance of public order are small. Admittedly the sentences have to be completed, but they could be served in an open environment as a substitution for imprisonment. An approach of this kind would manifestly be the most respectful of human dignity.

3.1 Daily life in prison for persons with restricted mobility

Many penal institutions do not possess any accommodation facilities suitable for prisoners with restricted mobility.

This is the case for the oldest institutions, particularly remand prisons, as well as penal institutions for convicted prisoners in some cases: for example, the long-stay prison of Saint-Martin-de-Ré and the prison of Lannemezan.

In other institutions, including old prisons, areas have been fitted out, in particular by means of combining two cells, of which one serves as a shower room. However, this solution, which makes it possible to create adequate space for movement in wheelchairs, inevitably limits the accommodation capacity of the institution, which manifestly discourages its adoption. In this respect, the example of one remand prison in the East of France is interesting: in this very old institution of fifty-nine places, considerable efforts have been made and renovation work has enabled the creation of a suitable cell. It is situated above the ground floor, but a lift is provided for its occupant.
More recent institutions more often possess suitable facilities. However, the situation remains less favourable in remand prisons: thus, one remand prison, which was brought into service in 1980, does not possess any cells designed to accommodate persons with reduced mobility.

When suitable cells exist, the level of equipped places varies: 0.23% in one prison in the South East of France, 0.86% in one remand prison in the same region and 1.38% in another institution, located in the West.

According to a report issued on 10th July 2008 by the parliamentary office for the assessment of scientific and technological choices (office parlementaire d'évaluation des choix scientifiques et technologiques), concerning the contribution of science and technology to compensating for disablement, 1.8 million people use wheelchairs in their homes in France, that is to say 2.8% of the population \(^{310}\). Although it may be appropriate to consider that proportionally fewer persons with reduced mobility are imprisoned, the levels cited above show a shortage of facilities.

In certain prisons, persons with reduced mobility are therefore assigned to ordinary cells, due to lack of space.

Such was the case of one man encountered during an inspection, accommodated on his own in a cell of 13.5 m², normally intended for three prisoners: the “remand” wing, in which he was imprisoned, did not possess any suitable cells, while the institution’s two equipped cells, situated in the “long-term detention” wing, were occupied by able-bodied persons. His living conditions there were shameful. He could only move his wheelchair forwards and backwards, without any possibility of being able to turn it due to lack of space, except by removing the footrests from the wheelchair. It was impossible for him to eat meals while sitting down properly at the table because the wheelchair could only be placed to one side. The only solution was to rest the tray on his lap. The switches and intercom were only accessible to persons in a standing position; thus, at night, he had to leave the neon light of the bathroom on in order to be able to get to the toilet. Moreover, he had to make an acrobatic manoeuvre in order to gain access to the toilet seat, it being impossible to get the wheelchair into the bathroom. This man had the benefit of a hospital shower in the UCSA every day from Monday to Saturday. However, washing on Saturdays, Sundays and bank holidays was a real ordeal: after getting out of the wheelchair and onto the toilet seat, he had to get to the sink and taps while sitting on the toilet seat. After the inspection by the Contrôleur général des lieux de privation de liberté, he was assigned to an institution possessing suitable facilities, which was also closer to his family.

In more recently completed institutions specially designed cells are available in the various wings.

Thus, in one prison with sections incorporating different kinds of prison regime inspected, the eight cells are distributed thus: three in the men’s remand prison, three in the men’s long-term detention centre, one in the women’s remand prison and another in the women’s long-term detention centre. One of the institution’s four family life units is also equipped for persons with restricted mobility.

In another, four cells are provided in the remand prison and three in the long-term detention centre. In the latter case, the rooms, of 19.20 m², are equipped with a “bathroom” area of 3.90 m², including a shower and bars fixed to the walls. However, at the entrance to the cell, which is 0.90 m wide, a small raised edge of 3 cm in height is fixed to the ground in order to prevent any object from being pushed across the floor. This obstacle obliges the occupant to go in and out backwards, since several falls had been recorded while attempting to go forwards.

\(^{310}\) In order to give an idea of the orders of magnitude, if 1% of the prison population were in this situation, the prisons administration would have to deal with 670 persons in wheelchairs.
through the door\textsuperscript{311}. The telephone, which is installed in the corridor of the wing, is placed at an appropriate height.

**Alterations are sometimes carried out in order to improve living conditions in cells.** Thus in one institution, the bed initially set up alongside a wall, as is traditionally the case in prisons, had been placed at right angles to the wall. In prison this measure, which appears simple to free persons, requires a decision from the management of the institution and work in the cell, because everything inside is fixed to the ground. Other arrangements are also desirable: height of the table in order to be able to sit at it by sliding the wheelchair underneath, installation of call buttons, replacement of the fixed shower nozzle with a flexible one etc. Hospital beds could be installed.

Specially laid out cells are often situated on the ground floor, which constitutes a logical solution to make movement easier. However, in long-term detention centres, the ground floor is often in fact reserved for persons placed in the closed doors (or controlled) regime, comparable to that imposed in remand prisons. Persons with restricted mobility, not subject to this regime, have the benefit of an open door regime there, but without being able to mix with other prisoners. Furthermore, the placing of specially laid out cells within wings with closed door regimes, which are considered by prisoners to be the “wing for punished prisoners”, is also experienced as an additional humiliation, added to their handicap.

In one of the institutions inspected, in the face of this difficulty, authorisation had been given to persons with reduced mobility to go to the first floor in order to meet fellow prisoners held under the open regime; this decision, which had been greatly anticipated, was much appreciated. In order to go upstairs from the ground floor, persons with restricted mobility inevitably had to use the lift or the goods lift and, for this purpose, had to be assisted by one warder on their departure and another on their arrival. These movements cannot be repeated frequently in view of the availability of warders. Thus, going back down to their cell in order to go to the toilets – since those located upstairs are not suitable – generally means not going back upstairs again. In penal institutions for convicted prisoners, when differentiated or progressive regimes are established, cells adapted for persons with restricted mobility should not be placed in sectors within which the closed door regime (or controlled regime) is established, but in those operating under the open door regime (or regime of trust).

In their daily life in prison, persons with restricted mobility come up against all kinds of difficulties: complications in movement due to obstacles, absence of lifts, limited access to key points of the prison (UCSA, library, visiting rooms, exercise yard, workshops, places of religious worship etc.). Unfortunately, this often leads them not to leave their cells.

The remand prison of Mulhouse, an old institution which possessed two specially laid out cells, provides an illustration of these difficulties. Solutions, which might be considered “makeshift”, but which have the merit of existing thanks to local initiatives, have been implemented there in order to improve living conditions. Thus, in the absence of a suitable ramp, each time that these persons want to go down the short flight of steps situated at the exit of their prison building, the warders fix two rails in place and, in view of the slope, several persons have to brake the wheelchair on the way down and push it on the way up. This system, which was put in place after a man had fallen, makes it possible to go out into the exercise yard, even if its implementation is difficult.

Unfortunately, difficulties remain, including in modern institutions. In one prison brought into service in 2010, access to the school centre is very complicated due to the presence of a step at the entrance: assistance is required every time in order to get over the obstacle and certain persons give up. Thus, access to the various activities is very often limited.

\textsuperscript{311} Cf. section 1.
The placement of UCSAs on the first floor, as is the case at Mont-de-Marsan, also constitutes a real difficulty.

This location, which is encountered too often, also gives rise to difficulties for persons who, while not having restricted mobility, may have a temporary handicap. Thus, in one remand prison in the Parisian region, in the absence of any lift or goods lift, a narrow staircase, which was difficult to use, constituted the only solution for getting to the unit without going out of the detention area.

When returning from visiting rooms, strip searches should not be systematic as provided for by the prisons act and as the rulings of several administrative courts have already recalled. Special attention is given to persons with restricted mobility in this regard. However, in the course of the year 2012, the Contrôleur général des lieux de privation de liberté had occasion to examine the case of a strip search performed upon a person with restricted mobility, for which he had verifications made on site as well as on the basis of documents.

3.2 Daily life in prison for elderly persons

The average age of the prison population is rising due to increases in the length of sentences and the character of persons committing certain offences. Thus at 1st January 2012, 2,565 persons of 60 years of age and over were imprisoned, that is to say 3.9% of the prison population. This population, composed of persons whose physiological age often appears ten years greater than their age in terms of years, progressively becomes dependent. This factor should oblige the prisons administration to find solutions that make it possible to deal with them in a dignified manner.

3.2.1 The Need for the Assistance of a Third Party

Numerous institutions have organised agreements with associations devoted to personal assistance services. The principal stumbling block for proper care continues to be the need to complete an application for personal care allowance (APA / allocation personnalisée d’autonomie). The SPIP staff do not always have the availability or technical knowledge required for the completion of these applications. When persons are not eligible for this allowance, the question of financing often leads to the waiving of the home help service, the institutions not having an ad hoc budget to finance it. Moreover, in many institutions, prisoners assigned to general services, who are referred to as assistants, serve as “third parties” or home helps. This situation is not acceptable due to the risk of blackmail and the absence of suitable training and remuneration, which does not make it possible to respect the dignity of persons who have become dependent.

However, the inspectors have ascertained some interesting local initiatives. In one prison in the Brittany region, a home help association enables dependent prisoners to have the benefit of medical-psychological assistance for the tasks of daily life as a whole, which do not come within the scope of treatment.

In one long-stay prison, an agreement between the director of the institution and the DSPIP on the one hand and the association of services for the maintenance of home life (association de services pour le maintien de vie à domicile) on the other, has made it possible to satisfy the needs of prisoners experiencing loss of autonomy with regard to problems of cell hygiene, assistance with washing, assistance with mobility and in order to make sure that they follow their therapeutic treatments, in agreement with the UCSA.

Similarly, in one long-term detention centre in the East of France, the general practitioner has succeeded in obtaining the approval of “home help” places within the establishment. Ten
places have thus been provided for within the framework of the home nursing care service (SSIAD / service de soins infirmiers à domicile) of the administratively attached hospital, by means of two sources of financing (the council of the French department and the departmental centre for disabled people).

3.2.2 The Provision of Suitable Activities

Elderly people suffering from chronic illnesses or disablement are very often excluded from employment and do not have any activities suitable for their state of health. However, certain local initiatives also deserve to be highlighted.

In one long-stay prison, specific activities are provided for elderly prisoners: walking tours are organised in association with the sports department and the SPIP, within the framework of temporary release for sports activities. Thus, between March and October 2010 three walking tours were conducted in the presence of the UCSA nursing staff. This is quite an achievement when it is recalled that within this institution certain persons had not left the prison for over ten years. In addition, gentle exercise is organised with an associated body by means of an annual agreement with the institution. It is intended for persons over sixty years of age and takes place once a month, from 10 to 11 a.m. The arrangement of the room does not make it possible to accommodate more than four prisoners.

In one long-term detention centre in the East of France, prisoners suffering from chronic illnesses are grouped together with elderly people over sixty years of age in order to protect them from pressures and extortion of money. Two specific activities have been created for this population: a vegetable garden has been laid out and a “memory upkeep” workshop put in place. Fifteen persons thus cultivate individual garden plots in an independent manner for the personal production of vegetables and flowers.

3.2.3 Follow-up Social and Health Care and Social Welfare

The chronically ill should receive specific support, taking both the medical and social aspects into account. However, in view of the absence of social workers within SPIP services, it appears very difficult to put such support in place.

The institutions have above all organised preventive health actions, as in one remand prison where therapeutic education of diabetic patients has been put in place. The management of self-testing, equipment and treatment in most cases requires education, assistance and support, which the UCSA staff discerningly provide.

Nevertheless, the ageing of the prison population, which has been noted for a number of years, and the lengthening of custodial sentences make it necessary to implement special procedures within the framework of accommodation in prison of dependent, elderly or disabled persons, who have to be dealt in a manner which comes within the scope of personalised treatment adjusted to their needs.

For all social security benefits, the major problem remains the absence of social workers within prisons, who are able to support prisoners in order to keep their files up to date and complete applications for benefits.

This specific point of access to welfare rights was dealt with in detail in the annual report of the Contrôleur général des lieux de privation de liberté for 2011.
4. Health Care within the Framework of Preparation for Release and Reduced Sentencing

4.1 Remission and Temporary Release

According to the provisions of article 721-1 of the code of criminal procedure “additional remission may be granted to convicted prisoners who show serious efforts in terms of social readjustment, in particular by successfully taking school, university or professional examinations giving concrete expression to the acquisition of new knowledge, by demonstrating real progress within the framework of education or training, by following a course of therapy designed to reduce risks of recidivism or endeavouring to indemnify their victims.

However, both by means of the interviews conducted during inspections and the letters received, the inspectors ascertained that elderly, sick and disabled persons within penal institutions were in general unoccupied, due to their state of health, the unsuitability of available activities and employment and the layout of the premises. For the same reasons, it is not always possible for them to follow courses of psychological or psychiatric care.

Moreover, the Contrôleur général examined an order made by a judge responsible for the execution of sentences (JAP) which refused the granting of any additional remission (RPS) to a convicted prisoner “having confirmed health problems” on the grounds that the latter had not shown any efforts “in the absence of activity without serious grounds” and “in the absence of treatment”. Other JAPs, on the contrary, granted the whole of additional remission, basing their decisions upon the prisoner’s state of health and the following grounds: “disabled prisoner in a wheelchair”, “disabled and elderly person”, “elderly and bedridden prisoner”.

The problem is the same for temporary releases governed by article D.143 of the code of criminal procedure. Although it is natural for a general rule not to be able to take specific cases into account, it should be possible to grant these temporary releases systematically, after agreement from the UCSA, when they are intended for the provision of treatment that can only be given outside of the prison and outside of the administratively attached hospital. For example, a case was referred to the Contrôleur général by a prisoner suffering from fibromyalgia and whose state of health required the benefit of a course of treatment at a spa for a three-week period, that is to say three five-day sessions (the financing thereof by the French national health insurance system being dependent upon compliance with this duration of treatment). However, paragraph 2 of article D.146 of the code of criminal procedure alone provides for the granting of temporary release for a period of ten days once a year; other temporary releases being limited to three days. Finally, the person concerned was indeed able to have the benefit of temporary releases in order to go to the course of treatment at a spa, but he was obliged to take financial responsibility for the treatment himself, each of the temporary releases granted being of three days in duration.
4.2 Deferment of Sentences on Medical Grounds

This measure is governed by article 720-1-1 of the code of criminal procedure which provides that “except when there is a serious risk of repeat of the offence, deferment may also be ordered, whatever the nature of the sentence and the time remaining to be served, for convicted persons when it is established that they are suffering from a life-threatening condition or that their long-term state of health is incompatible with maintenance in prison, and for a period which it is not necessary to fix, apart from cases of hospitalisation of prisoners in health institutions for mental disorders”.

The second paragraph specifies that “deferment of the sentence can only be granted if two separate medical opinions concur in establishing that the convicted person is in one of the situations set out in the preceding paragraph”. Thus, in case of contradictory medical opinions, deferment of sentences on medical grounds cannot be granted.

Moreover, article 79 of the prisons act of 24th November 2009 provides for a procedure for the deferment of sentences on emergency medical grounds ordered on the basis of a medical certificate drawn up by the doctor in charge of the health institution in which the prisoner is receiving health care, when it is established that they are suffering from a life-threatening condition.

Finally, the granting of deferment of sentences on health grounds is not subject to any conditions in terms of allowed times; it can therefore be granted during periods of unconditional imprisonment.

Furthermore, by definition it only suspends the enforcement of the sentence, which therefore recommences when the conditions of the deferment are no longer met; the person is then returned to prison.

According to the statistical tables of the prisons administration department, 104 sentence deferment measures were ordered on medical grounds for the year 2009; 137 for the year 2010 and 172 for the year 2011.

The facts ascertained at the time of inspections confirm that the number of deferments of sentences granted on medical grounds is indeed very low, the expert medical opinions often finding that “the state of health [of the prisoner] does not raise any problem with regard to continuation of imprisonment”.

In the first place, the conditions established under article 720-1-1 of the code of criminal procedure therefore appear too restrictive in certain cases.

It should be recalled that this article specifies that convicted persons can only have the benefit of this measure if “it is established that they are suffering from a life-threatening condition” or indeed if “their long-term state of health is incompatible with continuation of imprisonment”. Moreover, these deferrals are only granted in cases of extreme and immediate seriousness, as shown by the two following examples:

- One prisoner held in the remand prison of Mulhouse, who was paralysed down one side of the body following a heart attack and breathing by means of assisted respiration with oxygen eighteen hours a day, applied for deferment of their sentence on medical grounds on 22nd March 2012. The decision of 21st June 2012 ruling on this request found that the long-term incompatibility of their state of health with their maintenance in prison was confirmed, since the first expert had pointed to a significant deterioration of the convicted person’s state of health and the impossibility of giving treatment in a satisfactory manner in prison, while the second expert

Statistical tables of persons in custody 1980-2011 issued by the office for research and advance planning of the prisons administration department.
considered their medical condition incompatible with imprisonment, in spite of the fact that medical and paramedical treatment had been put in place.

- Two prisoners, who were suffering from cancer and receiving chemotherapy in an Interregional Secure Hospital Unit (UHSI) were able to have their sentences deferred for medical reasons on the grounds that their pathology was life-threatening in the short-term.

Apart from the restrictive character of the legal provisions, it should be noted that the experts who are asked to examine the compatibility between a prisoner’s state of health and their maintenance in prison, do not take the material conditions of imprisonment sufficiently into account, quite simply because they are totally unaware of the constraints thereof.

The Contrôleur général examined the situation of one person suffering from fibromyalgia who was unable to receive the treatment necessary to their medical care (in this instance, regular treatment by means of acupuncture and physio/balneotherapy), the expert opinions having found that the existence of a life-threatening condition was not established and that the patient’s state of health was compatible with maintenance in prison “insofar as swimming pool relaxation techniques (which are not curative in nature but rather provide comfort) are not possible, the person concerned may have access to relaxation therapy and psychological support” within the prison environment.

Finally, in practice, measures of deferment of sentences on medical grounds are sometimes revoked, with the person therefore returning to prison, on grounds that are totally foreign to any improvement in health or failure to comply with obligations.

Thus a case was referred to the Contrôleur général by a prisoner whose sentence had been deferred on medical grounds since they had developed a neurological problem, after having followed courses of chemotherapy and radiotherapy, that obliged them to move around in a wheelchair. This person was able to have the benefit of functional re-education physiotherapy for several months before being imprisoned once again; the application for revocation of the deferment measure by the court being based upon the absence of accommodation…

However, the circular of 10th January 2005 concerning the methodological guide on health care for prisoners recalls that the deferment of sentences on medical grounds “is based upon a working partnership between the prison services and the services for health care and social welfare, in particular in order to find suitable living quarters for persons having the benefit of the measure if necessary”. Moreover, the interministerial circular of 30th October 2012 concerning the updating of the guide specifies that the care and treatment of these persons when they come out of prison, whether by means of release, reduced sentencing or deferment of sentences, requires the “planning of reception facilities appropriate to [the] physical or mental state [of prisoners] and the use thereof in order to take care of them.”

4.3 The problematic situation of unconvicted prisoners

Contrary to the situation for convicted persons, there is no legal provision in internal law enabling persons placed on remand to request release on medical grounds. However, it is well-known that remand very often continues beyond the “reasonable period” called for under article 144-1 of the code of criminal procedure.

Cases have been referred to the Contrôleur général on several occasions by unconvicted prisoners reporting the degrading conditions of their imprisonment in view of their state of health. One of them, who had suffered from a chronic illness since childhood, had a medical
certificate mentioning a clear worsening of their state of health since their imprisonment and concluding: “the recrudescence of attacks appears [...] to be principally connected to the conditions of the patient’s environment”.

Whereas unconvicted prisoners, who are presumed to be innocent, experience very bad conditions of detention in remand prisons, the only procedure which is open to those of them who suffer from serious health problems is to make an application to be set free on the basis of article 148-1 of the code of criminal procedure, which provides that “release can also be requested in any case by any person indicted or charged and any defendant, at any stage in the proceedings”. Contrary to convicted persons, unconvicted prisoners’ state of health is not taken into account as grounds for release decisions, which are solely based on considerations concerning the examination of their case by the investigating judge in preparation for trial.

4.4 Deferment of Sentences on Emergency Medical Grounds

According to the testimonies collected during inspections of penal institutions by the contrôle général, it would appear that UCSA medical staff are not always aware of the procedure for deferment of sentences on emergency medical grounds, a measure which can be ordered on the basis of a medical certificate drawn up by the doctor of the UCSA.

However, in institutions of small size the doctor in charge of the UCSA can usefully alert the single multidisciplinary committee (CPU) of the situation of certain patients, so that the prison rehabilitation and probation counsellor (CPIP), thus informed, can identify the best reduced sentencing procedure, in consultation with the doctor.

The inspectors have had occasion to examine the situation of one imprisoned patient, for example, who was hospitalised on numerous occasions in the UHSI and who had applied for deferment of their sentence on medical grounds. However, the judge responsible for the execution of sentences did not have time to make a ruling before the prisoner was returned to the penal institution. The case had not been passed on to the SPIP concerned, despite the prisoner having so requested. In the absence of a response, the prisoner referred the case to the Contrôleur général, who had to take it up. This example shows that in this case the sole obstacle to the granting of the measure was the delivery of the sentence deferment application.

JAPs are aware of this problem, which results as much from the law as from poor advance planning of transfers, and leads to court registries and SPIPs not having prisoners’ applications and case-files at their disposal within satisfactory deadlines.

Similarly, several cases were referred to the Contrôleur général by prisoners who were waiting for the hand-over of medical opinions, many months after having made applications for deferment of their sentences on medical grounds.

5. Health Care in Semi-Custodial Institutions

In accordance with the Act of 18th January 1994313, the special regime for prisoners in open prisons and wings does not allow access to the health care provided by the UCSA and the SMPR, except for a few very rare exceptions.

For example, the open prison (CSL) of Montargis has a UCSA, created when the institution was a remand prison and maintained at the time of its change of status.

313 Act no. 94-43 of 18th January 1994 concerning public health and social welfare.
Persons on partial release therefore have access to external consultations, both in hospital and in private practices. In certain cases, agreements have been signed between the CSL and a hospital or medical practice in order to facilitate access to health care; however the inspectors have ascertained that no agreement of this kind usually exists.

In most cases, CSLs do not possess any specific place for consultations. No medical staff take care of the distribution of medicines and the supervision of their administration.

It is up to prisoners to carry out all of the formalities concerning their health, in particular those enabling them to find general practitioner. For this purpose their affairs need to be in order with regard to their entitlements to health insurance.

As recalled by the Contrôleur général in his public assessment concerning partial release, difficulties linked to the hours of doctors’ appointments can arise when it is not possible to obtain a consultation at times compatible with the partial release regime fixed by the judge responsible for the execution of sentences, even though the head of the institution, if informed beforehand, can make the necessary arrangements, subject to authorisation from the judge and to the latter’s being informed of any modifications, as provided for under article 712-8 of the code of criminal procedure.

The situation becomes even more complex when doctors are behind schedule in their consultations and the actual time for the appointment is put back, causing lateness in the person’s return to the CSL.

Another important question with regard to health care for persons on partial release concerns treatment obligations and their follow-up with psychologists, psychiatrists and addiction specialists.

Access to the vast majority of these treatments is difficult since the services are overloaded and the lack of available places often means that the treatment is postponed for several months after the initial application, therefore commencing within deadlines incompatible with partial release.

6. Somatic Health Care in Mental Health Institutions

For several years, there has been a trend towards the creation of positions for general practitioners within psychiatric hospitals in order to provide care and treatment of somatic illnesses among mental health patients.

The act of 5th July 2011 concerning legal provisions for the protection of persons subject to psychiatric treatment establishes an obligation for every patient hospitalised without their consent to undergo a somatic examination by a doctor within 24 hours of their admission.

Similarly, all patients placed in seclusion rooms and/or under physical restraint must have regular somatic examinations.

However, at the time of inspections of health institutions the inspectors ascertained that the time allocated to this task is sometimes insufficient or that these duties are carried out by medical students or, again, that psychiatrists who are former general practitioners are the sole persons taking care of general health care problems.

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Moreover, the inspectors noted that it was sometimes difficult to distinguish between somatic symptoms requiring attention and treatment and complaints falling within the framework of the psychiatric pathology, for patients hospitalised for long periods in psychiatric institutions in particular.

In most cases each treatment unit has a pain management committee with a manager responsible for the relief of symptoms of pain. However this coordination between somatic and psychiatric factors does not appear to be entirely established.

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Although it comes within the responsibility of the State to put in place a health system suitable for dealing with all health problems within places of deprivation of liberty, as we have just seen, the organisation of health care remains disparate according to the types of places and sometimes even between institutions of the same nature.

In spite of current laws, and the obligations incumbent upon public hospitals in particular, the provision of health care can still be very uneven and does not always measure up to the standards that our society is entitled to expect.

For this reason the Contrôleur général des lieux de privation de liberté issues the following recommendations:

1/ With regard to access to health care in police custody

The contrôle général recalls the need to make it easier to take courses of treatment during periods of police custody, with regard more particularly to chronically sick patients who need to take medicines at fixed times, everything should be done in order to obtain the medicines quickly, if need be by approaching their family. The distribution of medicines should comply with medical secrecy insofar as possible.

2/ With regard to access to health care during custody in detention centres for illegal immigrants.

The Contrôleur général recommends that a reminder should be issued of the provisions of the joint circular of the Ministry of the Interior and the Ministry of Health and Social Affairs of 7th December 1999 concerning health care for detainees.

He also recommends the updating of this circular, all the more so as the duration of detention, which at the time was set at eleven days, is currently forty-five days.

In addition:

- this circular should consolidate the conditions of independence for doctors practicing in detention centres for illegal immigrants, the protection of medical secrecy and the traceability of the treatment acts and diagnoses established;

- the “definition of health care facilities according to the size of the detention centre” with regard to the time of presence of medical staff and as specified in the circular should be made compulsory.

Moreover, the circular should specify:

- that detainees who wish to contact medical staff directly shall be able to do so, without going through any intermediary, and that letter boxes shall be put in place for this purpose in each centre;
- that medical consultations are systematically put in place for detainees on their arrival at the centre, both for the detection of possible contagious diseases and to examine their health in order to enable appropriate provision of health care, including by specialists;

- that article L.313-11 of the CESEDA is not subject to any conditions in terms of deadlines and that, accordingly, illnesses giving rise to the application of the procedure can be ascertained by a doctor, including in the detention centre.

Finally, the Contrôleur général recommends the putting in place of initial training for health staff working in CRAs in order to ensure, in particular, that the rules for the maintenance of illegal immigrants within national territory on health grounds are known and applied.

3/ With regard to health care in penal institutions

The Contrôleur général recommends that the ministry of Education and the ministry of Health should make changes to the programmes of medical and paramedical studies in order to include teaching programmes on the provision of health care and treatment to prisoners and support initial training for doctors and nurses in this respect.

Moreover, he recommends that assessment of the state of health of the prison population and publication of the results of studies thereof should be carried out on a more regular basis and proposes that prisoners’ health should be included in the programmes for the financing of scientific research.

**With regard to the special situation of open prisons**, the Contrôleur général recommends that each open prison should sign an agreement with a local public hospital in order to facilitate access to treatment and overall care for their health for persons on partial release.

**With regard to the provision of health care to prisoners**, the Contrôleur général wishes to recall:

- that access to health care should be effectively guaranteed to all prisoners, in all of the prison UCSAs, and that it should be possible to trace the channels through which calls to attend medical appointments are issued. In this respect, more particularly with regard to health incidents occurring at night and with a view to ensuring continuity of treatment, he recommends that a traceability tool should be put in place enabling information to be passed on between day and night teams;

- that, for removals from prison to the hospital environment, the CCR notes (orders, conduct, regime) concerning “escorts” should be specifically adapted to each individual situation in strict application of the memorandum from the prisons administration department of 19th October 2010 concerning the standardisation of escorts;

- that, in accordance with the circular of 21st June 2012, health staff working in the prison environment should take part in meetings of the single multidisciplinary committee (CPU), subject to strict compliance with medical secrecy;

- that medicines should be distributed to patients in a manner that is specifically adapted to the latters’ profiles, both with regard to choice of place and time and frequency of distribution; that the same applies to opioid replacement therapies, the continuity of which remains essential, including for those prescribed outside of prison; that, moreover, medicines should be administered in compliance with the form in which they are placed on the market; that finally, specialised courses of treatment for which official approval has not been granted to local authorities and so-called “comfort” medicines
should be listed in the medicines register of the institutions in order to be available in the UCSA dispensaries.

**With regard to access to specialised medical care**, the Contrôleur général recommends:

- that, as far as dental care is concerned, the administratively attached hospitals should place sufficient staff at the disposal of prison medical consultation and outpatient treatment units (UCSA), thus enabling strict application of the instructions of 29th August 2011 concerning the completion of oral-dental check-ups for prisoners at the time of their arrival in prison and reduction of the infectious risk associated with dental treatment. In this respect the following actions are to be taken into account: systematisation of assessment of the state of prisoners’ dental health at the time of their arrival accompanied by the planning of a dental care programme; full and complete implementation of dentistry surgery time as defined in the first methodological guide and training of nursing staff in dental care; elaboration of protocols for the relief and treatment of pain taking into account the aggravating nature of imprisonment; scheduling of appointments with waiting times of less than eight days for planned treatment and within 24 hours for emergency treatment; production of false teeth ensuring proper mastication and aesthetically satisfactory appearance.

- that, as far as ophthalmic treatment is concerned, prisons that cannot obtain ophthalmic surgery time should by default establish an agreement with a local optician; that, in addition, in association with the hospital, prisons should renegotiate the agreement with the ministry of Defence so that the obtention of glasses for prisoners lacking sufficient resources no longer takes place within a strict deadline of one month but “as soon as possible without overrunning a deadline of one month”; finally that, on the one hand, prisons should place the products necessary for the maintenance of contact lenses at the disposal of persons who wear them within the first twenty-four hours and, on the other hand, they should include these products in “new arrivals” prison shop vouchers in order to enable prisoners to buy contact lenses in the following days, the financial cost thereof remaining, allowing for exception, payable by the latter;

- that, as far as physiotherapy treatment is concerned, the administratively attached hospitals should organise themselves in order to ensure that the necessary sessions are provided in sufficient number within prisons by physiotherapists and that, failing this, the treatment should be organised in the administratively attached hospital. To this end, the Contrôleur général hopes that the use of temporary release may be promoted or, in the absence of conditions of eligibility, that implementation of removals from prison in order to go to hospital may be facilitated;

- that the admission of surgical appliances that the UCSA cannot supply into prison should not be subject to disproportionate security requirements and should be made easier, in particular by the intermediary of families.

**With regard to the situation of prisoners who are elderly and/or suffering from disabling diseases**, the Contrôleur général recommends that the ministry of Justice should begin the implementation of a programme in order to ensure that in the short-term all prisons, including the oldest ones, are able to offer an accommodation capacity in adapted cells for persons with restricted mobility in the region of 1 – 1.5% of available places.

In this respect:
specifically in prisons with sections incorporating different kinds of prison regime, the specially-equipped cells should be judiciously distributed between the various wings, without placing them in wings with closed-door regimes;

- a fresh look should be taken at access of persons with restricted mobility to various activities (exercise yards, school centres, production workshops etc.), which should be made easier;

Finally, when the performance of strip searches on persons of restricted mobility is justified in view of article 57 of the prisons act of 24th November 2009, it is imperative for the door of the room in which they are conducted to be closed, in order to guarantee the person’s dignity and privacy. In this respect, the prisons administration should issue directives in order to supplement those contained in its circular of 14th April 2011 concerning means of performing checks on prisoners.

With regard to the effectiveness of access to welfare rights for prisoners, the Contrôleur général once again wishes to recall, as he did in his annual report for 2011, the following recommendations:

- in order to facilitate the procedures for recognition of disablement and allocation of the allowance for disabled adults (AAH) and to supervise the terms of its payment, a tripartite agreement should be entered into between the social security office (CAF / caisse d’allocations familiales), the departmental centre for disabled people (MDPH) and the Prison service for rehabilitation and probation (SPIP) in each prison. In addition, the total amount of the AAH should only be reduced after having taken the prisoner’s total fixed costs (rent, taxes etc.) into account and provision could thus be made for maintenance of the AAH at the full rate for one year, subject to special terms and an assessment of the fixed costs;

- at the time of renewal of the residence permits of foreign prisoners, the prefectures should issue notification of receipt, which enables these persons to then claim their welfare rights;

- for the implementation of the personal care allowance (APA), the signature of agreements between prisons, councils of French departments, SPIPs and bodies organising home helps should be brought into general use in order to facilitate their action, in particular for the assessment of prisoners’ level of dependence and for the removal of difficulties with regard to their official address.

With regard to health care within the framework of preparation for release and reduced sentencing, the Contrôleur général recommends:

- that the assessment of “serious efforts in terms of social readjustment” taken into account by the judge responsible for the execution of sentences in the implementation of additional remission should include, on the one hand, the concrete possibilities provided in prison and, on the other hand, the prisoner’s age, ability and personality as well as any disablement;

- that in the absence of health care accessible in prison, recourse to temporary release provided for under article D.143 of the code of criminal procedure should be promoted and that “temporary release on medical grounds” should be created under this article, whose duration could take into account the medical needs of the person concerned;
In addition, the Contrôleur général recommends that the legislature should make an amendment to article 720-1-1 of the code of criminal procedure:

- on the one hand, in order to introduce, beyond the notions of establishment of the existence of a life-threatening condition and incompatibility of long-term state of health with maintenance in prison, the possibility of basing applications for deferment of sentences on health grounds on the circumstance that the treatment required by the person not only cannot be given in prison, but also cannot be provided within the framework of temporary release or removal from prison in order to go to hospital due to its repetitive or regular nature;

- on the other hand, in order to include persons placed on remand in the system of deferment of sentences on medical grounds, under the same conditions of eligibility as convicted persons;

- Finally, in order to delete (the second paragraph concerning) recourse to a second medical opinion (which did not exist in the initial act) and for which the need is therefore in no way evident.

