Implementation of the

UN Convention on the Rights of the Child

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Children deprived of their liberty - the situation in France

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16-18, Quai de la Loire, 75921 PARIS Cedex 19

Summary

By the Act dated 30th October 2007, the French legislator created the role of the *Contrôleur général des lieux de privation de liberté* (CGLPL), following France's ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT) in 2002.

The CGLPL is an independent administrative authority charged with *"ensuring that the fundamental rights of people deprived of their liberty are respected, and monitoring the conditions in which such people are detained*". It thus verifies that fundamental rights are respected for people deprived of their liberty, be they in prison, remanded in custody, in detention centres for foreigners, in court cells, in mental hospitals, in young offenders' institutions or in any other establishment by decision of a judge or administrative authority.

In this role, the CGLPL has been required to express its opinions on numerous occasions concerning the detention of minors,[1] which France handles in a particular way.

The only document referring specifically to detention of minors is the Ordinance dated 2nd February 1945, concerning delinquent children, published immediately after the Liberation. This fundamental document, which is still in force, clearly establishes the primacy of the educative aspects over the repressive ones. It has been modified 36 times since its creation, the last time by the Act dated 27th March 2012 concerning sentence execution. The Government is considering a reform of the rights of minors which would involve repealing the Ordinance dated 2nd February 1945, replacing it with a document that would be more consistent.

The Ordinance dated 2nd February 1945 states that the specific courts for minors decide on the measures for protection, aid, surveillance and education that are "necessary", and specifies that it is only if the circumstances and the personality of the minor require it that any criminal sanction can be applied, which, if this is to be imprisonment, cannot be longer than half the length of the sentence provided for in the law. The difficulty of reconciling short-term imprisonment with the lengthy requirement for education is one of the characteristic paradoxes of imprisoning children.

Concerning criminal sanctions for minors the law precludes the use of some sentences and reduces certain others (imprisonment or fines). But for others, the full weight of the law is applied (community service or the use of electronic monitoring): such choices have recently been revisited by the Act dated 9th March 2004. Since 2002, the law allows the possibility of an "educational punishment from the age of ten"; attempts have been made to lower the age for criminal responsibility, currently fixed at thirteen, but as yet these have not been accepted.

Minors are detained in prison establishments for minors or young offenders' institutions created by the judicial orientation and planning Act dated 9th September 2002, or in much older establishments - specific wings for minors in normal prisons.

The vast majority of minors are detained because they have committed an offence. However, there are some who can be deprived of their liberty as a result of some other mechanism which is not in place specifically for minors - remanded in custody during a police inquiry, administrative detention for foreign minors, or even, for very young children, detained with their mother who is herself placed in detention.

[1] List of the texts in Appendix 1

France ratified the UN Convention on the Rights of the Child on 7th August 1990. It is thus in a position where it needs to reconcile the constraints of detention along with the protection of fundamental rights enshrined in this convention, the right to health and safety, and the right to education.

1.

The diverse conditions for handling minors deprived of their liberty are only fully prison establishments for minors or young offender's institutions.

If depriving adults of their liberty is a traumatic experience it is even more so for a minor, which is why such treatment should only be used as a last resort. Children may be deprived of their liberty, but only if this is the ultimate solution, for a period as short as possible and taking account of the 'criminal responsibility' determined by the law. This last condition naturally only applies to those who have committed an offence. The educative and criminal policies adopted and the decisions made by the magistrates determine the conditions in which minors are detained.

During its visits, the CGLPL has been able to ascertain that those minors detained as a result of judicial decisions are, in general, children who have a history of severe and repeated difficulties. Placing these children in detention is simply an admission that the alternative measures have failed. Although such children do not seem to have any particular problems concerning their physical well-being, the same cannot be said for their mental state.

The demands made by education, discipline and community life always need to be reconciled with the particular protection that needs to be extended to children (see the Beijing Rules, article 26[2]) and with their fundamental rights, notably concerning prohibiting inhuman or degrading treatment, the right to have their private and family lives respected and their right to freedom of expression. These rules have significant bearing on the means used in a large number of activities necessarily tied to life in detention - for example searches carried out after a week-end spent with families, surveillance of telephone conversations or mail, the nature and procedures used in disciplinary situations, or the management of the individual's personal consumption. All national directives in this area must be clear and unambiguous. Their content and how they are applied must be strictly verified at every audit or inspection.

1.1 In prison establishments, the areas reserved for minors do not totally isolate them from adult prisoners

Taking minors into penal establishments is a long-standing practice - wings or sections of the prison enable isolating minors from adults. This practice is strictly followed in the case of young boys, but young under-age girls are incarcerated in areas used by adult women. Thus, there are only young boys in the minors' quarters.

