
RECOMMENDATIONS

of 12th November 2012

of the *Contrôleur général des lieux de privation de liberté*

made using the emergency procedure (article 9 of the law of 30th October 2007)

and concerning the Baumettes remand prison in Marseille

1 - When the *Contrôleur général des lieux de privation de liberté* (CGLPL) is aware of any serious violation of the fundamental rights of persons deprived of their liberty, article 9 of the law of 30th October 2007 authorises him to send his observations forthwith to the competent authorities and to demand that answers be provided. On receipt of the response, he determines whether the said violations have ceased; he then publishes his findings and the responses obtained.

Using this emergency procedure, which he is using for the second time, the *Contrôleur Général* publishes his recommendations, as follows:

2 - In effect, the findings from the team of some twenty inspectors that visited the Baumettes remand prison in Marseille between 8th and 19th October remove any doubts that there have been a serious violation of fundamental rights, particularly in regard to the obligations on public authorities, laid down in the applicable laws, to ensure that no prisoner is subjected to any inhuman or degrading treatment. As a result of these findings, the *Contrôleur Général* was granted a meeting, at his request, with the Minister of Justice on 16th November 2012; he asked the Minister to issue her comments, before the 4th December 2012, concerning the documents which he presented to her and, in particular, concerning this current report. In parallel, in a letter dated 12th November, the *Contrôleur Général* sent the same findings to the Minister of Health and Social Affairs, asking for a response by the same date.

3 - It goes without saying that the usual procedure, involving the drafting of an exhaustive report by the inspectors, is following its usual course and this report will be submitted to the appropriate ministers to benefit once again from their observations. It will be made public at the end of the due process.

4 - There is an irrefutable fact. In general, the extremely dilapidated state of the prison facility is perfectly well known. At the end of 1991, the (European) Committee for the Prevention of Torture (CPT) visited the institution and noted in its report that "detention conditions... left a lot to be desired" (§ 91) and that "accommodation conditions in wings A and B of the Marseille Baumettes prison were one of the immediate findings by the delegation". The report underlined in particular that "the cells and their fittings were in an advanced stage of deterioration. A number of them were filthy, as was the bedding" (§ 92). It concluded, notably, that "to submit prisoners to such a combination of detention conditions constitutes, according to the CPT, nothing less than inhuman and degrading treatment". On a return visit in 1996, the Committee acknowledged that the

authorities had carried out certain works, had reduced the prison's population and had increased the frequency of showers, but insisted that the major renovation of the establishment should be given "top priority" (Report § 93). A delegation from the Senate, visiting the prison on 18th April 2000, indicated that some one hundred cells were unoccupied "because of their squalid condition", that wings A and B were dilapidated and that "several cells had open toilets". Finally, the European Commissioner for Human Rights visited the establishment in September 2005 and stated that he "was shocked by the living conditions he observed.....in the Baumettes prison". "Holding prisoners in such an environment seems to me", he added, "to be at the limit of acceptability and at the limit of human dignity".

5 - Despite these regular observations made over the past twenty years, and despite the efforts of the establishment's successive management teams, the *contrôle général* is obliged to note that no substantial progress has been made. As an example, here is the description that two prisoners gave concerning their cell, a description that has been scrupulously verified by the *contrôle général*: "absence of the upper part of the window; television cable severed (no plug); no lighting (missing bulb), no night-light for the night warder; no emergency inter-phone; WC recently installed but not fixed to the floor, almost non-existent toilet flush and no privacy, washbasin good but leaks from the U-bend; no mirror; refrigerator very dirty and infested with cockroaches both inside and outside; dirty, damaged walls covered in graffiti of all sorts, numerous spiders and lice; floor dirty, covered in rubbish, no shower cubicle or hot water; no cupboard or shelves, nothing on which to sit, no table". Another person added: "it's made to drive us insane". Out of a sample of ninety-eight cells carefully examined by the inspectors, only nine incited no serious remarks. There are, nevertheless, considerable differences between one cell and another. Depending on the cell one is allocated, living conditions can be very different; this explains notably the small number of disciplinary measures taken (as they say "there are other means [of bringing people into line]").