In addition, he recommends

- that, with regard to the role of medical experts in the granting of deferment of sentences on medical grounds, a protocol should be set out which, on the one hand, enables the latter to go to the applicant’s cell in order to effectively ascertain their conditions of imprisonment and, on the other hand, introduces an obligation for systematic consultation between the medical expert and the general practitioner of the UCSA in addition to the medical examination of the person and, finally, fixes reasonable deadlines for the completion of the expert opinion, according to the person’s condition;

- that when sentence deferment measures are required it should be possible for the actors involved to plan effective provision of facilities (accommodation, resources) for the person concerned if necessary;

- that sentences should only be deferred on medical grounds in order to improve the state of health of the person, except in case of a favourable opinion on the part of an expert appointed for this purpose;

- that the original judge responsible for the execution of sentences remains competent to rule on applications for emergency deferment of sentences on medical grounds, when applicants are transferred after the commencement of the proceedings.
Section 6
“For the attention of the Contrôleur général…”
(Testimonies received)

Unconsciousness and Sleep, in Prison, at Night

“Dear Sir,

I would like to give you some additional information…

I feel particularly strongly about access to treatment and security in health matters in prisons because they come within my domain, I was a [health professional] …

As far as the problem which occurred in the night of 18th to 19th April is concerned, it was not a “fall from a bed” but was, indeed, a case of being struck by sudden loss of consciousness, leading to a head injury. According to the testimony of my fellow prisoner, I was still unconscious when the graded officer arrived. Apparently, he did not ask me any questions (even for the purpose of checking on my state) and I myself neither moved nor uttered a word. He apparently even said to my fellow prisoner: “He’s sleeping like a baby; you mustn’t call without any reason”.

Doctor M., who examined me in the morning of Friday 20th April, told me that she had only been informed of the problem on Friday. Since cardiac dysrhythmia is one of the possible causes of sudden loss of consciousness, she had me hospitalised immediately and expressed her incomprehension to prison management.

In your letter you inform me that “at the time of inspection [of the institution], in June 2010, the inspectors had ascertained that when medical emergencies were reported at night, the graded officer made use of the centre 15 Urgent Medical Aid Service call centre, the call centre doctor assessing the situation and the response to be given to the call. This is indeed what is provided for under article 11 of section 3, “Access to Healthcare”, of the institution’s rules and regulations. This article even specifies that: “The graded officer is authorised to put the duty or call centre doctor in touch with the prisoner in order to enable them to converse directly”. This would have been sufficient to establish my state of unconsciousness…

The graded officer complied neither with the rules and regulations, which do not provide for assessment of the person’s state of health by the graded officer in any way whatsoever, nor with the protocol signed between the actors concerned provided for by articles D. 374 and D. 369 of the CPP. This is precisely what Dr M. had pointed out.

“The anxiety that these problems connected with the handling of emergencies cause among prisoners, and which you mention in your letter, appear fully justified to me, if in other institutions things are conducted in the way that I have ascertained in the prison of… Indeed, it appears to me that in this regard it is possible to speak of loss of chances in terms of mortality and morbidity. It would be very simple to verify the death rate at night, weekends and on bank holidays, as compared to these levels during the week, by means of a study of the figures in order to check…

I have referred this problem to the medical inspector of the [departmental] commission of the Regional Health Agency (A.R.S.) as well as the health risk linked to the absence of distribution of hot drinking water.335 I have not yet received a response to my letter sent on 23rd July…

(…) Here I would like to express a personal opinion resulting from my analysis:

It should in no way be up to prison staff to determine the rules for medical emergencies according to subjective criteria that do not come within their domain.

It is up to the doctor to define the medical requirements for care and treatment of patients that are the most suitable to their condition and the degree of urgency.

335 Here it is question of the absence of distribution of hot water in cells for breakfast in the morning, which obliged prisoners to drink their Ricoré© - coffee being prohibited – with hot water taken from the tap (Editor’s note).
Prison staff have to implement the security measures judged necessary, and strictly compatible with the medical requirements in terms of health care and deadlines for treatment.

This is the sole condition able to ensure that their respective duties are compatible and do not compromise the patient’s chances.

It appears important not to forget that in case of pathological conditions, one is dealing in the first place with a patient – and this should be the sole concern of the doctor and the first concern of prison staff – and only in the second place with a prisoner – and this is only of concern to prison staff and should not, in any case, have any repercussions upon medical care and treatment in accordance with best practices.

Yours faithfully,”

Provision of Psychiatric Care

“Dear Mr Delarue,

I would like to draw your attention to quite a major problem experienced by many prisoners in France: the lack of resources for psychotherapeutic follow-up care in prison!

In view of the deeds for which I was sent to prison, at the end of a session of the CNE, I was sent to an “AICS” long-term detention centre (because elsewhere “there are not enough resources in terms of psychologists”)

However, since my arrival at the CD of M… (labelled AICS) on April 2012, I have still not been able to begin individual or group therapy with the psychologist, in spite of around ten letters. I have tried to discuss the matter with the management of the CD, completely in vain.

And at the same time, when we appear before the JAP for the consideration of our RPS, the judge sanctions us because “no follow-up measures have been commenced”? It is completely ridiculous!

The key to the prevention of recidivism remains psychotherapeutic work, whether undertaken in prison or outside. However, even specialised prisons do not have sufficient resources in terms of psychologists and I have the impression that there is no dialogue whatsoever between the prison and the UCSA.

Would it be possible for you to raise the awareness of the management of the CD of M… with regard to the legitimate expectations of certain prisoners in terms of psychological follow-up care?

Yours sincerely,

PS: copy of a letter to the UCSA of the CD of M…”

Awaiting Removal from Prison in order to go to Hospital

“Dear Sir,

I want to draw your attention to serious measures of pressure and retaliation against me liable to be highly detrimental to my state of health.

I have called upon your services on several occasions and you have been kind enough to take up my case.

You are aware of my problems and concerns with regard to the pressures placed upon me by the prisons administration. The situation is now becoming unbearable.

Today, Wednesday 25th April 2012, I was supposed to have a preventive intestinal colonoscopy carried out for cancer of the prostate.

For this purpose, I had been following a special course of treatment for some days (dietary regime) and had to drink a special liquid in order to clean the intestines. For the needs of the
operation, the medical services supplied me with a document that I had to fill in: a discharge form with medical information concerning me.

I took these papers with which I had been supplied by the UCSA \textsuperscript{320}, completed them and armed with these documents that I had to return dated and signed, return them to the departments which were going to operate on me at the hospital of S…

These documents supplied by the UCSA contained a plan of the hospital and, for this reason, the escort from the AP\textsuperscript{321} of S… prevented my transfer to the hospital claiming that, in view of my previous history, they could not take me there due to security problems.

Because of them, I have therefore been unable to have the treatment necessary to my state of health, under compulsion and through no fault of my own.

I earnestly ask you to take the matter up quickly with Mr M…, manager of the CD\textsuperscript{322}, or to get one of your institution’s inspectors to act quickly here on the site, in order to object to these events.

If I had to undergo a serious surgical operation under these circumstances, I would certainly no longer be here to inform you.

No importance whatsoever is given to my case, since not only do they make an idiotic mistake by passing on plans of the hospital to me (what use are they to me, in all honesty!??) but, on top of this, they make me suffer the consequences.

I cannot even serve my sentence in a normal manner and I have to beg in order not to have health problems, otherwise I die on the spot. My physical and, as a result, psychological state are thereby severely affected.

I reserve the right to make a complaint and commence all of the proceedings necessary in order to put an end to these serious problems and dysfunctions.

I look forward to hearing from you. Yours faithfully,

\textit{Removals from Prison and Searches}

“By means of this letter, I want to draw your attention to the conditions under which prisoners are removed from prison in order to go to hospital…

Mrs G., 42 years of age, convicted by the Criminal Court, was transported for a cardiac problem on … November by the fire brigade to the hospital of D.

Apart from the fire brigade, she was escorted by two warders [from the institution] who handcuffed and leg-cuffed her.

She remained in hospital for three days.

On … November, by authorisation of the judge [responsible for the execution of sentences], she went to see her cardiologist, at the N. hospital, escorted in a car by two plain-clothes police officers. Once again she was handcuffed and leg-cuffed.

On the same day Mrs P. L. could not find the strength to go to the funeral of her 17 year old son, since she did not have the heart to face being seen by her children and her family, while handcuffed and escorted by two uniformed warders.

Mrs B. and I have to consult an ophthalmologist at the hospital of D. or elsewhere.

Mrs B. has already made known her refusal to go, due to the conditions of removal from prison, at the risk of her eyesight deteriorating. For my part, I think that I will agree to be removed from prison, and will subsequently testify and denounce these humiliating, degrading conditions, which once again date from another century.

How is it possible for such rules of security to be current in a prison?

\textsuperscript{320} Prison medical consultation and outpatient treatment unit [somatic infirmary] (editor’s note)

\textsuperscript{321} Prisons Administration (Administration pénitentiaire) (editor’s note).

\textsuperscript{322} Long-term detention centre (Centre de detention) (editor’s note)
How can one be systematically placed in leg-cuffs, when there is no evidence in the prisoner’s file showing their dangerousness?

How is it possible that, as prisoners in a CP, where rehabilitation should be the priority, prisoners are removed from prison under conditions that are more violent, harsher and more humiliating than those in a remand prison?

Can you do anything in this regard?

I also want to mention searches. Before going to visiting rooms or on temporary release, we are frisked, and searched in the case of certain prisoners. On our return we are searched. We have to undress completely, naked in front of warders who are young enough to be our daughters!!! Unless I am mistaken, these systematic searches are no longer allowed under the law and case law and are now restricted. Unless I am mistaken, in this case once again there has to be a “suspicion”.

Does the sole fact of coming back from a visiting room systematically make us suspects?

What does the law say in this regard? What can you do?

The rules and regulations provide for these searches. Who can challenge the rules and regulations?

I look forward to your inspection; please kindly enlighten me with regard to these various points.

Yours faithfully,

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**Stays at Hospital after Removal from Prison**

“Dear Doctor,

I was hospitalised in a prison room, on … and … December, in the teaching hospital (CHU) of V. I inform you of the conditions in which I received medical treatment while under surveillance by the Police.

I had been told at the UCSA that my file had been passed on and that I would have my usual medical treatment during the hospitalisation. In the evening, around 20:00, I questioned the nurse. The surgeon had told me in the afternoon that there “would not be any problems”. However, the nurse told me that the emergency department did not have the prescribed medicines [there follow the names of four medicines]. She came back to bring me what she “had been able to find” [two of the medicines cited and two other different medicines] (I have a spinal disc herniation which has made me suffer from sciatica for more than 2 months)…

Despite my being a woman, out of the 5 different teams of Police officers who relayed each other I was only guarded by men (except for 2 women, out of 10 police officers).

In view of the lay out of the room, the position of the bed (in front of their surveillance window); the opaque plate glass windows, the neon lights and the bathroom area (of which the door cannot be shut), with a mirror effect on the whole of the window, the Police officers could obviously see me. During the treatment, when in the shower, when I went to the toilet. While I was feeling uncomfortable due to the anaesthetic, and due to being watched by them, one of the 2 said to his colleague, mocking me: “Is she going to stay stuck like that on the … much longer??!”

All of my belongings were taken away when I arrived, even my beach mule sandals and my glasses. To my question “Why?” the Police officer replied: “Because. That’s the way it is. You are not allowed”.

“When the medical staff were there, I asked if I could have my toothbrush and toothpaste in their presence, in order to freshen myself up. I did not receive them.

(…) I could not hold my gown closed while walking holding my two drip-feeds. Every time that I moved about the police officers therefore saw me naked.

Even in police custody I was allowed the minimum necessary for the night. I was able to use some hygiene products in order to have a wash in the morning. And I was always guarded by women.

All the same, when the escort confirmed that it was coming [for the return to prison], I was then immediately given “my” bag. It had been at their feet, since the day before. However, they said that they didn’t know where the luggage was.
When the medical staff knocked to enter [the security entrance where the police officers were stationed], they sighed and moaned: “Again! It's a pain in the . . .! We can’t have any peace!” I also heard many sexist jokes about the female hospital staff.

“During the night, one of the 2 said to his colleague: “Have you seen who you’re with tonight?!!” They were reading my data extraction sheet. They were laughing. They tried to find out the reason for my operation. Then they consulted the Web...

“[Return to prison], having been under surveillance by the Police 24 hours a day and without any item authorised in the room, was a strip search absolutely necessary?

“The warder made me undress entirely. She also wanted me to my remove trousers and underwear. I said to her that I was going to put the “top” back on first, I was tired and cold. She also made me take off the support belt (following the operation) in order to inspect the dressing and examine my back. I could not go back to my cell straight away. She made me wait in the jail of the remand prison since she did not have the keys to the passageway. Her colleagues were coming and going in their office. As none of them came to open for me, in the end I knocked on the door to call them. I wanted to take the [medicine] and lie down (the warder would thus have been able to find out the reason for my operation). During the week, they were talking to each other in the passageway, asking each other questions about the reasons for my hospitalisation. I had spoken about it to some of them in whose professional discretion I believe - ? - that I can trust.

Thank you for kindly giving your attention to this letter. I hope that this testimony will help improve the conditions of stays in hospital prison rooms for prisoners, whoever they may be and whatever their pathology.

Yours faithfully,

Removal from Prison, Overcrowding, Protest...

“… With regard to my health, I am still waiting to be removed from prison to hospital for the injection in my back. As for treatment at the UCSA, there is no way that they are going to touch me. As soon as the legal proceedings are over I am going to lodge a complaint against them through my lawyers for the medical error that they committed and for placing me in danger because of the prescription established by the UCSA. The director sent me a letter to inform me that I was going to be called to an interview with the manager of the UCSA. Since then a month has passed and I have still not heard any more. However, I am certain that I do not want to stay in this prison of M… in which everything is downside up. If the legal proceedings go well and nobody lodges an appeal, I will apply for my transfer to the prison of . . . I have requested an interview with the SPIP in order to begin completing the application. I am going to see the head of my building to see if she is willing to support my application. Would you be able to take up the matter of my application for transfer? I have now been here for 33 months; I am going crazy seeing so many breaches of requirements and no changes whatsoever… I have been working as a floor assistant helper for one month. I have spoken to the head about the problems, she agrees with me but says that she cannot do anything; it is up to the director (...).

A fellow prisoner, Mr T., informed us of the presence of false double cells. This is the reality. Cells Nos. [five cell numbers] are false doubles… There are 2 beds, 1 table, 1 shelf, 1 wooden board on the wall for hanging up photos and 1 row of coat hooks. When I arrived, in August 200…, they were single cells. In December 200…, the building filled up and there were no more places. They came to measure all of the single cells to see if they could make them into doubles. They then made these 5 cells into double cells. They will never be able to double the equipment since there is not enough room for it in the cell. The prisoners already get under each other's feet. It is just like the grilles on the windows: they are prohibited by the European conventions. They are still there, all the same. They are a breeding ground for germs and it is impossible to clean them. The squares are too small and too numerous (more than 1,000). For photos, there is a passport photo service in the prison. I paid €5 and I went to a room, a photographer took my photo and printed the 4 identity photos on the spot. I do not dispute that they have been placed in my property in storage. I wrote a letter to my family, put it in a stamped envelope and sent it to my SPIP officer for her to put the photos inside and send it. She replied that I had to have authorisation from the director. I therefore sent a request to the director. He sent me a reply slip informing me that my request was refused. He gave the reason that there was not enough information. I therefore wrote him a letter to explain to whom I wanted to send it and why. I never received a reply to my letter. It’s silence radio, as usual. I would like to know when this prison is finally going to comply with current laws
and prisoners’ rights. I have been witnessing the flouting of all of that for the last 33 months. Everybody is complaining (prisoners, families, warders, building heads). The response is always the same: there is nothing that can be done. Who then can take action and change all of that? Tensions have been mounting for several weeks, in the end they will explode and everybody is turning a blind eye. The day it does happen it will have major consequences because frustrations have been building up since the opening of this so-called “model prison”. Some model…

Yours faithfully,"
Section 7

The Confinement of Children

Our society has been so concerned with criminality among young people for so long that, on the occasion of this annual report, the Contrôleur général wanted to focus attention upon their “confinement” in the broadest sense of the word.

Minors who commit offences are not here viewed from the standpoint of the effects of their acts upon the victims thereof. Instead they are considered in their own right and from the point of view of what becomes of them when they are deprived of liberty by decision of an administrative authority or court.

Of course, these two points of view are less opposed than they might appear. Taking an interest in persons deprived of liberty does not mean indifference towards those who have suffered from their doings. The idea should even be upheld that concern for offenders and what becomes of them is the most effective way of looking after victims’ interests. In any case, it is healthy to look through the other side of the mirror and cast an eye upon the self-contained world of confinement. However, questions still need to be asked about the latter notion.

In the majority of cases, the cause of confinement of children placed in places of deprivation of liberty encountered by the inspectors was the commission of offences. However, this was not the only cause. As far as treatment without consent given in psychiatric institutions is concerned, the cause of deprivation of liberty is illness. With regard to the detention of foreigners, the cause is the fact that their parent’s papers for residence in France are not in order: indeed, no residence permit requirements are imposed upon minors. Finally, with regard to children entering France (in most cases by aeroplane), failure to produce documents for admission to the territory (passport, visa) leads to their detention in waiting areas.

Rather than examining this wide range of causes we will therefore successively examine the principle of confinement, its methods and finally its effects.

1. An Accepted and Limited Principle of Confinement

1.1 The Debates on Confinement

Under paragraph b) of article 37 of the Convention on the Rights of the Child of 20th November 1989, whose stipulations are applied in France, it is provided that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the

shortest appropriate period of time”. It specifies (article 40) that the States Parties “shall seek […]
the establishment of a minimum age below which children shall be presumed not to have the
capacity to infringe the penal law” and measures for “dealing with such children without
resorting to judicial proceedings” insofar as possible.

It follows from these principles that children may be deprived of liberty, but
only as a last solution, for as short a period as possible and taking an age of
“legal majority” into account that is fixed by law.

The latter condition of course applies to offenders for whom, from the
point of view of its laws, France is in compliance with these principles.

The statutory instrument of 2nd February 1945 concerning juvenile delinquency provides
that the juvenile courts decide upon necessary measures of “protection, assistance, supervision
and education” and that they can only pronounce penal sanctions, which in case of imprisonment
cannot be greater than half of the sentence provided for, if the minor’s circumstances and
personality so require.

However, repeated alarms with regard to criminality among minors given rise to three
debates, which are probably not ready to be closed and thus allow the crystallisation of an often
reasserted will to amend the statutory instrument of 2nd February 1945, considered too
“educational” and insufficiently “punitive”.

The first debate concerns the relative weight of protection and education – to sum up
quickly – and penal sanctions: for those who advocate a more punitive approach, this involves
reducing the weight of the former and increasing that of the latter. The second concerns the age
of legal majority: on the one hand, provision is henceforth made by law (since 2002) for the
possibility of “juvenile sanctions” for children of ten years and over; on the other hand (in
particular during the term of office of Mrs Rachida Dati, Minister of Justice), attempts have been
made to lower the age of criminal responsibility, which is currently fixed at thirteen years of age;324
these attempts have not been successful to date. The third concerns the penal sanctions
that can be inflicted upon minors. The law rules out some sanctions and reduces others (such as
prison and fines), while applying still others ipso jure (community service and electronic tagging):
these choices were recently re-examined (in particular by the so-called “Perben II” Act of 9th
March 2004).

1.2 Confinement of Children on Criminal Grounds

The fact remains that, to date, the confinement of children as a penal sanction still remains an
exception. 85% of minors entrusted by judges to the judicial youth protection service (PJJ) are in
an “open environment” and, therefore, not “in confinement”.

Moreover, whatever may have been suggested about the growth of juvenile
delinquency, thanks to the remarkably constant vigilance of judges, the
number of minors detained (in prison) has remained in the region of 700 to
800 (at any one time) for over twenty years, with the exception of a “peak”
following the civil unrest of 2005 in France.325 The intake of minors entering
prison is between 3,200 and 3,400 every year (with an equivalent number
being released).326 This stability stands out all the more in that the number of
prisoners of all categories has almost doubled over the last forty years or so,

324 This age is fixed at ten years in England-Wales.
325 At 1st May 2012, 803 children were prisoners.
326 Data to be compared with the 214,612 minors implicated in offences in 2009 (source: la criminalité en France –
increasing from 35,000 to 67,000. The number of minors detained is therefore decreasing in relative terms, currently representing 1.2% of all prisoners.

Concerns have however been raised about this stability in political debate. What if the increase in delinquency was attributable to the inadequacy of responses on the part of courts? Or at least, if prison is only to be used in a limited manner for minors, is there not a need to create other instruments, in parallel, in order to provide a response to the perceived increase in delinquency? The “Perben I” Act of 9th September 2002 provided a response to this question through the creation of a new form of confinement, the “young offenders’ institutions” (centres éducatifs fermés), designed for minors who have committed numerous offences and intended as a final attempt to avoid imprisonment. However, this revival of closed centres for children in 2002 marked the end of a very short interlude, during which such centres did not exist. As has been pointed out, the idea of the confinement of juvenile delinquents dates back to the French Revolution, with borstals (maisons de correction) appearing under the July Monarchy. Under diverse names, sometimes emphasising agricultural labour (19th century), sometimes military discipline (late 19th – early 20th centuries), these institutions changed after 1945 and the statutory instrument of 2nd February. The last “observation and security centres” (centres d’observation de sécurité) were closed in 1979. Institutions for confinement especially devoted to minors therefore only disappeared for a period of twenty-three years. Today such institutions do not therefore constitute an exception, although they do mark a return to earlier periods. In 2010, 1,242 children, between the ages of 13 and 18 years, were placed in forty-four young offenders’ institutions providing 488 places. Three new institutions of this kind have since opened. Although they are confined in a very different environment from that of prison, these minors are to be added to the few hundred young people who are prisoners.

1.3 The Confinement of Children on other Grounds

At least three such grounds, of very different natures, should be mentioned.

The cases that might be considered closest to those considered above arise from investigations for the purpose of identifying offenders, which can lead to decisions of placement in police custody on the part of senior law-enforcement officers.

In principle, police custody for a period of 24 hours is only applicable to minors over 13 years of age and under special conditions (in particular between 13 and 16 years of age) to which we will return. However, if they are suspected of having committed a serious offence, children between 10 and 13 years of age may also be “detained” for a twelve-hour period, which can be renewed once by the State Prosecutor’s Office. Since 1994, various different acts have increased the possibilities of placement in and prolongation of police custody for minors. These possibilities nevertheless remain more limited than the conditions laid down for adults.

It is not a simple to ascertain the proportion of minors among persons subject to police custody measures. The proportion of offences and serious crimes committed by persons under 18 years of age (18.9% in 2010) is known. Application of this proportion to the 523,000 police custody

228 Cf. article 33 of the statutory instrument (ordonnance) of 2nd February 1945.
230 Apart from road traffic offences.
measures ordered in 2010 would give 98,847 minors placed in police custody for the latter year. However, this proportion is variable and depends on local circumstances. By way of example, the following table gives the proportion of minors in police custody in the ten police districts inspected by the CGLPL:\footnote{The reference years vary according to the date of the inspection.}

\begin{table}
\centering
\begin{tabular}{|l|l|l|l|l|}
\hline
Town & Year & Total Police custody measures & Minors in police custody & \% \\
\hline
1 & Amiens & 2009 & 3,223 & (sample)\footnote{In the absence of overall data, a sample of measures (45) was studied, from whence the percentage was taken.} & 28.8 \\
2 & Creil & 2010 & 914 & 215 & 23.5 \\
3 & Dunkirk & 2010 & 1,369 & 335 & 24.5 \\
4 & Firminy & 2010 & 575 & 93 & 16.0 \\
5 & Nîmes & 2010 & 1,981 & 351 & 17.7 \\
6 & Paris 12th arrondissement & 2010 & 3,222 & 634 & 19.6 \\
7 & Pau & 2010 & 1,477 & 148 & 10.0 \\
8 & Pointe-à-Pitre & 2009 & 1,762 & 243 & 13.8 \\
9 & Rennes & 2009 & 1,795 & 539 & 30.0 \\
10 & Saint-Ouen & 2009 & 1,742 & 266 & 15.3 \\
\hline
\end{tabular}
\end{table}

As can be seen, the percentage of minors in police custody varies between 10% and 30%, which constitutes a wide range of variation. It may depend upon local circumstances (the proportion of young people in the population) as well as local customs, both those of young people (the well-known “drinking” evenings in Rennes) and of the police. It would be useful to compare this data drawn from urban sources with data concerning the gendarmerie. In any case, the proportion of minors in police custody does not appear to differ greatly from their proportion among offenders. In other words, within the limits of the law, the placing of minors in police custody is not subject to any special reserves.

As far as confinement specific to the foreign population is concerned, two very different forms thereof exist: the first involves waiting areas, that is to say detention areas (principally in airports) at borders for foreigners who are not in possession of the documents necessary for admission to France; the second concerns the detention of foreigners, in principle prior to their removal from French territory\footnote{It should be noted that a specific feature of the young persons concerned is uncertainty with regard to their age, since a certain number of them (in particular lone persons) claim to be minors without producing any identity papers. The police try to determine their real age by having a “bone age test” (examination of the wrist bones using the Greulich-Pyle method) carried out at the hospital. However this procedure is not accurate and is therefore criticised. However that may be, the police distinguish “claimed” minors from real minors and minors “changed to major status” (declared to be adults after examination).}.

Children may be placed in waiting areas, on the one hand, when they are accompanying parents who are not admitted to French territory and, on the other hand, when they arrive at the border alone and without any papers. Data on this subject is difficult to access and requires careful interpretation since it is necessary to distinguish between those who declare themselves to be minors and minors whose age is established (cf. below); as well as between minors turned back at the border and minors admitted to (“held” in) waiting areas pending a decision on their case. The border police data is as follows:

As far as confinement specific to the foreign population is concerned, two very different forms thereof exist: the first involves waiting areas, that is to say detention areas (principally in airports) at borders for foreigners who are not in possession of the documents necessary for admission to France; the second concerns the detention of foreigners, in principle prior to their removal from French territory.
For previous years, Olivier Clochard, Antoine Decourcelle and Chloé Intrand have drawn up the following table of the number of minors held in waiting areas, distinguishing between lone minors, who are often more numerous, and accompanied minors (Revue européenne des migrations internationales, vol. 19, no. 2/2003, “Zone d’attente et demande d’asile à la frontière : le renforcement des contrôles migratoires ?” [“Waiting areas and Asylum Applications: Reinforcement of Migration Controls?”], p. 157 et seq.):

<table>
<thead>
<tr>
<th>Year</th>
<th>Held in waiting areas (1)</th>
<th>Of which the Roissy waiting zone (2)</th>
<th>Of which minors (3)</th>
<th>% (3) / (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>13,180</td>
<td>11,058</td>
<td>687</td>
<td>5.2</td>
</tr>
<tr>
<td>2010</td>
<td>9,036</td>
<td>7,491</td>
<td>590</td>
<td>6.5</td>
</tr>
</tbody>
</table>

Figure 2 : Les mineurs maintenus en zone d’attente

Figure 2: Minors Held in Waiting areas (= Figure 2 : Les mineurs maintenus en zone d’attente)

Number of minors (= Nombre de mineurs)

Lone minors (= Mineurs isolés)

Accompanied minors (= Mineurs accompagnés)

“Lone minors” category Pointer “2000” (= Série « mineurs isolés » Pointer « 2000 »)

Value: 849 (= Valeur : 849)

Source: French Ministry of the Interior (= Source : Ministère de l’Intérieur)

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In 2005, out of 401 children “held” in waiting areas, 259 (almost two thirds) were lone minors.

These figures do not take persons into account, including children, who were turned back quickly after being refused admission to the country, after a few hours waiting in the police stations of Roissy (for the most part), and who, for this reason, did not stay in waiting areas.
Among these minors, the border police distinguish between those over and those under 13 years of age; at Roissy, until 2011 the latter were accommodated in hotel rooms under the supervision of child-minders paid for by the airlines. Since then, a “minors’ area” has been opened in the airport’s “ZAPI 3” area (used as a waiting zone).

As far as the detention of illegal immigrants is concerned, only minors accompanying their parents (or one of their parents) are to be found in detention centres and facilities, since lone minors cannot be subject to measures of removal from the territory. On the other hand, it is deemed that when such measures concern parents responsible for families, and detention measures are taken pending their actual departure, their children can be placed with them in the same premises.

According to the report for 2010 issued by the associations working in aid of foreigners in detention centres, the number of children accommodated in the latter is as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>165</td>
<td>262</td>
<td>197</td>
<td>242</td>
<td>222</td>
<td>318</td>
<td>358</td>
</tr>
</tbody>
</table>

Far from decreasing, the number therefore grew fairly regularly in the course of six years (+ 115%). At the same time, it is true that the number of foreigners “detained” in detention centres also increased considerably, from 20,488 to 33,692 (+ 64%335). However, the number of minors (who therefore represent 1% of the detainee population) increased more rapidly (0.8% in 2004). The 358 children detained in 2010 belonged to 178 families (that is to say an average of two children per family). Out of the latter, 53% were removed from French territory, the others being released for various different reasons.

Finally, there remain the children placed in departments or institutions specialised in the treatment of mental illness by means of measures of treatment without consent, either at the request of a third party or at the request of the prefect.

Indeed no distinction is made between children and persons over 18 years of age in the provisions of the public health code concerning these types of measures and, in spite of the silence of the latter provisions on parental authority, it therefore has to be assumed that they are applicable to minors.

However it is difficult to establish a quantitative list of children thus committed to treatment without consent. It has been pointed out that “Epidemiological data on the mental health of young people is patchy”337. However, data on use of the health care system is available and, in particular, data on the average and total intake of persons admitted to full time hospitalisation in child psychiatry departments for each of the 321 child and adolescent psychiatry administrative districts:

<table>
<thead>
<tr>
<th>Full time admission</th>
<th>Average no. / district Patient Days, sessions,</th>
<th>Overall total: Patient Days, sessions,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

334 Without this distinction having any other basis than the age of “legal majority” (cf. CGLPL, Rapport de visite de la zone d’attente de Roissy-Charles de Gaulle (“Inspection Report on the Waiting Zone of Roissy-Charles de Gaulle Airport”), www.cglpl.fr).

335 This data should be treated with caution. In any case, it does not coincide with the data from the CICI (Comité interministériel de contrôle de l’immigration / “Interministerial Committee for the Management of Immigration”) which reports 30,043 detainees for 2004 and 27,699 for 2009, i.e. a reduction of 7.8%.

336 Part Three, Book II, Section one, article 3211-1 et seq.


This data concerns the year 2003; it shows that in the latter year 9,000 children were hospitalised on a full time basis in hospital\textsuperscript{339}. This information is to be placed within the context of increasing recourse to mental health services in general (with a rise in overall levels of use from sixteen in one thousand in 1991 to thirty-three in one thousand in 2003) but reduction in the number of beds, which was divided by three between 1986 and 2003 (1,512 beds at the latter date). The average length of stay, which was 36 days in 2003, is therefore constantly becoming shorter. In any case, this data does not make it possible to determine which children, among the 9,000 admitted to hospital on a full time basis, were hospitalised without consent. Assuming the same ratio among children between measures of hospitalisation without consent and hospitalisations as a whole as in the adult population (i.e. 12.7\% in 2003) – which constitutes a very maximal estimate – gives an intake of 1,143 children hospitalised without consent for 2003.

This number should be viewed in the light of three considerations: police custody – therefore confinement that rarely continues for longer than twenty-four hours – represents the bulk of this population (around 86\%). In relation to the some four million 13-18 year olds present in France in 2010, this confinement inflow represents 2.8\% (of which 2.4\% for police custody alone). Finally, this modest percentage should not obscure the fact that all cases of deprivation of liberty, which are traumatic for adults, are far more so for minors, for which reason they should “be used only as a measure of last resort”.

### 2. Special Modes of Deprivation of Liberty

Article 40 of the Convention on the Rights of the Child specifies, in particular, with regard to children subject to prosecution, that they have the right “To have his or her privacy fully respected at all stages of the proceedings” and that the States “shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law”\textsuperscript{341}.

\textsuperscript{339} It is recalled that persons over 15 years age can be hospitalised in departments for adults.

\textsuperscript{340} This information obviously does not take double counts into consideration, for example the circumstance that a minor may be placed in police custody or hospitalised without consent several times in the same year.

\textsuperscript{341} Article 40, 2 vii and 3. It might be regretted that, in the spirit of this text, the Défenseur des enfants independent authority charged with the defence and promotion of children’s rights, henceforth dissolved into the Défenseur des droits ombudsman, has less visibility and speciality therein.
Imprisoned minors, whatever their age and the reasons for their deprivation of liberty, are dealt with in a special manner. This approach may be defined by a number of special features.

2.1 Separation from Adults

In principle, all places of confinement of minors are separate from those for adults.

This separation may result from the very distinction which has to be made in terms of the way in which they are dealt with: treatments for children suffering from mental illness do not follow the same principles as those for adults, because pathologies do not develop in the same way, the possible treatments are different and family factors are much more important. However, generally speaking, even if they are appreciably handled in the same manner (as is the case for police custody), the sentiment prevails (with confinement therefore being organised accordingly) that children, because they are in an especially vulnerable position when deprived of their liberty (if only because, except with regard to the detention of illegal immigrants, they are deprived of their close relations), should be more specifically protected and that this protection requires separation from adults who, either because they are in a state of suffering or because they have committed offences or serious crimes, could harm the child’s inner being.

This is the case, for example, during periods of police custody: in most police stations that possess several cells, one is reserved for minors, which is in general the cell closest to the guard-room, thus enabling the officers there to keep a direct eye on the minor or minors occupying it. In prison, “children’s wings” are separated from “adult wings”; one of the most significant innovations in the field of penal affairs since 1945 was the creation, by the act of 9th September 2002, of “prisons for minors” (EPM / établissements pénitentiaires pour mineurs), which each have sixty places and were designed in sites and according to programmes of operation that are totally different from other institutions. In waiting areas, or at least in the largest (Roissy), it has been mentioned that a “minors’ area” (for which a better name might have been found) accommodates minors of 13 years of age. In detention centres for illegal immigrants, minors are always assigned, with their parents, to those that have a few rooms reserved for families, in most cases in the form of two ordinary rooms combined together, to which some facilities for babies have been added: this area is set apart from the others. Finally, by their very nature, young offenders’ institutions only accommodate minors.

The protective nature of this separation applied as strictly as possible according to age has to be attenuated by two series of considerations.

In the first place, there are two places in which the partitions are far from being impermeable and where, as a result, the desired protection is entirely relative.

This occurs in three kinds of situations. It is firstly the case in transitional and intermediate places of confinement in which, due to lack of facilities, it is impossible to separate persons in the absence of space or architecture provided for this purpose. Such is the case for court cells, for example, which are often collective: the escorts separate different persons as best they can. It is not always possible. In gendarmeries, there are in general only two secure rooms, built according to the same model, where adults and children are placed without distinction; although, it is true that in principle only one person is placed in each cell. In transport vehicles, the constraints of journeys lead to the mixing of age groups. Finally, there are borderline cases in which available accommodation capacities do not make it possible to house children in sites specially dedicated to them: the contrôle général has ascertained the presence of young children in certain adult psychiatric departments. There is a recurrent problem of the same nature with
regard to girls in prison: in traditional institutions they are systematically placed in detention with adult women, in the absence of “children’s wings” for them.

