OBSERVATIONS OF THE CGT INSERTION ET PROBATION UNION FOR THE REVIEW OF FRANCE'S SIXTH PERIODIC REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS OF 1949

THE UN

In accordance with the Committee's invitation to non-governmental organizations to "submit parallel reports containing information on the implementation of some or all of the provisions of the Covenant, observations on States parties' reports and their written replies to the list of issues ; as well as information on the follow-up given by the State party to previous concluding observations", the union de syndicats CGT Insertion Probation - professional organization of prison officers working in the penitentiary insertion and probation services (SPIP) - a non-governmental organization within the meaning of the Committee, wishes to make the present observations to the Committee.

Two points in particular, because they resonate with our day-to-day business, call for comments on our part:

- the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and the treatment of persons deprived of their liberty (arts. 2, 4, 7, 9, 10, 14 and 19); and in particular the question of effective remedies against undignified conditions of detention
- freedom of expression (art. 19 and 20)

I. Observations relating to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty - details of the guarantees of effective remedy against unworthy conditions of detention included in the regime established by law n o 2021-403 of April 8, 2021 tending to guarantee the right to respect for dignity in detention, following the case J.M.B. and others v. France, information on the number of requests submitted on the basis of the aforementioned law by detainees to denounce their unworthy conditions of detention, the number of these requests that the judicial judges considered to be well-founded, and the measures taken by the judicial judges who noted these conditions

I.1. Endemic prison overcrowding as a major cause of unacceptable prison conditions

Incarceration, as a measure of deprivation of liberty, in itself has consequences detrimental to the right to dignity of detainees, in the sense that in France it goes beyond the simple deprivation of the freedom to come and go, and affects a growing number of their rights and freedoms (privacy, health, intimacy, security, etc.). This effect, which should not be inherent to the simple notion of incarceration, is potentiated by the exponential occupation of prisons.

A - Increasingly alarming figures

As of July 1er 2024, statistics from the Ministry of Justice show 78,509 people in prison - over 26% of them remand prisoners - an increase of over 5% in one year - for 61,869 operational places.

With 7,800 more people incarcerated in 4 years, this growth has doubled compared to the 2015-2020 period[1] . To date, there is not a single Interregional Division territory with an occupancy percentage of 100% or less, for all types of facility combined. Some prisons or prison quarters are fully occupied.

[1] For the period 2015-2020, the number of people incarcerated was already described as "The prison population has reached levels not seen since 1980" in the Ministry of Justice's cahiers d'études pénitentiaires et criminologiques. https://www.justice.gouv.fr/sites/default/files/2023-05/Cahiers_etudes_penitentiaires_et_criminologiques_n50_mai2020_.pdf

over 200%: Amiens, Saint-Brieuc, Nimes, Rémire-Montjoly... These figures should also be treated with caution, as they conceal the reality of occupancy rates in certain areas, notably men's wards in prisons, where the percentages are weighted or even distorted by those in women's wards, which are generally less busy.
This exponential increase has been accompanied by a 42% rise in the number of mattresses on the floor over the past year[2] . This is a far cry from respect for individual cell confinement. It should be remembered that a surface area per inmate of less than 3m2 in a collective cell is sufficient to strongly presume a violation of article 3 of the European Convention on Human Rights[3] .

Under these conditions, we feel it is impossible to guarantee respect for the dignity of detainees, given the exponential increase in prison occupancy, as well as their dilapidated and/or unhealthy state: It should be remembered that most of the prison administration's budget is spent on building new establishments, which are not always intended to replace insalubrious or dilapidated prisons, and more incidentally on renovating/rehabilitating establishments which nevertheless house a significant number of inmates.

In addition to the indignity of ever-increasing overcrowding in French prisons, there are numerous other consequences for both inmates and prison staff.

B - Major repercussions on inmates and prison staff Prison is a public service, and inmates are its users, entitled to their rights: to health, to access to the law, to privacy... Given the conditions of detention, and the cruel lack of human and material resources allocated to activities, integration schemes and preparation for release, prison makes people more fragile and precarious, and can deprive them of these essential rights, which contribute to keeping them in society, in the community of men, and thus to their dignity.

