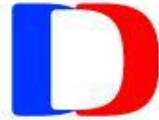


RÉPUBLIQUE FRANÇAISE

**LE DÉFENSEUR
DES DROITS**



**Action of the Defender of Rights
in relation to prisoners**

Synthesis report 2000/2013

You can find the following documents on the Defender of Rights' website:

- The report by the Defender of Rights on his action in relation to prisoners published on Friday 11 October and addressed to the Prime Minister containing 21 recommendations for the Government:
http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport-personnes-detenues_complet.pdf
- The specialised report on maintaining family ties from the standpoint of a child with an imprisoned parent:
<http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport-gt-10-10-13.pdf>

The Defender of Rights' mission is to defend the effectiveness of the rights of everyone and, in particular, the rights of those facing the most difficulty asserting them. While prisoners are deprived the right to come and go, their detention pending trial or the serving of their sentence must not in any circumstances entail a restriction or a reduction of other established human rights.

Therefore, the natural mission of the Defender of Rights is to ensure observance of these fundamental rights, all the more so since the four previous bodies only intervened in their respective areas of expertise in prison matters.

The Defender of Rights wished to draw up an initial report on his action by placing it within the framework of the line of action conducted by the bodies it has succeeded.

The Defender of Rights deals with many subjects including the protection of imprisoned minors and also the sensitive issue of maintaining family ties, taking into account disabilities, compliance with the rules of the code of conduct and the balance between security requirements and respect for prisoners' dignity and rights.

Above all, the Defender of Rights, who succeeds the Mediator of the Republic, has a network of delegates who intervene in all French prisons located in mainland France and in French overseas territories. The Defender of Rights is consequently a local body which has a unique vision of the reality of prison life. Referrals filed to the Defender of Rights through the intermediary of his delegates or directly filed to the head office are testimonies of the difficulties experienced, solutions provided by the Defender of Rights or his delegates and avenues for increasing the effectiveness of rights in prison.

The report entitled "Action by the Defender of Rights in relation to prisoners", addressed to the Prime Minister on 10 October, recounts the actions conducted and the problems encountered, and puts forward 21 recommendations to the Government to improve relations of prisoners with both the prison authorities and the external public services in the aim of the successful rehabilitation of former prisoners.

By relying on legal analysis, the examination of all referrals processed at the head office and the observations made by his delegates, the Defender of Rights wished to present his missions in prisons two years after taking up office. Firstly, the Defender of Rights points out

a fundamental principle relating to prisoners: “while they are deprived of their liberty, they cannot be deprived of their rights.”

In 2012, 4,000 prisoners filed claims to the Defender of Rights.

The delegates amicably settled 90% of the referrals covering very diverse issues that reflect prison reality. These referrals are equally divided between disputes with the prison authorities and problems with external public services.

30% of the referrals filed with the head office allege breaches of the code of conduct with regard to searches, violence or use of force, medical treatment in an outside hospital and prison procedures. 24% of the referrals relate to disputes concerning day-to-day prison life and problems regarding transfers. The other referrals target difficulties maintaining family ties (14%), residency issues for foreign prisoners (8%), health problems (8%), reduced sentencing and procedures for serving a sentence (7%), relations with external public services (4%), work and professional training (3%) and disabled prisoners (2%).

As regards the prison code of conduct, the Defender of Rights recalls that “prison officers’ observance of the requirements laid down in the code of conduct is of particularly high importance in prisons as confinement already causes tension. Arbitrary and biased conduct can lead to dramatic consequences for prisoners and prison officers.” The Defender of Rights highlights that upon examining referrals relating to violence committed by prison officers, the assessment of the need for and proportionality of the use of force is sensitive due to the difficulty in gathering conclusive evidence regarding the course of events. Therefore, it is recommended that the use of force, except in the case of legitimate defence, is always preceded by a discussion and negotiation stage, in order to dissuade the prisoner from continuing his/her conduct.