This is also the case when the distinction is made not from eighteen years of age, but at another age fixed by the administration. We have already noted the attitude of the border police, for whom the age of separation is fixed at thirteen years of age, which means that children of fourteen years are “held” with adults: this position is incomprehensible. Similarly, the “health” separation of patients in mental health institutions is, as we have seen, made at fifteen years of age.

Finally, despite the principle of separation, material conditions do not always enable effective implementation of the latter. This is the case in numerous children’s wings in prison. Although they often occupy a specific floor, either the nave-style construction of the building facilitates relations between floors, or other more or less illicit forms of establishing relations exist (“yo-yoing”), there are numerous opportunities for trafficking (in cigarettes for example, since contrary to adults minors are in principle deprived of tobacco). This constitutes an education in “survival” which is common and probably inevitable. It should be added that this porosity is facilitated by the administrative mechanism which in many places of confinement changes the place to which persons are assigned from one day to the next: young persons who reach their eighteenth birthday are suddenly transferred from an environment of children to being surrounded by adults.

In the second place, subject to that which follows with regard to the specific set-up of confinement, due to this separation children constitute a minority in places of confinement.

In the second place, subject to that which follows with regard to the specific set-up of confinement, due to this separation children constitute a minority in places of confinement. With the exception of those designed for their exclusive use (EPM, young offenders’ institutions) and which moreover bring together a very small population, their numbers are very low compared to the much higher number of adults: 1% of inmates with regard to the detention of illegal immigrants, as already stated; no more among those in prison. However, it is difficult for the specific needs of minorities to be taken into account in places where the organisation of collective life conforms to very strict rules, due to the requirements of security as well as routines. The open air areas provided for children in the “ZAPI 3” of Roissy and in detention centres for illegal immigrants are very small. The same applies to recreational areas for new-born infants accommodated with their mothers in prisons. While there is often a lack of activities in places of confinement in France, this is even more the case for populations of minors, in particular in places in which stays are short in duration. General regulations and shortage of staff prevent specific measures from being taken (for example with regard to hours). The most harmful factor lies in the fact that institutions for minors are… in the minority. Imprisonment, hospitalisation and committal to young offenders’ institutions therefore mean that in most cases minors are moved far away from their homes, inevitably reinforcing the breaking-off of relations with loved ones, at the very moment when it ought to be avoided as much as possible. On top of this, the provisions made (except in many CEFs) do not facilitate visits from families and relations of trust with them. The rules of life for adult males prevail. The position of children is similar to that of other “minorities” in other places of detention: women, foreigners, elderly persons. Tensions between these rules and the inevitable adaptations are present in all institutions that accommodate minors, as well as in the practices of the professionals who work in them.

2.2 Limited Mixing of Sexes except in Prison

In general, separation of boys and girls is implemented to a lesser extent than that of age groups.
However, it is imposed in a less strict manner in prisons for minors (EPM) and in young offenders’ institutions (CEFs). The former were designed from the first with a “living unit” intended for the accommodation of girls. These have to be able to accommodate four girls, including one in a double cell with a young child. However, practices have attenuated the initial design. In half of the institutions, either no girls have ever in fact been assigned there since their opening (thus in the EPM of Marseille) or else a decision has been taken not to send them to the site (thus at the EPM of Porcheville, in the Paris region). On the other hand, at the time of inspections by the contrôle général, small numbers of girls were accommodated in the other half of the institutions. Thus in Quievremechain (North of France), out of 203 committals in 2010, nineteen (9.3%) concerned girls. Even in these institutions, mixing of the sexes applies to certain activities, and to education in particular, for which the pupils are grouped together according to academic level (and not according to gender). All in all, it remains limited.

As for the latter institutions, although the majority of CEFs only accommodate boys (and one of them, at Doudeville, only girls), a certain number are mixed and accommodate both boys and girls, the latter constituting a minority, both in the design of the premises (four rooms at the most out of ten or twelve) and because the demand is much lower: in Châtillon-sur-Seine, from December 2006 to November 2009, fifty-five young people were successively admitted of whom only four were girls. The low number of girls sometimes leads institutions, as at Beauvais in 2011, to give up providing for both sexes because it ties up facilities for no reason. As in EPMs, the mixing of sexes obviously only concerns certain common activities. However, physical separation is more difficult to impose and, in spite of prohibitions of principle (prohibition of visits by boys and girls to each other’s rooms, for example), mixing of sexes can sometimes be more pronounced than normally provided for.

Sexes are also mixed in hospitalisation units: psychiatry does not depart from the general rule in hospitals.

In prisons, on the other hand, the separation is total since girls are accommodated in wings for adult women and “children’s” wings therefore only contain boys. In detention centres for illegal immigrants, the question in fact hardly arises: as has been noted, children remain with their parents.

2.3 A Regime of Confinement with Specific Characteristics

| However, insofar as possible, the law and rules and regulations make provisions which tend to enable different living conditions. |
| This is particularly the case for long-stay institutions. One might risk suggesting that the shorter the stay, the greater the uniformity and the more extended the stay, the less uniformity prevails. |

In this respect CEFs and EPMs have some remarkable features. Apart from, as already noted, their low inmate numbers (ten or eleven per CEF, sixty per EPM), these institutions have been characterised right from the start by the concern to combine coercion and education in the same place, which manifests itself in the set-up of premises, hours and activities. Contrary to the best-established French penal tradition, CEFs and above all EPMs (which claim prison status) give priority to collective life (units comprising several people, shared meals), while solitary confinement is a forced withdrawal of a punitive character.

342 It is recalled that the proportion of women among the prison population as a whole is less than 4%.
343 This combination initially gave rise – and still gives rise – to a great deal of hostility from professionals and their representatives, according to whom real educational action in a closed and coercive environment is quite simply impossible.
However, even in the children’s wings of traditional institutions, specific rules of life are at work: their dimensions do not in general exceed about twenty cells (the community is thus small); minors always, except in the case of very specific exceptions, occupy their cells alone (the stability of the numbers of imprisoned minors and the construction EPMs has made it possible to maintain the application of this rule, in spite moreover of the very considerable increase in the prison population); finally, in any case, provision is made to organise compulsory schooling until sixteen years of age and considerable education between sixteen and eighteen years. Accessible rooms facilitate the beginnings of a collective life which is more extensive than in ordinary imprisonment. Finally, in both these institutions and in EPMs, the regime of disciplinary sanctions is specific to minors and appears less harsh, with a distinction made between minors of sixteen years (who cannot be placed in punishment cells: the “cooler”) and those between sixteen and eighteen years of age.

However, it should be emphasised that specific rules have been instituted, even for short periods of confinement.

This is the case with regard to police custody in particular. For example, the statutory instrument of 2nd February 1945 provides that the parents (or guardian) of the child are necessarily notified of the latter’s placement in police custody, that the questioning is compulsorily recorded, that minors of 16 years of age are compulsorily examined by a doctor, that police custody measures concerning children cannot be extended, except in case of serious offences and crimes, and that any extension is subject to effective presentation before the competent judge. The Court of Cassation recalls that these specific rules are aimed at protecting the interests of the minor, “not due to their lack of discernment at the time of the deeds, but due to their assumed vulnerability at the time of their questioning”.

The accommodation area reserved for families in detention centres for illegal immigrants is intended for preserving the privacy of family life rather than instituting a specific regime for detained children. Moreover, the latter are subject to ordinary law to such an extent that they are not necessarily spared the sight of their parents being handcuffed at the time of arrival in the centre or departure before the judge. Some precautions are nevertheless taken and some facilities or equipment (though somewhat scanty) are provided for the use of young children. On the other hand, the situation is more difficult with regard to detention facilities for illegal immigrants. In general these are of limited surface area and possess little in the way of facilities; they are often included in the premises of police stations and headquarters and are incompatible with the presence of a family. Nevertheless, few of them appear to be used for this purpose.

### 2.4 Specialised Staff

Very generally speaking, confined children are entrusted to persons specially appointed for this purpose. Two different groups should be mentioned.

In the first place, the usual staff of places of deprivation of liberty often appoint specific persons within their ranks for dealing with children.

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344 In spite of the efforts made in various quarters, the hours and content remain below the required standards.
345 Articles R.57-7-35 to R.57-7-37 of the Code of Criminal Procedure.
346 Article 4.
348 Cf. Court of Cassation (Criminal Division), 13th October 1998, Bull. crim. (Official listing of rulings of the Court of Cassation) no. 259.
349 Court of Cassation (Criminal Division) 25th October 2000, no. 00 – 83.253, Bull.crim. (Official listing of rulings of the Court of Cassation) no. 316, D. 2001, IR 177 (summary information in the Recueil Dalloz).
350 Cf. R.553-5 et seq. of the Code for Entry and Residence of Foreigners and Right of Asylum.
This is the case in particular of the prisons administration which, for both “children’s wings” and prisons for minors, commonly makes use of prison officers (and prison rehabilitation and probation counsellors – CPIP) who volunteer for the management of these places. This choice was made very naturally in the case of EPMs, since each time new institutions were opened in 2007-2008, calls for applications enabled the selection and training of prison officers who wanted to be posted to them. As far as children’s wings are concerned, the circumstance that the prison officers who work in them hold “fixed positions” (from morning until the evening) and are not on shift work as in the other passageways, makes it possible to choose from among the officers wishing to hold and apply for these posts. Almost all of the prison officers encountered by the contrôle général in its inspections of children’s wings and EPMs are remarkable in their composure, competence and awareness of the role that they play. “We can serve as a substitute for a father”, said one of them. Their patience is all the more severely tested in that the population of which they are in charge is far from being easy to manage, as we will see below. In particular, it is highly worthy of note that assaults by children in EPMs very rarely lead to the filing of criminal complaints by the prison officers who are the victims thereof, contrary to observed practices in prisons ordinary prisons. However, all is not perfect for all that. The “fixed positions” above all present the formidable disadvantage of only providing service on working days. Children often complain that at night, and above all at the end of the week, the prison officers who replace their “regular warders” do not show the same qualities of listening and patience. Moreover, in EPMs, recruitments are henceforth made in a “piecemeal” manner and their unfavourable reputation may be dissuasive: there are fewer applicants and, as the years go by, it is to be feared that the strong initial motivations present at the beginning could be weakened or lost.

What is true of prison officers naturally also applies to the medical staff of child psychiatry departments. However, the changeover from the care and treatment of adults to that of children is less difficult than the changeover from supervision of adult prisoners to supervision of children described above. However that may be, staff of very high quality are also found in these departments, in general very aware of the particular nature of their young patients.

On the other hand, as far as police custody and detention of illegal immigrants are concerned, there are no staff especially devoted to the management of children. It is true that for the detention of illegal immigrants (and in waiting areas) the officers are already specialised in dealing with foreigners, by virtue of their membership of the border police (PAF). However, no special selection is made among the police officers and soldiers of the gendarmerie responsible for police custody when minors are implicated in the commission offences (the same does not apply when they are the victims thereof).

In contrast, the staff of CEFs are of course entirely oriented to minors by their very nature. However, the circumstance that many of them have very little training in the tasks that they have to handle may be cause for concern – even if this only constitutes a transitional period. This is the price paid for the fact that professionals took a dim view of young offenders’ institutions from their very inception and few of them applied to work in them; moreover their reputation has not encouraged vocations. Tutors appointed by the management from a very wide range of professional backgrounds are thus still found in them today, even in the most recently opened institutions.

Indeed, if there is a common feature of the complete transformation of places of deprivation of liberty over the past several decades it is certainly the fact that, whereas they traditionally operated with interchangeable staff in a very self-contained manner, they are
henceforth open to personnel of different kinds, bringing their assistance to the initial core staff of supervision and health care.

It is well-known that since the Act of 18th January 1994, the staff of public hospitals are responsible for health care in the prison environment. This competence was naturally also extended to prisons for minors as well as detention centres for illegal immigrants. General practitioners and nursing staff therefore provide health care for imprisoned and detained children, presenting the advantages of the hospital environment (here once again, highly-motivated volunteer medical staff are in general to be found) but also the organisational shortcomings of these institutions. Alongside noteworthy successes (a “children’s wing” in which two child psychiatrists each come once a week to provide mental health care), for example, there is often a shortage of psychiatric care.

The same motivation has long been shown by the teachers in charge of each prison educational unit (ULE), who are seconded by the administration of the national education system and teach courses, as already mentioned, to minors (and to adults besides).

Since the act of 9th September 2002, tutors from the judicial youth protection service go to penal institutions in order to provide their assistance to minors. This change did not take place without negative reactions, based once again upon the grounds that there cannot be any place for tutors within a “closed environment”. With the passing of time, these criticisms have become less pronounced. In any case, it is unquestionable that their contribution is extremely positive, as seen for example in the meetings of “multidisciplinary” committees for children’s wings, which endeavour to assess what becomes of children in prison.

Finally, mention should be made of the efforts that make it possible to facilitate working visits by exceptional actors, who often bring their artistic or cultural talents, within many places of deprivation of liberty that accommodate children. By way of contrast, one might regret on the one hand the inactivity that weighs upon detention centres for illegal immigrants and, on the other hand, the insufficient provisions in certain prison nurseries, where women can live with their children until the latter reach the age of eighteen months, in particular on the part of private managers.

A dynamic relation between these various professionals was deliberately sought within EPMs, while placing the life of these institutions under the double responsibility of the prisons administration and the judicial youth protection service, both closely associated with the national education system. Due to incomprehension or rivalries, these dynamic relations have not always been established. In cases where such relations have been in operation the results are positive, in spite of difficulties.

3. The Necessarily Uneven Effects of Confinement

The various different forms of confinement are difficult to assess, each having their own history and specific principles. It is equally difficult to choose between two attitudes: one which disputes any positive results arising from confinement, in which case the latter should be totally prohibited; the other which enters into the logic of designers of systems of confinement and attempts to measure whether the results thereof live up to the original intentions. It should moreover be stated that the spirit in which the contrôle général works does not lead it to determine the best possible way of dealing with young patients and juvenile delinquents. On the other hand it is incumbent upon it to identify and denounce any violation of their fundamental rights: it is perfectly clear that vigilance is the rule with regard to children, if anything, more still than for adults.
3.1 The Opposition between Confinement and the Interests of the Child

In the minds of our contemporaries, legitimately concerned with their security, confinement is frequently considered to be a relatively tolerable condition, which can easily be likened to a sort of long holiday, admittedly coerced, but restful nevertheless. Children, by their nature more carefree, lacking any family responsibilities, accommodation to finance or employment to take care of outside, are considered to be even better off in such circumstances.

This naïve and, to put it plainly, preposterous view is completely unfounded. However, it is able to endure because its lack of basis is hidden and cannot be revealed. Indeed, apart from for close relations (and even them) and professionals nobody can say what confinement is, although everybody is able to talk about it. For all that, one does not have to spend a great deal of time in a place of deprivation of liberty in order to discover the weight of a twofold constraint: that of collective life and its rules, and that of one’s fellows (co-confined) and their rules.

Although, in a certain manner, children are able to submit more easily to new collective rules of life, they cannot without harm endure relations with others that are largely based on relations of force and threats, dissimulation and ulterior motives, self-seeking friendship and detestation without any reason.

Without it being possible to generalise in this respect, it is true that in places of punitive confinement at least, many of them become deeply desocialised. Some of them suffer from deep maladjustments, including in the form of mental illnesses. To the question of whether such difficulties may be solved by the solution of confinement, good sense leads to a negative response.

As is well-known, these are the reasons which led the legislature of 1945 to give priority to education in calling upon juvenile court judges, as we have seen, to pronounce as a rule “measures of protection, assistance, supervision and education”\(^{351}\) and, only exceptionally, “juvenile sanctions” for the youngest and sentences for the eldest.

The question of whether this choice should be called into question does not arise, as is often asserted, from the nature of delinquency, or its prevalence, or the increasingly early age at which offences are said to be committed.

Such calling into question could only arise on two correlated grounds: the educational choice is unable to overcome the rapid expansion of delinquency; whereas the “penal” choice for its part is likely to overcome it.

Without going into the debate on the former reason, which regularly mobilises more energy than it does specific analyses, it should be noted that little effort is made to prove the second. By way of example, in one annual report we mentioned a parliamentary report which praised the “conclusive” results of young offenders’ institutions, while no data was (then) available enabling the least assessment thereof\(^{352}\). One might give endless illustrations of this kind and recall the general conviction that punitive confinement solves outstanding security problems. Although there is little doubt that it temporarily and visibly settles such problems by removing persons who commit offences and serious crimes from society, what happens after the sanction? This question is all the more pertinent for minors since their sentences are shorter and their personalities in course of development.

\(^{351}\) Article 2 of the aforementioned statutory instrument of 2nd February 1945.

3.2 Ill-Being

Places of confinement constitute an ordeal for children, whatever their age. At least this may be assumed with regard to very young children living with their mothers in prison for the first months of their existence. It is true that immediate separation would probably not be a more desirable solution. For this reason, in his report for 2010 the Contrôleur général called for the granting of either parole or deferred sentences for imprisoned mothers who were about to give birth.

With regard to children imprisoned in both EPMs and children’s wings, most of whom are between sixteen and eighteen years of age, one cannot fail to be struck by the inability shown by a certain number of them to find any means of expression other than violence and unpredictable reactions to events. In the short study submitted in the contrôle général’s report for 2009 on security and violence, it was pointed out that out of forty-nine assaults on prison officers studied, in which the assailant had been identified, eighteen (more than a third) were imputable to minors and thirteen to “young adults” (18-21 years of age). Conversely, of course, as age increases the risk of assault on staff falls sharply. The same applies to assaults recorded between prisoners. Out of thirty-four in which the assailants were known, seventeen involved minors (that is to say half), and three involved young adults. Among the prison population, age is a decisive factor with regard to violence.

It is understandable that under these conditions prisons for minors do not enjoy a good reputation among staff. Even in a well-managed institution of this kind serious incidents can occur, such as a riot, thus described by the secretary of a local trade union: “They were throwing everything out of the windows: TVs, brooms, rubbish bins, buckets”; a fact which led another to assert that “Prisons for minors are like pressure-cookers”. The officers, whose patience and competence we have already mentioned, become worn out: “We are always being asked to do more with fewer resources” one of them points out. Out of thirty-six tutors, four were on sick leave or posted to other departments, while a third were temporary staff without any prospect of permanent recruitment… The educational team nevertheless takes care of its duties, but exhaustion is common.

The ill-being of these young people admittedly dates from before their committal to prison. But does prison abate it in any way? In other words, cannot confinement in prison be something other than this punishment which only intensifies pre-existing tensions?

3.3 Fragmented Lives

Making proper provision for dealing with minors, not only juvenile delinquents but perhaps also patients, if their families are to be believed, is rather like attempting the impossible.

The fragility of the personalities in question, and (often) of their close relations, absence of stability in their condition, irregularity of school attendance and the fragmentation of their existence manifested in repeated exclusion from life in society, should lead to an understanding giving these children the continuity, stability and peace of mind necessary to the acquisition of

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354 Ibid. p.147.
355 La Dépêche du Midi, 10th May 2011.
356 Libération, 20th April 2011.
357 Marseille, Thursday 2nd October 2008.
resolute behaviours, based on clearly identified values. However, to the precipitate pace of disrupted existences there often corresponds a series of equally rapid solutions, which are not followed up.

This concerns the children that may be ranked among the minors the most in difficulty, since confinement has to be envisaged. This is shown, for example, by the circumstance that three quarters of those placed in young offenders’ institutions have already had several convictions at the time of their committal and that “the persons committed to CEFs – as well as to prisons moreover – are most often adolescents combing both serious educational disadvantages and family, social and psychological difficulties”.

However, the often-mentioned “disruption” affecting these children’s lives also affects the measures provided for dealing with them to an equal extent. It is not the staff that are here in question, but the institutional organisation. A child, placed in an educational home proves troublesome, rebels, commits petty thefts, experiences police custody and appears before a juvenile court judge. They will be moved, placed in a secure young offenders’ institution. If their misdemeanours continue, they will be placed on probation, and ultimately placed in a young offenders’ institution. From there, if they run away or commit an offence, the placement can be revoked, as provided for by law, and the minor imprisoned in an EPM. If they are unruly, they may be transferred to the children’s wing of another institution. These children’s lives are accompanied by instability. However, on top of this, in spite of the tutor from outside of the institutional environment charged with following the child’s development, they will be confronted at each stage with different people, distinct educational methods, and possibly changing assessments of their personality and behaviour. There will not necessarily be consistency, nor long-term assessments of their development.

These “sections” are all the more fragmented and separate since, as far as confinement is concerned, the periods are short, something about which one cannot complain. Although placements in CEFs are for six-month periods which may be renewed once, a third of children stay for less than three months, another third stay for between three and six months, while the final third stay for more than six months. In EPMs, the average lengths of stay noted at the time of inspections are shorter: from three to four months on average. The same applies in “traditional” prisons. This is precisely where the paradox lies: how can instability be resolved by means of instability? In other words: lengthening the time of detention is obviously out of the question. But a high degree of coordination between these short periods it is then absolutely essential. There is no such coordination. Or, to express the idea in a more illustrative manner, let us state that, during its inspections of young offenders’ institutions, the contrôle général has encountered children who had been placed in them for almost a year and who, when questioned, said that they had found a form of happiness and stability there but had no illusions about the fact that this period could only be a momentary interlude in incessant chaos.

This “chopping up”, if this trivial expression may be used here in order to get the idea across, is all the more pronounced in that each episode in the sequence has no means of continuity with regard to the next. It is striking to see the extent to which young offenders’ institutions and prisons lack information on what becomes of their former inmates. The manager

359 First paragraph of article 33 of the statutory instrument of 2nd February 1945.
360 The excessive workload of these tutors does not make regular follow-up easier.
361 According to Messrs PEYRONNET and PILLET (report cited above, p.16). However, these lengths of stay do not correspond to those noted during inspections by the contrôle général. Although it is true that certain CEFs base their policy on non-renewal of the custody period at the end of the first six months, they are far from being in the majority.
of one institution stated that their only source in this respect was provided by the post cards that certain grateful children sent to them after their release. This is not of any help whatsoever in assessing what happened before, during and after and the stay and further increases the discrepancy that can exist between the various different stages of dealing with the child. It is even difficult to establish a record of what happens at any given period, due to the pressures of events and lack of time available to staff. For example, the inspections conducted by the contrôle général have made it possible to establish that the document on individual measures for dealing with young offenders (DIPC / document individuel de prise en charge), provided for by the law, is completed in a very uneven manner. Recollection on the part of adults is nevertheless essential to the formation of children.

This picture of successively disjointed measures applied to juvenile delinquents could also be used to describe the situation of children suffering from mental illness. A succession of hospital stays of short duration can also come after a string of different types of care and treatment and before still other different approaches for dealing with them. Once again, the competent practices of professionals, who do what they can in situations that they do not control, are in no way at issue here. Families are well aware of this circumstance.

3.4 Difficulties of Assessment

The principle should be laid down that it is extremely difficult to measure the “success” or “failure” of confinement and that the criterion of whether delinquent acts are repeated (but which are never actually the same) cannot in itself constitute the only yardstick of failure.

All professionals warn against the risk of hasty and summary assessment, made on the basis of perfunctory, obvious and direct evidence. Indeed, it is quite true that the education of children contains a great many elements that are invisible and deferred.

Let us try to prepare the ground for reflection.

In the first place, should education be considered impossible in a closed environment? If, by a negative response to this question, one means to assert that optimal conditions of education are not present in prison and in CEFs, one is certainly in the right. However, if one asks, taking the opposite question so to speak, whether there should be education in places of deprivation of liberty, the response should be affirmative. In order to illustrate the significance of these considerations, a comparison with health care seems to be called for. Nursing staff and general practitioners working in prison often recall, for good reason, that prisons are not places of treatment. By this, they mean that provision of health care and treatment for a person can only take place under the best conditions in hospital or in a place offering equivalent guarantees (medical practice etc.). For all that, prisons contain persons suffering from injuries to whom immediate medical assistance has to be given, as well as persons who have to be granted therapeutic treatment, although it is not considered necessary to remove them to hospital. The same applies to education. It takes place with parents who are endowed with values and available on the one hand, and with teachers trained in an establishment reserved for this purpose on the other hand.

However, there are children deprived of liberty who, in their confinement, have neither parents (who have sometimes long been absent) nor school. Should their stay nevertheless be considered a “gap period” where no educational action can or should be undertaken? The response is negative for two reasons. On the one hand, it is necessary to educate for the collective life, which is so specific and has such restrictive rules, that is life in a closed environment: the very possibility of that life depends on it. In this respect, EPMs, with their life units and meals in common, are *volens volens* more “educational” than “children’s” wings with
their individual cells and joint work between warders and tutors is necessarily educational. On the other hand, the obligation of compulsory education remains and even the “value of schooling”: this is true to such an extent that teachers have long been present in prisons. The value of educational elements provided during periods of confinement should be acknowledged.

Can such elements be to the advantage of all without distinction? Although, as mentioned above, confined children (except in detention centres for illegal immigrants) have every chance of presenting difficulties in schooling and in their relations with others, this in no way means that they constitute a homogeneous category. They require education which has to be personal and multidisciplinary, which moreover renders a fruitful approach to each of them very costly. The need for this individual approach is reflected in the difficulties of assessment. As already pointed out, criteria that are too perfunctory are liable to be misleading: on this point, educational work in a closed environment is not so different from that of a street educator. The circumstance that, during their time in a young offenders’ institution, a child may have been enrolled at a nearby ordinary secondary school does not necessarily mean that they have made a more decisive effort than another child who, during the same period, simply succeeded in deciding to start speaking to their father again. Assessment of educational efforts in closed environments, as elsewhere, can only be done over the long-term, and this is precisely what is lacking today.

In reality, as every professional knows very well, for these imprisoned young persons as for many of their fellows, the question is not that of building an educational foundation on virgin soil devoid of any construction. It is rather that of helping the child in choosing between positive behaviours and other types of asocial conduct which they have often considered to be to their advantage. Running away, consumption of alcohol or drugs, putting pressure on weaker persons in order to take advantage of them and belonging to one “gang” at the expense of another are all commonplace examples. In this respect, places of confinement do not always function in the manner intended by their designers. They are places of very intense confrontation, not necessarily between individuals, but unavoidably between social values. Determining which will win is a process which recommences on a daily basis for professionals. Moreover, because of the nature of this closed world, where everybody observes and is dependent upon others, the demands placed upon professionals (tutors, warders, teachers, medical staff, police officers etc.) are much heavier than in an “open” environment. Is this sufficiently taken into account? In any case, this perhaps provides one of the most reliable criteria for the assessment of progress made in these closed places: that the most generally accepted values in contemporary exchanges between human beings are, to a greater or lesser extent, permanently assimilated by the child present.

* The question of the “closed child” (the child placed in a closed environment) should always remain shocking. As stated in the Convention on the Rights of the Child, it should be the measure of last resort. This means that it should never be used immediately, before all of the other possible forms of protection and education have been exhausted. The confinement of children can therefore only remain marginal, whatever the age of the child.

Progress can certainly still be made on this issue in France. As stated by the contrôle général in its report for 2010, minors should not be placed in places of detention for illegal immigrants and all families that have to be removed from the country with children under eighteen years of age should be placed under house arrest without further formalities. The stages

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362 “€640 per minor and per day on average” in young offenders’ institutions, according to Messrs PEYRONNET and PILLET (op. cit. p.14).
363 This conclusion is not only the consequence of lack of resources; the need to avoid being too intrusive into the personal life of children is a brake which should be taken into consideration.
of response to illness or delinquency should be increased in number before confinement in variable forms. Innovation is necessary in this direction rather than lowering the age of criminal responsibility, which is already low enough, or increasing places of confinement. In this respect, the development of young offenders’ institutions as an alternative to prison is not a bad choice, although other solutions should obviously exist before children are sent to them. Thus parental support does not appear to be very extensively developed in France: that which exists is provided by associations for children in distress and provides an example which could be followed.

It is also necessary to restore relations, develop networks and encourage continuity between different programmes and within the same programme, between professionals making their respective contributions to the education of the child. Far too many feel abandoned. None of them should be.

However, above all, public opinion needs to be convinced that confinement cannot be a fixed and long-term response to children who go astray. Children who stray from the right path are not wild animals to be brutally attached to the pillory. Short-term imprisonment needs to be reconciled with long-term education. This is the most formidable paradox of the confinement of children.
Section 8

Assessment of the work of the Contrôleur général des lieux de privation de liberté in 2012

As in previous years, in the course of 2012, its fifth year of activity, the contrôle general endeavoured both to strictly maintain the quantitative and qualitative requirements of its work, and to continue to devote attention to the improvement of its working methods. It is aided in this regard by its relations with those who come within its field of responsibility, that is to say persons deprived of liberty. These persons are often in distress and write or speak without patience, having reached the limits of their resources in this respect. They place great importance upon the keeping of one’s word and the fulfilment of undertakings made. Although they are not averse to words of encouragement, they find it difficult to content themselves with them. They also have some difficulties in understanding the limits of the contrôle général’s role, such as the fact of only being able to make recommendations to the authorities and not being able to interfere in judicial proceedings. Their reactions, apart from the fact that they call for further action on the part of the inspectorate, constitute the latter’s most useful source of “discomfort”.

The aim of this section, as in previous years, is to set out all of the aspects of the institution’s work. Without openness there can be no independence and openness is impossible without provision of information. Since the contrôle général is not subject to government control, or to any higher authority, it is incumbent upon it to “give an account of its administration” to the general public, to paraphrase article 15 of the Declaration of the Rights of Man and of the Citizen. It does so in this report, by successively examining the question of its relations with the authorities and assessing the two aspects of its work (cases referred and inspections), its resources and its action at the international level.

1. The Act of 30th October 2007: Towards an Amendment?

1.1 Principles that should be considered established

From the moment that the institution’s independence is established (which was the case at the outset), time has the effect of a virtuous circle for the inspectors. Indeed, experience provides them with ever greater insight into the various aspects, whether positive or otherwise, of the state, organisation and operation of places of deprivation of liberty. Instinct and deduction, methods of investigation and different understandings of the reality are consolidated by the ever increasing number of inspections completed and the drafting of reports. The recruitment of a photographer in the capacity of an inspector has made it possible to add images to written expression, enabling the establishment of a very extensive database. The growing number of cases taken up – even if their content should be taken with caution – increases the availability of information, often in an immediate manner, with regard to a large number of places of captivity, particularly prisons and places of detention of illegal immigrants. The inspectorate has long since served its apprenticeship.

364 Cf. article 9 of act no. 2007-1545 of 30th October 2007 instituting the contrôle général.
At the time of writing this report, the approximate time spent collectively by the inspectors in the various places inspected can be set out:\footnote{365}{By multiplying the average length of time spent in each institution (see below) by the average number of inspectors per assignment and the number of institutions inspected.}

- two years in police custody;
- nine years in prison;
- three and a half years in hospitalisation;
- ten months in young offenders’ institutions;
- one year and three months in detention for illegal immigrants.

This is only an image, of course. It is simply intended to provide an illustration of the skills acquired.

Comparison with other international experiences also increasingly justifies the redoubling of a number of convictions, which are an integral part of a practical approach that is inseparable from effective action. Some of them have been written down in the law. Seven of them are set out below.

The first is the requirement for liberty of movement in these places where it does not exist.

Arriving at any time, meeting any person that it appears useful to interview, consulting any document (except those falling within the areas of secrecy to which the law denies access to the contrôle général\footnote{366}{Cf. fourth paragraph of article 8 of the act of 30th October 2007.}) and freedom to move around without restriction within the institutions inspected are permanent requirements and tribute should be paid to the persons in charge of these places for submitting to these demands, with good grace\footnote{367}{Certain managerial structures are more reluctant than others to accept these requirements. In the national police force, in particular, many senior officers insist on “accompanying” the inspectors, in spite of the terms of the circular from the Interior minister of 23rd September 2003 (cf. § 2.3 thereof).} whatever their feelings may be, in a general concern for openness in relations with the inspectorate. It is true that the opposite would be so directly contrary to the law that it would unfailing give rise to immediate and very firm reproaches to the ministry concerned.

The second is the absolute necessity of consulting the various different parties involved with regard to the collection of information, in particular as far as declarations made in the course of interviews and assertions read in letters are concerned.

The need to assess the real situation in places in which, by their very nature, information does not circulate under the best conditions, where face-to-face “captive—officer” relations facilitate subjective interpretations and reputations are durable in character\footnote{368}{For example, the necessity has already been emphasised of paying attention to the nicknames with which prisoners saddle the warders in penal institutions.}, makes the corroboration of statements and the verification of information from several sources essential. As the months have gone by, the circle of persons whom the inspectors consider it essential to consult has grown. They include not only the “users” and staff of the institutions, but also third parties in relation to these institutions, whose point of view, though admittedly often partial, is nevertheless indispensable.

The third is the confidential character of information collected and interviews conducted.
Fortunately, the law imposes secrecy upon the members of the contrôle général\textsuperscript{369}, except as insofar as the publication of inspection reports is concerned. With the exception of one blunder, which quickly became known and whose consequences were small, no inspector has ever departed from this requirement. It sometimes disconcerts state employees, whose corporate mentality facilitates confidentiality, particularly between officials of the same corps or the same affair. It provokes incredulity on the part of captives, whose statements are so easily used in order to establish their personality and fix the regime that should be applied to them: some of them entreat the inspectors not to repeat anything of what they agree to say (or shout). However, the inspectors’ convictions and practices in this regard are unshakeable: complete confidentiality of the information confided by officers and persons deprived of liberty is maintained and reminders are issued periodically on this issue\textsuperscript{370}.

The fourth is the length of stay in the institutions inspected.

The reality of this factor will be seen below. The inspectorate very quickly became convinced that the richness of the information collected was increasing more than proportionally with the passage of time. This is not only attributable to the fact that, as the days go by, more people are encountered and more documents consulted. It also results from the circumstance that, with the allowed times, the persons involved become used to the inspectors, who become a part of the functioning of the places; reservations are resolved; the “official” information copiously given at the outset becomes more selective and pertinent through the filter of effectiveness provided by the testing of norms in practice. In an international discussion in 2012, the inspectorate’s correspondents asserted that it was pointless to remain within an institution for long when the latter shows obvious evidence of treatments contrary to fundamental rights. The contrôle général holds the opposite conviction. The measurement of phenomena requires time in places where a great many things are passed over in silence, in particular when they are awkward to say. Moreover, once phenomena have thus been measured, the causes thereof still need to be examined, in keeping with the preventive nature of the work conducted by bodies such as the institution that here submits its report to the reader. Indeed, the denunciation of abuses is not enough; the recurrence of situations contrary to fundamental rights needs to be prevented.

The fifth, which has often been stated, to the point that we will content ourselves with simply mentioning it, concerns rigorosity.

This concerns the meticulousness which the inspectors have to show, on the one hand, in their conduct during inspections (compliance with security regulations at least up to the point that the necessary information is not thereby compromised\textsuperscript{371}), showing respect for persons whoever they may be and, on the other hand, in collecting the information that they need and, finally, in giving an account of their assignments in an impartial manner.