So much for the principle. However, physical constraints mean that this separation is not always entirely effective. Areas for minors are frequently on a separate floor but, with buildings constructed in the form of a nave, communication between floors is usually possible, and other forms of association, more or less furtive, exist. The opportunities for

[2] Adopted by the United Nations General Assembly in 1985.

trafficking (for example in cigarettes, as minors are, in principle, prohibited from smoking whereas adults are not) are legion. This is a form of 'survival' training that is frequent and probably inevitable. To this clandestine form of association needs to be added an administrative mechanism whereby, in many penal establishments, a person is transferred from the section reserved for minors to the adult prison environment on the day they reaches eighteen.

In the areas reserved for minors in traditional establishments, particular rules apply - they usually contain no more than about twenty cells, and the community is therefore relatively small. Except in really exceptional circumstances, minors are housed one to a cell. Despite the significant increase in the overall prison population, the stability in the number of minors incarcerated, coupled with the construction of specific establishments for minors, has meant that this rule has been maintained.

In all cases, measures are in place to ensure mandatory schooling up to the age of sixteen, and significant training between sixteen and eighteen. Rooms are provided for facilitating the beginnings of a communal existence more significant than in ordinary detention situations.

Finally, both in traditional prisons and in prison establishments for minors, discipline is specific and less severe, with a differentiation being made between minors under sixteen, who may not be placed in disciplinary cells, and those aged between sixteen and eighteen.

1.2 Prison establishments for minors and young offenders' institutions have recently been set in place to separate young offenders from adult prisoners and to provide an appropriate educational environment

Both structures have common features. Their populations are low: ten or eleven places in young offenders' institutions (CEF – centre éducatif fermé) and some sixty places in prison establishments for minors (EPM – établissement pénitentiaire pour mineurs). They have been designed and built to marry constraint and training in the same place, which means a specific layout of the building, and a different organisation of timetables and activities. Contrary to the traditional French penal institution, CEFs and EPMs encourage community life, for example with communal rooms or taking meals together - in these establishments isolating someone is always a punitive measure.

1.2.1 Prison establishments for minors

One of the most notable transformations in the French penal environment since 1945 was brought about by the Act dated 9th September 2002, which created the 'prison establishments for minors' (EPM), each with around sixty places, and which have been designed to have a very different mode of operation compared with traditional establishments. The EPMs are part of the French prison administration. They were born out of the desire to have a more effective way of handling habitual adolescent (13 to 18 year-old) offenders, by avoiding the regime of the traditional penal establishment in order to have a framework for a more thorough educational approach.

The aim was to have more synergy between the various professionals involved in such establishments, by placing them under the joint responsibility of the prison

administration and the Judicial youth protection service, in close cooperation with France's national education authority.

Originally, EPMs were designed to have a “living unit” devoted to housing young girls. But practice is a long way from the initial theory. Not a single girl has been sent to such establishments since they were opened. In the case of mixed establishments where boys and girls are in theory separated, cohabiting is applied in certain activities, in particular in teaching, where pupils are grouped by their educational level and not by sex. A mixed environment is thus necessarily limited.

1.2.2 Young offender’s institutions

The Act of 9th September 2002 also created CEFs, which are principally educational establishments, where youngsters are detained as part of their judicial review procedure. These institutions are under the jurisdiction of the Judicial youth protection service (PJJ - protection judiciaire de la jeunesse). They are subject to the obligations contained in the Act 2002-2 on modernisation of social and medico-social actions.

CEFs were initially conceived as an alternative to prison for young habitual offenders subject to some form of judicial review or suspended sentence with restrictions, but various subsequent legislative measures[3] have widened the scope to include conditional release and external placements, but also to minors who commit certain types of offence[4] without any previous convictions.

The Act of 9th September 2002 specifies that these minors be subject to "*surveillance and control measures that enable robust and strengthened educational monitoring adapted to their personality*", in an establishment providing the conditions for training and security appropriate to their situation, i.e. of ensuring they are in attendance.

The reforms in 2004 and 2007 modified slightly the original 2002 ideas - it was no longer a case of avoiding imprisonment, but rather a way of managing those coming to the end of their sentences but who were still under tight surveillance. However, the fact is that minors detained whilst awaiting reviews of their sentences represent a very small minority. The vast majority of children placed in young offenders’ institutions are accused individuals under judicial review, with the remaining group comprising those with suspended sentences accompanied by restrictions.

Whether sentenced or simply accused, the objective is clearly to find a place for minors rooted in delinquency who arrive in prison having been frequently implicated in situations but never sanctioned. The idea of any linear gradation in the levels of sanction is not borne out by the facts. Magistrates may have different conceptions. For some, the CEF are a preliminary stage before prison, whereas for others they are a mandatory step following release from prison. Frequently it is the availability of places that dictates the choice.

Finally, it needs mentioning that, although these minors can be the authors of offences they can also be the victims, and any educational project designed for them needs to be constructed with this aspect of the minor's personality taken into account. Thus, in one centre visited by the CGLPL, 40% of the girls had been the victims of sexual offences.