Indeed, prison overcrowding and the current conditions of detention in too many establishments are having a noticeable impact on the provision of care, access to the law and activities. As a result, waiting lists are lengthened, and staff are unable to take proper care of users when there are sometimes twice as many as the maximum capacity of the establishments. The recommendations made by the Contrôleuse Générale des Lieux de Privation de Liberté (CGLPL) in June 2024 concerning the Tarbes prison are just one example[4] . In this dilapidated, overcrowded facility, the number of jobs on offer is limited to ten general service auxiliary positions, and only 7% of inmates have access to work. Only two vocational training courses are offered, benefiting a total of ten inmates. Socio-cultural activities are limited to a socio-aesthetic care activity for only six inmates, at a rate of 1.5 hours per week. Access to the library is highly restrictive: registered inmates can only go there once a week, from 7:30 to 8:30 am. Sports slots were doubled in March 2024, with every inmate now able to access sports fields or premises for 3h a week. However, the weight room has been devoid of any equipment for 18 months, and the sports field has no equipment at all.
Promiscuity, inactivity and the daily time spent in cells also generate tensions and even situations of interpersonal violence at all levels. We cannot ignore the fact that this has a significant impact on the working conditions of prison staff, supervisors and probation officers, who are not recruited in numbers commensurate with the actual occupancy of the establishments.

In our view, combating prison overcrowding and improving prison conditions are essential prerequisites for respecting the right to dignity of prisoners.

[2] 3526 ground mattresses on July 1er 2024 https://www.justice.gouv.fr/sites/default/files/2024- 07/mesure_mensuelle_01072024.pdf
[3] ECHR, October 20, 2016, Mursic v. Croatia, no. 7334/13

[4] Urgent recommendations concerning the Tarbes prison (Hautes-Pyrénées) " Contrôleur Général des Lieux de Privation de Liberté's website (cglpl.fr)

The dignity of incarcerated people is an individual issue, not a collective one or one of public interest.

I.2. Insufficient effective remedies for unacceptable detention conditions

While the new right of appeal to the courts against unworthy conditions of detention introduced by article 803-8 of the French Code of Criminal Procedure is an essential step forward, it does not make good on the injunctions issued to France by the European Court of Human Rights in the JMB v. France judgment, not least because of the difficulties involved in making it effective.

A - A procedure that can be difficult to access: for short sentences and the most vulnerable users

As we saw earlier, overcrowding has a negative impact on access to rights.

These consequences are all the more severe for prisoners who are underprivileged, illiterate or foreign nationals.

Because of its procedural requirements, this appeal can be difficult to access for these groups, as well as for people serving short sentences. In particular, it requires: a separate written request, detailed allegations supported by general findings (CGLPL reports in particular), and prima facie evidence.

Such formal requirements are likely to discourage the most vulnerable people, who are already the most likely to be deprived of their rights while in detention. While the burden of proof may at first glance appear to be lightened by the notion of prima facie evidence, proof of unworthy conditions may nonetheless appear relatively complex to establish, particularly in view of the inaccessibility from detention of resources such as visit reports from the CGLPL or bar associations that could support the elements put forward, and all the more so when the detainee has no access to a lawyer.

It should also be noted that this procedure was not initially eligible for legal aid. We had to wait until July 1er 2023 (and the decree of June 12 2023) to ensure that the most vulnerable prisoners were not deprived of this possibility of appeal for financial reasons.

Nor does the procedure, in its current form, allow those sentenced to short terms (even though they are incarcerated in remand prisons, where prison overcrowding is most prevalent) to take advantage of it, even though the unworthy conditions of confinement are equally prejudicial and deleterious to their future personal development and their trust in institutions. In fact, in addition to the time required to process this appeal, which can take more than 2 months, there is also the time needed to compile the information required to ensure that the "allegations contained in the request are detailed, personal and current, so that they constitute prima facie evidence"[5] .

In addition, as mentioned above, the workload of prison staff is overburdened by the problem of overcrowding, which makes it impossible for them to provide efficient support to inmates wishing to lodge an appeal. Article R. 249-18 of the French Code of Criminal Procedure (CPP)[6] stipulates that it is the responsibility of the head of the prison to take all necessary steps to inform inmates of the possibility of lodging an appeal under article 803-8 of the CPP, notably by means of a guide for incoming inmates or a poster campaign in detention. However, it would be legitimate to question the effectiveness and efficiency of this information, particularly in terms of accessibility for all persons, even the most vulnerable with regard to reading, but also in terms of its persistence over time.

[5] Article 803-8 of the Code of Criminal Procedure
[6] Expanded in the circular dated 09/30/2021 https://www.justice.gouv.fr/sites/default/files/migrations/portail/bo/2021/20211029/JUSK2129245C.pdf

Finally, it would be advisable to ensure that the judicial judge makes full use of his powers

The "investigative" powers provided for in articles R249-24 and R 249-29 of the French Code of Criminal Procedure (CPP)[7] are also available, whether at the time of examining the admissibility of the appeal, or to establish whether corrective measures have put an end to detention conditions contrary to the applicant's dignity. Such verifications would provide a better understanding of the reality of the conditions of detention, the need for corrective measures, and the inadequacy or relevance of any particular intervention on the merits. In addition, it would enable us to move away from mere observations/statements made by the administration.