The sixth concerns the need to apprehend the whole of the factors that influence the existence of good or bad conditions of deprivation of liberty and, to this end, the need to examine the working conditions of staff in particular.

It is necessary to conduct interviews with officers with the same seriousness as with persons deprived of liberty and practical analysis has to be undertaken of existing rules, as well as changes to and departures from the latter. Moreover, data such as levels of absenteeism and numbers of industrial accidents and their causes are just as important as the number of

\textsuperscript{369} First paragraph of article 5 of the act of 30\textsuperscript{th} October 2007.

\textsuperscript{370} For example, to certain inspectors who, while returning from an inspection, inadvertently conversed about the latter while on public transport.

\textsuperscript{371} In an internal plenary meeting in the course of the year 2012, the inspectors discussed the point of determining whether it was acceptable to conduct an interview with a prisoner, regarded as “dangerous”, who was brought to them handcuffed and attached to a piece of furniture in the room.
complaints originating from an institution and the number of persons who request to meet the inspectors, as far as description of the operation of an institution is concerned.

Finally, the seventh concerns the vigilance with which the commencement of each inspection has to be approached, the need to avoid routine, the appropriateness of continual questioning on the working methods of the institution and the necessary improvement of data acquisition.

The monthly meetings at which all of the inspectors meet and the annual seminar which was organised in 2012372, as in the two previous years, are far from being of secondary importance in the life of the institution. They are a means of regularly raising questions about practices and gaining a better understanding of the essential issues. They also ensure the consistency of the practical approaches used. They back up the inspectors in the fulfilment of their duties, which is not always an easy task.

1.2 Issues that should be considered as leaving room for improvement

The passage of time has also brought out a number of inadequacies and shortcomings and highlighted the need to broaden the contrôle général’s field of authority. Here we will give a number or elements which led to the writing of a draft bill last spring, which was passed on to the Prime Minister in May 2012.

1.2.1 The Scope of the Activity of the Contrôleur général des lieux de privation de liberté

In the first place, the question should be raised of extending the protection provided by the act of 30th October 2007 to new populations exposed to violations or, above all, to risks of violation of their fundamental rights, by means of inspections and the taking up of cases by the contrôle général.

The law defines the scope of the activity of the contrôle général as being the deprivation of liberty, when such deprivation results from a “decision by the public authorities”373. This, of course, includes court decisions with regard to applications for placement in detention and committal orders to closed establishments as well as (in the case of senior law-enforcement officers) placement of persons in police custody; as well as decisions made by administrative authorities in the field of the detention of foreigners and treatment without consent. Whenever a decision leading to deprivation of liberty is made by one of these authorities, regardless of whether it is taken in accordance with legal requirements, the Contrôleur général des lieux de privation de liberté is competent to take cognisance thereof without further formalities.

Conversely, initiatives on the part of private persons leading to de facto deprivation of liberty cannot give rise to action on the part of the contrôle général. One might think, for example, of the activities of employees of private security firms.

In this respect, a large population exists for which the risks of violation of its fundamental rights are far from negligible: these are the elderly persons placed in institutions for their accommodation, and the EHPAD retirement

372 The seminar was held in the premises of the Economic, Social and Environmental Council of France (Conseil économique, social et environnemental), whose President insisted on personally welcoming the members of the contrôle général.

373 First paragraph of article 8 of the act.
homes in particular. The extension of the contrôle général’s field activity to this population comes up against four serious obstacles.

The first of these – as has just been noted – is the fact that placement in one of these institutions is not attributable to any decision by a public authority. Not only are such decisions always made by private persons but it must be admitted that in certain cases it may be the elderly persons themselves who apply for admission. On the face of it, it is difficult to imagine that somebody who has requested admittance to a place of accommodation could be in the position of a captive. Moreover, although such decisions are often taken by close relations, this does not change the nature thereof in the context of the question raised here: only private persons are involved.

The second concerns the reality of the deprivation of liberty. In theory, no restrictions on coming and going are applicable in institutions for elderly persons. Some stay in such institutions for periods of a few weeks, at the time of holidays in particular. There are no obstacles to admission to or discharge from such establishments. Furthermore, the most commonplace image of these institutions does not associate them with deprivation of liberty.

The third concerns the current scope of the contrôle général’s activity. The populations falling within its field of competence have points in common. The older members of our society are different cases. Their condition is attributable to their age rather than their being responsible for some act which might have led them to break the law or threaten public order. It might be thought illogical and even rather disrespectful towards these persons to associate them with those that the contrôle général deals with today.

The fourth arises from the scale of the problem. Assuming the scope of activity of the inspectorate were extended, a considerable increase in its resources would be required in order to maintain its effectiveness unchanged, in view of the large number of institutions concerned and their inmates. An extension of this kind is obviously not opportune in the current period.

These considerations are respectable. They have their price, but they should not be allowed to determine the decision on their own.

With regard to respect for fundamental rights and to the prevention of cruel, inhuman and degrading treatments in particular, it is necessary to refrain from any institutional perfectionism and act with the greatest possible effectiveness.

On the one hand, elderly persons are increasingly numerous and often in a delicate state of health and, on the other hand, the staff in charge of them, who are often exemplary, are far from having the qualifications of hospital nursing staff for example. The languor of repetition (induced by the state of health in question), levels of tiredness among staff who are sometimes insufficient in number, the thankless nature of the tasks to be accomplished and the difficulty of dialogue are possible sources of excesses.

The authorities have obviously long been aware of these issues. Risk prevention plans have been initiated. These issues are principally taken into account on the basis of the self-discipline of professionals, to a far greater extent than the possibility of inspections. In addition, numerous actors are involved (territorial authorities).

However, there exist no on-site reporting tools (except in case of reprehensible events which justify the organisation of inspections).

Retirement homes for infirm elderly people (Etablissement d’hébergement pour personnes âgées dépendantes).
In short, the situation of EHPADs today is closely comparable to that of prisons and/or psychiatric institutions before the institution of the contrôle général. The beneficial effects of the contrôle général (inspections and, beyond this, the possibility of inspections which is enough to change practices in itself) have not been extended to institutions for elderly persons.

However, the latter and most of their close relations – of whom, each probably has direct or indirect experience of this issue – live with concerns, whether or not founded, about the real manner in which their elders are treated in these institutions. These concerns, which may be legitimate and cannot be ignored lightly, would be greatly alleviated by the institution of a body able to conduct inquiries into cases that could be referred to it and carry out detailed on-site inspections. Such a body exists.

Not only does it exist, but the acquired experience set out at the beginning of this section places the contrôle général in a position to be able to guarantee the effectiveness of its action. Indeed, from the point of view of the protection of fundamental rights, the manner in which inspections should be conducted within institutions for elderly persons is no different from those which have been conducted until the present time in some six hundred and sixty separate institutions. Although the aim may be different, there is no call for any difference in methods of investigation, in particular with regard to the exercise of the seven “convictions” recalled above. Of course, there are specific issues to be taken into account, such as dialogue with very elderly people. However, the scale of these differences is no greater than that found in the specific characteristics of the various different categories of places that the contrôle général already inspects.

Moreover, the arguments against the contrôle général playing a role of this kind, as set out above, do not carry great weight when examined attentively. A decision by a public authority? This is a formal distinction, though obviously important, to which changes can be made by amendment for practical reasons, provided that the scope thereof is very precisely defined. The reality of deprivation of liberty? Complete realism is required on this point, in the very interest of the protection of persons. It is perfectly clear that many elderly or very elderly persons are not authorised to leave their accommodation because, lacking adequate capacities, they would be taking too many risks by going outside. The mixing of populations? The current scope of activity of the contrôle général already includes foreigners who do not have residence permits, offenders and patients suffering from mental illness, who all share the common point of de jure or de facto deprivation of liberty to come and go. Expansion of the contrôle général’s resources? The public authorities will have control of any such expansion and much can already be done with existing resources. None of these reasons, which for the most part come within the bounds of administrative common sense, should be allowed to prevail over a human requirement whose dimensions are not set to decrease over the long-term and to which, as from the present time, it is possible to provide a response.

1.2.2 The question of referral of cases

We will, of course, return below to the assessment of the cases taken up by the contrôle général in 2012. Here we want to examine the framework within which they are defined by the act of 30th October 2007.

A specific provision of the act (its article 6) is devoted to this issue. It entitles a certain number of natural persons and corporations, as well as authorities, to refer matters to the contrôle général. Such is the case for any natural person, bodies whose purpose is to ensure respect of the fundamental rights of persons, the Prime Minister and ministers, members of Parliament and the Défenseur des droits ombudsman.
This is the sole exposition that the act, which thereby supports petitioners, devotes to the referral of cases to the inspectorate. On the other hand, the act is totally silent about the obligations and rights pertaining to the contrôle général with regard to the referral of cases, contrary to its provisions concerning inspections (articles 8 and 9). For their part, the rights and obligations pertaining to persons concerned by cases, by virtue of the referral thereof, have to be sought in other texts: the prisons act of 24th November 2009 protects prisoners’ correspondence\(^{375}\) with the inspector; article L.3211-3 of the public health code enables persons, with regard to whom measures of total hospitalisation without consent have been taken, to bring any circumstance to the attention of the contrôle général that comes within the latter’s competence\(^{376}\).

It can of course be inferred from the act of 30th October 2007 that its provisions of a general order also apply to cases referred. For example, the obligations of secrecy incumbent upon the members of the inspectorate (article 5) therefore naturally apply to the “inquiring” who read letters received\(^{377}\). Similarly, the Contrôleur général des lieux de privation de liberté can, of course, draw upon the cases referred and dealt with in the proposals, recommendations and assessments that he makes: there are no restrictions in this regard\(^{378}\).

However, these legislative provisions deal to a large extent by paralipsis with issues that the inspectorate has to handle in practice with regard to cases referred to it.

In the face of this discretion on the part of the texts, in association with the administrations – to which tribute should be paid for their flexibility in adapting to these new burdens\(^{379}\) - the contrôle général has defined the obligations incumbent upon it.

To this end, as mentioned in previous reports, the contrôle général has therefore:

- Implemented a system of inter partes collection of information whenever a case is referred which so justifies: indeed, it appeared impossible to credit the content of each case referred without first approaching the persons concerned in order to collect their analysis of the facts; this often involves the heads of institutions as well as doctors\(^{380}\), teachers\(^{381}\) and social workers, or several of these persons.

- Continued this inter partes collection of information until the contrôle général manages to get as precise an idea as possible of the circumstances under which cases have been referred to it. Exchanges can therefore take place in several stages. In cases where correspondence does not appear sufficient, the contrôle général accepts the possibility of going to the site to verify the occurrence of the facts, and the manner in which the administration responded to them, on the

\(^{375}\) As well as prisoners’ telephone conversations with the inspector, notwithstanding some difficulties on the part of the prisons administration in accepting this principle (cf. Reports of the Contrôle général for 2009, p.13, and for 2010, p. 261).

\(^{376}\) However, it is highly regrettable that this provision does not envisage the confidential nature of the referral of cases. Although relations between medical staff and patients are not of the same nature as those existing in prison, one can only note that, by virtue of the law, greater guarantees are provided for prisoners than for patients. It would therefore be judicious to add the phrase “in a confidential manner” to this provision of the public health code.

\(^{377}\) Few of the inspectorate’s correspondents ask to remain anonymous. However, anonymity is strictly respected in all cases, with the exception of situations in which the persons referring the case expressly demand that the matter be taken up with the authorities.

\(^{378}\) Conversely, it is clear that referral of cases to the State Prosecutor’s Office and to disciplinary authorities by the contrôle général, provided for under article 9, can only arise from inspections. This is highly regrettable. This restriction does not have any consequences with regard to the use of article 40 of the code of criminal procedure, which remains applicable, pursuant to the very text thereof. The same does not apply to the possibility of transferring cases falling within the field of disciplinary sanctions.

\(^{379}\) Notwithstanding some trade union reactions which, it might be added, have disappeared for the time being.

\(^{380}\) As was the case, in 2012, with regard to events that occurred in two detention centres for illegal immigrants.

\(^{381}\) For example, in a case concerning access to a correspondence course.
basis of the actual evidence: this is the purpose of the team of “inquirers” to which, as will be seen below, the inspectorate was able to add two new recruits in 2011-2012.

- Decided, if need be, to bring the comments to the attention of the administration that are called for by the administrative handling of the cases thus raised. In general, these remarks are passed on to the head of the institution, but where appropriate they may also be given to national managers. The on-site inquiries produce more detailed reports which, in principle, are sent to the institution concerned. Until now, none of these reports had been published. For this is the reason, for the purposes of the openness that it has often demanded, the contrôle général publishes one of them, concerning IT in prison, in this report.

The system thus set out does not call for any major corrections. However, with regard to the need for connections between the contrôle général and the wider public, it appeared that this mode of operation should be made explicit by being specified in the act of 30th October 2007.

These convenient relations between the institution and those who may refer cases to it go hand in hand with legal requirements. The handling of referred cases creates obligations towards third parties. The law should deal with this question expressly. In particular, the draft bill provides for the possibility for the Contrôleur général, as far as cases taken up at the time of inspections of institutions are concerned, to give formal notice to the managers thereof to pass on the documents that he requires subject, of course, to the provisions of the current fourth paragraph of article 8 of the act of 30th October 2007, concerning protected secrets. With regard to the latter, however, the draft bill elaborated includes provisions to make medical secrecy more flexible, in case of suspicion of ill-treatment, according to very precise conditions, which are more restrictive than those set out in the institutional act (loi organique) of 29th March 2011 in favour of the Défenseur des droits ombudsman. With regard to the secrecy of investigations and preparation of cases for trial, which should remain entirely applicable with regard to the inspectors, the draft bill raises an ambiguous point concerning official records of the end of police custody, which was a source of some difficulties in 2012.

1.2.3 Protection of the Rights of Persons Deprived of Liberty

The draft bill is intended to consolidate the protection of the right of persons deprived of liberty to refer cases to the contrôle général and to be heard by the latter.

In his previous annual reports, the Contrôleur général called the attention of the authorities to the reprisals that can be made against persons who request to be interviewed by the inspectors, those who have been interviewed by him whether or not they so requested, and finally those who may correspond with him, whether in a regular manner or otherwise. He set out the seriousness of this phenomenon before the competent parliamentary committees: this seriousness is qualitative - since the more the phenomenon develops the more the right to refer cases to the inspectorate loses its impact, narrowing the scope of the information at the

382 Cf. amongst others the Annual Report for 2011, p. 271.
383 Section 2 above.
384 As stated in the Annual Report for 2010, the French act of 2007 is highly criticised by the international courts for the restrictions that it opposes to the contrôle général with regard to medical secrecy. Indeed, in their view these restrictions make verification of the existence of ill-treatment suffered by persons deprived of liberty a practical impossibility.
385 A public prosecutor at a court of first instance thought it appropriate to oppose making these official records available to the inspectors at the time of inspection of a gendarmerie.
386 Most recently, in the report for 2011, p. 267ii
inspectorate’s disposal, and therefore reducing its capacity to act\footnote{This way of reasoning is clearly in the minds of those responsible for reprisals: it is a question of determining/establishing, in reprehensible circumstances as far as fundamental rights are concerned, who is “the strongest”.}; as well as quantitative, since failure to suppress a reprisal action constitutes an encouragement to other actions of the same nature and obviously aggravates the effects thereof.

Information received by the contrôle général, which often reaches the latter in an indirect manner but is nonetheless truthful, leaves no doubt as to the reality of such manoeuvres, even if they constitute a minority of cases\footnote{They in no way need to be in the majority in order to have an impact.}: letters opened or intercepted in transit preventing their arrival; threats of dismissal or dismissal from employment; threats of consequences if contact is made with the inspectorate etc. There are many different forms: these intrigues are entirely real and certain persons have very specifically stated (by indirect means) why they avoided the inspectors when they came or why they have given up writing to or telephoning the inspectorate.

A situation of this kind should not be cause for surprise. It is inevitable. It is so much a part of the reasons for the existence of verification institutions such as the contrôle général that article 21 of the Optional Protocol of the United Nations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\footnote{See the relevant excerpts from this text in annexe 6 below.} makes specific provision for situations of this kind by prohibiting these types of behaviour.

As already noted, the legislature of 2007 scrupulously adopted the content of this Protocol, with the exception of this particular article, concerning which France moreover issued a “reservation”, as it is entitled to do under international law.

Acquired experience clearly shows that this reservation and the fact that article 21 of the Protocol was not taken up in the act, in other words the silence of the law, constitute an encouragement to reprisals and their virtual impunity.

Admittedly, it is incumbent upon the contrôle général to deter behaviours of this kind, insofar as it is able, by leaving material providing information about this issue on-site, at the time of inspections in particular. The administrations also have a responsibility to sanction these behaviours, insofar as they are at all aware of them.

However, the law, for its part, should set out clear instructions in this regard as well as effective means of sanction.

The draft bill therefore proposes introducing a provision into the act which directly takes up article 21 of the Protocol, while however including the content of the French “reservation” made at the time of signature of this treaty, in the form of a cross-reference to article 226-10 of the Penal Code\footnote{The French reservation declared that article 2 would be applied, subject to the reservation that it should not constitute an obstacle to the prosecution to which persons who knowingly give false information to the contrôle général render themselves liable. Article 226-10 concerns false accusations.}.

Moreover, it sets out the penalties applicable to persons who obstruct the contrôle général in its duties of investigation. At the same time, with regard to the confidentiality pertaining to mail to and from the contrôle général, as also to telephone conversations with the latter, which results from the act and which a certain number of professional officers stubbornly continue to flout, it should be possible to punish disregard thereof by means of the sanctions provided for under article 432-9 of the Penal Code\footnote{This article concerns violation of the secrecy of correspondence by persons exercising public authority.}.\footnote{This way of reasoning is clearly in the minds of those responsible for reprisals: it is a question of determining/establishing, in reprehensible circumstances as far as fundamental rights are concerned, who is “the strongest”.}
Finally, it establishes an obligation for the State Prosecutor’s Office, to which cases are referred on the basis of article 40 of the Code of Criminal Procedure, and for disciplinary authorities, to which cases are referred in application of the final paragraph of article 9 of the Act of 30th October 2007, to inform the contrôle général of actions taken in pursuit of cases brought before them, according to terms that it is obviously up to them to define. The contrôle général is not unaware of the fact that, with regard to the State Prosecutor’s Office, an obligation of this kind already appears under article 40-2 of the same Code. However, on the one hand, since article 40 was instituted in the act of 2007, it would be better to include the whole of the necessary provisions therein; on the other hand, one can only note that the State Prosecutors Offices, to which the contrôle général has referred the various cases taken up over a period of almost five years, have never informed the latter institution on their own initiative of the actions decided in pursuit of them; yet, it is incumbent upon the inspectorate to verify the effectiveness of these measures since, unlike other parties referring cases, this issue comes directly within the exercise of its duties.

2. Relations with the Authorities and other Corporations

2.1 The Authorities

2.1.1 The President of the French Republic and the Government

In accordance with the tradition established in previous years, the President of the Republic of France met the Contrôleur général on 2nd February 2012, in order for the Annual Report for 2011 to be handed over to him.

The President of the Republic, who was declared elected on 10th May 2012, showed his interest in the issues concerning the scope of activity of the institution by undertaking a general review with the Contrôleur général, with whom he wished to meet, on July 5th of the same year. This interest was shared by several members of the Government, who took steps of the same nature, in particular the Interior minister, as well as the minister of Justice. Comfortable relations were then established with the personal staff of the Prime Minister and of the Ministers which, of course, do not call the absolute necessity for the independence of the institution into question. Decisions were taken in the direction of certain recommendations, as mentioned in the first section of this report (foreign minors in detention; circular on criminal policy of 19th September in particular).

The heads of administrations appointed before or after the spring elections also established relations with the contrôle général in order to be informed of its duties, working methods and common affairs. This was the case with regard to the respective heads of the general inspectorate of legal services, the General Inspectorate of the National Gendarmerie, the general inspectorate of the national police force, the permanent secretary for immigration and the Chief of Police. In addition, the Contrôleur général was heard by the General Inspectorate of Finances (inspection générale des finances) on 3rd of July, on a purely informative basis, concerning his duties.

392 The question should be raised of the contrôle général ’s relations with the regional State administrations (prefectures, Interregional Departments of Prison Services, regional health agencies etc.), which are not directly in charge of institutions and are not involved in elaborating national norms, but which are often allocated a major role. The contrôle général has not had the opportunity establishing direct connections with them; a circumstance which, for its part, it regrets.
Since then the contrôle général has been involved in several projects and events conducted and organised by the Government and the Ministries: such was the case for the conference on the prevention of recidivism (conférence de consensus sur la prévention de la récidive), of which the steering committee was established on 18th September 2012 at the Ministry of Justice, as well as the mission on the situation in Mayotte entrusted to the member of the Council of State Alain Christnacht393. The contrôle général of course sets out its point of view, in complete independence once again, when requested to do so and on the imperative condition that such assessments are not binding upon those that it will have to give subsequently, as part of its natural duty of inspection. In particular, it is incumbent upon it to recall that under the very stringent constraints to which the State budget is subject, whose consequences can be felt in inspections and in subsidies to associations, that as far as deprivation of liberty is concerned, very useful reforms can be made of considerable impact, which bears no relation to their low or inexistent cost; and also to recall that in the choice between two priorities under consideration, that which favours the most underprivileged should prevail.

It should however be mentioned that two difficulties remain unresolved.

The question of the distribution of inspection reports to the administrations, which has been raised for several years, and recalled to the ministers met by the inspectorate, has not yet found a solution. In application of the act of 30th October 2007 (article 9), inspection reports are sent to the ministers concerned. Insofar as they are thus expressly designated, the contrôle général considers that it is not its place to determine whether these reports should or should not be disseminated within the departments, such distribution obviously falling within ministerial prerogatives. However the reports hardly leave the central departments. There is therefore a paradox in the contrôle général’s work: the contacts with whom it deals at the local level (heads of institutions, judges, doctors, officials etc.) remain uniformed of the content of final reports394 which have been considerably enhanced by their own remarks and, in the best of cases, are unable to use them as a resource for their own action. This would nevertheless constitute a tool for multiplying the inspectorate’s influence and increasing the impact of the recommendations made. A routine needs to be established of sending the report (enhanced by the ministerial comments) to local managers, in particular those who come under the judicial authorities, the Interior minister and the minister of Health and Social Affairs.

Above all, the question of the draft bill, whose content has been recalled above, remains entirely pending, whereas there is no doubt that if it is voted by Parliament a marked increase in effectiveness will also result. A text, enhanced by statement an explanatory statement and a carefully elaborated impact study, was sent to the Prime Minister and the Ministers concerned at the end of the month of May 2012395. The question was raised on several occasions with the competent members of the Ministers’ personal staff, to whom the advantages of examination of the draft bill for the Government as well as for the contrôle général were set out. So far without success. The contrôle général does not expect to have the benefit of priority; it is aware of the urgency of legislative affairs; it is similarly aware that legislative power is not its domain…; but it regrets that the central authorities, as they have long since learned to do, remain completely inert with regard to the texts submitted to them as well as the reminders made thereof, even at the risk of compromising the independence of the institution if this inertia were to continue.

2.1.2 The French Parliament

393 Although not for the mission dispatched to the prison of Nouméa by the Minister of Justice.
394 Until their publication, at the initiative of the contrôle général, on its website (www.cglpl.fr), although such dissemination requires a certain amount of time.
395 The text of the draft bill is dated 12th May.
The suspension of legislative activity for several months and the beginning of the fourteenth National Assembly of France had an impact upon the frequency of contact, upon which the Contrôleur général places particular importance, between the French Parliament and the inspectorate.

In particular, although the annual report was presented to the President of the French Senate (on 9th February) and then to the Law Commission of that assembly (on 6th March), as well as to the President of the National Assembly (on 15th February), it was not possible to present it to the Law Commission of the latter, due to the election campaign.

For the same reason, the Contrôleur général was heard within the framework of the preparation of a smaller number of bills and private member’s bills (propositions de loi) than in previous years: the bill on planning and enforcement of sentences (act of 27th March 2012) and the finance bill for 2013. He was also heard within the framework of assessments, such as that conducted by Messrs LEFRAND and BLISKO on the act of 5th July 2011 at the end of the thirteenth National Assembly of France; and special fact-finding missions, such as the mission on prison overcrowding created by the National Assembly and chaired by Mr RAIMBOURG. He was invited to speak within the framework of the parliamentary days on prison, on 27th November. He was also asked to make comments at the time of the examination by the national Assembly of the bill introducing a period of detention for the verification of foreigners’ rights to temporary residence.

A certain number of members of Parliament, elected, in particular, at the time of the senatorial elections of 2011, wanted to be better informed about the inspectorate’s role and duties. Meetings were organised for this purpose. Mrs KLÈS, member of the French Senate for Ille-et-Vilaine and Secretary of the Law Commission, wanted to take part in an inspection assignment. This request was granted with great interest. Both Parliament and the contrôle général, while strictly respecting their respective fields of competence, can only gain from exchanges of this kind.

2.2 Independent Government Agencies with Specific Regulatory Powers

No new agreements were entered into with independent government agencies in 2012 because none appeared necessary. On the other hand, in 2012 the contrôle général endeavoured to give life to the previously established agreements.

Exchanges of case-files with the Défenseur des droits ombudsman take place in a regular manner and do not raise any particular difficulty: either disputes implicating all or part of the operation of particular places of deprivation of liberty are referred to the Défenseur or else it falls to the Contrôleur général to deal with cases calling the professional ethics of officials into question – this constitutes the most frequent case. Letters referring cases are passed on to the appropriate authority, their writers are systematically informed and the authority to which the case was initially referred is informed of the outcome of the proceedings. The heads of the two institutions consulted each in other to consider whether there were any grounds for common action. To date such action has not gone ahead.

A joint meeting was organised with the independent authority for the protection of broadcasting freedom (Conseil supérieur de l'audiovisuel) following a referred case passed on by the contrôle général in order to examine, with professionals working for France Télévisions, the issue of television programmes recounting criminal cases staged, in particular, without concealment of the identity and faces of persons still in prison. This led to a very useful exchange of views, without it being possible at this stage to resolve the serious problems arising from the detrimental consequences of these programmes for the persons thus exposed. The contrôle général has
already stressed these difficulties. It will continue to do so until a solution has been found that reconciles freedom of information with protection of persons from physical injury.

As far as the French Data Protection Authority (CNIL) is concerned, following on from the joint inspection organised in 2010, a second inspection of the same nature was planned in 2012: the constraints of schedules led to the postponement of this project until the following year.

Among authorities of this kind, even if they lack the status of independent agencies, mention should be made, on the one hand, of the Monitoring Commission for Pre-trial Detention (commission de suivi de la détention provisoire), which the Government which came out of the spring elections resurrected from its ashes, after a five-year absence: the president and members thereof wanted to hear the general inspector on 6th June; and on the other hand of MIVILUDES (the “Interministerial Mission for Monitoring and Combatting Cultic Abuses”), whose new president and general secretary visited the inspectorate on 5th October.

2.3 Other Corporations

As far as the judiciary is concerned, contacts of the most useful kind naturally continue at the time of every inspection: not one takes place without an interview with either the civil (hospitals specialised in mental health) or criminal (search for offenders and enforcement of sentences) State Prosecutor’s Office; in most cases these are held with the judges of the bench (heads of courts, judges responsible for the execution of sentences and juvenile court judges).

The inspectors were involved in several public meetings with judges, both with their professional organisations and those bringing the younger generations together. The Contrôleur général was asked to give his opinion at the Court of Cassation on two occasions, in particular in the course of a meeting with the judges of the bench and the State Prosecutor’s Office of the Criminal Division chaired by the president Bertrand LOUVEL. The Principal State Prosecutor, Olivier de BAYNAST, also invited him to take part in the half-yearly conference on the enforcement of sentences at the Court of Appeal of Douai. The liberty and custody judges of the court of first instance (TGI) of Pontoise included him in a meeting on the application of the act of 5th July 2011. Finally, the French National School for the Judiciary (école nationale de la magistrature) kindly enables the inspectors to regularly take part (and teach) in the in-service training sessions that it sets up; as well as in training courses organised in a decentralised manner, such as at the Court of Appeal of Aix-en-Provence in October. These opportunities for the establishment of relations are essential since the inspectorate needs to be familiar with judges’ concerns, leanings, resources and workloads since, along with current norms, they are decisive factors in the activity of benches and state prosecutor’s offices in places of deprivation of liberty.

Contact between the inspectorate and the various bodies of the profession is henceforth maintained on a regular basis, thanks to the interest shown by those who organise them. The contrôleur général was received by the national Bar council (conseil national des barreaux), the association of Chairmen of the Bar (conférence des bâtonniers) and the council of the Bar Association of Paris. It was also received by other Bars providing the occasion for fruitful exchanges: thus in Versailles, in Nantes in the spring and then in Bobigny at the beginning of the summer. It also met with specialised training groups, such as lawyers specialised in juvenile cases (13èmes Assises de Montpellier conference) and was involved in training sessions (IXAD school for lawyers seminar at Le Touquet). In addition, traditional ceremonial events (formal receptions, Saint Yves’ day

396 On a single occasion, one of the latter judges refused an interview requested by the inspectors at the time of an inspection.
celebration in Brittany etc.) also provided opportunities for developing relations. These exchanges with the officers of the courts serve the same purpose as those with lawyers. They are also intended to encourage lawyers to refer cases to the contrôle général more often if need be for the commencement of proceedings; this constitutes one of the remedies for the reprisals mentioned above.

Dialogue is also maintained in a regular manner with schools of initial and in-service training; the inspectorate was involved in training actions at the French National School for the Judiciary, the ENA graduate school for the training of senior French officials (école nationale d'administration), the training school for senior officers of the French gendarmerie (école des officiers de la gendarmerie nationale), the training school for senior officers of the French national police force (école nationale supérieure de la police) as well as, for the first time, at the invitation of its director, before the students of the Centre for Graduate Studies of the French Interior Ministry (Centre des Hautes Études du Ministère de l'Intérieur) on 22nd October. On 6th November the Contrôleur général went to the training school for the French national prisons administration (école nationale d'administration pénitentiaire), for the award of diplomas to the second-year Master’s degree students, organised jointly with the Universities of Pau and Bordeaux, under the supervision of Jean-Paul Céré. Training actions were also conducted in other schools (Sciences Po and Universities).

The professional organisations of officials working in places of deprivation of liberty are consulted as often as possible, once or twice a year. This is the case in particular at the beginning of the year, since it is considered proper for the contrôle général to inform them (subject to the confidentiality with which the inspectorate always complies) of the content of the annual report before its public publication. The principal organisations of directors of prison services, prison officers and prison rehabilitation and probation counsellors, on the one hand, and of police officers on the other hand had the benefit of being thus informed, thus providing an opportunity for fruitful exchanges on changes in their professions and the conditions in which they are exercised. It is once again recalled that these exchanges are not, of course, for the purpose of the social dialogue conducted by the administration with these organisations but are rather intended to enlighten the inspectorate concerning the organisations’ point of view on the institutions that it has to inspect and, conversely, to promote understanding of its own opinion.

Other contacts took place with the various different professionals, ministers of religion and members of associations that the contrôle général meets in the course of inspections. The inspectorate takes part in events that they organise (general meetings, conferences etc.) and instigates the meetings which appear necessary in order to compare different points of view in a dynamic manner. The public release of the film “A l’ombre de la République”, on 7th March, provided the occasion for a large number of such meetings, as did the “Journées Nationales Prison” conference on prisons jointly organised by the various different associations at the end of the month of November. As is the case with the trade unions, but in a joint manner, the associations are traditionally convened twice a year for the presentation of the annual report (in 2012, this presentation took place on 1st March) and in order to take note of their opinions. For

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397 The action at the ENSP enabled the Contrôleur général to carry out a brief inspection of the headquarters of the Technical and Scientific Police, situated not far from the former institution at Ecully (Rhône), where the management of two master files used during police custody was presented to him in a thoroughly informative and open manner.

398 The same traditionally applies to the director of the prisons administration department.

399 For example the conference organised on young offenders’ institutions – an initiative that is rare enough to be highlighted – by a regional association in Limoges, on 21st June.

400 Cf. the annual report for 2011 on this film, shot in places of deprivation of liberty during inspections conducted by the contrôle général.

401 As well as meetings with the general public, in Paris and numerous regional capitals.
practical reasons however, the second meeting could not be held this year. It would be desirable to make up for this gap in 2013. It has already been remedied in part by separate contacts, in particular with those working in the professions of psychiatrists, on several occasions, doctors practicing in detention centres for illegal immigrants, directors of institutions specialised in mental illnesses, with the Catholic chaplaincy of prisons, with various different associations such as the CIMADE, the Ordre de Malte, the FARAPEJ, the Croix-Marine association, the Little Brothers of the Poor, the GENEPI [voluntary association of students teaching in prisons], the OIP [prisons watchdog] and Les Prisons du Cœur etc. The contrôle général considers that it is an integral part of its role to pay attention to the observations and reflections that these national associations draw from their experience in places of deprivation of liberty. It pays particular attention to the resources that they might receive in order to perform the tasks entrusted to them, in this period of difficult budgetary choices.

Finally, the contrôle général pursues its relations with natural persons and bodies engaged in reflection on issues likely to be of concern to it: these include the Institut Montaigne, with regard to work in prisons and its outcome; and various researchers: two of the latter thus contributed their skills during collective meetings of the inspectorate in 2012. In this case, once again, such sharing is essential to the proper functioning of the contrôle général.

3. Cases Referred

As recalled above, article 6 of the Act of 30th October 2007 enables any natural person, as well as corporations whose purpose is to ensure respect for fundamental rights, to refer any cases to the contrôle général that are considered to constitute a violation of the fundamental rights of persons deprived of liberty.

3.1 Analysis of the Cases Referred (letters sent to the contrôle général)

3.1.1 Quantitative Trends

Overall volume of letters (excluding inquiry responses) in numbers per year

<table>
<thead>
<tr>
<th></th>
<th>2008 (4 months)</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (estimate)</th>
</tr>
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<tbody>
<tr>
<td>Number of letters referring cases received</td>
<td>192</td>
<td>1,272</td>
<td>3,276</td>
<td>3,788</td>
<td>4,072</td>
</tr>
</tbody>
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402 This was due to the necessary mobilisation agreed to with regard to the public recommendations concerning the Baumettes prison.
403 Grouped together in the FUMCRA association.
404 Grouped together in the ADESM association.
405 Real data: January – November. The figures for the year as a whole have been obtained by extrapolation.
Percentage increases:
- 2009 / 2008<sup>406</sup>: 231% (or x 3.3)
- 2010 / 2009: 158% (or x 2.6)
- 2011 / 2010: 16% (or x 1.6)

The estimated increase (2012 as compared with 2011) amounts to + 7.5% (or x 1.07).