[3] Acts dated 9th March 2004, 5th March 2007 and 10th August 2011

[4] Crimes and attacks on people of a certain severity, including those that go to the criminal court.

Certain CEFs are mixed with both boys and girls present. Girls are nonetheless in the minority, both because of the design of the buildings (four bedrooms maximum out of ten or twelve) and because the demand for space for girls is simply less. This low level of occupation sometimes means the centre abandons a mixed population because of the space that is wasted. As in the EPMs, the gender mix only concerns certain joint activities. But physical separation is more difficult to impose and, despite being strictly prohibited in principle, the mixing of the genders is more frequent than originally planned.

1.3 Placing minors either in police custody or in administrative detention takes place in locations designed for adults and where separation for minors is not guaranteed

1.3.1 Administration detention of foreign minors

The specific case of detention for foreigners takes two forms:

- in detention in **buffer zones**, i.e. areas at country borders (mainly at airports) where foreigners who do not have the necessary documents to enter the Schengen Area are held;
- detention in administrative **detention areas**, usually as a preliminary step before being escorted to the border or expelled from France. These are most often permanent structures but sometimes arranged temporarily.

Children placed in **buffer zones** are either those who accompany their parents who have not been admitted to the country, or children arriving alone without the necessary documents. In 2010, there were 590 minors among the 9000 people held in buffer zones.

There are two categories for such minors - those aged 13 or over, who are detained with the adults, and those under 13 who are housed in hotels under the responsibility of paid nannies or, at Roissy, in a specially created "minors' area" set up in 2011.

As for **administrative detention**, the only children that can be expected are those accompanied by one or both parents since no minor alone can be the subject of an expulsion order. However, adults with children are to be found there and, if their presence is as a result of an expulsion order, their children under eighteen are held with them in the same place. In these detention centres, the section used for housing families favours preserving the family unit rather than finding a specific solution for any under-age children. The question of gender separation does not arise since the children remain with their parents.

According to a report drafted by charitable organisations that work with foreigners in detention centres, there were 358 children in such centres in 2010 (there were only 165 in 2004). These were spread among 178 families. Of these families, 53% were eventually expelled from the country, with the rest being released for diverse reasons.

Certain establishments are not suitable for housing families. For this reason families are sometimes split up - the father is detained in a centre for men and the mother and her children are housed in a different centre. The risk here is that two jurisdictions may make different decisions. Faced with this possibility, the CGLPL recommended in its 2010 Annual Report that when families with children were subject to an expulsion order, they be assigned a residence rather than be detained with their children in detention centres. If this is not

possible, it was recommended that couples, with or without children, be placed in detention in the same centre possessing appropriate facilities.

Following this recommendation, the Minister of the Interior, in a circular dated 6th July 2012, re-defined the measures that were to be used in the case of administrative detention of families with children under the age of eighteen. The terms of this circular make it clear that the best interests of the child must be ensured in all circumstances. It recommends the use of an assigned residence rather than placing in a detention centre.

1.3.2 Facilities used for police custody

Police custody, of 24 hours maximum, is only applicable to children over the age of 13 and with special conditions (in particular for those aged under 16). But children aged between 10 and 13 suspected of having committed a serious offence can equally be 'detained' for 12 hours, renewable just once by order of the public prosecutor. Since 1994, various laws have increased the possibilities for detaining and prolonging the detention of minors in police custody. They remain, nonetheless, more restrictive that the conditions applicable to adults.

The Ordinance dated 2nd February 1945 contains specific rules for detaining minors in police custody. For example, the child's parents (or legal guardian) are to be informed that the child has been taken into custody, interviews are to be recorded, children under the age of 16 must be examined by a doctor and the detention may not be extended except in the case of serious offences or crime.

In most police stations with several cells, one of these is systematically used for minors. It is usually the one nearest the duty officer's position, so that any officer present may have a direct view of any minor in that cell.

It is not easy to have a precise view of the proportion of minors within the total number of police custody situations. The proportion of crimes and offences committed by those under 18 is known (18.9% in 2010). If this percentage is used on the 523,000 police custodies reported in 2010, the number of minors taken into custody that year would be 98,847. But this proportion may vary depending on local circumstances.

1.4 For new-born children, born to a mother who is detained, there are specific provisions, which can only be described as inadequate, and the legal framework for these situations has recently been improved.

When parents are deprived of their liberty, there is no satisfactory answer to the question of whether to include the children in the deprivation of liberty or to separate parents and children. In its 2010 Annual Report, the *Contrôleur général* suggested that there be a debate concerning those mothers detained with children. The recommendation was that such mothers either be granted an amendment to their sentence, have their sentence suspended for a type of ‘maternity leave’ or be granted conditional release.

French law provides mothers, who commit offences and are thus incarcerated as accused persons or formally sentenced, be imprisoned with their child until the latter reaches the age of 18 months. During the following twelve months, "short periods" are permitted for mother/child relations. The 18-month limit coincides with the period when the

child starts to move around independently and to start having a notion of the detention situation.