Waste treatment is also a problem in these buildings. The recently installed goods hoists break down frequently - thus everything is carried up or down manually. The electricity supply is insufficient for the institution's needs: the neon tubes are fragile and one warder has been obliged to carry out his nightly round along the passageways in pitch darkness using his own torch. Between three and five out of the ten showers were in working order in the filthy shower rooms, which means that not all those who are allowed to shower can do so within the prescribed time (the improvements noted in 1966 did not last long). Rats abound in the past two years (they can even be seen during the day) adding to the other nuisances: warders tap with their feet to disperse them when carrying out their rounds at night, not always successfully. The kitchen in the basement was renovated in 1998 but the corridors on this level are in a filthy state. In short, a lack of basic hygiene and cleanliness is to be found throughout a large part of the institution. The clerks of the judges responsible for the execution of sentences (and therefore the judges) and the nurses from the psychiatric unit of the Regional Mental Health Department for Prisons (SMPR - for *Services médico-psychologique régionaux*) categorically refuse (the latter evoking their independence) to set foot inside the prison. And this is not all: on 29th April 2011, the departmental sub-committee for fire safety called for the institution to be closed.

6 - Certain work has been undertaken. A new wing (building D) was built in 1989, with more comfortable cells usually given to 'privileged' prisoners. However, having been badly designed, it allows significant quantities of rainwater to spread into the passageways and cells with every passing shower. There are significant structural faults following certain ground movements such that the building can not be considered a long-term prospect. Admittedly, the small courtyards adjacent to the older buildings have been cordoned off. The new ones are sparsely equipped and above all not protected against the weather. The conduits were refurbished in 2009 without any noticeable effect. The external gates were recently restructured (the "Baumettes 1" project), in particular those where vehicles pass: given the gates' dimensions, one interlock entrance is now unusable and one of the doors of the the other has been damaged (significantly endangering the life of a warder).

7 - The state of the buildings is simply accepted with resignation by a large number of staff, who continue to carry out certain duties which are sometimes devoid of any sense, such as the night-time checking of cells with no lighting and no protection covering the doors' peepholes, or the 'visual search', or, conversely, do not carry out instructions which, given the state of things, would not have any effect.

8 - The Baumettes prison buildings do not just suffer from design and construction deficiencies. There is also a maintenance problem. As has already been noted, "the State knows how to build, but it does not know how to maintain"¹, especially concerning prisons. Yes, the prisoners cause plenty of damage – and yes, one can complain but one should not be surprised – and the older the institutions, the greater the effect of such vandalism. But above all, neither the maintenance headcount nor the budget is equal to the task. In just two years, the operational maintenance budget has been reduced by close to a quarter. At the time of the inspectors' visit, the maintenance team consisted of two genuine technicians, five assistant technicians and six contract employees. There is a back-up of two warders per wing, but these can easily be called to other duties. Each member of the team does what he can, demoralised, handling the most urgent cases as they arrive, without any organised follow-up of the works: their dedication can in no way disguise what should be done and has not been done.

9 - Overcrowding remains the rule: as at 1st October 2012, in an institution designed for 1,190 places, there were 1,769 prisoners actually present. This number continues to increase, specifically concentrated in the men's wing, where the occupation rate is 145.80%. Indeed, Marseille takes in prisoners to relieve the 'overcrowding' in other remand prisons in the region. Overcrowding in institutions with a delegated management system – a public/private management system - triggers the penalty clauses which the State would then be required to pay. Yet, at the same time there are staffing constraints: not only are staff numbers not at the required level (in particular for front-line warders) but working conditions are responsible for a high level of absenteeism - between 1,600 and 1,900 man days per month (2.6 days per person) are thus lost, increasing the load on those who are present. Sometimes there is just a single warder to handle a complete floor (around two hundred prisoners). In these conditions, certain services are simply not maintained.