It is clear that the growth curve levels off in 2012, as shown by the fact that the growth for 2012 as compared with 2011 was considerably less than the increases in other years. This would be cause for contentment if one had the conviction that all persons who might potentially refer cases were completely at liberty to write to the contrôle général. As stated above, this was not the case.

### Monthly Variations in the Number of Letters Referring Cases Received in 2012

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>349</td>
<td>336</td>
<td>334</td>
<td>298</td>
<td>295</td>
<td>320</td>
<td>380</td>
<td>388</td>
<td>335</td>
<td>337</td>
<td>357</td>
<td>343</td>
</tr>
</tbody>
</table>

### Monthly Variations in the Number of Letters Received in 2011 and 2012 (including inquiry responses)

<sup>406</sup> On the basis of the estimate for the year 2008 of 384 letters.

<sup>407</sup> Estimate established on the basis of letters received since the month of September.
**Saisines 2012** = Cases referred 2012

**Saisines 2011** = Cases referred 2011

**Retours enquête 2012** = Inquiry responses 2012

**Retours enquête 2011** = Inquiry responses 2011

Total 2012

Total 2011

January

February

March

April

May

June

July

August

September

October

November

December (estimate for 2012)

**Average number of letters per writer**: out of the letters received in 2012 as a whole, each person wrote an average of two letters. In 2009, the average was 1.7 letters, 2.5 letters in 2010 and 3 in 2011.

**Interviews**: fifty inquiries were opened in 2012, following interviews conducted in the course of inspections, and fifty-three responses were given, specifying the follow-up actions taken locally or asking for further details.
3.1.2 Quantitative Trends

<table>
<thead>
<tr>
<th>Number of new persons concerned</th>
<th>2008 (4 months)</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012 (estimate)</th>
<th>Total (2008-2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>149</td>
<td>735</td>
<td>1,317</td>
<td>1,432</td>
<td>1,491</td>
<td>5,124</td>
<td></td>
</tr>
</tbody>
</table>

In 2008, 78% of the letters reported situations concerning new persons, as compared with 58% in 2009, 40% in 2010, 38% in 2011 and 37% in 2012.

Since the beginning of its activities, it has fallen to the contrôle général to take cognisance of the situation of 5,124 separate individuals.

Categories of Persons Referring Cases to the Inspectorate

Out of the 4,072 letters received in 2012:

<table>
<thead>
<tr>
<th>Categories of persons referring cases to the inspectorate</th>
<th>Estimate for the year</th>
<th>% estimate for the year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person concerned</td>
<td>3,160</td>
<td>77.60%</td>
</tr>
<tr>
<td>Family, close relations</td>
<td>453</td>
<td>11.12%</td>
</tr>
<tr>
<td>Lawyer</td>
<td>152</td>
<td>3.73%</td>
</tr>
<tr>
<td>Association</td>
<td>124</td>
<td>3.05%</td>
</tr>
<tr>
<td>Doctor, medical staff</td>
<td>33</td>
<td>0.81%</td>
</tr>
<tr>
<td>Independent government agency</td>
<td>33</td>
<td>0.81%</td>
</tr>
<tr>
<td>Persons working in prisons (teachers, sports etc.)</td>
<td>27</td>
<td>0.66%</td>
</tr>
<tr>
<td>Members of Parliament</td>
<td>12</td>
<td>0.29%</td>
</tr>
<tr>
<td>Others (fellow prisoner, trade union, private individual etc.)</td>
<td>78</td>
<td>1.93%</td>
</tr>
<tr>
<td>Total</td>
<td>4,072</td>
<td>100%</td>
</tr>
</tbody>
</table>

The “others” category comprises:
- 14 ministries (passed on for reasons of competence);
- 12 anonymous persons;
- 12 persons deprived of liberty reporting the case of a third party inside the same institution;
- 12 judges;
- 8 members of personnel;
- 7 “others”;
- 6 heads of institutions (sent to the wrong place);
- 3 trade unions;
- 2 private individuals;
- 2 CPIPs.
Person concerned
Family, close relations
Lawyer
Association
Doctor, medical staff
Independent government agency
Persons working in prisons (teachers, sports etc.)
Members of Parliament
Others (fellow prisoner, trade union, private individual etc.)

<table>
<thead>
<tr>
<th>Categories of persons referring cases to the inspectorate</th>
<th>Statistics drawn up on the basis of the 1st letter referring the case</th>
<th>Statistics drawn up on the basis of the letters received as a whole</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Person concerned</td>
<td>80.93%</td>
<td>80.33%</td>
</tr>
<tr>
<td>Family, close relations</td>
<td>7.14%</td>
<td>9.37%</td>
</tr>
<tr>
<td>Lawyer</td>
<td>7.08%</td>
<td>3.49%</td>
</tr>
<tr>
<td>Association</td>
<td>5.04%</td>
<td>3.87%</td>
</tr>
<tr>
<td>Doctor, medical staff</td>
<td>0.95%</td>
<td>0.84%</td>
</tr>
<tr>
<td>Independent government agency</td>
<td>1.91%</td>
<td>1.21%</td>
</tr>
</tbody>
</table>
Persons working in prisons (teachers, sports etc.)

<table>
<thead>
<tr>
<th></th>
<th>Unknown</th>
<th>0.61%</th>
<th>0.58%</th>
<th>0.66%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members of Parliament</td>
<td>1.5%</td>
<td>0.76%</td>
<td>0.32%</td>
<td>0.29%</td>
</tr>
<tr>
<td>Others (fellow prisoner, trade union, private individual etc.)</td>
<td>2.59%</td>
<td>1.75%</td>
<td>4.22%</td>
<td>1.93%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

The above table does not bring out the considerable changes in 2012 as compared to 2011. The changes since 2009 make it possible to distinguish a number of trends: a gradual fall (in relative terms) in the persons concerned in favour of a noticeable increase of the proportion accounted for by close relations, in particular (notably, certain wives, who show great tenacity concerning the need to bring an end to the difficulties they analyse, with regard to health in particular).

The proportion of lawyers, as well as associations, is quite insufficient in the context of the possible reprisals analysed at the beginning of this section. Or, more precisely, it is very unevenly distributed: a few counsels and certain members of associations write relatively regularly. However, it appears that the vast majority (we are here, of course, referring to those who are concerned in one capacity or another with the enforcement of sentences) are either unaware of the procedure for referring cases to the inspectorate or seem to be under the impression that it is not useful to do so.

Other persons referring cases are of little significance in terms of relative numbers. The almost continuous fall in the number of cases referred by independent government agencies with specific regulatory powers, which is partly concomitant with the merging of some of them into the Défenseur des droits ombudsman, should be cause for concern. Finally, the provision enabling members of the Government to refer cases to the contrôle général has only been used (in a formal manner) on one single occasion since 2008.

Distribution of Cases Referred according to the Nature of the Place of Deprivation of Liberty Concerned

<table>
<thead>
<tr>
<th>Type of institution</th>
<th>Estimated total 2012</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Penal institutions (PI)</strong></td>
<td>3,787</td>
<td>93% of the places as a whole</td>
</tr>
<tr>
<td>Prison (with sections incorporating different kinds of prison regime)</td>
<td>1,525</td>
<td>40.27% of PI</td>
</tr>
<tr>
<td>Long-term detention centres</td>
<td>1,004</td>
<td>26.51%</td>
</tr>
<tr>
<td>Remand prison</td>
<td>994</td>
<td>26.25%</td>
</tr>
<tr>
<td>Long-stay prison</td>
<td>187</td>
<td>4.94%</td>
</tr>
<tr>
<td>Hospital (UHSA, UHSI, EPSNF)</td>
<td>15</td>
<td>0.40%</td>
</tr>
<tr>
<td>Open Prison</td>
<td>10</td>
<td>0.26%</td>
</tr>
<tr>
<td>National Assessment Centre</td>
<td>10</td>
<td>0.26%</td>
</tr>
<tr>
<td>Prison for minors</td>
<td>1</td>
<td>0.03%</td>
</tr>
<tr>
<td>Reduced sentencing training prison</td>
<td>1</td>
<td>0.03%</td>
</tr>
<tr>
<td>PI as a whole</td>
<td>8</td>
<td>0.21%</td>
</tr>
<tr>
<td>PI unspecified</td>
<td>32</td>
<td>0.84%</td>
</tr>
<tr>
<td><strong>Total penal institutions 2012</strong></td>
<td>3,787</td>
<td>93% of the places as a whole</td>
</tr>
<tr>
<td><strong>Health institutions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Psychiatric hospital</td>
<td>88</td>
<td>49.16%</td>
</tr>
<tr>
<td>UMD</td>
<td>51</td>
<td>28.49%</td>
</tr>
<tr>
<td>Hospital (psychiatric sectors)</td>
<td>20</td>
<td>11.17%</td>
</tr>
<tr>
<td>Secure room</td>
<td>4</td>
<td>2.24%</td>
</tr>
<tr>
<td>Unspecified</td>
<td>16</td>
<td>8.94%</td>
</tr>
<tr>
<td><strong>Total health institutions 2012</strong></td>
<td>179</td>
<td>4.40%</td>
</tr>
<tr>
<td><strong>Detention of illegal</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detention centre for illegal immigrants</td>
<td>39</td>
<td>81.25%</td>
</tr>
</tbody>
</table>
immigrants, foreigners refused entry and asylum seekers

<table>
<thead>
<tr>
<th>Waiting areas</th>
<th>9</th>
<th>18.75%</th>
</tr>
</thead>
</table>

Total detention of illegal immigrants, foreigners refused entry to the country and asylum seekers 2012

| Police station | 22 | 78.58% |
| Gendarmerie | 3 | 10.71% |
| Unspecified | 3 | 10.71% |

Total police custody facilities 2012

| Total young offenders’ institutions 2012 | 3 | 0.07% |
| Total jails and cells of courts 2012 | 2 | 0.05% |
| Others in 2012 | 7 | 0.17% |
| Unspecified in 2012 | 18 | 0.44% |

Overall total

| 4,072 | 100% |

Distribution of the Letters according to the Type of Institution

| Etablissement pénitentiaire | 93% |
| Etablissement de santé | 4.40% |
| Locaux de garde à vue | 0.69% |
| Rétention administrative | 0.07% |
| Centre éducatif fermé | 0.05% |
| Dépôt | 0.17% |
| Autres | 0.44% |
| Indéterminé | 1.18% |

Penal institutions
Health institutions

EHPAD retirement homes, IPPP (Psychiatric infirmary of the Paris police headquarters), military arrest facilities, PSE etc.
Police custody facilities
Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers
Young offenders’ institutions
Court cells
Other
Unspecified

<table>
<thead>
<tr>
<th>Distribution of letters according to the type of institution</th>
<th>Statistics drawn up on the basis of the 1st letter referring the case</th>
<th>Statistics drawn up on the basis of the letters received as a whole</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Penal institutions</td>
<td>87%</td>
<td>91.42%</td>
</tr>
<tr>
<td>Health institutions</td>
<td>6%</td>
<td>5.32%</td>
</tr>
<tr>
<td>Police custody facilities</td>
<td>1.21%</td>
<td>0.29%</td>
</tr>
<tr>
<td>Detention of illegal immigrants, foreigners refused entry and asylum seekers</td>
<td>0.99%</td>
<td>0.71%</td>
</tr>
<tr>
<td>Young offenders’ institutions</td>
<td>0.23%</td>
<td>0.05%</td>
</tr>
<tr>
<td>Court cells</td>
<td>0.15%</td>
<td>0.11%</td>
</tr>
<tr>
<td>Other</td>
<td>7%</td>
<td>0.38%</td>
</tr>
<tr>
<td>Unspecified</td>
<td>0.30%</td>
<td>0.42%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Persons Referring Cases according to the Type of Institution

<table>
<thead>
<tr>
<th>Person concerned</th>
<th>Family, close relations</th>
<th>Lawyer</th>
<th>Asso.</th>
<th>Other</th>
<th>AAI 409</th>
<th>Doctor, medical staff</th>
<th>Persons working in prisons (teachers, sports etc.)</th>
<th>Members of Parliament</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penal institutions</td>
<td>2,996</td>
<td>413</td>
<td>129</td>
<td>92</td>
<td>66</td>
<td>25</td>
<td>15</td>
<td>25</td>
<td>11</td>
</tr>
<tr>
<td>Health institutions</td>
<td>112</td>
<td>28</td>
<td>12</td>
<td>3</td>
<td>7</td>
<td>14</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Detention of illegal immigrants, foreigners refused entry and asylum seekers</td>
<td>11</td>
<td>3</td>
<td>25</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Police custody facilities</td>
<td>17</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>28</td>
</tr>
<tr>
<td>Unspecified</td>
<td>11</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Joint institution (Health/Justice)</td>
<td>11</td>
<td>2</td>
<td></td>
<td></td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Young</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>

409 Independent government agency with specific regulatory powers (autorité administrative indépendante)
### 3.1.3 Content of the Cases Referred

**Principal Causes (by category of institution) for the two most significant categories: Prisoners and Hospitalised Patients.**

<table>
<thead>
<tr>
<th>Principal causes for health institutions (figures shown for information only – not to be used elsewhere):</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Proceedings (disputing of hospitalisation, lack of knowledge of procedure etc.): 29</td>
</tr>
<tr>
<td>- Assignment (determination of the administrative district, assignment outside of administrative district, readmission after UMDs etc.): 26</td>
</tr>
<tr>
<td>- Legal information and advice (notification of rights, exercise of remedies etc.): 17</td>
</tr>
<tr>
<td>- Preparation for release (trial release, discharge from hospitalisation etc.): 14</td>
</tr>
<tr>
<td>- Patient/staff relations (confrontational relations, disrespect, use of force): 11</td>
</tr>
<tr>
<td>- Relations with the outside (access to the telephone, visits etc.): 9</td>
</tr>
<tr>
<td>- Material conditions (accommodation, hygiene, meals etc.): 8</td>
</tr>
<tr>
<td>- Access to health care (access to medical file, psychiatric care and treatment, courses of treatment etc.): 7</td>
</tr>
<tr>
<td>- Seclusion (duration, grounds invoked, protocol etc.): 4</td>
</tr>
</tbody>
</table>

Other causes account for too few letters to be significant.

<table>
<thead>
<tr>
<th>Principal causes for penal institutions (figures shown for information only – not to be used elsewhere):</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Transfer (requested transfer, administrative transfers, conditions of the transfer etc.) (482)</td>
</tr>
<tr>
<td>- Access to health care (access to hospitalisation, to medical record, to psychiatric care and treatment and to specialised care and treatment etc.) (325)</td>
</tr>
<tr>
<td>- Activities (education, training, employment, IT, sport, exercise etc.) (320)</td>
</tr>
<tr>
<td>- Material conditions (prison shops, accommodation, hygiene, meals, television etc.) (295)</td>
</tr>
<tr>
<td>- Prisoners/staff relations (disrespect, assaults, confrontational relations etc.) (265)</td>
</tr>
<tr>
<td>- Preparation for release (reduced sentencing, SPIP, relations with outside bodies, administrative formalities etc.) (257)</td>
</tr>
<tr>
<td>- Relations with the outside (access to visiting rights, conditions of visiting rooms, mail, telephone, etc.) (228)</td>
</tr>
<tr>
<td>- Internal order (discipline, searches, use of means of physical restraint, systems of security etc.) (193)</td>
</tr>
<tr>
<td>- Proceedings (disputing procedures, enforcement of sentences, disclosure of grounds for imprisonment etc.) (188)</td>
</tr>
<tr>
<td>- Relations between prisoners (assaults, extortion rackets, gifts etc.) (128)</td>
</tr>
</tbody>
</table>
- Internal assignment (cell allocation, differentiated regimes etc.) (124)
- Legal information and advice (access to a lawyer, remedies, legal information etc.) (84)
- Financial situation (personal account, taking of poverty into account etc.) (76)
- Solitary confinement (conditions, duration, grounds invoked, visits from the doctor etc.) (57)
- Self-harming behaviour (self-injury, hunger strikes, suicide attempts etc.) (49)
- Removal from prison in order to go to hospital (use of means of physical restraint, cancellation, conditions etc.) (39)
- Inspection (request for interview etc.) (35)
- Handling of applications for remedy (absence of response, hearings, use of the CEL) (31)
- Religion (availability of religious services, dietary requirements, religious objects etc.) (20)
Other causes account for too few letters to be significant.

In 2010, the three principal causes were: “transfer”, “access to health care” and “material conditions”.

In 2011, the three principal causes were: “transfer”, “access to health care” and finally “activities”. There is therefore no change in this regard in 2012 (although “material conditions” follow closely behind).

It should be noted that the causes are divided between a wide range of different grounds, in which priorities can admittedly be distinguished, but without any major separation between the one and the other which would single out certain factors as being more important than others. It remains that concerns relating to family life (moving closer, contact with outside) clearly prevail.

3.2 Actions Taken in Response to the Cases Referred (letters from the contrôle général)

The data concerning the actions taken in response to cases referred to the contrôle général in 2012, as for the cases referred themselves, only covers the first eleven months of the year, for reasons involving the deadlines for preparation of the annual report. The twelve-month figures given here therefore correspond to estimates (by extrapolation). The definitive data will subsequently be established (and, of course, made public).

3.2.1 Overall Data

The numerous letters sent to the contrôle général, whether they report individual situations or contain more general testimony concerning conditions of imprisonment, hospitalisation or detention of illegal immigrants, all receive personalised replies within deadlines that the contrôle général wants to keep as short as possible, taking into account the personality of the writers and the seriousness of certain difficulties raised. However, the size of the institution’s staff and the large number of letters received, as well as the analysis of increasingly detailed issues, inevitably lead to an insurmountable lengthening of these deadlines at the present time.
Between January and November, 6,328 letters were sent by the contrôle général in order to follow-up cases referred. For the year as a whole, the estimated total amounts to 6,903 letters.

<table>
<thead>
<tr>
<th>Type of action taken</th>
<th>Estimate 2012</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inquiry (case taken up with the authority)</td>
<td>1,170</td>
<td>17%</td>
</tr>
<tr>
<td>Notification of the person of the opening of an inquiry</td>
<td>1,082</td>
<td>16%</td>
</tr>
<tr>
<td>Actions taken following the inquiry and recommendations if necessary (authority)</td>
<td>936</td>
<td>13%</td>
</tr>
<tr>
<td>Notification of the person of the actions taken in order to follow up the inquiry</td>
<td>698</td>
<td>10%</td>
</tr>
<tr>
<td>Reminder (to the authority)</td>
<td>427</td>
<td>6%</td>
</tr>
<tr>
<td>Notification of the person of a reminder issued to the authority</td>
<td>342</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>4,655</td>
<td>67%</td>
</tr>
<tr>
<td>Request for further information</td>
<td>897</td>
<td>13%</td>
</tr>
<tr>
<td>Provision of information</td>
<td>857</td>
<td>12%</td>
</tr>
<tr>
<td>Noted without taking further action</td>
<td>205</td>
<td>3%</td>
</tr>
<tr>
<td>Lack of competence</td>
<td>142</td>
<td>2%</td>
</tr>
<tr>
<td>Passed on for reasons of competence</td>
<td>62</td>
<td>1%</td>
</tr>
<tr>
<td>Taken into account for inspection</td>
<td>58</td>
<td>1%</td>
</tr>
<tr>
<td>Other</td>
<td>27</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>2,248</td>
<td>33%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>903</td>
<td>10%</td>
</tr>
</tbody>
</table>

Inquiry 1,170
Notification of inquiry 1,082
Reminder 769
Request for further information 897

265
In most cases, first letters sent to the Contrôleur général lead him to ask for further information in order to better ascertain the situation submitted to him (13% of requests sent by the contrôle général) or to provide information enabling the person concerned to gain a better understanding of the situation (13% of replies).

This may be information specific to conditions of imprisonment, hospitalisation or detention of illegal immigrants (average time required for transfer to an institution, terms of payment of allowances for prisoners in situations of poverty, strip search regime on return from visiting rooms), or proceedings that can be implemented (procedure for requesting discharge from measures of treatment without consent, complaints to the State Prosecutor’s Office) as well as directing persons to the appropriate authorities (the SPIP for seeking accommodation within the framework of reduced sentencing, the UCSA for medical care and treatment). Within the framework of these duties of provision of information, the contrôle général refrains from advising persons with regard to the appropriateness of implementing one type of judicial proceedings rather than another, for this is not its role, and asks them to get in touch with a lawyer or the legal information and advice point.

The Contrôleur général may also inform correspondents of his lack of competence resulting from the provisions of the act of 27th October 2007, in most cases because the matter involves contesting a court decision (by a trial court, investigating judge, liberty and custody judge or, above all, a judge responsible for the execution of sentences) or of taking issue with the suitability of a course of medical treatment prescribed and the state of health in question. The contrôle général also passed on sixty-two letters to other independent government agencies with specific regulatory powers for reasons of competence, for the most part to the Défenseur des droits ombudsman, in particular when the alleged deeds called into question compliance with professional ethics on the part of staff or when the difficulty in question came specifically within the field of mediation.

Other letters do not call for action on the part of the Contrôleur général, when their content consists of thanks or encouragement (noted without taking further action in the above table) or when certain persons keep him informed of changes in their situation (release, transfer granted in order to move closer to family etc.).

Finally, certain more general testimonies or reflections are kept with a view to subsequent inspection of the institution. It should however be noted that, as a whole, the letters received constitute so many pieces of evidence which may lead the contrôle général to decide upon the inspection of such or such an institution. Conversely, the absence or virtual absence of receipt of letters from an institution is also taken into account for the planning of inspections. The whole of the letters received are in any case used in order to bring the difficulties mentioned to the attention of the inspectors who will conduct the inspection of the institution. To this end, a summary of the letters received and of the steps already taken by the inquirers, who are in charge
of the whole of the contrôle général’s correspondence, is systematically handed over to the teams of inspectors before inspections.

### 3.2.2 Cases Referred Giving Rise to Inquiries

17% of the letters issued by the contrôle général are sent for the purposes of referring cases to the competent authorities, in order to obtain the latters’ point of view on the situation submitted to them, and passing on any useful evidence for this purpose.

This is the case when a person reports a situation where respect for their fundamental rights is called into question (access to health care, access to employment, maintenance of family relations, and protection from bodily harm etc.). However, beyond the personal situations that are submitted to it, the inspectorate’s first concern is to verify, in accordance with its duties, whether there is a problem of a general order concerning the effectiveness of the fundamental rights of prisoners in the institution concerned as a whole, or even in all of the institutions (access to specialist health care, handling of applications for remedy, organisation of internal visiting rooms, procedure for acquisition and inspection of IT equipment, implementation of differentiated regimes etc.).

This approach, which is used in the same spirit that leads the inspectorate to send findings to the heads of institutions before passing on inspection reports to the ministers concerned, that is to say the implementation of *inter partes* proceedings, makes it possible to obtain details enabling the Contrôleur général to have the most objective possible view of the situation submitted to him and, if necessary, to compare various different views of the same reality.

The principal authorities with which the Contrôleur général takes cases up are the directors of institutions (738 letters sent in 2012), and more particularly the directors of penal institutions in view of the typology of the referred cases received.

Thus 673 inquiry letters were sent to the heads of penal institutions in 2012, that is to say an average of 3.5 letters per year and per institution. These numbers make it possible to put the grievance into perspective, which is sometimes heard but seldom backed up with reasons, according to which the Contrôleur général calls upon the directors of penal institutions too frequently for difficulties which are moreover considered to be trivial. In addition to this statistical view, it should be recalled that, when taking evidence from authorities, the contrôle général is fully exercising its roles of inspection as well as prevention. Moreover, when it takes the precaution of carrying out an inquiry, it does so in order to avoid laying itself open to the criticism, which would be entirely justified, of taking a partial approach solely based on referring the situations submitted to it to the authorities concerned. Furthermore, anything that might seem trivial to a free person is much less so for a prisoner. Nothing is trivial in prison. A single example can illustrate this: the loss of personal possessions at the time of a transfer, even when they lack any real financial value (family photos, clothes etc.), constitutes an unquestionable...
infringement of property rights\textsuperscript{412} in prison, where personal possessions are limited to a strict minimum.

The contrôlé général also calls upon the medical authorities (UCSA and SMPR) with regard to issues of medical care and treatment, for the most part in connection with possibilities of access to specialised medical care (absence of physiotherapist, waiting time for provision of dental care etc.) but also with regard to the management of medical emergencies (though of course never with regard to the nature of the treatment given or the appropriateness treatments to diagnoses, all of which are covered by professional secrecy).

As compared with the data for the year 2011, it can be noted that the contrôlé général calls upon the directors of institutions less frequently, although they remain the principal persons called upon, whereas it approaches medical departments, regional agencies and departments of the central administration, as well as ministers, more frequently.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
Categories of personnel with whom cases were taken up & 2011 / in \% & 2012 / in \% \\
\hline
Head of institution (dir. of penal inst., dir. of hospital, other) & 70.70 & 64.75 \\
Medical staff (pen. inst., CRA etc.) & 15.77 & 12.56 \\
Regional agencies (DISP, ARS) & 5.09 & 8.21 \\
Central administration (ministers, DAP etc.) & 4.55 & 6.23 \\
SPIP & 3.89 & 5.30 \\
Judges and law officers & - & 2.91 \\
Total & 100 & 100 \\
\hline
\end{tabular}
\caption{Inquiries conducted in 2012 according to the type of authority with which the cases were taken up}
\end{table}

\textsuperscript{412} Which are included among fundamental rights (cf. article 1 of the first additional Protocol to the European Convention on Human Rights).
A proportion of the instances in which the contrôle général approaches interregional directors of prison services arise from the decision taken in 2012 to systematically take up matters with them when they remain without response on the part of the head of the institution concerned, after the latter has been sent one or even two reminder letters\(^{413}\) (cf. the number of reminder letters in the table above).

Between January 2012 and November 2012, the contrôle général opened 674 inquiry case-files (i.e. an estimated 735 inquiry case-files for the year as a whole).

A case-file is opened whenever a person submits a given situation in a given establishment\(^{414}\). For a single case-file, several inquiry letters may successively take matters up with the same authority, or in most cases several authorities (for example the head of the institution and the UCSA for conditions of provision of health care for a disabled person or for the cancellation of removal from prison for medical treatment).

**Inquiry case-files according to the place concerned**

<table>
<thead>
<tr>
<th>Type of institution</th>
<th>Estimated total 2012</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Penal institutions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prisons (with sections incorporating different kinds of prison regime)</td>
<td>303</td>
<td>44.30% of pen. inst.</td>
</tr>
<tr>
<td>Remand prisons</td>
<td>179</td>
<td>26.17%</td>
</tr>
<tr>
<td>Long-term detention centres</td>
<td>166</td>
<td>24.27%</td>
</tr>
<tr>
<td>Long-stay prisons</td>
<td>31</td>
<td>4.53%</td>
</tr>
<tr>
<td>Reduced sentencing training prisons</td>
<td>1</td>
<td>0.15%</td>
</tr>
<tr>
<td>EPSNF</td>
<td>1</td>
<td>0.15%</td>
</tr>
<tr>
<td>All types of inst.</td>
<td>3</td>
<td>0.43%</td>
</tr>
<tr>
<td><strong>Total penal institutions</strong></td>
<td>684</td>
<td>93.06% of the places as a whole</td>
</tr>
<tr>
<td><strong>Health institutions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitals (psychiatric sectors)</td>
<td>5</td>
<td>20% of health inst.</td>
</tr>
<tr>
<td>Psychiatric hospitals</td>
<td>12</td>
<td>48%</td>
</tr>
<tr>
<td>UMD</td>
<td>8</td>
<td>32%</td>
</tr>
<tr>
<td><strong>Total health institutions</strong></td>
<td>25</td>
<td>3.40% of the places as a whole</td>
</tr>
</tbody>
</table>

\(^{413}\) Due to the routing system for correspondence with the inspectorate adopted by the prisons administration, it is not unusual for responses from heads of establishments to be held up at the interregional department pending approval of their content.

\(^{414}\) For this reason, the data for 2012 cannot be compared with the data for previous years, since before the implementation of Acropolis (software application programme for the management of referred cases and inspections) a case-file was opened in the name of each person concerned and could therefore cover various successive situations. On the software programme, cf. Annual Report for 2011, p. 273.
Detention of illegal immigrants, foreigners refused entry and asylum seekers

<table>
<thead>
<tr>
<th>Detention centres for illegal immigrants</th>
<th>11</th>
<th>55% of CRAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiting areas</td>
<td>8</td>
<td>40%</td>
</tr>
<tr>
<td>Detention facilities for illegal immigrants</td>
<td>1</td>
<td>5%</td>
</tr>
<tr>
<td>Total detention of illegal immigrants, foreigners refused entry and asylum seekers</td>
<td>20</td>
<td>2.72% of the places as a whole</td>
</tr>
</tbody>
</table>

Police custody facilities

<table>
<thead>
<tr>
<th>Gendarmeries</th>
<th>3</th>
<th>50% of police custody (GAV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police stations</td>
<td>3</td>
<td>50%</td>
</tr>
<tr>
<td>Total police custody facilities</td>
<td>6</td>
<td>0.82% of the places as a whole</td>
</tr>
</tbody>
</table>

**TOTAL** 735 100%

The inquiries conducted in 2012 by the contrôle général concern fundamental rights such as access to health care, maintenance of family relations, protection from bodily harm, access to employment, training and activities, as well as respect for the dignity of persons deprived of liberty.

**Inquiry case-files according to the fundamental right protected**

<table>
<thead>
<tr>
<th>Fundamental right concerned</th>
<th>Estimated cases 2012</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to health care and prevention</td>
<td>125</td>
<td>17.01%</td>
</tr>
<tr>
<td>Maintenance of family / outside relations</td>
<td>96</td>
<td>13.06%</td>
</tr>
<tr>
<td>Protection from physical injury</td>
<td>97</td>
<td>13.20%</td>
</tr>
<tr>
<td>Access to employment, training and activities</td>
<td>87</td>
<td>11.84%</td>
</tr>
<tr>
<td>Dignity</td>
<td>62</td>
<td>8.44%</td>
</tr>
<tr>
<td>Property rights (possessions and money)</td>
<td>59</td>
<td>8.03%</td>
</tr>
<tr>
<td>Rehabilitation / preparation for release</td>
<td>45</td>
<td>6.12%</td>
</tr>
<tr>
<td>Legal information and advice</td>
<td>33</td>
<td>4.49%</td>
</tr>
<tr>
<td>Equal treatment</td>
<td>33</td>
<td>4.49%</td>
</tr>
<tr>
<td>Protection from mental injury</td>
<td>19</td>
<td>2.59%</td>
</tr>
<tr>
<td>Defence rights / compliance with the inter partes principle</td>
<td>13</td>
<td>1.77%</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>13</td>
<td>1.77%</td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>14</td>
<td>1.90%</td>
</tr>
<tr>
<td>Freedom of conscience, thought and religion</td>
<td>8</td>
<td>1.09%</td>
</tr>
<tr>
<td>Welfare rights</td>
<td>6</td>
<td>0.82%</td>
</tr>
<tr>
<td>Right of access to information</td>
<td>6</td>
<td>0.82%</td>
</tr>
<tr>
<td>Unjustified imprisonment / detention of illegal immigrants / hospitalisation</td>
<td>6</td>
<td>0.82%</td>
</tr>
<tr>
<td>Privacy</td>
<td>4</td>
<td>0.54%</td>
</tr>
<tr>
<td>Voting rights</td>
<td>2</td>
<td>0.27%</td>
</tr>
<tr>
<td>Freedom of individual expression</td>
<td>2</td>
<td>0.27%</td>
</tr>
<tr>
<td>Image rights</td>
<td>1</td>
<td>0.14%</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>0.54%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>735</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**3.3 On-site inquiries**

When written exchanges between the Contrôleur général, on the one hand, the person(s) concerned and the authority with which the matter is taken...
up, on the other hand, do not enable him to have a sufficiently detailed view of the situation or situations submitted to him, the Contrôleur général delegates inquirers to carry out verifications on the site, on the basis of the evidence, which are referred to as on-site inquiries.

Such on-site inquiries always take place after written exchanges with the authority or authorities concerned, although the possibility of making exceptions to this principle is not ruled out when cases of an urgent character so justify, within the framework of potential problems of overall proportions. Thus, rather than simply playing a role of mediation between the administration and the person deprived of liberty, the contrôle général fully exercises its duty of preventing violations of the rights of persons who could find themselves in the same situation as the person or persons who originally referred the case.

For this reason, contrary to inspections, on-site inquiries always focus on a specific issue, rather than on the operation of the institution as a whole.

The issues taken up to date have been as follows: access to IT facilities (two inquiries in 2012), the conditions under which prisoners suffering from a disability are dealt with (one inquiry), the way in which transsexual prisoners are dealt with (one inquiry), the place of children in detention (one inquiry) and the difficulties in detention of persons of Somalian nationality imprisoned within the framework of acts of piracy in the Gulf of Aden (one inquiry in two institutions).

Moreover, these on-site inquiries make it possible to determine whether follow-up actions have been taken in response to recommendations issued at the end of previous inspections of the institution concerned, or in response to the assessments and recommendations made public.

Although they differ therefrom in terms of their purpose, on-site inquiries are conducted under the same conditions and in virtue of the same prerogatives as those exercised within the framework of inspections. Thus, inquiries can either be conducted in an unexpected manner or announced a few days beforehand (four with advance notice and two unexpected in 2012); the inquirers have access to any document and can go to any place and hold confidential interviews with any person, prisoner, member of staff or other, that they consider it useful to meet. On-site inquiries are carried out by two, or sometimes three inquirers, who are present inside the institution for two or three days on average and, in any case, for the time required to conduct the necessary verifications.

Since fewer interviews are conducted than within the framework of inspections, still greater attention is given to the protection of persons from whom evidence is taken against subsequent reprisals, of any kind whatsoever. Hence, at the time of the end-of-inquiry meeting, the inquirers are careful to remind directors that they are responsible for guaranteeing compliance with the provisions of article 21 of the United Nations Protocol.

At the end of the inquiry, a report recounting the facts ascertained and containing recommendations is sent to the head of the institution. However, it is up to the latter to pass it on to the other actors concerned (UCSA, SPMR, SPIP, RLE etc.). The director then sends back their comments. Certain reports were also passed on to the director of the prisons administration department, with a letter specifying the recommendations that fall more particularly within the latter’s field of competence.

The report is also passed on to the person or persons who originally referred the case to the inspectorate, with any details concerning the security of the institution being deleted as necessary. These reports are sometimes produced, at the initiative of the persons concerned, in

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415 Cf. the beginning of this chapter.
416 An example of a report is published in section 2 of this report.
support of applications for remedy or deferment of sentences on medical grounds for example. Although obviously not having restrictive force, these reports can indeed provide useful background information for the judges in charge of such cases.