As regards body searches, the Defender of Rights deplores the fact that almost four years after the entry into force of the Prison Law, they continue to sometimes be carried out on a systematic basis or on a purely random basis. Internal memoranda, adopted by several prison establishments and submitted to the Defender of Rights, accordingly lay down the principle of a systematic full search on returning from the visitation rooms. Such systematic searches breach the provisions of Article 57 of the Prison Law, which integrates the principles laid down by the European Court. Moreover, regulatory provisions relating to the means of controlling prisoners stipulate that the finding of banned items or substances entering or leaving the prison warrants the implementation of appropriate searches. These provisions seem to be widely interpreted by certain prison directors. A profound divergence consequently exists between the provisions of the Prison Law and implementation thereof in prison establishments. Such divergence, which undermines prisoners’ dignity, must be promptly resolved.

The Defender of Rights, who is convinced that the effective exercise of prisoners’ rights contributes to their successful rehabilitation, has a decisive role to play in increasing prisoners’ access to rights and the effectiveness of the observance of their rights in the particularly sensitive framework of prisons.

Leaving prison is a delicate step that depends on improved cooperation between the various prison, social and health players. Through the unique presence of his delegates “inside and outside prisons”, the Defender of Rights can contribute to the successful release from prison.

The Defender of Rights has put forward 21 recommendations with a view to:

- consolidating the implementation of the principle of equal treatment in prisons;
- confronting current practices and standards from the standpoint of the child's best interests, whether the child is a prisoner or a member of his/her family is a prisoner;
- contributing to ensuring compliance with the principle of non-discrimination;
- improving monitoring of the compliance with the principles of the code of conduct;
- reinforcing the role of the Defender of Rights in prisons.

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A. Recommendations specific to prisoners' relations with the authorities

1. Ensuring that all unequal treatment is prevented in the prison establishment in the prisoners' day-to-day lives.
2. Improving the taking into account of requests made by prisoners to the authorities by ensuring that a written certificate is provided and by sending a written reply, in addition to using the electronic liaison register.

B. Recommendations specific to children's rights¹

3. Amending the Code of Criminal Procedure, following the repeal by Decree No. 2013-368 of 30 April 2013 on the standard internal regulations of Articles D.284, D.285 and D.402 without reintegrating the specific guarantees they contained into other provisions:
 - a. Article D.402 of the Code of Criminal Procedure, which ensured the maintenance of family ties for prisoners during their imprisonment.
 - b. Articles D.284 and D.285 of the Code of Criminal Procedure, which ensured the right to information of imprisoned minors, in accordance with Articles 3 and 37 of the International Convention on the Rights of the Child.
4. Amending Article 717 of the Code of Criminal Procedure by adding a provision aimed at encouraging the moving of convicted prisoners closer to their families and providing indemnities for travel and accommodation costs incurred by visits by low income families or children to an imprisoned parent in the event where the condition of moving the family closer together is not observed.
5. Adopting the circulars required to take into account the child's best interests during visits to his/her imprisoned parent in the organisation of visits and granting permissions to visit a prisoner, in particular by integrating the provisions enabling the adaptation of the duration and organisation of the visits based on the child's situation, by ensuring a better adaptation of the visiting hours based on the child's school times and holidays, by enabling the imprisoned parent to have a shower on the day when his/her child visits.

C. Recommendations specific to fighting against discrimination²

6. Reminding the public prosecutor's department and judges regarding the attention which must be given to the particular situation of disabled individuals in view of their vulnerability and the need to implement alternative measures to detention pending trial, involving "appropriate measures", each time the detention conditions do not fulfil the requirements laid down by international law and prison law relating to equal access to rights and respect for dignity.
7. Article 720-1-1 by integrating disability in the grounds for a suspended sentence in order to ensure that the procedures for serving a sentence do not subject a disabled individual to distress exceeding the inevitable level of suffering inherent to imprisonment, in view of his/her particular vulnerability.
8. Adopting the decrees required to implement the obligations stipulated by Article L.111-7 of the Construction and Housing Code relating to public buildings with regard to accessibility to new and existing prison establishments by individuals with all types of disabilities.