10 - This is even more the case since the establishment's initial operating budget was significantly reduced in 2012 compared with 2011 (- 7.2%). As certain expenses cannot, by their nature, be reduced, the provision of certain services is compromised. The sum under the heading of "prisoners' hygiene and cleanliness" thus dropped from €72,323 to a budget of €30,000 (- 58%). The major expense item for the prison, "supplies and general works", went from €284,611 in 2011 to €180,000 in 2012 (- 36.7%). The Marseille Baumettes prison, being one of the rare institutions in the region under public management, suffers from the fact that most of the others are under private management and, naturally, the outside private service providers have to be paid according to their contract terms.

11 - Budget restrictions offer a partial, but not complete, explanation for another characteristic of the institution - the dearth of activities on offer to prisoners. Paid occupations are limited. Although the vocational training courses are well designed, they concern relatively few people. At the time of the visit there were nine people in the workshops, and in general there are no more than a few dozen. Then there remain the 'auxiliary service workers' who are paid and who may benefit from being assigned to a wing that is less dilapidated than the others. But here again, budget restrictions have reduced the number of positions available (from 204 to 169) and the average pay per person (from 214 to 169 euros per month). Those who are offered such jobs (the 'auxies' for auxiliaries) are selected by the senior staff based on management criteria and not on criteria

¹ *The 2010 Annual Report from the Contrôleur général des lieux de privation de liberté, Paris April 2011, p. 30.*

concerning the prisoner's skills or needs. In addition, it is no doubt necessary to pay to be granted such a privileged status: "the auxies recruit the auxies".

As for sport, there are only two qualified instructors - there were others who have left but who have not been replaced. Five warders thus act as instructors but can at any time be called away to cover for absent colleagues or other reasons (during the visit a prisoner set fire to objects in his cell and one of these 'temporary instructors' was called to help another warder deal with the problem). In such conditions, the activity of supervising prisoners using the fitness apparatus or boxing bouts gets few candidates - there were eight changes in 2012.

There are certain permanent cultural activities available, run by some very devoted external people, ('cyber-base' in the women's wing, a 'multi-media centre' for the men, 'mysterious places' for creativity). But financing these activities is not guaranteed. Some exceptional shows have been put on. However, there is no position for a coordinator and the remarkable theatre that the women's wing boasts will disappear when reconstruction begins (the "Baumettes 2" project). Given all this, the only real 'activity' for all is exercise - up to six hours a day.

12 - But exercise can be far from relaxing. For another characteristic of this institution is the rising level of violence, which often occurs in the exercise yards. Violence is directed towards the staff - fortunately proportionally less than in other institutions - and frequently occurs between fellow prisoners. Although the list clearly cannot be regarded as exhaustive (only violence in the exercise yards has a real chance of being identified), since the beginning of this year, doctors have recorded fourteen cases of multiple bruising, eight deep wounds, seven diverse wounds and fractures, three traumatic skull injuries and one case of rape. Not all of the cases known to the medical staff are necessarily communicated to the State Prosecutor's Office.

An explanation for this violence is often cited - it reflects life in Marseille, in particular in the 'northern districts'. It is also the result of the rivalry between gangs of youths or delinquents from different cities ("if the guys from Marseille get done in Avignon, then those from Avignon get done in Marseille "). This is however only a partial explanation. Moreover, residents of the northern districts of Marseille are not particularly numerous in this prison. On the other hand, the institution is a veritable souk for goods and services where everything can be bought and where everything is sold at elevated prices. Access to a telephone, for example: as a senior staff member says, "here, there are two telephone providers, company X (the exclusive official provider) and the gang bosses"; telephone calls are payable, but so is access to the telephone, facilitated and made more expensive by the fact that the majority of telephones are in the exercise yards and are regularly vandalised (organised supply limitation). This all generates loans and debts, demands for payment, racketing and threats. Violence is meted out to those who cannot or who refuse to pay. However many of these are simply indigent (about 15% of prisoners "lack sufficient resources" as defined by the prison regulatory norms). And if the 'customer' is really insolvent, the threats are carried out on his family outside the prison. It is not surprising that, in these circumstances, people dare not leave their cells, even for a shower, for exercise or to get medical treatment. Nor is it surprising that requests to transfer to another wing abound (to escape the more insistent creditors) and become urgent (fires in the cells, 'cuts'). Overcrowding is frequently the reason for refusing such requests and the disparity between the physical conditions from one cell to another means that, if a request is granted, living conditions can vary quite significantly, as mentioned above. The physical environment, the lack of activities, violence - they are all linked.