It should be specified that in the seven institutions thus inspected, the whole of the staff were available to answer the inquirer’s questions and to pass on the whole of the documents requested to them, even when the inquiry was unexpected, and that the inquirers were able to conduct the interviews under conditions guaranteeing the confidentiality of the exchanges. Moreover, certain recommendations were implemented by the heads of the institutions concerned on receipt of the report.

4. Inspections

4.1 Quantitative data

<table>
<thead>
<tr>
<th>Categories of institutions</th>
<th>Total no. of institutions.</th>
<th>Inspect.</th>
<th>Inspect.</th>
<th>Inspect.</th>
<th>Inspect.</th>
<th>TOTAL</th>
<th>of which inst. inspected once only</th>
<th>% of inst. inspected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police custody facilities</td>
<td>4,095</td>
<td>14</td>
<td>60</td>
<td>47</td>
<td>43</td>
<td>73</td>
<td>237</td>
<td>234</td>
</tr>
<tr>
<td>– of which police</td>
<td>600</td>
<td>11</td>
<td>38</td>
<td>33</td>
<td>28</td>
<td>42</td>
<td>152</td>
<td>150</td>
</tr>
<tr>
<td>– gendarmerie</td>
<td>3,495</td>
<td>2</td>
<td>14</td>
<td>13</td>
<td>13</td>
<td>29</td>
<td>71</td>
<td>71</td>
</tr>
<tr>
<td>– various 419</td>
<td>Not specified</td>
<td>1</td>
<td>8</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Detention by customs</td>
<td>236220</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>– of which judicial</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>– ordinary law</td>
<td>226</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Cells/jails of courts</td>
<td>182</td>
<td>2</td>
<td>7</td>
<td>11</td>
<td>10</td>
<td>19</td>
<td>49</td>
<td>48</td>
</tr>
<tr>
<td>Other 421</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Penal institutions</td>
<td>191</td>
<td>16</td>
<td>40</td>
<td>37</td>
<td>32</td>
<td>25</td>
<td>150</td>
<td>141</td>
</tr>
<tr>
<td>– of which remand prisons</td>
<td>99</td>
<td>11</td>
<td>21</td>
<td>13</td>
<td>16</td>
<td>15</td>
<td>76</td>
<td>72</td>
</tr>
<tr>
<td>- prisons (with sections incorporating different kinds of prison regime)</td>
<td>43</td>
<td>1</td>
<td>7</td>
<td>9</td>
<td>7</td>
<td>7</td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>- long-term detention centres</td>
<td>25</td>
<td>2</td>
<td>5</td>
<td>8</td>
<td>6</td>
<td>1</td>
<td>22</td>
<td>21</td>
</tr>
<tr>
<td>- long-stay prisons</td>
<td>6</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>- prisons for minors</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>- various (CSL etc.)</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>- EPSNF</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Detention of illegal</td>
<td>102</td>
<td>11</td>
<td>24</td>
<td>15</td>
<td>11</td>
<td>9</td>
<td>70</td>
<td>62</td>
</tr>
</tbody>
</table>

417 The number of institutions changed between 2011 and 2012. The figures set out below have been updated.
418 The number of follow-up inspections was respectively one in 2009, five in 2010, six in 2011 and ten in 2012.
419 This concerns facilities of the central departments of the national police force (criminal investigation department, PAF etc.) and gendarmerie facilities other than territorial headquarters.
420 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.
421 Military arrest facilities etc.
<table>
<thead>
<tr>
<th>Categories of institutions</th>
<th>Total no. of institutions</th>
<th>Inspections in 2008</th>
<th>Inspections in 2009</th>
<th>Inspections in 2010</th>
<th>Inspections in 2011</th>
<th>Inspections in 2012</th>
<th>TOTAL</th>
<th>of which inst. inspected once only</th>
<th>% of inst. inspected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health institutions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>– Of which CHS</td>
<td>252</td>
<td>5</td>
<td>22</td>
<td>18</td>
<td>39</td>
<td>22</td>
<td>106</td>
<td>106</td>
<td>28.73%</td>
</tr>
<tr>
<td>– Hospital (psychiatric sectors)</td>
<td>252 424</td>
<td>0</td>
<td>5</td>
<td>4</td>
<td>8</td>
<td>3</td>
<td>20</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>– Hospital (secure rooms)</td>
<td>48</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>17</td>
<td>6</td>
<td>29</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>– UHSI</td>
<td>7</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>7</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>– UMD</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>8</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>– UMJ</td>
<td>48</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>8</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>– IPPP (Psychiatric infirmary of the Paris police headquarters)</td>
<td>1 425</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>– UHSA</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Young offenders’ institutions</td>
<td>44</td>
<td>0</td>
<td>8</td>
<td>8</td>
<td>11</td>
<td>7</td>
<td>34</td>
<td>33</td>
<td>75%</td>
</tr>
<tr>
<td>OVERALL TOTAL</td>
<td>5,219</td>
<td>52</td>
<td>163</td>
<td>140</td>
<td>151</td>
<td>159</td>
<td>665</td>
<td>643</td>
<td>48.44% 426</td>
</tr>
</tbody>
</table>

This table speaks for itself and hardly requires any comments other than those which are to follow in the parts below. In four years and a few months, the contrôle général has inspected a considerable number of institutions approximately three quarters of penal institutions and young offenders’ institutions and almost 30% of hospitals treating mental illnness. The number of police custody facilities is much less significant in terms of relative numbers: however, in absolute numbers, it has provided the inspectors with sound experience (more than a quarter of police stations have been inspected) and, above all, the number of institutions inspected is much more significant in relation to the number of police custody measures carried out, since the latter figure constitutes one of the criteria for the selection of such facilities for inspection and, conversely, many police custody facilities (in gendarmerie districts in particular) have a very low levels of activity in terms of placements in police custody.

In any case, detailed and rigorous analysis of such a number of places of deprivation of liberty is unprecedented in the history of the country.

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422 Since detention facilities for illegal immigrants are opened and closed by prefectoral 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.

423 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.


425 The number of follow-up inspections is respectively one in 2009, five in 2010, six in 2011 and ten in 2012.

426 The ratio is not calculated from the total of the institutions inspected on at least one occasion between 2008 and 2012, 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 342 inspections for a total of 706 places of deprivation of liberty.
4.1.2 Number of Inspections

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of inspections</td>
<td>52</td>
<td>163</td>
<td>140</td>
<td>151</td>
<td>159</td>
</tr>
</tbody>
</table>

2008 (4 months)

It is here recalled that in 2008 the Contrôleur général undertook to conduct one hundred and fifty inspections annually (for the determination of his budgetary allocations in particular). With the exception of 2010, during which the team of inspectors was slightly smaller for a number of reasons, it should be noted that this objective has always been reached or exceeded. Such is the case for 2012.

In a difficult context, the authorities authorised the recruitment of a few additional inspectors (see below, § 5.1). However, inspection deadlines have become progressively longer since 2008 (table *infra* § 4.1.3): the presence of the new inspectors has not therefore increased the number of inspections, but has enabled a marked improvement in the quality thereof, by increasing the time spent in institutions. It might therefore be assumed that the annual number of inspections will scarcely increase in the future, unless the duration of inspections is reduced, which is of course unthinkable.

4.1.3 Average Duration of Inspections (days)

<table>
<thead>
<tr>
<th>Category</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Young offenders’ institutions</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Jails and cells of courts</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1.5</td>
</tr>
<tr>
<td>Penal institutions</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Police custody facilities</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Detention of illegal immigrants, foreigners refused entry and asylum seekers</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Detention by customs</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Health institutions</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Overall average</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

The constant increase in the duration of inspections mentioned above applies to all of the categories of institutions inspected (with the exception of the cells of Courts of First Instance
For some of these institutions, it is clear that the duration of inspections is now becoming stable: this is the case with regard to penal institutions – for which, however, this average duration encompasses a range of between three and twelve days – and police custody facilities. For other institutions, the duration continues to increase: this is the case in particular for young offenders’ institutions, detention centres for illegal immigrants and hospitals. It is not impossible that scope for increase still exists, with regard to the latter in particular.

It should also be recalled that the size of the team of inspectors that goes to any particular institution of course depends on the dimensions of the latter. In 2012, the size of teams ranged from two to twenty-two inspectors.

### 4.1.4 Nature of the Inspection (since 2008)

<table>
<thead>
<tr>
<th>Category</th>
<th>Unexpected</th>
<th>Scheduled</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police custody, TGI cells, customs</td>
<td>304</td>
<td>1</td>
<td>513</td>
</tr>
<tr>
<td>Young offenders’ institutions</td>
<td>29</td>
<td>5</td>
<td>34</td>
</tr>
<tr>
<td>Health institutions</td>
<td>53</td>
<td>54</td>
<td>107</td>
</tr>
<tr>
<td>Penal institutions</td>
<td>63</td>
<td>86</td>
<td>149</td>
</tr>
<tr>
<td>Detention centres and facilities for illegal immigrants, waiting areas…</td>
<td>64</td>
<td>6</td>
<td>70</td>
</tr>
</tbody>
</table>

It results from the above data that 77% of the inspections conducted since 2008 were carried out without advance notice.

### 4.1.5 Categories of Institutions Inspected

In total, 665 inspections have been conducted since 2008. They are distributed as follows:

- 35% concerned police custody facilities;
- 23% penal institutions;
- 16% health institutions;
- 11% detention centres and facilities for illegal immigrants and waiting areas;
- 7% court jails and cells;
- 5% young offenders’ institutions;
- 3% customs detention facilities.

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427 As far as these institutions are concerned, the duration of inspections is closely connected to the size of the facilities, and therefore to the dimensions of the courts inspected during the year. This factor explains the decline in the average length of inspection for these facilities in 2012.
Police custody facilities
Penal institutions
Health institutions
Detention centres and facilities for illegal immigrants and waiting areas
Court jails and cells
Young offenders’ institutions
Customs detention facilities

4.1.6 Follow-up Inspections in 2012

These were conducted in the following institutions, already previously inspected (the year of the first inspection is indicated in brackets):

- Court of first instance of Bobigny (2008);
- Legal procedure unit (UTJ / unité de traitement judiciaire) of Paris 18th arrondissement (2008)
- Remand prison of Reims (2008);
- Detention centre for illegal immigrants of Palaiseau (2009);
- Detention facility for illegal immigrants of Choisy-le-Roi (2008);
- Police station of Versailles (2008);
- Detention centre for illegal immigrants of Toulouse (2009);
- Long-term detention centre of Mauzac (2010);
- Detention centre for illegal immigrants of Rouen (Oissel) (2008);
4.2 Completion and Results of Inspections

The data for 2012 are in line with the comments made in previous years in particular with regard to the prolongation of the time spent for inspections, which still shows a tendency to increase for certain categories of institution; as well as for the use of photographs, some of which have been subject to publication within the framework of emergency procedures, in correlation with the publication of observations; and concerning the mobilisation of inspection teams: one inspection conducted in 2012 involved twenty-four inspectors over a two-week period, an unprecedented number.

These numbers of inspection staff are needed because inspections of premises are conducted on three principal levels simultaneously. On the one hand, a statement of the state of the premises is established in as precise a manner as possible, backed up by measuring instruments; on the other hand, the number of documents inventoried is increasing, for example with regard to the data collected in digital form in the GIDE files and the electronic liaison register (CEL); finally, in certain institutions, the number of requested interviews can be large and, in addition to unrequested interviews, mobilises a very large number of inspectors.

Follow-up inspections (or returns to institutions already inspected) continued in 2012. As is well-known, these make it possible to gain a precise idea of the changes made following the contrôle général’s recommendations. They are sometimes full of pleasant surprises, when improvement work has been carried out or management methods changed; they can also be a source of many unpleasant surprises when nothing has changed, in spite of ministerial undertakings (the case of one detention centre for illegal immigrants) or even when the atmosphere inside the institution has worsened, due to a combination of factors principally implicating the behaviour of the persons in charge (case of a detention centre for illegal immigrants in the South of France).

The respective proportions of the inspectorate’s activity accounted for by unexpected and announced inspections has not significantly changed, since the former are systematically implemented for institutions of modest and medium size (police custody facilities, detention centres for illegal immigrants, young offenders’ institutions etc.), while the latter may be applied for other institutions at the discretion of the head of the inspection, in view of the data collected before its commencement.

The contrôle général, as was indeed its intention, once again had the opportunity of questioning the methods that had so far adopted with approaches used by teams in foreign countries (cf. below). Discussions were held, within the framework of the annual seminar in particular, on the value of distributing questionnaires among persons deprived of liberty and conducting interviews with groups of persons brought together for that purpose rather than with single individuals. These approaches were judged to be closely correlated with the objective of assessing the management of institutions, which does not fall within the contrôle général’s prerogatives. It appeared preferable to maintain all of the flexibility desirable with regard to the approaches used, without ruling any of them out, while in any case maintaining the confidential character of interviews whatever the circumstances. The inspectors already engage in various different forms of conversations, ranging from extended one-to-one interviews in separate rooms to unsolicited discussions with groups of persons and in-depth conversations with two or three persons in a room or a cell. The most important thing is that all persons who so wish can be

428 Cf. annual reports for 2010, p. 274 et seq. and for 2011, p. 288 et seq.
429 The dimension of the cells and the number of their occupants are, in particular, always taken into consideration, as is clearly shown by the public reports and images filmed in the premises inspected (in the film A l’ombre de la République).
430 Computerised prisoner management (Gestion informatisée des détenus)
431 Cf. section 2 above.
interviewed under conditions that they themselves judge to be entirely appropriate to their wishes, that they are able to express themselves freely and in confidence, without stereotypes, and that the inspectors are able to collect the information that they require. These requirements obviously apply equally to persons deprived of liberty and to staff.

No previously unknown difficulties arose during the inspections in 2012, with the exception of those reported above in this report\(^{432}\). It should, however, be noted that, on at least one occasion a person lost their temper during a one-to-one interview with an inspector and brought the conversation to an end in a very noisy manner. An incident report was drawn up by staff concerning the person in question. A request was made to the head of the institution not to follow up this report with disciplinary measures, in order to preserve the impartial character of the inspection (without direct effect) with regard to both persons deprived of liberty and staff.

Such impartiality obviously ceases when the contrôle général is obliged to make use of the prerogatives to which it is entitled by law: referral of cases to the state prosecutor's office on the basis of article 40 of the code of criminal procedure; referral of cases to disciplinary authorities. Both of these procedures were implemented in 2012, the latter in two different contexts: in the first case, a disciplinary sanction was ordered in a long-stay prison following an inspection that had been requested in response to reprehensible acts reported by the inspectorate; in the second, a case was referred to the Interior minister following signs of assault in a detention centre for illegal immigrants, which had remained unexplained after inquiry.

As already mentioned, it is often preferable to take up such matters with the head of the institution, in order to place the latter in a position to take the immediate measures necessary, rather than implementing these procedures without hesitation. This can even be the case when the acts in question are committed at the expense of the inspectors. In the course of an inspection, one of the latter was thus deliberately locked in a cell with a prisoner whose behaviour was very agitated. A request was made to the head of the institution for the person responsible to be called for and reprimanded. The impartiality of inspections has to be compatible with the respect due to the inspectors’ office, since they ensure that they respect the persons they meet, whoever they may be.

4.3 The Drafting of Reports

The procedure adopted for the preparation of inspection reports, which implements a double *inter partes* exchange - in the first place with the head of the institution and then with the ministerial authority - is time-consuming in itself: it is impossible to impose deadlines for response upon these different parties that are incompatible with their informing themselves and weighing up the terms of their reply.

But the fact should not be concealed that the quantity of documents collected and the size of the teams mobilised also makes drafting a slower process, on the one hand, for the reports referred to as “findings” (initial report sent to the head of the institution) and, on the other hand, for those referred to as “inspection reports” (final report sent to ministers). This drafting entails the ever more demanding task of extracting the essential facts from each of the writers, as well as increasingly extensive coordination between them. It requires more time-consuming proofreading.

\(^{432}\) In particular the refusal on the part of a State Prosecutor’s Office to grant access to official records of the end of police custody.
and elaboration of supplementary documents on the part of the persons in charge within the contrôle général.

As a result the time required for completion of the procedures is long, exceeding reasonable deadlines, that is to say beyond the periods of time expected in particular by the parties engaged in dealings with the inspectorate. Work was undertaken in 2012 in the areas of text management techniques, division of tasks and placing of the final reports online. These efforts will probably not be enough. The state of the inspectorate’s staff levels, combined with the number of inspections conducted each year, renders significant improvement in the coming months unlikely.

5. The Resources Allocated to the Contrôleur général des lieux de privation de liberté in 2012

5.1 Staff

The finance act for 2012 fixed a maximum number of 27 posts within the contrôle général.

Indeed, due to the marked increase in the inspectorate’s activity, the authorities granted three additional posts as compared with 2011, that is to say an increase of 12.5%. These creations were assigned to the centre for referred cases in charge of answering letters from persons deprived of liberty (cf. the data concerning the number of cases referred given under § 3 above).

Thus, the number of staff managed for 2012 was set at twenty-nine persons working full-time, including two inspectors placed at the inspectorate’s disposal by their respective administrations, one by the French National Assembly and the other by the publicly-owned hospitals of Marseille (AP-HM / Assistance publique - Hôpitaux de Marseille).

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433 The Acropolis application software already mentioned with regard to referred cases.

434 Similarly, moreover, the annual number of inspections is unlikely to increase significantly and will remain in the region of 150, rather than increasing to 170 as had been hoped for a time with the increase in the number of inspectors.

435 For the record, it is recalled that the finance act for 2008 (the year of creation of the inspectorate) fixed a maximum of eighteen posts.
Administrative management

Centre for referred cases

The contrôle général saw the departure of two inspectors in the course of the year 2012, while five new persons joined it: two inquirers in the centre for referred cases and three inspectors, including the Secretary-General. A chief superintendent of the French national police force, from the border police, took up their duties on 1st December 2012.

At 31st December 2012, the contrôle général also received reinforcements in the persons of fifteen part-time inspectors (on the basis of article 3 of the decree of 12th March 2008) who take part in inspection duties in an occasional manner. In the course of the year 2012, three of these “external” inspectors brought their collaboration with the inspectorate to an end, while three others joined it.

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent staff</td>
<td>17</td>
<td>16</td>
<td>19</td>
<td>26</td>
<td>29</td>
</tr>
<tr>
<td>% increase since 2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>71 %</td>
</tr>
<tr>
<td>Non- permanent staff</td>
<td>10</td>
<td>16</td>
<td>16</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
<td>32</td>
<td>35</td>
<td>41</td>
<td>44</td>
</tr>
<tr>
<td>% increase since 2008</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>63 %</td>
</tr>
</tbody>
</table>

As far as male-female parity is concerned, at 31st December 2012 the contrôle général is composed of 21 women and 23 men, that is to say 48% women.

The average age of the contrôle général’s permanent staff comes to 50.1 years of age, that is to say slightly younger than in 2011 (for which it was 52.1 years of age).

The average age of the women is younger than that of the men with respectively 45.3 years and 58.1 years. On this point it is recalled that the staff “profile” sought by the inspectorate in any case involves great experience and extensive skills in the latter’s fields of competence.

The year 2012 saw an increase in the number of days of sick leave, although the number of officials concerned (3) was stable as compared with 2011. Indeed, eleven cases of sick leave totalling 229 days were recorded as against ten cases and 197 days.

Moreover, in the year 2012 the contrôle général welcomed ten trainees for professional training for average periods of 10.4 weeks.

The trainees came from the French National School for the Judiciary, Bar schools and regional training institutes for the French administration. An administrative judge and a director of prison services were also welcomed. In this respect, it is recalled that the inspectorate gives priority to long-term trainees (four months and over) since such periods make it possible to train and entrust them with the duties necessary to the operation of the institution, in particular with regard to cases referred.

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436 The recruitment of two of the three inquirers was planned at the end of 2011. One took up their duties at the end of 2011 due to the vacancy of a position of inspector; the second arrived in February 2012.

437 On 1st May Aude MUSCATELLI succeeded Xavier DUPONT, who was appointed to the French national solidarity fund for the autonomy of elderly and disabled people (CNSA / Caisse nationale de solidarité pour l’autonomie) in the capacity of director of institutions and services for health care and social welfare.

438 Including two persons placed at the inspectorate’s disposal by other administrations as from 2011.

439 I.e. the number of persons in the workforce
The number of training initiatives and training days organised by the contrôle général in 2012 amount respectively to twenty initiatives and fifty-eight days. It should be noted that no training expenditure was undertaken by the inspectorate, which has the benefit of free access to various training courses (French National School for the Judiciary / ENM, DSAF etc.). 45% of inspectorate officials had the benefit of at least one training course during the year.

5.2 The Budget

The total budget of the contrôle général is 4.38 million euros, in line with the 308 “protection of rights and liberties” programme, common to a large number of independent government agencies with specific regulatory powers, whose “technical” management is incumbent upon the general secretariat of the Government (secrétariat général du Gouvernement).

Distribution of the Overall Budget

- Rent 7%
- Ordinary expenditure 13%
- Personnel costs 80%

5.2.1 Appropriations for the Remuneration of Staff (item II)

The funds were increased by 194,500 euros, apart from the CAS (earmarked account), in order to enable the recruitment of two officials for the centre in charge of referred cases.

Part of the budget allocated for the payment of external inspectors was not used (€204,840 out of €351,840). These funds had originally been granted in order to compensate for the small number of permanent staff. Unfortunately, the difficulty of finding suitable persons to hold posts as inspectors – in spite of the large number of unsolicited applications – explains the fact that part of these funds was not used. This circumstance weighs all the more heavily in that the contrôle général often seeks persons with specific experience at given periods: on several occasions this requirement led to the vacancy of posts, which could have been financed, for periods of several weeks or months. However, this possibility of recruitment is essential to the

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440 Department of Administrative and Financial Services (Direction des services administratifs et financiers, Prime Minister’s office).
441 Initial finance act (Loi de finances initiale) allocation of payment appropriations.
running of the inspectorate’s missions and the successive deductions that were made in the course of the year 2012 will jeopardise the execution of the 2013 budget, unless the constraints are reduced.

Moreover, the vacancy of the post for a hospital doctor, whom it was not possible to recruit on a full-time basis, but by means of their being placed at the inspectorate’s disposal and paid back from the funds apart from item II, created an available (€134,000) which was used for the temporary recruitment of two seasonal employees. This post enabled the recruitment of a second police superintendent at 1st December 2012.

In view of the budgetary situation, €144,373 of funds was cancelled from item II.

5.2.2 Other Items

The commitment appropriations (AE / autorisations d’engagement) and payment appropriations (CP / crédits de paiement) are differentiated since the necessary commitments for the rent were entered into in 2011 for the remaining duration of the lease, which continues to run until December 2014: they are therefore lower this year.

An additional allocation of 100,000 euros obtained in the 2011 financial year in order to enable the repayment of the administrative appropriation for the placing of the hospital doctor at the inspectorate’s disposal was made permanent in the initial finances act (Loi de finances initiale) 2012.

After frozen funds, the Contrôleur général thus had 541,183 euros in commitment appropriations and €780,780 euros in payment appropriations at his disposal.

The principal cost items, apart from the rent which represents an annual expenditure of €243,850 (that is to say €524/m²)\(^{442}\), are as follows:

- Mission expenses: 233,550 euros made it possible, in particular, to conduct 154 inspections;
- The repayment for the placing of the hospital doctor at the inspectorate’s disposal (121,039 euros);
- Everyday operation (145,554 euros\(^{443}\)) of which IT (28,219 euros) and communication expenditure (34,900 euros).

Distribution of ordinary expenditure

\(^{442}\) I.e. slightly more than 31% of allocations of payment appropriations.

\(^{443}\) Less than 20% of the payment appropriations, with communication expenditure in the broad sense representing 4.5% thereof. See the detailed analysis of the latter expenses in the Annual Report for 2011, p. 296-29. They then stood at 3.3%. Since then, two new items of expenditure have been added thereto: the cost of the Agence France-Presse news agency “line” and that of the translation of the annual report into English, a stage which is unfortunately necessary in order to make the contrôle général’s role known outside of France (see below).
6 The International Activity of the Contrôleur général des lieux de privation de liberté

This activity comes under the United Nations Protocol appended to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed this treaty, which was signed and ratified by France, is behind the creation of the contrôle général as one of the “national preventive mechanisms [against torture]” for which it makes provision, created at the same time a specialised United Nations Subcommittee on Prevention of Torture (referred to by its acronym SPT). The latter, by virtue of article 11 of the Protocol, not only has the task of conducting inspections of places of deprivation of liberty, but also of advising and assisting the States Parties in putting in place national preventive mechanisms and maintaining direct contact with the latter, once they have been established, in order to consolidate their capacities by means of technical aid and training, as well as advising and providing them with assistance.

Pursuant to a current treaty, the SPT therefore has to establish relations with the contrôle général.

Conversely, pursuant to the French act of 30th October 2007, an obligation (of which it is true that the scope is not specified) of “cooperation” with the competent international bodies, that is to say those whose role is close to its own, is incumbent upon the contrôle général. Of course this does not stand in the way of other forms of international cooperation, which the contrôle général has not failed to develop insofar as it has felt the need as well as in response to requests made to it.

6.1 Multilateral International Action
As stated in previous annual reports, the initial framework for multilateral international action was the Council of Europe whose departments – in particular the Directorate General of Human Rights – set up a kind of network for mutual aid between the “national preventive mechanisms” created in the Council of Europe Member States in application of the United Nations Protocol, with the (initially somewhat hesitant) assistance of the Committee for the Prevention of Torture (CPT) of this same Council and, above all, of the Association for the Prevention of Torture (international NGO based in Geneva), with financing from the States and the European Union. This network functioned for two and a half years in the form of plenary meetings (once a year) and specialist workshops. Since its sources of financing were not permanent, it ended its activities in mid-2012.

The existence of this network did not stand in the way of the establishment of direct and regular contacts between the contrôle général and the Committee for the Prevention of Torture, on the one hand, and the other institutions of the Council of Europe, on the other hand. Thus in 2012 the Contrôleur général addressed the “Immigration” Committee of the Council of Europe Parliamentary Assembly, at its session in Paris on 1st June.

In continuation of initiatives undertaken in previous years, relations were also pursued with the European Union which, at least as far as the twenty-seven Member States are concerned, could usefully organise exchanges between the existing national mechanisms in a centralised manner. To this end, the Contrôleur général met the Director-General of the European Commission’s DG “Justice” at Brussels on 27th March.

Work was conducted concerning the various authorities of the United Nations, at the initiative of the departments of the ministry of Foreign Affairs and its legal affairs department in particular. In addition, thanks to the initiative of the permanent mission of France to the United Nations and the Ambassador Gérard AURAUD, combined with that of the Association for the Prevention of Torture, the Contrôleur général participated in a round table on the implementation of the Protocol before the representatives of various foreign permanent missions, on 11th May.

Above all, the Contrôleur général was invited to address the plenary meeting of the Subcommittee on Prevention of Torture (SPT) chaired by Professor EVANS on 15th November and was able to explain the work and principles of action of the French “national preventive mechanism” to its twenty-five members (including one Frenchman, Dr Obrecht, who is a former inspector).

These meetings, which of course cannot be organised in large numbers, make it possible to establish useful relations and, above all, to compare French national experience with that of other countries which have also signed and ratified the Protocol.

6.2 Bilateral International Action

As noted in the previous annual report, bilateral action appears likely to stimulate the effectiveness and originality of the modes of action chosen by the contrôle général, to a much greater extent than multilateral action.

For this reason, active cooperation continued in 2012 with the “national preventive mechanism” for England and Wales (Her Majesty’s Inspectorate of Prisons or HMI-Prisons), directed by Mr Nick HARDWICK. Two joint inspections were organised both in French places of deprivation of liberty and others coming under the British authorities. These followed up two other such inspections conducted in 2011. These inspections then gave rise to comments from each of the two bodies concerning the functioning of the other, which resulted in useful reflections (already mentioned with regard to inspections) for the contrôle général.
In a different manner, following the appointment in 2012 of Senegal’s “National Observer of Places of Deprivation of Liberty”, after the voting of an act which is not without kinship with the French law, the Association for the Prevention of Torture, which advises Senegal in this area, wanted to contribute to the training of the head of this new authority (a former member of the Senegalese national legal service) and of its secretary-general by organising their participation in inspection assignments. Each of them therefore participated in an assignment with the contrôle général in June, in different places of deprivation of liberty. This cooperation enabled useful exchanges with the inspectors.

Several countries, which have either already established “national preventive mechanism” or are planning to do so, wanted to meet the members of the contrôle général in order to be informed about its activities, whether through the intermediary of the ministry of Foreign Affairs or by other means. A number of delegations were welcomed for this purpose, from Africa and Eastern Europe in particular. For similar purposes, one inspector visited the Russian Federation while the Contrôleur général himself made a trip to Belgium (which currently lacks a mechanism of this kind).

Finally, thanks to the Ambassador Mr François DELATTRE and to the liaison magistrates of the French embassy, as well as to the Open Society Foundation, the Contrôleur général was able to use the opportunity provided by his speech at the United Nations in order to visit one place of imprisonment in Philadelphia and another in New York, as well as meeting numerous associations working in the field of protection of persons deprived of liberty.

* Contrary to what might be imagined, the contrôle général’s work is far from being exclusively focused on inspections. The latter are preceded by the task of collecting the available data and are followed by considerable thought and drafting work. Generally speaking, the contents of the cases referred to the inspectorate raise increasing difficulties (concerning questions of reduced sentencing, concurrent sentences, application of the law – for example with regard to searches in prison – and belongings of which possession may be refused to patients in hospital etc.), which occupy increasing numbers of staff. Relations are essential with all persons and associations whose professional, religious and other concerns lead them to go to places of deprivation of liberty, because such contacts are likely to stimulate reflection as well as the inspectorate’s methods: these connections therefore need to be consolidated and maintained. Researchers constitute an irreplaceable source for the implementation of conceptual tools: they should be read and listened to. As we have just seen, there is a need for comparison with the different methods used in other countries. Above all, relations with the authorities (both executive and legislative) and the judiciary and officers of the courts; as well as tireless provision of information to the general public, which is so fond of mythologies on these issues, are the necessary approaches for sustainable initiatives. These are the courses of action that the contrôle général pursues with determination, while endeavouring to elaborate a strategy for change in places of deprivation of liberty as its work progresses, elements of which have been given in previous chapters.

444 *The trip to Russia also provided an opportunity to visit prisons.*
Section 9

Places of Deprivation of Liberty in France: Statistical Elements

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 Annual Report for 2009 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 and 2011 in order 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.

445 Data kindly passed on by Bruno Aubusson de Cavarlay in his capacity as a researcher at the CNRS (French National Centre of Scientific Research) 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 Number of persons implicated in offences, police custody measures and persons imprisoned


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.

<table>
<thead>
<tr>
<th>PERIOD</th>
<th>PERSONS IMPlicated IN OFFENCES</th>
<th>POLICE CUSTODY MEASURES</th>
<th>of which less than or equal to 24 hours</th>
<th>of which more than 24 hours</th>
<th>PERSONS IMPRISONED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975-1979</td>
<td>593,005</td>
<td>221,598</td>
<td>193,875</td>
<td>27,724</td>
<td>79,554</td>
</tr>
<tr>
<td>1980-1984</td>
<td>806,064</td>
<td>294,115</td>
<td>251,119</td>
<td>42,997</td>
<td>95,885</td>
</tr>
<tr>
<td>1985-1989</td>
<td>809,795</td>
<td>327,190</td>
<td>270,196</td>
<td>56,994</td>
<td>92,053</td>
</tr>
<tr>
<td>1990-1994</td>
<td>740,619</td>
<td>346,266</td>
<td>284,901</td>
<td>61,365</td>
<td>80,149</td>
</tr>
<tr>
<td>1995-1999</td>
<td>796,675</td>
<td>388,895</td>
<td>329,986</td>
<td>58,910</td>
<td>64,219</td>
</tr>
<tr>
<td>2000</td>
<td>834,549</td>
<td>364,535</td>
<td>306,604</td>
<td>57,931</td>
<td>53,806</td>
</tr>
<tr>
<td>2001</td>
<td>835,839</td>
<td>336,718</td>
<td>280,883</td>
<td>55,835</td>
<td>50,546</td>
</tr>
<tr>
<td>2002</td>
<td>906,969</td>
<td>381,342</td>
<td>312,341</td>
<td>69,001</td>
<td>60,998</td>
</tr>
<tr>
<td>2003</td>
<td>956,423</td>
<td>426,671</td>
<td>347,749</td>
<td>78,922</td>
<td>63,672</td>
</tr>
<tr>
<td>2004</td>
<td>1,017,940</td>
<td>472,064</td>
<td>386,080</td>
<td>85,984</td>
<td>66,898</td>
</tr>
<tr>
<td>2005</td>
<td>1,066,902</td>
<td>498,555</td>
<td>404,701</td>
<td>93,854</td>
<td>67,433</td>
</tr>
<tr>
<td>2006</td>
<td>1,100,398</td>
<td>530,994</td>
<td>435,336</td>
<td>95,658</td>
<td>63,794</td>
</tr>
<tr>
<td>2007</td>
<td>1,128,871</td>
<td>562,083</td>
<td>461,417</td>
<td>100,666</td>
<td>62,153</td>
</tr>
<tr>
<td>2008</td>
<td>1,172,393</td>
<td>577,816</td>
<td>477,223</td>
<td>100,593</td>
<td>62,403</td>
</tr>
<tr>
<td>2009</td>
<td>1,174,837</td>
<td>580,108</td>
<td>479,728</td>
<td>100,380</td>
<td>59,933</td>
</tr>
<tr>
<td>2010</td>
<td>1,146,315</td>
<td>523,069</td>
<td>427,756</td>
<td>95,313</td>
<td>60,752</td>
</tr>
<tr>
<td>2011</td>
<td>1,172,547</td>
<td>453,817</td>
<td>366,833</td>
<td>86,984</td>
<td>61,274</td>
</tr>
</tbody>
</table>
1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned


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.

---

*Nombres absolus* = Absolute numbers

*Mis en cause (majeurs et mineurs)* = Persons implicated in offences (adults and minors)

*Mis en cause (majeurs)* = Persons implicated in offences (adults)

*Garde à vue total* = Total police custody

*Garde à vue plus de 24h* = Police custody of more than 24 h.
### 1.3 Number of Police Custody Measures and Rate of Use thereof according to Type of Offence


Field: Serious crimes and offences reported to the state prosecutor’s office by the police and gendarmerie (apart from traffic offences), Metropolitan France.