Under the provisions of the law, mother and child must be housed in "specially equipped locations" and the prison service for rehabilitation and probation, in close cooperation with the appropriate child and family departments, qualified with parental authority, must organise the child's stay and their exeats, and prepare the child for separation from their mother. A convention must be agreed with the *département's* social services for the provision of necessary social support.

The fundamental rights of the child must be respected with particular vigilance, in particular with respect to **article 3 of the UN Convention on the Rights of the Child**, which imposes on the authorities and on the courts to have the "best interests of the child" as the "primary consideration" in all decisions. These fundamental rights impose looking at the 'reality' concerning the 'mother and child' sections in prison which needs to be viewed from the perspective of the mothers' ability to play their maternal role.

Most often, two cells are combined so as to provide a suitable surface area and a separation between the area for the mother and that for the child. But this is not always the case - the floor space is often less than the minimum 15 sq. metres specified in a circular published in 1999. Such cells must provide all the essential elements for the child's well-being (night-light for child surveillance, temperature-controllable hot water, appropriate heating, sufficient storage space, a direct link to warders, etc.). No bars or gratings, whatever the size of the mesh, may be fixed to windows, and ordinary lighting must be capable of being used at night. In addition to fittings inside the cell, there must be nearby space for washing and drying laundry and, if not available inside the cells, facilities for cooking and for storing food (refrigerator, freezer). And there should also be a room where children's activities may take place.

External people taking charge of the child are necessary for both health and social reasons. Children's educators, volunteers from charitable organisations specialised in mother-child relations, prison visitors (if the mother so wishes) must be able to have free access to the 'mother/child' areas with, naturally, the help of the prison service for rehabilitation and probation, in order to encourage the normal development of the child by organising activities within the establishment but, above all, to accompany the child on their trips outside the prison environment.

As part of the fundamental rights of the child, maintaining links with other family members should be given special attention. Thus everything should be done to ensure that there is no barrier to such external meetings with all people whom the mother has authorised to receive such visits. No official request for a visit permit should be demanded for this. The *Contrôleur général* has requested that family units be provided everywhere. These are places where families can meet and access should be a priority for women with children.

Act no. 2014-896 dated 15th August 2014 is a significant advance for young children who find themselves with mothers in prison. Indeed, taking up many of the suggestions from the *Contrôleur général*, Members of Parliament have tabled, and adopted, numerous amendments to the above-mentioned Act, which concerns personalising sentences and

strengthening the effectiveness of criminal sanctions[5]. These measures encourage the prosecutor to differ the serving of sentences by women who are at least twelve weeks pregnant, or of serving them in open establishments, and of extending conditional release to such women. The measures authorise suspending any sentence of less than four years for these same people and for anyone having parental rights over children under twelve.

[5] See appendix 2.

2.
Protection against violence for minors deprived of their liberty and their ability to have access to health care must be improved.

The health and safety of persons deprived of their liberty, be they minors or adults, must be assured as corollaries to the right to life and not to suffer inhuman or degrading treatment, as laid out every two years in the **European Convention for the Protection of Human Rights and Fundamental Freedoms** as well as the UN Convention on the Rights of the Child. It is appropriate here to take a look at the means of protecting these rights in establishments receiving minors and to explore the specific difficulties encountered in such institutions.

2.1 The particular behaviour of minors means they run specific risks which demand special handling.

Certain behavioural characteristics of minors can partially be differentiated from those of adults. As for their dangerousness, or more particularly their propensity to be violent, the study by the CGLPL, published in its 2009 Annual Report, is revealing. This brief inquiry indicates that, out of forty-nine assaults on prison staff where the author was identified, eighteen were perpetrated by minors and thirteen by 'young adults' (aged 18 to 21). And inversely, with advancing age the risk of attacking staff diminishes rapidly. The same observation is to be made concerning acts of violence between inmates - half of those where the authors were identified involved minors.

The dangerous nature of certain equipment can be increased by an order of magnitude by the behaviour of minors. Thus in 2013, the CGLPL was obliged to issue an urgent recommendation in the Official Journal concerning a young offenders' institution, the very site of which presented a serious risk of danger for minors, especially if they managed to escape the attention of those in charge, e.g. in case of absconding, which cannot be excluded.

Besides the danger that minors may represent for the health and safety of those around them, their behaviour may also present risks for their own health and safety. The CGLPL has frequently recommended that particular attention be paid to this form of self-inflicted dangerousness.

2.2 Violent acts between detained minors are not always detected and, when discovered, are frequently inadequately dealt with.

During their visits to establishments for minors deprived of their liberty, the inspectors have noted a certain tendency by the personnel to minimise the phenomenon of violence between the children. This tendency is found both with the management and with the operational staff.