13 - Staff manage the situation as best they can with the personnel and equipment available. Most of the warders (but not all, which itself creates some underlying tensions) adopt a 'local' method based on dialogue and a familiarity with the prisoners, which certainly helps to overcome numerous difficulties at the cost of a certain indulgence vis-à-vis the rules, notably concerning relations between prisoners, but also in the functioning of the internal 'market'. Thus, everyone the inspectors met complained about the disorganisation concerning the 'prison shops' (external

purchasing). Managing the accounting and physical checking of deliveries for 1,800 people is problematic. There is a lack of staff to ensure distribution, during which pilfering takes place on a significant scale. In addition, plenty of personal effects circulate secretly within the prison. According to the State Prosecutor's Office, more than 1,200 mobile telephones were found in 2011.

14 - For prisoners, but also for prison staff, such a situation produces conditions that are doubtless inhuman and certainly degrading. Given that these conditions persist, despite repeated warnings over the past twenty years, urgent solutions are required. The Government has committed to rebuilding the women's wing (the least dilapidated) and create a new men's remand prison on part of the site from 2013 onwards (the "Baumettes 2" project already mentioned). But this project will leave untouched the current men's remand prison, i.e. the oldest and most dilapidated buildings: the commitment to rebuild this or to renovate the buildings in their entirety (the so-called "Baumettes 3" project) must be made without delay.

15 - While waiting for this to become reality some ten years from now, it is essential to,

a/ Concerning conditions of accommodation:

- Reduce the number of new arrivals in the establishment to bring the population down to a sustainable level, i.e. to the number of places in the design capacity (1,190);
- Update the organisational structure, which dates from 1989, in order to ensure a sufficient level of staff and, in parallel, to reduce the degree of absenteeism;
- Strengthen the maintenance team and provide it with the appropriate means to perform its role;
- Carry out the work necessary to render the buildings watertight (building D), and to repair the water conduits (buildings A and B) and the goods-lift;
- Institute effective and long-term measures for cleanliness and hygiene, particularly for eliminating rats, cockroaches and other similar pests;
- Review the procedures for meal service, particularly in respect of hygiene.

b/ Concerning the dearth of activities:

- Bring the operational budget to former levels in order to rapidly increase the number of auxiliaries employed and their remuneration;
- Use other means of finding service providers for offering workshop type employment, rather than relying solely on the prison management;
- Find alternative activities, such as vocational training, to counter the fact that the "Baumettes 2" project will reduce the available space for men's workshop activity by almost half and remove some fifteen (out of between thirty and forty) employment opportunities for women;
- Preserve the existing cultural activities, rethink the role of the socio-cultural association and strengthen its links with the SPIP (*Service pénitentiaire d'insertion et de probation* - Prison Service for Rehabilitation and Probation).

c/ Concerning violence:

- Provide to the Marseille 9th arrondissement police station the necessary means for investigation so that, under judge supervision, information gathered can be used, the breaches of the law can be followed up and those responsible can be charged;
- Bring senior management closer to the work of staff carrying out their daily duties, so that the latter do not feel alone and lost when faced with difficulties;
- Review and rigorously monitor the organisation for distributing goods for the prison shops;

- Re-conquer the control of the exercise yards, as has already been requested by the *contrôle général*²;
- Establish a better balance between the differential management of prisoners (affectation, use of privileges) and disciplinary measures;
- Define precise limits to the degree of familiarity between prisoners and warders, useful in reducing tension; establish a 'Baumettes prison project', which should demonstrate the institution's concern for the more vulnerable population and rehabilitation of prisoners, and also define the expected transformation of the establishment once all the building works have been completed.

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² Recommendations concerning the remand prison in Villefranche-sur-Saône, Journal Officiel dated 6th January, 2009.