<table>
<thead>
<tr>
<th>Type of offence</th>
<th>1994 Persons implicated in offences</th>
<th>2008 Persons implicated in offences</th>
<th>2011 Persons implicated in offences</th>
<th>Police custody measures %</th>
<th>Police custody measures %</th>
<th>Police custody measures %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>2,075</td>
<td>1,819</td>
<td>1,986</td>
<td>115.7%</td>
<td>117.3%</td>
<td>114.7%</td>
</tr>
<tr>
<td>Procurement</td>
<td>901</td>
<td>759</td>
<td>887</td>
<td>108.3%</td>
<td>101.2%</td>
<td>103.4%</td>
</tr>
<tr>
<td>Robbery with assault</td>
<td>18,618</td>
<td>20,058</td>
<td>21,101</td>
<td>75.4%</td>
<td>94.2%</td>
<td>86.3%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>10,943</td>
<td>14,969</td>
<td>14,933</td>
<td>74.3%</td>
<td>81.8%</td>
<td>71.2%</td>
</tr>
<tr>
<td>Burglary</td>
<td>55,272</td>
<td>36,692</td>
<td>41,335</td>
<td>62.6%</td>
<td>74.9%</td>
<td>68.7%</td>
</tr>
<tr>
<td>Theft from parked cars</td>
<td>35,033</td>
<td>20,714</td>
<td>19,307</td>
<td>65.3%</td>
<td>78.2%</td>
<td>68.4%</td>
</tr>
<tr>
<td>Foreign nationals</td>
<td>48,514</td>
<td>119,761</td>
<td>95,147</td>
<td>77.1%</td>
<td>68.5%</td>
<td>68.2%</td>
</tr>
<tr>
<td>Drug trafficking</td>
<td>13,314</td>
<td>11,543</td>
<td>18,526</td>
<td>86.7%</td>
<td>67.2%</td>
<td>67.0%</td>
</tr>
<tr>
<td>Car theft</td>
<td>40,076</td>
<td>20,764</td>
<td>16,879</td>
<td>61.7%</td>
<td>75.4%</td>
<td>63.7%</td>
</tr>
<tr>
<td>Arson, explosives</td>
<td>2,906</td>
<td>7,881</td>
<td>7,322</td>
<td>58.5%</td>
<td>79.3%</td>
<td>62.2%</td>
</tr>
<tr>
<td>Insults and assaults on officers</td>
<td>21,535</td>
<td>113,805</td>
<td>116,197</td>
<td>49.5%</td>
<td>71.6%</td>
<td>63.7%</td>
</tr>
<tr>
<td>Other offences against morality</td>
<td>5,186</td>
<td>12,095</td>
<td>11,789</td>
<td>50.8%</td>
<td>71.6%</td>
<td>54.3%</td>
</tr>
<tr>
<td>Other thefts</td>
<td>89,278</td>
<td>113,808</td>
<td>116,197</td>
<td>44.8%</td>
<td>54.2%</td>
<td>43.8%</td>
</tr>
<tr>
<td>Forged documents</td>
<td>9,368</td>
<td>8,260</td>
<td>9,592</td>
<td>45.4%</td>
<td>57.8%</td>
<td>43.2%</td>
</tr>
<tr>
<td>Bodily harm</td>
<td>50,209</td>
<td>150,264</td>
<td>152,311</td>
<td>29.4%</td>
<td>48.7%</td>
<td>37.0%</td>
</tr>
<tr>
<td>Destruction, criminal damage</td>
<td>45,591</td>
<td>74,115</td>
<td>61,187</td>
<td>27.3%</td>
<td>39.6%</td>
<td>29.2%</td>
</tr>
<tr>
<td>Use of drugs</td>
<td>55,505</td>
<td>149,753</td>
<td>171,246</td>
<td>59.1%</td>
<td>45.9%</td>
<td>29.1%</td>
</tr>
<tr>
<td>Weapons</td>
<td>12,117</td>
<td>23,455</td>
<td>27,391</td>
<td>48.9%</td>
<td>43.1%</td>
<td>28.6%</td>
</tr>
<tr>
<td>Shoplifting</td>
<td>55,654</td>
<td>58,674</td>
<td>61,924</td>
<td>11.9%</td>
<td>35.2%</td>
<td>27.5%</td>
</tr>
<tr>
<td>Personal injury</td>
<td>28,094</td>
<td>65,066</td>
<td>63,980</td>
<td>21.1%</td>
<td>31.5%</td>
<td>24.8%</td>
</tr>
<tr>
<td>Fraud, breach of trust</td>
<td>54,866</td>
<td>63,123</td>
<td>62,971</td>
<td>31.2%</td>
<td>34.7%</td>
<td>22.1%</td>
</tr>
<tr>
<td>Fraud, economic crime</td>
<td>40,353</td>
<td>33,334</td>
<td>36,168</td>
<td>16.4%</td>
<td>29.1%</td>
<td>17.9%</td>
</tr>
<tr>
<td>Other general police matters</td>
<td>15,524</td>
<td>6,190</td>
<td>8,212</td>
<td>19.5%</td>
<td>15.0%</td>
<td>11.7%</td>
</tr>
<tr>
<td>Unpaid cheques</td>
<td>4,803</td>
<td>3,135</td>
<td>3,926</td>
<td>9.0%</td>
<td>14.6%</td>
<td>6.7%</td>
</tr>
<tr>
<td>Family, children</td>
<td>27,893</td>
<td>43,121</td>
<td>48,845</td>
<td>6.1%</td>
<td>9.7%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Total</td>
<td>775,701</td>
<td>1,172,393</td>
<td>1,172,547</td>
<td>43.2%</td>
<td>49.3%</td>
<td>38.7%</td>
</tr>
</tbody>
</table>
## 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 (Bureau des études et de la prospective, Sous-direction des personnes places sous main de justice [“office for research and advance planning of the prisons administration department vice-directorate for persons placed in custody”])

Field: Penal institutions in Metropolitan France, all persons imprisoned.

<table>
<thead>
<tr>
<th>Period</th>
<th>Unconvicted prisoners: immediate</th>
<th>Unconvicted prisoners: preparation for case for trial</th>
<th>Convicted prisoners</th>
<th>Imprisonment for debt (*)</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970-1974</td>
<td>12,551</td>
<td>44,826</td>
<td>14,181</td>
<td>2,778</td>
<td>74,335</td>
</tr>
<tr>
<td>1975-1979</td>
<td>11,963</td>
<td>49,360</td>
<td>16,755</td>
<td>2,601</td>
<td>80,679</td>
</tr>
<tr>
<td>1980-1984</td>
<td>10,406</td>
<td>58,441</td>
<td>14,747</td>
<td>1,994</td>
<td>85,587</td>
</tr>
<tr>
<td>1985-1989</td>
<td>10,067</td>
<td>55,547</td>
<td>17,828</td>
<td>753</td>
<td>84,195</td>
</tr>
<tr>
<td>1990-1994</td>
<td>19,153</td>
<td>45,868</td>
<td>18,859</td>
<td>319</td>
<td>84,199</td>
</tr>
<tr>
<td>1995-1999</td>
<td>19,783</td>
<td>37,102</td>
<td>20,018</td>
<td>83</td>
<td>76,986</td>
</tr>
<tr>
<td>2000</td>
<td>19,419</td>
<td>28,583</td>
<td>17,192</td>
<td>57</td>
<td>65,251</td>
</tr>
<tr>
<td>2001</td>
<td>20,195</td>
<td>23,688</td>
<td>20,006</td>
<td>33</td>
<td>63,922</td>
</tr>
<tr>
<td>2002</td>
<td>25,707</td>
<td>29,855</td>
<td>22,355</td>
<td>42</td>
<td>77,959</td>
</tr>
<tr>
<td>2003</td>
<td>27,111</td>
<td>29,100</td>
<td>21,602</td>
<td>19</td>
<td>77,832</td>
</tr>
<tr>
<td>2004</td>
<td>27,247</td>
<td>28,471</td>
<td>25,109</td>
<td>10</td>
<td>80,837</td>
</tr>
<tr>
<td>2005</td>
<td>29,466</td>
<td>28,387</td>
<td>23,772</td>
<td>4</td>
<td>81,629</td>
</tr>
<tr>
<td>2006</td>
<td>27,535</td>
<td>25,812</td>
<td>28,605</td>
<td>14</td>
<td>81,966</td>
</tr>
<tr>
<td>2007</td>
<td>25,427</td>
<td>27,243</td>
<td>33,565</td>
<td>16</td>
<td>86,254</td>
</tr>
<tr>
<td>2008</td>
<td>22,778</td>
<td>26,709</td>
<td>36,144</td>
<td>30</td>
<td>85,661</td>
</tr>
<tr>
<td>2009</td>
<td>20,587</td>
<td>24,828</td>
<td>35,697</td>
<td>19</td>
<td>81,131</td>
</tr>
<tr>
<td>2010</td>
<td>19,993</td>
<td>25,039</td>
<td>34,676</td>
<td>84</td>
<td>79,792</td>
</tr>
<tr>
<td>2011</td>
<td>0,225</td>
<td>24,827</td>
<td>39,674</td>
<td>117</td>
<td>84,843</td>
</tr>
</tbody>
</table>

(*) Imprisonment of solvent persons for non-payment of certain fines (contrainte judiciaire) as from 2005
1.5 Population of Serving Sentences or on Remand and Prisoners at 1st January of each year


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
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).

<table>
<thead>
<tr>
<th>Year</th>
<th>Duration of the sentence enforced: number of prisoners</th>
<th>Percentage distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Less than 1 year</td>
<td>1 to less than 3 years</td>
</tr>
<tr>
<td>1970</td>
<td>6,239</td>
<td>5,459</td>
</tr>
<tr>
<td>1980</td>
<td>7,210</td>
<td>5,169</td>
</tr>
<tr>
<td>1990</td>
<td>7,427</td>
<td>5,316</td>
</tr>
<tr>
<td>2000</td>
<td>6,992</td>
<td>5,913</td>
</tr>
<tr>
<td>2010</td>
<td>8,365</td>
<td>6,766</td>
</tr>
<tr>
<td>2011</td>
<td>17,445</td>
<td>14,174</td>
</tr>
<tr>
<td>2012</td>
<td>17,535</td>
<td>14,780</td>
</tr>
</tbody>
</table>
2. Compulsory Committal to Psychiatric Hospitalisation

2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2007 to 2011

Field: All institutions, Metropolitan France and French overseas departments.

The table continues on the following page …/…

---

<table>
<thead>
<tr>
<th>Mode of hospitalisation</th>
<th>Year</th>
<th>Number of patients</th>
<th>Number of admissions</th>
<th>Number of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospitalisation at the request of a third party (HDT)</td>
<td>2006</td>
<td>43,957</td>
<td>52,744</td>
<td>1,638,929</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>53,788</td>
<td>58,849</td>
<td>2,167,195</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>55,230</td>
<td>60,881</td>
<td>2,298,410</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>62,155</td>
<td>63,158</td>
<td>2,490,930</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>63,752</td>
<td>68,695</td>
<td>2,684,736</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>63,345</td>
<td>65,621</td>
<td>2,520,930</td>
</tr>
<tr>
<td>Hospitalisation by court order (HO) (art. L.3213-1 and L.3213-2)</td>
<td>2006</td>
<td>10,578</td>
<td>12,010</td>
<td>756,120</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>13,783</td>
<td>14,331</td>
<td>910,127</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>13,430</td>
<td>14,512</td>
<td>1,000,859</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>15,570</td>
<td>14,576</td>
<td>1,083,025</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>15,451</td>
<td>15,714</td>
<td>1,177,286</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>14,967</td>
<td>14,577</td>
<td>1,062,486</td>
</tr>
</tbody>
</table>

446 Tables were introduced into the SAE (Statistique annuelle des établissements de santé) in 2006; the results are given for information only.
<table>
<thead>
<tr>
<th>Mode of hospitalisation</th>
<th>Year</th>
<th>Number of patients</th>
<th>Number of admissions</th>
<th>Number of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospitalisation by court order / ASPDRE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>according to art. 122.1 of the CPP and article L3213-7 of the CSP</td>
<td>2006</td>
<td>221</td>
<td>146</td>
<td>56,477</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>353</td>
<td>303</td>
<td>59,844</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>453</td>
<td>458</td>
<td>75,409</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>589</td>
<td>477</td>
<td>104,400</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>707</td>
<td>685</td>
<td>125,114</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>764</td>
<td>783</td>
<td>124,181</td>
</tr>
<tr>
<td></td>
<td>2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitalisation by judicial court order</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>According to article 706-135 of the CPP</td>
<td>2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>103</td>
<td>104</td>
<td>6,705</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>38</td>
<td>23</td>
<td>18,256</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>68</td>
<td>39</td>
<td>9,572</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>194</td>
<td>251</td>
<td>21,950</td>
</tr>
<tr>
<td>Provisional Committal Order</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2006</td>
<td>518</td>
<td>1,295</td>
<td>22,929</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>654</td>
<td>1,083</td>
<td>31,629</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>396</td>
<td>411</td>
<td>13,214</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>371</td>
<td>378</td>
<td>14,837</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>370</td>
<td>774</td>
<td>13,342</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>289</td>
<td>317</td>
<td>14,772</td>
</tr>
<tr>
<td>Hospitalisation according to art. D.398 of the CPP (prisoners)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2006</td>
<td>830</td>
<td>1,047</td>
<td>19,145</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>1,035</td>
<td>1,189</td>
<td>26,689</td>
</tr>
<tr>
<td></td>
<td>2008</td>
<td>1,489</td>
<td>1,717</td>
<td>39,483</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>1,883</td>
<td>2,254</td>
<td>48,439</td>
</tr>
<tr>
<td></td>
<td>2010</td>
<td>2,028</td>
<td>2,493</td>
<td>47,492</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>2,070</td>
<td>2,411</td>
<td>46,709</td>
</tr>
</tbody>
</table>
## 2.2 Compulsory Committal to Hospitalisation without Consent in 2011

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.

<table>
<thead>
<tr>
<th>Compulsory Hospitalisation without Consent</th>
<th>Number of stays</th>
<th>Number of days (thousands)</th>
<th>Number of patients</th>
<th>Average age</th>
<th>% men</th>
<th>% stays brought to an end</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospitalisation at the request of a third party ASPDT</td>
<td>74,585</td>
<td>2,553.9</td>
<td>60,709</td>
<td>42.7</td>
<td>54.5</td>
<td>61.6</td>
</tr>
<tr>
<td>Hospitalisation by court order ASPDRE</td>
<td>19,192</td>
<td>1,180.1</td>
<td>15,975</td>
<td>39.4</td>
<td>82.4</td>
<td>56.4</td>
</tr>
<tr>
<td>Hospitalisation of persons judged not to be criminally responsible</td>
<td>619</td>
<td>69.1</td>
<td>436</td>
<td>37.0</td>
<td>93.8</td>
<td>51.0</td>
</tr>
<tr>
<td>Provisional Committal Order</td>
<td>298</td>
<td>10.7</td>
<td>244</td>
<td>21.4</td>
<td>65.3</td>
<td>71.0</td>
</tr>
<tr>
<td>Hospitalisation of prisoners</td>
<td>1,747</td>
<td>34.3</td>
<td>1,390</td>
<td>32.4</td>
<td>94.0</td>
<td>89.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>95,333</strong></td>
<td><strong>3,848.1</strong></td>
<td><strong>76,670</strong></td>
<td><strong>41.8</strong></td>
<td><strong>60.9</strong></td>
<td><strong>61.1</strong></td>
</tr>
</tbody>
</table>
3. Detention of illegal immigrants, foreigners refused entry to the country and asylum seekers

3.1 Number of persons implicated 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).

<table>
<thead>
<tr>
<th>Year</th>
<th>Measures</th>
<th>Banning from French territory (ITF)</th>
<th>Removal by prefectural order (APRF)</th>
<th>Obligation to leave French territory (OQTF)</th>
<th>APRF + OQTF</th>
<th>Deportation order</th>
<th>Readmission</th>
<th>Forced removals (subtotal)</th>
<th>Voluntary return</th>
<th>Total removals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>pronounced</td>
<td>6,198</td>
<td>42,485</td>
<td>-</td>
<td>42,485</td>
<td>441</td>
<td>49,124</td>
<td>49,124</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>2,071</td>
<td>7,611</td>
<td>-</td>
<td>7,611</td>
<td>385</td>
<td>10,067</td>
<td>10,067</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>33.4%</td>
<td>17.9%</td>
<td>-</td>
<td>17.9%</td>
<td>87.3%</td>
<td>20.5%</td>
<td>20.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>pronounced</td>
<td>6,536</td>
<td>49,017</td>
<td>-</td>
<td>49,017</td>
<td>385</td>
<td>55,938</td>
<td>55,938</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>2,098</td>
<td>9,352</td>
<td>-</td>
<td>9,352</td>
<td>242</td>
<td>11,692</td>
<td>11,692</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>32.1%</td>
<td>19.1%</td>
<td>-</td>
<td>19.1%</td>
<td>62.9%</td>
<td>20.9%</td>
<td>20.9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>pronounced</td>
<td>5,089</td>
<td>64,221</td>
<td>-</td>
<td>64,221</td>
<td>292</td>
<td>69,602</td>
<td>69,602</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>2,360</td>
<td>13,069</td>
<td>-</td>
<td>13,069</td>
<td>231</td>
<td>15,660</td>
<td>15,660</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>46.4%</td>
<td>20.4%</td>
<td>-</td>
<td>20.4%</td>
<td>79.1%</td>
<td>22.5%</td>
<td>22.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>pronounced</td>
<td>5,278</td>
<td>61,595</td>
<td>-</td>
<td>61,595</td>
<td>285</td>
<td>6,547</td>
<td>73,705</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>2,250</td>
<td>14,897</td>
<td>-</td>
<td>14,897</td>
<td>252</td>
<td>19,841</td>
<td>19,841</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>42.6%</td>
<td>24.2%</td>
<td>-</td>
<td>24.2%</td>
<td>88.4%</td>
<td>26.9%</td>
<td>26.9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>pronounced</td>
<td>4,697</td>
<td>64,609</td>
<td>-</td>
<td>64,609</td>
<td>292</td>
<td>11,348</td>
<td>80,946</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>1,892</td>
<td>16,616</td>
<td>-</td>
<td>16,616</td>
<td>223</td>
<td>22,412</td>
<td>23,831</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>40.3%</td>
<td>25.7%</td>
<td>-</td>
<td>25.7%</td>
<td>76.4%</td>
<td>27.7%</td>
<td>27.7%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>pronounced</td>
<td>3,580</td>
<td>50,771</td>
<td>46,263</td>
<td>97,034</td>
<td>258</td>
<td>11,138</td>
<td>112,010</td>
<td>112,010</td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>1,544</td>
<td>11,891</td>
<td>1,816</td>
<td>13,707</td>
<td>206</td>
<td>4,428</td>
<td>19,885</td>
<td>23,196</td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>43.1%</td>
<td>23.4%</td>
<td>1.8%</td>
<td>14.1%</td>
<td>79.8%</td>
<td>17.8%</td>
<td>17.8%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>pronounced</td>
<td>2,611</td>
<td>43,739</td>
<td>42,130</td>
<td>85,869</td>
<td>237</td>
<td>12,822</td>
<td>101,539</td>
<td>101,539</td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>1,386</td>
<td>9,844</td>
<td>3,050</td>
<td>12,894</td>
<td>168</td>
<td>5,276</td>
<td>19,724</td>
<td>29,796</td>
<td></td>
</tr>
<tr>
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<td>%enforcement</td>
<td>53.1%</td>
<td>22.5%</td>
<td>7.2%</td>
<td>15.0%</td>
<td>70.9%</td>
<td>19.4%</td>
<td>19.4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>pronounced</td>
<td>2,009</td>
<td>40,116</td>
<td>40,131</td>
<td>80,307</td>
<td>215</td>
<td>12,162</td>
<td>94,693</td>
<td>8,268</td>
<td></td>
</tr>
<tr>
<td></td>
<td>enforced</td>
<td>1,330</td>
<td>10,422</td>
<td>4,914</td>
<td>15,336</td>
<td>198</td>
<td>4,156</td>
<td>21,020</td>
<td>29,288</td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>66.2%</td>
<td>26.0%</td>
<td>12.2%</td>
<td>19.1%</td>
<td>92.1%</td>
<td>22.2%</td>
<td>22.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>pronounced</td>
<td>1,683</td>
<td>32,519</td>
<td>39,083</td>
<td>71,602</td>
<td>212</td>
<td>10,849</td>
<td>84,346</td>
<td>8,404</td>
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<td>enforced</td>
<td>1,201</td>
<td>9,370</td>
<td>5,383</td>
<td>14,753</td>
<td>164</td>
<td>3,504</td>
<td>19,622</td>
<td>28,026</td>
<td></td>
</tr>
<tr>
<td></td>
<td>%enforcement</td>
<td>71.4%</td>
<td>28.8%</td>
<td>13.8%</td>
<td>20.6%</td>
<td>77.4%</td>
<td>23.3%</td>
<td>23.3%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Year</th>
<th>Theoretical capacity</th>
<th>Number of committals</th>
<th>Average occupancy rate</th>
<th>Average length of detention (in days)</th>
<th>Detainees removed apart from voluntary returns(*)</th>
<th>% removals/ committals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td></td>
<td>25,131</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td></td>
<td>28,155</td>
<td>64%</td>
<td>5.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td></td>
<td>944</td>
<td>73%</td>
<td>8.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td></td>
<td>1,016</td>
<td>83%</td>
<td>10.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td></td>
<td>1,380</td>
<td>74%</td>
<td>9.9</td>
<td>16,909</td>
<td>52%</td>
</tr>
<tr>
<td>2007</td>
<td></td>
<td>1,691</td>
<td>76%</td>
<td>10.5</td>
<td>15,170</td>
<td>43%</td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td>1,515</td>
<td>68%</td>
<td>10.3</td>
<td>14,411</td>
<td>42%</td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td>1,574</td>
<td>60%</td>
<td>10.2</td>
<td></td>
<td>40% (**)</td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td>1,566</td>
<td>55%</td>
<td>10.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(*) CICI Annual Report for 2010. The Report for 2011 gives a rate of 42% for CRAs possessing inter-service removal units (*pôle interservices éloignement*) and 37% for the rest.
Annexe 1

Summary Table of the Principal Recommendations of the CGLPL for the year 2012

(see table on following pages)

447 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.
<table>
<thead>
<tr>
<th>Place concerned</th>
<th>Overall issue</th>
<th>Specific issue</th>
<th>Recommendation</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Discipline and sanctions</td>
<td>Length of detention</td>
<td>The question of the length of detention (45 days) cannot be regarded as definitively resolved; the Contrôleur général recommends that it should once again be fixed at a maximum of 32 days.</td>
<td>1</td>
</tr>
<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Disciplinary measures and length of solitary confinement</td>
<td>Disciplinary procedure and the terms of enforcement thereof should be defined within a legal framework fixing, in particular, a maximum duration for the placement of detainees in solitary confinement.</td>
<td>3 + 1</td>
<td></td>
</tr>
<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Solitary confinement register</td>
<td>A register specifically devoted to placements in solitary confinement should be opened, in which, as a minimum, the grounds, time of commencement and end of the placement as well as the authority carrying out the measure are noted – the judicial authorities should be notified immediately – while also providing for procedures for the supervision of excluded persons (frequency of patrols, medical care and treatment, use of means of physical restraint).</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Deadline for entering appeals</td>
<td>The legislature should make an amendment to article L 552-1 of the CESEDA in order to exclude the duration of temporary stays in LRAs, as well as days when registries are closed in CRAs (in general Saturdays and Sundays), from the calculation of the allowed time of forty-eight hours for entering appeals against decisions involving removal from the country and placement in detention;</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Defence rights</td>
<td>Asylum application procedure</td>
<td>The Interior Minister should issue a circular concerning the functioning of detention centres for illegal immigrants which, on the one hand, should plan free access to legal aid associations and to the services of the Inter Service Migrants association and, on the other hand – with regard to the procedure for the obtainment of the right of asylum – should establish an obligation to draft and distribute explanatory leaflets concerning the asylum application procedure, in several languages, for detainees, as well as a model for staff, and registry staff in particular; it should mention the mandatory nature of the duty to pass on asylum applications to the OFPRA, even when they are submitted late; asylum application files in several languages; and the placing of an interpreter at the disposal of asylum-seekers in order to help them with the procedures. That the associations or the OFII should be accorded the right, appointed as representative for this purpose by the asylum-seeker, to the possibility of passing on asylum applications directly to the OFPRA, without going through the registry, the latter henceforth only being competent for incidental formalities (the taking of fingerprints for attachment to the application for example).</td>
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<tr>
<td>Detention Centres for Illegal Immigrants</td>
<td>Access to health care</td>
<td>Health care for detainees</td>
<td>The Interior and Health ministers should update the circular of 7th December 1999 concerning health care for detainees recalling the conditions of independence of doctors practicing in detention centres for illegal immigrants, the protection of medical secrecy and the traceability of medical acts and diagnoses established and making the “definition of health care facilities according to the size of the detention centre” compulsory with regard to the time of presence</td>
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</table>
## Detention Centres for Illegal Immigrants

Access to health care

Health care for detainees

of medical staff as specified in the circular. Moreover, the circular should specify:
- that detainees who wish to contact medical staff directly shall be able do so, without going through any intermediary, and that letter boxes shall be put in place for this purpose in each centre;
- that medical consultations are systematically put in place for detainees on their arrival at the centre, both for the detection of possible contagious diseases and to examine their health in order to enable appropriate provision of health care, including by specialists;
- that paragraph 11 of article L.313-11 of the CESEDA is not subject to any conditions in terms of deadlines and that, accordingly, illnesses giving rise to the application of the procedure can be ascertained by a doctor, including in the detention centre.

Finally, the Contrôleur général recommends the putting in place of initial training for health staff working in CRAs in order to ensure, in particular, that the rules for the maintenance of illegal immigrants within national territory on health grounds are known and applied.

## Waiting Zones

Reminder of recommendations already made

Relations with carriers

Relations with the carriers should be properly organised, and agreements should provide specific details of how services are to be supplied and financed. It is recommended that firm national instructions should be issued.

## Waiting Zones

Reminder of recommendations already made

Surgeries by humanitarian associations

Action needs to be taken in order to allow persons held to contact associations for the defence of foreigners. In none of the zones inspected (apart from Roissy) is provision made for the regular presence of a humanitarian association, such as those mentioned under article L.223-1 of the CESEDA (though some of them make occasional visits). In many waiting areas, telephone contact details for such associations are displayed, as well as a list of lawyers at the local Bar. These practices are useful and should be brought into general use.

## Young offenders’ institutions

Reminder of recommendations already made

Mixing of the sexes

Except for a few exceptions (such as the accommodation of girls), the establishment of CEFs “specialised” in inmates of a particular type should be avoided. However, it would be useful to engage in collective consideration of the issue of mixing of sexes in CEFs.

## Young offenders’ institutions

Reminder of recommendations already made

Assessments

The wealth of experience acquired since the act of 9th September 2002 by the young offenders’ institutions should now make it possible to reinforce the demands imposed upon managers in the elaboration of their educational programmes. Of course, assessments, both internal and external, should make it possible to distinguish rapidly between good and poor projects: fragile children are not a field for experimentation.

## Young offenders’ institutions

Reminder of recommendations already made

Educational project

The Contrôleur général’s report for 2011 noted a certain number of uncertainties affecting young offenders’ institutions. In 2012 observations of the same kind were made to various degrees: there continues to be general uncertainty with regard to what becomes of children after their respective stays in institutions; similarly, lack of precision in the completion of the documents that make it possible to assess children’s development (in particular the “document of individual measures in dealing with young offenders” provided for by the social action and family code (code de l’action sociale et des familles) since 2002) continues to be too widespread, except in institutions that are “smoothly” run.
| **Young offenders’ institutions** | Discipline and sanctions | Normative disciplinary framework | The Minister of Justice should enact a general normative framework, which could take the form of a decree, concerning disciplinary rules in young offenders’ institutions. In order to ensure fairness towards minors and consistency between adults, professionals should be able to refer to a scale of sanctions for guidance, while being able to adapt them to the individual requirements of the minor in question. This normative framework would rule out sanctions involving: on the one hand restrictions upon or prohibition of contact with families, for whatever reason, as recommended by the United Nations resolutions, referred to as the Havana Rules; and, on the other hand, the management of tobacco for disciplinary purposes. |
| **Young offenders’ institutions** | Violence | In a general manner, the Contrôleur général would desire that all violence – even minor – by adults against minors should be systematically brought to the attention of State Prosecutor’s Offices; such violence, prohibited by the law and by the Convention on the Rights of the Child of 20th November 1989 (article 19), cannot in any case whatsoever constitute a response to contraventions. |
| **Young offenders’ institutions** | Defence rights and introductory legal training for tutors | Notification of rights | The Minister of Justice should issue a circular recalling that minors placed in young offenders’ institutions (CEF) remain entitled to rights of which it is essential for them to be informed. Thus, the minor’s legal situation should be subject to more detailed explanations on the part of one of the members of the CEF; these explanations should be provided both to the minors and to their parents; minors committed to institutions and their parents should be systematically provided with information on the Défenseur des droits ombudsman and the Contrôleur général des lieux de privation de liberté. It would be appropriate to ensure that minors personally sign any notification sent to them by courts or authorities, so that they are able to fully exercise their rights. All tutors should have the benefit of introductory legal training, in order to be in a position to completely fulfil their duties towards minors. |
| **Police custody facilities** | Reminder of recommendations already made | Video surveillance | The legislature should make an amendment to the Internal Security Code (code de la sécurité intérieure) in order to include a provision therein concerning procedures for authorisation of video surveillance devices in police custody facilities. It should specify the conditions under which they are installed and governed; the terms and duration of storage of images; the procedures for notification of persons in police custody and the remedies open to them. Moreover, a memorandum from the minister of the Interior should specify that images of persons deprived of liberty cannot be placed in media which are easily copied (USB keys for example) and accessible to third parties without difficulty. Finally, where cameras are still installed in rooms reserved for body searches they should be rapidly removed. |
| Intercom facilities in gendarmeries | The Contrôleur général recommends the installation of intercom systems in cells in order to make up for the absence of personnel in gendarmeries at night, when there are persons in custody present in the premises. |  |  |
The Ministers of justice and of the Interior should issue a new circular concerning the rights of persons in police custody making it possible to sum up the developments in case law that have occurred since the coming into force of the act of 14th April 2011. Provision could also be made therein for the handing over to persons in police custody: of a document detailing their rights and the display of notices of this kind in police custody facilities; of a document including a list of the lawyers of the local bar and an explanation concerning the role of lawyers in police custody; of a copy of the official record of notification of their rights as well as the official record of the stages of police custody and of the end thereof. Persons brought before law courts at the end of periods of police custody should be reminded of their rights [cf. the following recommendation], whether or not within the field of application of the provisions of article 803-3 of the code of criminal procedure; on the other hand, the elaboration of rules and regulations and the display thereof should be a requirement, in all places containing jails (provision should be made concerning the latter in an act). As far as minors are concerned, police and gendarmerie departments should be reminded that when notice of police custody measures is given to their legal representatives, they should be systematically informed of their right to appoint a lawyer for their child, if the latter has not requested one, as well as of their right to call for a medical examination for minors over sixteen years of age (cf. article 4 of the statutory instrument of 2nd February 1945).
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<tr>
<th>Penal institutions</th>
<th>Access to care</th>
<th>Distribution of medicines</th>
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<td>The Interior minister should issue a memorandum recalling that continuity of health care makes it necessary for courses of treatment to be taken during periods of police custody, with regard more particularly to chronically sick patients who need to take medicines at fixed times, everything should be done in order to obtain the medicines quickly, if need be by approaching their family. The distribution of medicines should comply with medical secrecy insofar as possible.</td>
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<th>Penal institutions</th>
<th>Documents placed at prisoners' disposal</th>
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<td>A memorandum from the director of the prisons administration department to the directors of penal institutions should recall the necessity:</td>
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<td>- to update the rules and regulations of institutions and to place them at prisoners’ disposal, along with up-to-date versions of the penal code and code of criminal procedure, if necessary in IT format or else by providing for access to legal websites in the libraries of institutions;</td>
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<td>- that statutory texts concerning life in detention, and circulars in particular, should be systematically placed in files specially established for this purpose and accessible in the libraries of institutions.</td>
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<th>Penal institutions</th>
<th>Defence rights</th>
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<td>This memorandum from the director of the prisons administration department should also recall the need to organise the traceability of prisoners' applications for remedy and to systematically reply to them, or at least to acknowledge receipt thereof. The memorandum should also recall that the provisions of article 24 of Act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with the public administrations, transposed under articles R57-6-8 et seq. of the code of criminal procedure, should be implemented in case of unfavourable individual decisions taken by the prisons administration, making provision for model forms and summons to inter partes hearings if necessary.</td>
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<th>Penal institutions</th>
<th>Confidentiality of interviews with lawyers</th>
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<td>To ensure the confidentiality of exchanges between lawyers and their detained clients, by systematically providing for dedicated soundproofed interview premises and making sure that the telephone numbers of legal advisers are indeed excluded from monitoring and recording. It is also recommended that the statutory texts concerning life in detention, and circulars in particular, should be systematically placed in files specially established for this purpose and accessible in the libraries of institutions.</td>
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<th>Penal institutions</th>
<th>Implementation of Disciplinary Proceedings</th>
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<td>The Government should reform disciplinary regulations in penal institutions by statutory means.</td>
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<td>This regulatory reform should specify:</td>
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<td>- that inquiry reports leading to the opening of disciplinary proceedings should be drafted in a sufficiently clear, specific and detailed manner. For this purpose, the Contrôleur général recommends the putting in place of specific training in the conducting of inquiries and command of the written procedures involved for officers and graded officers in charge of drafting reports.</td>
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- that all decisions to take no further action with regard to incident reports should be brought to the attention of the prisoners concerned;
- that the allowed time between the commission of the offence and appearance before the disciplinary authority should be as short as possible and should not, in any case, be greater than fifteen days.
- inquiries, necessarily conducted by an officer or a graded officer specialised in this task, should be conducted in an inter partes manner. Inquiries should be carried out including incriminating and exonerating facts, on the basis of testimonies, evidence collected by means of face-to-face comparison of evidence and video recordings. Inquiries should also include information on the personality of the prisoner. From the moment that a disciplinary fault is formed, the inquiry report constitutes the step in the proceedings which refers the prisoner for appearance before a disciplinary committee with reformed competence;
- that at the inquiry stage face to face comparison of evidence should be organised and any possible witnesses heard, including at the time of the disciplinary hearing;
- the acts at the origin of the proceedings are examined by the disciplinary committee, at the end of an inter partes hearing. The officer or graded officer having conducted the inquiry serves as reporting official to the disciplinary committee. The committee includes (as currently) an external assessor. It is chaired by one of the assistants of the head of the institution specially designated for this purpose. The prisoner appears assisted by a lawyer or a specially-appointed representative (if they have so requested);
- after having heard the reporting official followed by the representative and the prisoner, who speaks last, the committee deliberates and issues a decision, which sets out its reasons and is made public, read at the time of the hearing before the disciplinary committee, delivers a verdict with regard to guilt and puts forward a sanction if necessary. They may follow the decision, reduce or increase the sanction – in which case they give the specific reasons for their decision – or demand a new examination of the proceedings.
- the person punished should be informed in the disciplinary committee’s decision, of which a copy is handed over to them immediately, of the procedures and deadlines for appeals to a higher administrative authority, as well as judicial remedy, including with regard to deferment (article L.521-1 of the Code of Administrative Law (code de justice administrative)).