The inspectors can thus have considerable difficulty in gathering the necessary information required to establish the facts, as if there was an attempt to hide the extent of the violence problem. Numerous doctors issue medical certificates to those concerned, without bringing the situation they have witnessed to the notice of the judicial authorities. One should not be surprised, therefore, if violence among young detainees is much more widespread than is indicated by the cases that have been clearly identified.

There would appear to be a kind of resignation towards the violence observed, using the excuse that children deprived of their liberty by the judicial system have a 'natural' tendency to be violent. Because of this, with a lack of adequate effective control, assaults and violence continue. Certain communal areas in the parts of penal institutions reserved for minors appear not to be satisfactorily supervised, particularly the exercise yards.

The slow progress in disciplinary procedures, coupled with the average short duration for detaining children, means that many offenders are never punished.

These observations obliged the CGLPL to publish urgent recommendations in the Official Journal dated 26th March 2014. These highlight the following points:

- whilst it is true that minors are frequently disposed to be violent, this cannot mean that such a situation lacks a solution;
- warders need to be present in the exercise yard to prevent both trafficking and violence;
- the educational courses followed by children need to include how to resolve disputes, mutual respect and denunciation of myths;
- those committing violent acts must be disciplined according to the in-house rules and, if need be, as authors of criminal acts;
- rapid dispatch of disciplinary procedures would have a positive educational effect and help to dissipate the feeling of impunity;
- the question of doctors notifying the judicial authorities when they are witness to the consequences of bodily violence must be addressed. The CGLPL believes that the medical code of ethics, which provides the ability of alerting the authorities concerning violence or maltreatment of children, should be given a broad interpretation when dealing with incarcerated children, cut off from their families and afraid of complaining.

In reply, the Government adopted a certain number of measures, both immediate and long-term, to improve the situation for minors:

- security for minors in the exercise yards;
- creation of a specific disciplinary commission dealing only with minors to expedite handling of cases;

- strengthening the links between the national education authority, the departments of the PJJ and the judicial authorities;
- supervising the warders who have clearly shown willing.

2.3 Protecting minors from adult violence must be a permanent preoccupation.

Because minors who are deprived of their liberty are in a particularly vulnerable situation which requires appropriate measures for protection, all such minors are, in principle, taken into establishments where they are kept apart from their adult counterparts. As has been shown in the first part of this document, minors may, nevertheless, be in contact with adults. This places them in a situation where their right to health and safety may be compromised. Therefore, the CGLPL recommends that, in establishments harbouring both adults and minors, there be a permanent and **improved sealing off** between the two parts of the establishment.

Adults looking after minors may also be the authors of violent acts against them. Beyond the acts of gratuitous violence which should in no circumstances be tolerated, the issue of maintaining order and disciplinary procedures within such establishments needs to be addressed. No matter how good the quality of the regulations in force may be, it is the organisation of discipline and the means used for its maintenance that may infringe the fundamental rights of the children detained. Thus it can happen that 'local necessity' demands using certain 'infra-disciplinary' practices that are 'in theory' prohibited, such as restrictions at mealtimes or on smoking, or unscheduled periods of incarceration. In such situations, these practices are carried out without any form of control and completely destroy any educational link between the law and reality.

In certain CEFs, inspectors have observed recourse to physical restraint as an abusive, and even commonplace, means of imposing discipline, defended as being educational by the least qualified teams.

As a general rule, there is enormous uncertainty concerning the way of defining discipline and the means to be used to have it respected. But any form of inhuman and degrading treatment must clearly be banned and care must be taken to be sensitive to the children's state of mind. On the other hand, firmness is in no way to be excluded and refusal even less so.

2.4 The presence of medical personnel in young offenders' institutions is inadequately guaranteed

The CEFs do not have a permanent medical team. Thus the presence of medically trained personnel is uncertain. Between centres, there can be big differences in the level of care available to minors for physical treatment, for psychiatric care and for psychological help - and *a fortiori* for any health education. The presence of nursing personnel is very patchy.

Physical health care is frequently handled by local general practitioners who visit the establishment or treat minors accompanied by prison staff in their surgery. But there is no contract or protocol defining the respective rights and obligations of either the doctor or the centre. Although one or two psychologists frequently consult, establishing relationships with

psychiatrists has proved much more difficult and it is rare to find any convention between an CEF and a specialised hospital unit, even where the centre's population clearly has the need.

It is desirable to establish some form of convention to formalise the external assistance needed from doctors, nursing personnel or specialised health establishments. The central administration should be able to draft some 'model' conventions which should serve as a means of standardising practices. The Regional Health Authorities, under the aegis of the Ministry for Health, should be in a position to facilitate signing such contracts, with their application being checked by the local committees.

3.
The priority given to education in establishments involved in depriving minors of their liberty must manifest itself in a more systematic organisation.

Educate, according to the UN Convention on the Rights of the Child "*shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential*"; it is also "*A preparation of the child for responsible life in a free society*".

Even though it is perfectly reasonable to believe that a penal institution or other closed community, whatever its nature, is hardly the best place to carry out education, the fact is that education for minors incarcerated in such institutions is a **fundamental right of the child.** Therefore the nation has an obligation to organise such education.