¹ See the recommendations in the special report by the Defender of Rights' working group on the child's best interests on "The child and maintaining family ties from the standpoint of a child with an imprisoned parent"

² MLD Decision No. 2013-34, 11 April 2013

9. Implementing an intergovernmental working group tasked with making proposals regarding the observance of rights and taking care of disabled prisoners, in particular, with regard to the appropriate measures to be implemented before, during, and after imprisonment and concerning the conditions required to respect their dignity.
10. Launching an update of the methodological guide on healthcare management of imprisoned individuals in order to integrate the needs of disabled individuals, regardless of the type of disability.

D. Recommendations specific to the ethics of security

11. Improving the quality of prison reports, in particular in the event of the use of force, in order to identify the movements used and the reasons for the use of force, in particular by introducing a provision into the prison service code of conduct stipulating the requirements for accuracy, precision and impartiality in drafting prison reports, and by improving the training of prison officers, and line management supervision regarding this matter.
12. Improving the quality of internal investigations by systematically hearing the implicated officers, the prisoner concerned and any witnesses of the incident, and keeping any video recordings made.
13. Clarifying the effects of the hospitalisation of a prisoner for the term of his/her solitary confinement concerning the objectives and nature of this measure.
14. Restricting and specifying the level of security relating to the application of body searches and coercive measures during medical treatment in an outside hospital and medical consultations, and improving commitment mechanisms relating to prison officers' responsibility in these areas.
15. Introducing a discussion stage before using force, inserting this principle into the prison service code of conduct, and implementing it in initial and continuous training.
16. Preventing violence by prisoners by better resolution of their claims and disputes.
17. Systematically obtaining feedback, in particular in the event of the implication of a prison officer concerning the use of force or coercive measures.

E. Recommendations relating to the Defender of Rights' missions

18. Adopting the circulars required to improve the performance of the Defender of Rights' mission, and in particular, of his delegates in prison establishments in order to enable improved effectiveness of prisoners' rights in accordance with Article 37 of organic Law No. 2011-33 of 29 March 2011 relating to the Defender of Rights, which notably recommends:
 - a. appointing a correspondent for the Defender of Rights in each interregional prison service management board.
 - b. integrating a presentation of the Defender of Rights into the internal regulations of each prison establishment and, in particular, the procedure for making a referral to the representative of the Defender of Rights and ensuring disclosure of this information in the welcome guide book.
 - c. ensuring, in liaison with the associations and private administrators of prison establishments, the distribution of an information guide book relating to the Defender of Rights in family visitation areas.
 - d. providing tracking of the Defender of Rights' correspondence required for the improved effectiveness of his involvement and examination of cases, in the event of the transfer of prisoners.

- e. giving prisoners free and confidential telephone access to contact the Defender of Rights³.
- 19. Ensuring that the Defender of Rights is consulted, in accordance with Article 32 of organic Law No. 2011-33 relating to the Defender of Rights, in the scope of drafting legislation which falls within his remit and asking the Director of the Prison Authorities to do the same for regulations which he draws up.
- 20. Amending Article R 57-7-45 of the Code of Criminal Procedure by replacing “Mediator of the Republic” with “Defender of Rights”. Bringing Article D-187-1 of the same Code into compliance in order to guarantee prisoners placed in the disciplinary unit access to delegates of the Defender of Rights.
- 21. Amending Article D-234 of the Code of Criminal Procedure by including the Defender of Rights or his delegates as an automatic member in the composition of the prison establishment Review Board.

³ In accordance with the provisions stipulated in the Circular of 9 June 2011 implementing Articles 4, 39 and 40 of the Prison Law No. 2009-1439 of 24 November 2009 relating to prisoners’ telephone and written correspondence (NO : JUSK1140028C)