Moreover, the prisons administration department (DAP) should issue two memoranda for decentralised departments:
- a first reminder note explaining the imperious need to distinguish the fields of application, on the one hand, of article 24 of Act no. 2000-321 of 12th April 2000 concerning the rights of citizens in their relations with the public administrations and, on the other hand, of the disciplinary proceedings resulting from the DAP circular of 9th May 2003 established in application of the said article 24, in order to bring an end to the confusion which reigns in the implementation of these two measures, in particular with regard to decisions concerning dismissals from employment and training, placements
<table>
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<tr>
<th>Penal institutions</th>
<th>Discipline and sanctions</th>
<th>Disciplinary Committee Procedures</th>
<th>Placement in confinement and placement in punishment wings</th>
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<td>under the solitary confinement regime and withdrawal of appliances and correspondence;</td>
<td>The regulatory reform by the ministry of Justice concerning disciplinary regulations should also specify:</td>
<td>The regulatory reform by the ministry of Justice concerning disciplinary regulations should also specify:</td>
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<td>- a second reminder note specifying that the assignment of prisoners to “closed” sectors,</td>
<td>- that disciplinary committee sessions should be held in a specifically dedicated and equipped place, outside of punishment wings; a place conducive to the solemnity and equanimity of <em>inter partes</em> proceedings and that the Declaration of the Rights of Man and of the Citizen should be displayed there;</td>
<td>- that the suspension of educational, teaching and professional training activities should not be included among the restrictions resulting from the sanction of confinement, which remains a disciplinary measure in its own right;</td>
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<td>within the framework of differentiated regimes, should not in any case be used as a sanction, this practice being contrary to the spirit of the Prisons Act of 24th November 2009.</td>
<td>- that prisoners occupying cells on their own should not have to pack their affairs prior to appearing before the disciplinary committee;</td>
<td>- that placement in punishment wings pending disciplinary hearings should be strictly limited to cases of urgency, in accordance with the Prisons Act of 24th November 2009, apart from any other grounds or any other consideration;</td>
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<td>- that it is incumbent upon directors of institutions to specify the procedures for searches upon prisoners called to appear before the disciplinary committee, in accordance with article 57 of the Prisons Act of 24th November 2009, in such a manner as to avoid the implementation of two strip searches in succession;</td>
<td>- that the secretariats of disciplinary committees should be entrusted to a member of prison staff who is not an assessor; the prison officer-assessor should not simultaneously be responsible for keeping order in the hearing;</td>
<td>- that for prisoners who declare that they do not understand French, a special procedure should systematically be put in place, with the appointment of an interpreter, chosen from the list approved by the court of appeal, by the head of the institution.</td>
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<td>- that the secretaryship of disciplinary committees should be entrusted to a member of prison staff who is not an assessor; the prison officer-assessor should not simultaneously be responsible for keeping order in the hearing;</td>
<td>- that disciplinary committee sessions should be compulsorily held in the presence of an assessor from civil society, failing which the sanctions pronounced shall be invalid. For this purpose, the Contrôleur général recommends that initial and continuing training should be implemented for assessors from civil society. He also recommends that the prisons administration might facilitate a meeting of assessors in order to take advantage of their experience in the reforms that it needs to conduct;</td>
<td>- that all video surveillance recordings of incidents should be viewed in disciplinary hearings by means of monitors installed in each disciplinary committee room;</td>
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| Penal institutions | Discipline and sanctions | pending inquiry and hearing | The regulatory reform by the ministry of Justice concerning disciplinary regulations should also specify:  
- that in view of the harshness of the sanction of placement in a punishment cell, the latter should only be pronounced as a last resort and envisaged in case of failure of compensatory sanctions and mediations;  
- that medical opinions diagnosing unfitness for stays in punishment wings should revoke this mode of enforcement of a disciplinary measure and not suspend it pending a medical opinion to the contrary;  
In this respect, the Contrôleur général recommends that medical staff should not take part in decision-making processes leading to disciplinary sanctions; the practice of obliging doctors to certify whether or not prisoners are fit to be placed in the punishment wing hardly being conducive to the establishment of relations of trust between doctors and their patients. |

| Penal institutions | Discipline and sanctions | Regime Applied in Punishment Wings | In addition, the regulatory reform by the ministry of Justice concerning disciplinary regulations should specify:  
- that an inventory of fixtures and statement of state of repair should be drawn up in the presence of the parties involved at the time of each arrival in a punishment cell and that the whole of the items and products necessary for a stay in the punishment wing should be handed over to the prisoner;  
- that, in view of their presence in a cell twenty-three hours a day, persons punished should have the benefit of two daily exercise timeslots, in the morning and in the afternoon. To this end, the Contrôleur général recommends the possibility of leaving several persons in the same yard, which would solve, if necessary, the difficulty of procuring a sufficient number of available yards;  
In this respect, France should follow and extend to punishment wings the recommendation concerning solitary confinement wings made by the European Committee for the Prevention of Torture (general report 2010) which consists of “rethinking the design of exercise yards in solitary confinement wings in all institutions that are to be built or renovated. These yards should be sufficiently spacious and equipped in a manner allowing prisoners to practice physical exercise rather than merely pacing up and down a closed area” and have facilities making it possible to shelter from climatic vagaries.  
Finally, this circular should specify:  
- that persons placed in punishment wings should be able to take daily showers and have their spare changes of clothes in their cells, for the same reasons of hygiene; |
| Penal institutions | | “Disguised” sanctions imposed through misuse of statutory provisions for disciplinary purposes | The prisons administration department (DAP) and the judicial youth protection service (DPJJ) should issue a joint circular specifically fixing the modes of application of the provisions concerning disguised sanctions in prisons for minors (EPM). | 4 |
| Penal institutions | | Unlawful Practices for the Purposes of Punishment | The Contrôleur général firmly recalls:  
- that the processing of applications and effective access to activities and employment cannot in any case be conducted in a discretionary and discriminatory manner;  
- that discriminatory treatment of prisoners in the management of the concrete aspects of their daily lives such as deprivation of activities, exercise and even meals, moral harassment (racist remarks, intimidation etc.), unusually frequent changes of cell, brutal searches of cells etc. cannot be tolerated. | 4 |
| Penal institutions | Discipline and sanctions | The respective fields of competence of the prisons administration and the courts | The legislature should make an amendment to article 721 of the code of criminal procedure devoted to remission credits and the role of the judge responsible for the execution of sentences (JAP), in order to clarify the respective fields of jurisdiction of the prisons administration and of the courts in disciplinary matters.  
In the first place, in order to clearly dissociate disciplinary measures from measures for the tailoring of sentences to the needs of individual offenders, the system of remission credits should be given a purely administrative character and, therefore, the head of the institution should be invested with a power of withdrawal connected to the pronouncement of disciplinary sanctions, according to a pre-established scale and with remedies defined by law.  
On the other hand, the criteria on which the JAP relies within the framework of additional remission decisions should be broadened in order to take the prisoner’s behaviour into account, without being bound by disciplinary decisions pronounced by the head of the institution in any way whatsoever.  
In the second place, the Contrôleur général desires that reflection should be initiated by the Minister of Justice, in order to surround the prerogatives of heads of institutions with the necessary guarantees and introduce systematic control by the liberty and custody judge whenever punishment cell sanctions of more than five days are pronounced, in order to check the conditions of enforcement of disciplinary measures. | 4 |
<p>| Penal institutions | Discipline and sanctions + defence | Remedies open to persons punished by the | The regulatory reform concerning disciplinary regulations should also specify that appeals to higher administrative authorities and actions for judicial remedies lodged against decisions taken by disciplinary committees, as well as decisions delivered, should be recorded by means enabling the traceability thereof, in order to place this information at the disposal of the authorities responsible for inspection; | 3 + 4 |
| Penal institutions | Rules and regulations of punishment wings | The rules and regulations of all punishment wings should be brought up to date with the Prisons Act in penal institutions as a whole, in particular with regard to items authorised and handed over to prisoners at the time of their placement in punishment cells. | 3 |
| Penal institutions | Taking punishment cells of less than 6 m² out of service | The prisons administration should take punishment cells of cramped dimensions out of service, in accordance with the recommendations of the European Committee for the Prevention of Torture (annual report 2010), which fix the minimum surface area of living space at 6 m². | 3 |
| Penal institutions | Improvement and facilities of punishment cells | Improvement work should be undertaken in order to ensure that each punishment cell has adequate access to natural light, possesses a smoke detection and smoke extraction system and is equipped with means of communication with the staff. The facilities of punishment cells should be brought into line with norms; greater vigilance should be given to the maintenance of these premises. | 3 |
| Penal institutions | Maintenance of family relations | The family and friends of prisoners placed in punishment wings should not suffer any special restrictions connected to the imposition of disciplinary treatment, with regard to their visiting and relations by means of telephone and letters. Moreover, family life units (UVF / unités de vie familiales) and family visiting rooms (visiting rooms equipped for single families, in general with children) are still too few in number, and use thereof is sometimes too restrictive. | 3 + 1 |
| Penal institutions | The role of graded officers | The role and corresponding duties of the middle-ranking managerial members of prison staff, known as senior prison officers (premiers surveillants) and prison “majors” (majors pénitentiaires), referred to as “graded” officers, should be redefined. | 1 |
| Penal institutions | Removals from prison in order to go to hospital | Use of handcuffs and fetters should only be resorted to in scenarios where they are absolutely necessary, that is to say that there is a need to return to the diversity provided for in the rules. If such practices are to be avoided, it is particularly to be recommended that the obligation to achieve results should be changed into a best-efforts obligation. Thus, for removals from prison to the hospital environment, the CCR notes (orders, conduct, regime) concerning “escorts” should be specifically adapted to each individual situation in strict application of the memorandum from the prisons administration department of 19th October 2010 concerning the standardisation of escorts. | 1 + 5 |
| Penal | Individual and | The necessary dialogue between prisoners and staff needs to be placed at the centre of practices once again in an operational manner. In addition, the terminals that were supposed to be installed in prisons, in order to allow prisoners to record their applications in the CEL | 1 |</p>
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<tr>
<th>institutions</th>
<th>Access to health care</th>
<th>collective expression on the part of prisoners themselves, should henceforth be operational. At the same time, nothing has come of the initiatives undertaken by the prison administration department in order to open up channels for forms of collective expression on the part of the prison population, which gave rise to experiments in some ten institutions, amongst which the Contrôleur général identified some unquestionable successes. The causes of this failure should be looked into and put right.</th>
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<tr>
<td>Access to health care</td>
<td>Provision of health care to prisoners</td>
<td>The Contrôleur général recalls that access to health care should be effectively guaranteed to all prisoners, in all prison UCSAs, and that it should be possible to trace the channels through which calls to attend medical appointments are issued. In this respect, more particularly with regard to health incidents occurring at night and with a view to ensuring continuity of treatment, he recommends that a traceability tool should be put in place enabling information to be passed on between day and night teams.</td>
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<td>Access to health care</td>
<td>Medical staff and CPUs</td>
<td>The ministers of Justice and Health should issue a joint memorandum recalling that, in accordance with the circular of 21st June 2012, health staff working in the prison environment should take part in meetings of the single multidisciplinary committee (CPU), subject to strict compliance with medical secrecy.</td>
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<tr>
<td>Access to health care</td>
<td>Distribution of medicines</td>
<td>Medicines should be distributed to patients in a manner that is specifically adapted to the latters' profiles, both with regard to choice of place and time and frequency of distribution; the same applies to opioid replacement therapies, the continuity of which remains essential, including for those prescribed outside of prison. Moreover, medicines should be administered in compliance with the dosage form in which they are placed on the market. Finally, specialised courses of treatment for which official approval has not been granted to local authorities and so-called “comfort” medicines should be listed in the medicines register of the institutions in order to be available in the UCSA dispensaries.</td>
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<td>Prisoners who are elderly and/or suffering from disabling diseases</td>
<td>Adaptation of premises</td>
<td>The ministry of Justice should begin the implementation of a programme in order to ensure that in the short-term all prisons, including the oldest ones, are able to offer an accommodation capacity in adapted cells for persons with restricted mobility in the region of 1 – 1.5% of available places. In this respect, specifically in prisons with sections incorporating different kinds of prison regime, the specially-equipped cells should be judiciously distributed between the various wings, without placing them in wings with closed-door regimes. Moreover, a fresh look should be taken at access of persons with restricted mobility to various activities (exercise yards, school centres, production workshops etc.), which should be made easier. When the performance of strip searches on persons of restricted mobility is justified in view of article 57 of the prisons act of 24th November 2009, it is imperative for the door of the</td>
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<td>Penal institutions</td>
<td>Access to specialised medical care</td>
<td>Searches</td>
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<td>Dental care</td>
<td>Ophthalmic care</td>
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<td>The joint memorandum from the ministers of Justice and Health should recall that, as far as ophthalmic treatment is concerned, prisons that cannot obtain ophthalmic surgery time should by default establish an agreement with a local optician; that, in addition, in association with the hospital, prisons should renegotiate the agreement with the ministry of Defence so that the obtention of glasses for prisoners lacking sufficient resources no longer takes place within a strict deadline of one month but “as soon as possible without overrunning a deadline of one month”; finally that, on the one hand, prisons should place the products necessary for the maintenance of contact lenses at the disposal of persons who wear them within the first twenty-four hours and, on the other hand, they should include these products in “new arrivals” prison shop vouchers in order to enable prisoners to buy contact lenses in the following days, the financial cost thereof remaining, allowing for exception, payable by the latter.</td>
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<td>Physiotherapy</td>
<td>Ophthalmic care</td>
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<td>The joint memorandum from the ministers of Justice and Health should recall that, as far as physiotherapy treatment is concerned, the administratively attached hospitals should organise themselves in order to ensure that the necessary sessions are provided in sufficient number within prisons by physiotherapists and that, failing this, the treatment should be organised in the administratively attached hospital. To this end, the Contrôleur général asks for the granting of temporary release without difficulty, appropriate to the requirements of treatment and, in the absence of conditions of eligibility, for the implementation of removals from prison in order to go to hospital to be facilitated.</td>
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<td>Penal institutions</td>
<td>Physiotherapy</td>
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<td>The joint memorandum from the ministers of Justice and Health should recall that the admission of surgical appliances that the UCSA cannot supply into prison should not be...</td>
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<td>Penal institutions</td>
<td>Surgical appliances</td>
<td>Health care in preparation for release</td>
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<th>Health institutions</th>
<th>Access to health care</th>
<th>Procedure for admission to units for difficult psychiatric patients</th>
<th>The authorities should rapidly elaborate a procedure for admission to UMDs which is far more rigorous than that which currently exists, in order to bring an end to the discrimination resulting from the law with regard to the discharge of orders for treatment without consent concerning persons judged not to be criminally responsible or having spent time in UMDs.</th>
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<td>Health institutions</td>
<td>Access to health care</td>
<td>Merging of ASPDRE and ASPDT</td>
<td>The Contrôleur général recommends both that the two types of treatment without consent (committal to psychiatric treatment at the request of a representative of the State and committal to psychiatric treatment at the request of a third party) should be combined into a single procedure and, at the same time, that the principle of decision should be entrusted to a judge.</td>
<td>1</td>
</tr>
<tr>
<td>Health institutions</td>
<td>Access to health care</td>
<td>Emergency psychiatric units</td>
<td>The minister of Health should encourage the trend towards the development of units responsible for dealing with psychiatric emergencies insofar as they are better equipped for carrying out both assessments of the state of health of new arrivals and the procedures involved in the implementation of treatment without consent, in particular as far as complete hospitalisation is concerned.</td>
<td>1</td>
</tr>
<tr>
<td>Health institutions</td>
<td>Improvement of somatic health care</td>
<td>It would be useful for the director general in charge of provision of healthcare to distribute a guide of good practice concerning the obligation for all persons placed in complete hospitalisation without their consent to undergo a somatic examination as required by the act of 5th July 2011 which would redefine the presence of doctors practicing somatic medicine where it is insufficient.</td>
<td>5 + 1</td>
<td></td>
</tr>
<tr>
<td>Health institutions</td>
<td>Improvement of somatic health care</td>
<td>The Ministers of Health and Justice should issue a joint circular, which could be a circular of application of the act of 5th July 2011, recalling a certain number of rights at the disposal of patients committed to psychiatric treatment without consent. Thus:</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>
- notification of decisions ordering committal to psychiatric treatment without consent is mandatory; it should occur as quickly as possible and in a manner appropriate to the state of the patient. Delivery of a copy of the decision must be a priority;
- traceability of notification of decisions of committal to psychiatric treatment should be systematically organised, in order to make it possible, for both the administrative departments of hospitals and authorities likely to inspect these health institutions or intervening at any particular stage of the procedure, to verify that such notification has indeed been issued;
This notification should not exempt professionals from written, specific and updated provision of information, on the various possibilities of remedy and on the authorities to which cases can be referred, with information on the latters’ status and full contact details as well as a description of their principal areas of competence; provision of this information could be carried out by means of the posting of noticeboards as well as by the handing over of specific documents and information booklets distinct from booklets for new arrivals, or indeed booklets for new arrivals specially dedicated to psychiatry;
- posting on noticeboards, in all psychiatric institutions and in all treatment units, of the charter of rights and liberties of persons admitted, mentioned under article L.311-4 of the social action and family code (code de l’action sociale et des familles);
- posting on noticeboards of the bar roll of counsels entitled to practice for the jurisdiction concerned, as well as telephone contact details for dedicated surgeries when they exist;
- that article L.1111-6 of the public health code concerning the appointment of trusted legal representatives should be implemented in psychiatric hospitals;
- that the principle of hearings held by a judge outside of the ordinary bench of the court within health institutions should be recognised as the usual practice, as already stated by the Contrôleur général in the assessment concerning the use of videoconferencing with regard to persons deprived of liberty, published in the Journal officiel of 9th November 2011.
Annexe 2

Map of Institutions and Departments Inspected in 2012

Insert map no. 1 entitled “CARTE_1_dptmts visités en 2012_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 to the site for a period of two to 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 CGLPL, “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 case of 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.

---

List of the Departments for which the Inspection of Institutions has led to Public Reports on the CGLPL Website

Insert map no. 4 entitled “CARTE_2_rapports publiés_SIG” here.
Annexe 4

Budget balance sheet

1. Budget allocated to the CGLPL in 2012

<table>
<thead>
<tr>
<th>Initial finances act (Loi de finances initiale) LFI 2012*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel costs</td>
</tr>
<tr>
<td>of which permanent staff</td>
</tr>
<tr>
<td>of which occasional staff</td>
</tr>
<tr>
<td>Other expenditure</td>
</tr>
<tr>
<td>Operation</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
</tbody>
</table>

*for payment appropriations

1.1 Distribution of the Overall Budget

- Rent 7%
- Ordinary expenditure 13%
- Personnel costs 80%
- Charges courantes 13%
1.2 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 repayment 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, as well as its translation into English.

The other expenditure covers day-to-day operation (equipment, fluids, reimbursement of trainees’ expenses, expenditure linked to IT and office stationery).

NB: the figures are closed at the date of 12th December 2012.

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’État honoraire (honorary Councillor of State)

Secretary-General: Xavier Dupont (until 31st January 2012) succeeded by Aude Muscatelli, administratrice territoriale (member of the French regional administration) (from May 2012)

Assistant: Chantal Brandely, executive assistant

Inspectors

Jean-François Berthier, commissaire divisionnaire (chief superintendent of the French national police force)

Betty Brahmy, hospital doctor, psychiatrist

Marine Calazel, attaché of the Prime Minister’s office

Martine Clément, director of the prison rehabilitation and probation department (until June 2012)

Michel Clémot, général de gendarmerie (acting Secretary-General from February to April 2012 inclusive)

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, attaché principal d’administration central (head attaché of central government departments)

Muriel Lechat, commissaire divisionnaire (chief superintendent of the French national police force) (from December 2012)

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

Jane Sautière, director of the rehabilitation and probation department (from July 2012)

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
Khadoudja Chemlal, hospital doctor (until September 2012)
Jean Costil, former president of an association
Céline Delbauffe, former lawyer (from April 2012)
André Ferragne, contrôleur général des armées (chief inspector of French armed forces attached to the Defence ministry) (until October 2012)
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 of 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 (from September 2012)
Guillaume Monod, child psychiatrist (from July 2012)
Bernard Raynal, former director of a hospital
Eric Thomas, headteacher
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, attaché of the Prime Minister’s office

Inspector – responsible for international relations
Elise Launay-Rencki, secretary for foreign affairs

Benoît Delepoulle (member of the national legal service in-service training)
Amadis Delmas (IRA / regional training institute for the public administration)
Stéphane Fournier (archivist)
Mathilde Gerrer (trainee lawyer)
Laurence Grosclaude (registered to follow lectures at the French national School for the Judiciary)
Maud Guillemet (IEJ/ Institute for Judicial Studies)

In addition, in 2012 the CGLPL welcomed, for professional training or for temporary employment contracts:
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) (from March 2012)
Sara-Dorothée Guérin-Brunet, legal expert
Lucie Montoy, legal expert.
Estelle Royer, legal expert

Chirine Heydari-Malayeri (trainee lawyer)
Arnaud Porée (administrative court (TA) judge)
Aude Sergeant (director of prison services)
Gabriel Szeftel (IRA / regional training institute for the public administration)
Sophie Rafin (registered to following lectures at the ENM French national School for the Judiciary)
Adèle Vidal-Giraud (IEJ/ Institute for Judicial Studies)
Annexe 6

Reference texts

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.

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.

Act no. 2007-1545 of 30th October 2007 instituting a Contrôleur général des lieux de privation de liberté (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. L194-1 (V)
Amends the Electoral Code - art. L230-1 (V)
Amends the Electoral Code - art. L340 (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 becomes current at the date provided for under I of article 44 of institutional act (loi organique) no. 2011-333 of 29th March 2011 concerning 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 (VT)

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 obtains 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 can 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 can 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. L111-10 (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.

***

French Senate: Bill no. 371 (2006-2007);
Report by Mr Jean-Jacques Hyest, on behalf of the Law Commission (commission des lois), no. 414 (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 Hyest, 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 rules in accordance with article 7 of decree no. 2008-246 du 12th March 2008 concerning its operation.

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: right to dignity, freedom of thought and conscience, to the maintenance of family relations, to healthcare and to employment and training etc.

Cases can 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.
Table of Contents

CONTENTS .................................................................................................................................................. 2
GLOSSARY ..................................................................................................................................................... 6
FOREWORD .................................................................................................................................................. 9
SECTION 1: ................................................................................................................................................ 12
STATEMENTS MADE BY THE CONTRÔLEUR GÉNÉRAL TO THE GOVERNMENT IN 2012 ............... 12
  1. ASSESSMENTS AND RECOMMENDATIONS PUBLISHED IN THE JOURNAL OFFICIEL ....................... 12
  1.1 The Assessments made public .............................................................................................................. 13
  1.2 Recommendations concerning Baumettes Prison in Marseille .......................................................... 16
  2. RECOMMENDATIONS CONCERNING INSPECTIONS .......................................................................... 17
     2.1 Detention Centres for illegal immigrants and Waiting areas .......................................................... 18
     2.2 Young Offenders’ Institutions ........................................................................................................... 30
     2.3 Police Custody and Customs Detention Facilities ............................................................................ 38
     2.4 Prisons ................................................................................................................................................ 47
     2.5 Treatment in Hospitals without Consent ........................................................................................... 64
SECTION 2 ................................................................................................................................................. 78
ACTIONS TAKEN IN 2012 IN RESPONSE TO ASSESSMENTS, RECOMMENDATIONS AND CASES TAKEN UP BY THE CONTRÔLEUR GÉNÉRAL ................................................................. 78
  1. POSITIVE CHANGES OBSERVED FOLLOWING CASES TAKEN UP AND RECOMMENDATIONS .......... 80
     1.1 Transgressive acts committed by minors ............................................................................................ 80
     1.2 Maintenance of family relations for imprisoned couples ................................................................. 81
     1.3 Prisoners’ Voting Rights .................................................................................................................... 81
     1.4 The Fight against Poverty in Prison ................................................................................................... 82
     1.5 Degrading Treatments of Detained Persons ...................................................................................... 82
     1.6 The Prohibition on the Sale of Coffee in Prison Shops .................................................................... 83
  2. ACTIONS TAKEN IN 2012 IN RESPONSE TO THE PUBLIC ASSESSMENTS PUBLISHED IN THE JOURNAL OFFICIEL ........................................................................................................... 84
     2.1 The Assessment concerning Numbers of Prisoners published on 13th June 2012 ......................... 84
     2.2 The Assessment concerning Partial Release published on 23rd October 2012 .............................. 84
  3. ABSENCE OF PROGRESS ASCERTAINED WITH REGARD TO CERTAIN ISSUES ABOUT WHICH CONTINUAL RECOMMENDATIONS HAVE BEEN MADE .................................................................... 85
     3.1 Confiscation of the brassieres of women placed in police custody .................................................. 85
     3.2 The practice of Religion in Prisons .................................................................................................... 86
     3.3 Supervision of Prison Staff ............................................................................................................... 86
     3.4 The Harmful Use of Fuel Tablets in Prisons ...................................................................................... 87
  4. SUBJECTS WHICH CONTINUE TO POSE MAJOR PROBLEMS ..................................................... 87
     4.1 The Protection of Medical Secrecy in Prison ..................................................................................... 87
     4.2 Provision of medical services for transsexual prisoners .................................................................. 88
     4.3 The application of the “Closed Doors” Regime to the Whole of the Prisoners of Long-Stay Prisons and long-stay Prison Wings ................................................................................................. 89
     4.4 Renewal of Prisoners’ Residence Permits ......................................................................................... 89
     4.5 The Use of Information Technology in Prison .................................................................................. 90
SECTION 3 .................................................................................................................................................. 100
DISCIPLINE AND SANCTIONS IN PLACES OF DEPRIVATION OF LIBERTY ............................................ 100
  1. EMPIRICAL DISCIPLINARY PRACTICES BUILT UPON LEGAL UNCERTAINTIES ............................ 101
     1.1 Misuse of Therapeutic Practices for Disciplinary Purposes within Health Institutions ..................... 101
     1.2 A Disciplinary Regime with Poorly-Defined Contours in Detention Centres for Illegal Immigrants .... 106
     1.3 Discipline in Young Offenders’ Institutions: a Heterogeneous Construction .................................... 108
  2. PRISON DISCIPLINE: PERFECTIBLE LAW AND QUESTIONABLE PRACTICES .................................. 111
2.1 Disciplinary Regulations that are specific, while leaving room for improvement ........................................ 112
2.2 Misapplication of Statutory Provisions as an Indirect Means of Discipline. ............................................. 125
2.3 Unlawful Practices for the Purposes of Punishment ...................................................................................... 136
2.4 The impact of Prison Disciplinary Sanctions upon Court Decisions ......................................................... 137

SECTION 4 ....................................................................................................................................................... 147

ACCESS TO DEFENCE RIGHTS FOR PERSONS DEPRIVED OF LIBERTY .................................................... 147

1. ACCESS TO INFORMATION: AN ESSENTIAL PRECONDITION FOR ANY DEFENCE .................................. 148
   1.1 Informing Persons Deprived of Liberty of the Existence of their Rights is a Priority ............................... 148
   1.2 The use made of the information provided depends upon its content and the way in which it is passed on .................................................................................................................................. 153
2. EFFECTIVE EXERCISE OF DEFENCE RIGHTS ....................................................................................... 165
   2.1 The technical nature of defence before a judge places persons deprived of liberty at a disadvantage .... 165
   2.2 Though apparently more straightforward, defence before the administration is no less difficult to exercise ............................................................................................................................................. 176

SECTION 5 ....................................................................................................................................................... 183

DEPRIVATION OF LIBERTY AND ACCESS TO HEALTH CARE ......................................................................... 183

1. ACCESS TO HEALTH CARE IN PLACES OF SHORT-TERM DEPRIVATION OF LIBERTY ........................... 183
   1.1 Access to Health Care in Police Custody Facilities .................................................................................. 183
   1.2 Access to Health Care in Detention Centres and Facilities for Illegal Immigrants .............................. 186
2. GENERAL HEALTH CARE IN PRISONS ....................................................................................................... 189
   2.1 Background details .................................................................................................................................. 189
   2.2. The Principal Points Reported by the Contrôleur général des lieux de privation de liberté .............. 192
   2.3 The Highly Variable Quality of Provision of Health Care to Prisoners in General .............................. 195
3. DAILY LIFE IN PRISON FOR THE ELDERLY AND PERSONS SUFFERING FROM DISABLING PATHOLOGIES .... 200
   3.1 Daily life in prison for persons with restricted mobility ........................................................................ 201
   3.2 Daily life in prison for elderly persons .................................................................................................. 204
4. HEALTH CARE WITHIN THE FRAMEWORK OF PREPARATION FOR RELEASE AND REDUCED SENTENCING .............................................................................................................. 206
   4.1 Remission and Temporary Release ......................................................................................................... 206
   4.2 Deferment of Sentences on Medical Grounds ......................................................................................... 207
   4.3 The problematic situation of unconvicted prisoners .............................................................................. 208
   4.4 Deferment of Sentences on Emergency Medical Grounds ...................................................................... 209
5. HEALTH CARE IN SEMI-CUSTODIAL INSTITUTIONS .................................................................................... 209
6. SOMATIC HEALTH CARE IN MENTAL HEALTH INSTITUTIONS ................................................................. 210

SECTION 6 ....................................................................................................................................................... 216

"FOR THE ATTENTION OF THE CONTRÔLEUR GÉNÉRAL..." (TESTIMONIES RECEIVED) ................................. 216

SECTION 7 ....................................................................................................................................................... 222

THE CONFINEMENT OF CHILDREN .............................................................................................................. 222

1. AN ACCEPTED AND LIMITED PRINCIPLE OF CONFINEMENT ............................................................... 222
   1.1 The Debates on Confinement .................................................................................................................. 222
   1.2 Confinement of Children on Criminal Grounds ...................................................................................... 223
   1.3 The Confinement of Children on other Grounds .................................................................................... 224
2. SPECIAL MODES OF DEPRIVATION OF LIBERTY ...................................................................................... 228
   2.1 Separation from Adults ............................................................................................................................ 229
   2.2 Limited Mixing of Sexes except in Prison ................................................................................................. 230
   2.3 A Regime of Confinement with Specific Characteristics ....................................................................... 231
   2.4 Specialised Staff ...................................................................................................................................... 232
3. THE NECESSARILY UNEVEN EFFECTS OF CONFINEMENT ...................................................................... 234
   3.1 The Opposition between Confinement and the Interests of the Child ..................................................... 235
   3.2 Ill-Being .................................................................................................................................................. 236
   3.3 Fragmented Lives .................................................................................................................................... 236
   3.4 Difficulties of Assessment ....................................................................................................................... 238
SECTION 8 ............................................................................................................................... 241

ASSESSMENT OF THE WORK OF THE CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ IN 2012

1. THE ACT OF 30TH OCTOBER 2007: TOWARDS AN AMENDMENT? ........................................... 241
   1.1 Principles that should be considered established ................................................................. 241
   1.2 Issues that should be considered as leaving room for improvement .................................. 244
2. RELATIONS WITH THE AUTHORITIES AND OTHER CORPORATIONS ........................................ 250
   2.1 The Authorities .................................................................................................................. 250
   2.2 Independent Government Agencies with Specific Regulatory Powers ............................... 252
   2.3 Other Corporations ............................................................................................................ 253
3. CASES REFERRED .................................................................................................................. 255
   3.1 Analysis of the Cases Referred (letters sent to the contrôle général) ................................. 255
   3.2 Actions Taken in Response to the Cases Referred (letters from the contrôle général) .......... 264
   3.3 On-site inquiries ................................................................................................................ 270
4. INSPECTIONS .......................................................................................................................... 272
   4.1 Quantitative data ................................................................................................................. 272
   4.2 Completion and Results of Inspections .............................................................................. 277
   4.3 The Drafting of Reports ...................................................................................................... 278
5. THE RESOURCES ALLOCATED TO THE CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ IN 2012 279
   5.1 Staff ................................................................................................................................... 279
   5.2 The Budget .......................................................................................................................... 281
6. THE INTERNATIONAL ACTIVITY OF THE CONTRÔLEUR GÉNÉRAL DES LIEUX DE PRIVATION DE LIBERTÉ 283
   6.1 Multilateral International Action ...................................................................................... 283
   6.2 Bilateral International Action ............................................................................................. 284

SECTION 9 .................................................................................................................................... 286

PLACES OF DEPRIVATION OF LIBERTY IN FRANCE: STATISTICAL ELEMENTS .................................. 286

1. DEPRIVATION OF LIBERTY IN CRIMINAL AFFAIRS .................................................................. 287
   1.1 Number of persons implicated in offences, police custody measures and persons imprisoned 287
   1.2 Trends in numbers of persons implicated in offences, police custody measures and persons imprisoned 288
   1.3 Number of Police Custody Measures and Rate of Use thereof according to Type of Offence 289
   1.4 Annual Intake of Penal Institutions according to Criminal Category ................................... 290
   1.5 Population of Serving Sentences or on Remand and Prisoners at 1st January of each year ........ 291
   1.6 Distribution of Convicted Persons according to the Duration of the Sentence being served (including reduced sentencing without accommodation) ........................................... 292
2. COMPULSORY COMMITTAL TO PSYCHIATRIC HOSPITALISATION ........................................ 293
   2.1 Trends in measures of committal to psychiatric hospitalisation without consent from 2007 to 2011 293
   2.2 Compulsory Commital to Hospitalisation without Consent in 2011 ....................................... 295
3. DETENTION OF ILLEGAL IMMIGRANTS, FOREIGNERS REFUSED ENTRY TO THE COUNTRY AND ASYLUM SEEKERS ................................................................. 296
   3.1 Number of persons implicated in offences by the immigration department and number of police custody measures ........................................................................................... 296
   3.3 Detention Centres for Illegal Immigrants (Metropolitan France). Theoretical capacity, number of committals, average duration of detention, outcome of detention .................................. 298

ANNEXE 1 ...................................................................................................................................... 299

SUMMARY TABLE OF THE PRINCIPAL RECOMMENDATIONS OF THE CGPL FOR THE YEAR 2012 299

ANNEXE 2 ..................................................................................................................................... 316

MAP OF INSTITUTIONS AND DEPARTMENTS INSPECTED IN 2012 ............................................. 316

ANNEXE 3 ..................................................................................................................................... 317

THE INSPECTION REPORTS MADE PUBLIC ON THE WWW.CGPL.FR WEBSITE ............................. 317

ANNEXE 4 ..................................................................................................................................... 319