In order to comply with the UN Convention on the Rights of the Child, the jurisdictions dealing with young offenders must ensure that the educational aspect be taken as a priority when reaching their decisions. This primacy of the educational over the repressive has been raised to the status of a fundamental principle recognised by the nation in a decision taken in the Constitutional Council on 29th August 2002. The creation of the CEFs and EPMs in 2002 is directly in line with this logic.

3.1 Pedagogic projects are sometimes inadequate or implemented with difficulty.

What is required within the framework of the education of minors deprived of their liberty is developing and implementing real l**earning projects.** The management team in each centre has to prepare a plan that takes into account the children in their care. The project will comprise **objectives** and **means.** The objectives are concerned with the contents of the children's learning. The learning itself concerns their behaviours, their social life, attitudes towards the offence and behaviours to be promoted and achieved. The means concern the forms of individual and collective life and the rules to be applied to the latter, in particular with regard to discipline and incentives, contact with the exterior, and practical arrangements, belonging to the young offenders' institutions or accessible, which can facilitate fulfilment of the objectives.

Initially drafted by the heads of each facility, the project needs to be taken up by the staff, and educational staff in particular. The latter need to enrich the project by bringing their experience to it, so that they can then assimilate it. It should constitute the common cement of their attitude towards the children, so that there is as little disagreement as possible. The project needs to be regularly revised, as experience is acquired, in close coordination with the educational team. Already, the valuable experience acquired since the Act of 9th September 2002 by young offenders' institutions should enable putting pressure on management and request that they reinforce the definition of their training programmes.

CEFs can differentiate their projects, by their methods, as long as this does not create separate populations under their charge. The quality of certain charitable organisations and

the personnel in the PJJ has enabled putting in place, in certain CEFs, some very original and coherent programmes. Putting this in place is fine, but it is important that the magistrates dealing with placing children are fully aware so that they can choose the CEF best suited to the child not based only on the availability of a place or the geographic location. For young offenders in need of stability and finding their way in life, it would be particularly unfortunate if just a single criterion were to be used for this.

A well organised and respected project can also help the child, when leaving the establishment, in guiding his search for a career path which can often last for several years. The existence of a **recognisable project** is a major factor in differentiating between those establishments which work satisfactorily, and the others. This condition is not sufficient to guarantee the success of the project, but it is necessary.

The project should be able to give the adolescents education through responsibility in their daily lives. The teaching or leisure activities should enable the youngsters to improve their behaviour, according to simple, clear and shared viewpoints. Periods of improvement and progress should be clearly marked - such stages should not be seen as automatic.

Teaching, especially for sixteen year-olds, must not be considered lightly, neither in the time allocated for the children nor in the quality of the teachers. In one centre visited by the CGLPL, it took eight months to recruit a teacher, something that is clearly unacceptable. Although the content of the courses and the methods used need to be adapted to the youngsters' aptitudes, the necessary time devoted to these lessons must not be disregarded. In these areas also, both national and regional assistance would help the teachers, who are often left to their own devices.

For those who, despite their difficulties, show that they are capable of reintegrating the standard school curriculum, the establishments close to the CEF must be willing to open their doors without any difficulty. This objective must be pursued with determination despite the fact that, locally, people are very wary of CEFs. The main reaction of local residents when one is planned in their area is to try to move it elsewhere - the 'not in my back-yard' syndrome. Such re-insertion needs to be planned and organised, and this needs to be a joint effort by the management team at the centre and the responsible local players.

Many young offenders' institutions do not offer sufficient **activities**, and those that are available are centred round television, board games and sport. Efforts need to be made to offer pre-apprenticeship work experience periods - local company bosses are very much in favour - either in local firms or in technical workshops within the establishment. The interest shown by the personnel in their vocation and the fact that such youngsters are more attracted to this type of occupation than to standard schooling should help. This presupposes the availability of competent staff, of suitable space and equipment, and continuity in the management team to drive this forward, something that is sometimes lacking.

Despite being very willing, the personnel in the CEFs are often insufficiently qualified and lack the backing of a specific project to guide them in their conduct. As a result, the adolescents are sometimes left to themselves to improvise their own activities, the educational content of which is, at best, debatable. In 2013, a situation of this nature was discovered that was so serious that it was necessary to publish an urgent set of recommendations in the Official Journal dated 17th October 2013. This enabled putting in

place satisfactory *ad hoc* local solutions, but did not give rise to the creation of an organised set of general measures.

A coherent training project is difficult to imagine with allowing for that margin of error required in any learning experience, with its basket of hesitations and mistakes. At the same time, learning to cope with one's frustrations is part of learning to become an adult - so it is not really possible to have education without learning to live with one's limits. Thus one can say that education under constraint is both a paradox and a balance, whereas whatever the situation, leading a child to adult autonomy in a free society is a fundamental educational requirement.

But a training project within a CEF is dealing with a fragile population for which the strict controls imposed in penal institutions are not sufficient to create independent responsible citizens. Therefore, it is necessary to seek a **personalised way of handling and leading** the minor, encouraging their development, their independence and their insertion into society. To this end, no effort should be spared in seeking the agreement and buy-in from the individual, with the help of their legal representative, to the design and implementation of their personal project for their period in the establishment. More generally, it is important that the individual plays their part in the functioning of the establishment, with their contribution to community life or any other means of being involved.

In practice, the delicate balance between the two logics, penal and social, is difficult to find. The penal side typically wants to prevent the adolescent becoming an habitual offender, whereas the education advocated here often seeks more reinsertion into the real world rather than the search for independence that families and social codes promote.

For these children and adolescents in a closed society, like many others, it is not a question of trying to build educational foundations where nothing existed before. It is to help the youngster to choose between positive behaviour and the anti-social type of which they have all too often appreciated the benefits. Absconding, consumption of alcohol and drugs, pressurising and taking advantage of the weaker, belonging to one 'gang' at the expense of another are some all too common examples of this. As conceived, prison and other similar establishments do not always function in the way one would like. They are places given over to violent confrontation, not necessarily between individuals but certainly between different social values and norms. Knowing which will be in the ascendency starts again every day for the professionals. And thus, in such closed communities, where everyone watches and depends on everyone else, the requirements demanded of the staff are much more rigorous than in an 'open' world.

3.2 Training of personnel and their length of tenure are often inadequate.

There can be no teaching without teachers, i.e. without **personnel trained for the task.** True, the conditions inside penal establishments are such that standards are lowered and the prison administration system is required to hire people who are insufficiently qualified or in difficulty. It is not uncommon to find a proportion of the staff comprising teachers who 'do the job', often without any particular skills and with little training in the art of looking after minors. Despite this, it should be laid down that a minimum proportion of qualified teachers is required. In addition, when qualified educator posts are not filled, it is

imperative that one of the important tasks to be defined is the acquisition of knowledge and skills by unqualified staff and that on-going training becomes a priority.

It is reasonable to assume that the prevalence of varying practices, and the lack of training mentioned above, are the results of the geographic isolation of recent centres and for which the organisation has been very diverse. The absence of a well-defined national plan certainly contributes to such isolation and differing treatment. A more effective national framework and regular meetings of private and public organisation professions would enable consolidating experience and know-how and comparing best practices in the area of handling the educative aspect of youngsters in a closed environment.

This obligation to train personnel should not be limited to those carrying out the teaching function. Workshop leaders, kitchen staff, matrons, night warders - all should receive, according to their role, the necessary training in relationships with children in difficulty. It is not a question of confusing the roles, but rather to help the adults have a way of handling the minors which means that they are all speaking the same language. No professional should be allowed to be in contact with minors deprived of their liberty, without having received the required training.

In addition, since their task is a difficult one, the professionals involved deserve, not only moral support, but concrete measures to enable them to surmount their difficulties. Regular supervision, without the presence of management, but accompanied by a third party observer, should be installed, as the General Directorate has recommended and as already happens in a number of centres.

3.3 Involving families, real agents for success in these projects, is not always possible, nor requested.

The fragile nature of the individuals concerned, the instability in their lives, the irregularity of school attendance, the fragmentation of their existence caused by repeated interruption in their social life are all factors that indicate a need for continuity, stability, and the necessary calm to start acquiring determined behavioural traits based on clearly defined values. However, to a frenetic rhythm of a chaotic life, the system often responds with an equally uncoordinated set of unfulfilled 'solutions'. In these circumstances, the **families** can constitute the link between the various 'educational holidays' that incarceration causes for their children.

It is often the CEFs with the most clearly defined projects that have best defined the role that parents can play with the young inmates. Nonetheless, although it is true that it is often necessary for a young delinquent to break the link with their previous day-to-day existence, the choice of establishment for placing these young offenders takes little account of geography and as a result frequently means the family finds itself at considerable distance from the penal institution, to such an extent that the family finds it impossible to be associated to any useful extent with the project developed for their child.

3.4 The educational mechanisms set up in 2002 have been in force for a sufficiently long time that it should be possible to evaluate the results.

Evaluations, both internal and external, should provide a means of separating the good projects from the bad. However, assessing the effectiveness of educational programs, in closed communities or elsewhere, can only be achieved over the long term, and it is precisely that which is missing today. The various establishments should be able to assess the fruits of their educational efforts. For this, the future of former inmates should be communicated to the establishments to the extent that they remain subject to educational measures or a form of deprivation of liberty. Today, there is no system of follow-up, and establishments only know of the situation of their former charges if the latter choose to inform them.

The mechanisms set up in 2002 have been in the field for a sufficiently long time that we should be now able to assess the future of a whole generation of children who have gone through this process.

APPENDIX 1

Documents concerning confinement of minors published by the *Contrôleur général des lieux de privation de liberté*

All these documents can be consulted at http://www.cglpl.fr

2014 Activity Report, Dalloz, 2014.

- *Les suites données aux recommandations en urgence du 26 mars 2014 relatives au quartier des mineurs de la maison d'arrêt de Villeneuve-lès-Maguelone*, p. 17-18 (*Actions taken in response to the Urgent Recommendations dated 26th March 2014 concerning the wing reserved to minors in the prison at Villeneuve-lès-Maguelone*);
- *Les suites données aux recommandations en urgence du 17 octobre 2013 relatives aux centres éducatifs fermés d'Hendaye et de Pionsat et recommandations du 1er décembre 2010 relatives aux centres éducatifs fermés de Beauvais, Sainte-Gauburge, Fragny et l'Hôpital-le-Grand*, p. 23-24 (*Actions taken in responses to the Urgent Recommendations dated 17th October 2013 concerning the young offenders' institutions in Hendaye and Pionsat and the recommendations dated 1st December 2010 concerning the young offenders' institutions in Beauvais, Sainte-Gauburge, Fragny and Hôpital-le-Grand*) ;
- *Les suites données à l'avis du 8 août 2013 relatif aux jeunes enfants en prison et à leurs mères détenues,* p. 24-25 (*Actions taken to the opinion given on 8th August 2013 concerning young children in prison and their incarcerated mothers);*
- *L'apprentissage de l'autonomie chez les mineurs privés de liberté,* p. 101-116 (*Developing independence in minors deprived of their liberty).*

The *Contrôleur général des lieux de privation de liberté* and the Association for the Prevention of Torture - Opinion and Recommendations from the French *Contrôleur général des lieux de privation de liberté* 2008-2014 (document available at www.cglpl.fr);

- *Recommandations du 1er décembre 2010, relatives aux centre éducatifs fermés de Beauvais, Sainte-Gauburge, Fragny et L'Hôpital-le-Grand,* p. 67 *(Recommendations dated 1st December 2010 concerning the young offenders' institutions in Beauvais, Sainte-Gauburge, Fragny and Hôpital-le-Grand*) ;
- *Recommandations en urgence du 17 octobre 2013 relatives aux centres éducatifs fermés d'Hendaye et de Pionsat*, p. 179-182 *(Urgent Recommendations dated 17th October 2013 concerning the young offenders' institutions in Hendaye and Pionsat);*
- *Avis du 8 août 2013 relatif aux jeunes enfants en prison avec leurs mères détenues*, p. 178 (O*pinion given on 8th August 2013 concerning young children in prison and their incarcerated mothers)*;

- *Recommandations en urgence du 26 2014 relatives au quartier des mineurs de la maison d'arrêt de Villeneuve-lès-Maguelone, p. 202-210 (Urgent Recommendations dated 26th March 2014 concerning the wing reserved to minors in the prison at Villeneuve-lès-Maguelone)*.

2013 Activity Report, Dalloz.

- *Urgent Recommendation concerning Young Offenders' Institutions, pp. 13-14-15*
- *Actions taken in response to the Emergency Recommendations concerning the Two Young Offenders' Institutions, pp. 68-69*
- *CEFs (Young offenders' institutions), pp. 177-178.*

2012 Activity Report, Dalloz.

- *Minors*, pp. 23-24.
- *The Confinement of Children*, pp. 222-241.

APPENDIX 2

Article 25 of the Act no. 2014-896 dated 15th August 2014 modifying the criminal procedure code

Article 25 of this Act modified two articles in the criminal procedure code:

- Article 708-1 of the criminal procedure code should now read: "When implementing a prison sentence concerning a woman who is more than twelve weeks pregnant, the public prosecutor, or the judge in charge of executing sentences, should use all possible means either to differ serving the sentence or to arrange for the sentence to be served in an open environment."

- Article 720-1 of the criminal procedure code[6] has been completed by a further paragraph which reads: "The threshold of two years specified in the first paragraph is raised to four years when suspension for family reasons concerns either a sentenced person who has parental authority over a child under ten years of age and lives in his/her main home with that child or a woman more than twelve weeks pregnant.";

Finally, the first paragraph of article 729-3 of the criminal procedure code[7] is completed by the words: "or when it concerns a woman who is more than twelve weeks pregnant".

[6] Article 720-1 of the criminal procedure code: *"In misdemeanour cases, where the person sentenced has no more than two years' imprisonment left to serve and in the event of a serious problem of a medical, familial, professional or social nature, this sentence may be suspended or divided into fractions for a length of time not in excess of four years, none of these fractions being shorter than two days."*

[7] In the previous version, article 729-3 of the criminal procedure code read as follows: *"Parole may be granted to any person sentenced to a prison term of four years or less, or for whom the amount of time left to serve is of four years or less, where this person has parental rights over a child of less than ten years, who habitually lives with this parent.*"