- *Avenues for consideration: improve information to the penal population on the existence of this recourse, the procedure to follow and train prison staff, at the very least, so that they can best assist detainees (and that this is one of the items of information given to new arrivals?) - standard recourse forms should be freely available to detainees, without them having to request them from prison staff.*

B - The absence of precautionary measures

The mandatory period between the filing of the petition and the judge's decision is between 13 and 37 days, and the prison administration is given up to 30 days to take the necessary measures. These two months, or two and a half months in the event of an appeal, seem to us to be a timeframe that is ill-suited to the seriousness of the issues at stake in a situation of indignity, and allows certain degrading or even inhuman treatment to continue. This recourse is an obstacle to an emergency procedure and to immediate measures to put an end to the situation of indignity.

C - Transfer, a solution that is no solution at all

Whether in terms of the corrective measures that can be taken by the prison administration or the measures that can be taken by the judicial judge to put an end to conditions of detention contrary to the applicant's dignity, transfer appears to be the measure favored by the Ministry of Justice, making even a possible refusal of transfer by the detainee a reason for rejecting measures on the merits.

And yet, in such an endemic situation of prison overcrowding, we fail to see how transferring a prisoner from one facility to another could resolve a situation of indignity. On the contrary, we fear that it will simply enable people to be moved from one insalubrious and overcrowded establishment to another, all the more so when there seems to be no obligation on either the prison administration or the magistrate to ensure the dignity of conditions of detention in the new establishment. Nor does the transfer of the applicant to another establishment resolve the situation of indignity in the original establishment, thus maintaining the same situation for other detainees. It will therefore always be easier for the prison administration to move this or that individual making use of the recourse rather than to actually address the concrete causes of the unworthy conditions of detention, which would nevertheless have the merit of benefiting the entire incarcerated population. Thus, transfer alone would not be satisfactory, nor would it be exclusive of other measures that would provide a structural response to this indignity.

The other pitfall may be the same as in the case of overcrowding transfers, which clog up detention centers with inmates on short sentences with unsuitable profiles: the use of cells in arrivals wards as available places, making it more difficult for prison staff to support these users.

In addition, there is no provision for a posteriori control by the judge over the conditions of detention in the new facility.

Moreover, the transfer of a prisoner is not without consequences for his or her overall situation: new prison shock, loss of possible employment/training, risk of severing family ties... These major consequences hinder the reintegration of prisoners whose placement in unworthy prison conditions has already inevitably taken its toll.

[7] https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044046505
https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044046541

Finally, since transfer is the solution favored by the legislator, we fear the dissuasive effect it may have on the very exercise of this recourse, and the fact that users may prefer not to avail themselves of such a recourse and remain in difficult conditions of detention for fear of being distanced from their family circle. It should also be remembered that incarceration also has major consequences for the detainee's family, and that the geographical distance caused by a transfer makes them even more precarious at all levels: social, family organization, links with children, etc.

➢ *Food for thought :*

** Effective a posteriori control of detention conditions in the host establishment*
** Mandatory corrective measures at the original plant*
** Avoid making transfer the preferred measure*

D - Lack of evaluation and figures for the system

In the report submitted, France states that "since February 25, 2022, requests on the basis of article 803-8 of the Code of Criminal Procedure can be counted via Cassiopée (a computer system processing information relating to judicial proceedings), and the count has been available since March 31, 2022. As of July 1, 2022, 30 orders from liberty and custody judges, and 132 orders from sentence enforcement judges, ruling on the basis of this article 803-8, had been issued."

This response appears largely inadequate, as it offers no clear indication of the effectiveness and efficiency of this recourse. For example, it does not distinguish between orders declaring the petition inadmissible/receivable, orders certifying that the petition is well-founded, or orders ruling on the merits of the petition and imposing measures. How many appeals have been successful since the appeal was created? What were the reasons for rejection? What are the average delays? What is the proportion of transfer decisions? What decisions have been taken? What corrective measures has the prison administration taken?

We call for the collection of figures to highlight the practical contours and effectiveness of this recourse, as well as the availability of such data.
At the same time, the aim of this appeal is to put an end to unacceptable detention conditions. How can we be sure that detention conditions have improved overall, if there is no control or a posteriori evaluation? Recent reports by the CGLPL and our day-to-day observations seem to indicate that there has been no improvement in detention conditions since the creation of this possibility of appeal.

➢ *Food for thought :*

** Comprehensive data feedback*
** Set up an assessment of the overall effectiveness of this measure on the situation in prisons*

I.3. A necessary turnaround in penal and prison policies

A decision of March 14, 2024 by the Committee of Ministers of the Council of Europe, as part of its monitoring of the execution of the J.M.B. v. France judgment, "expressed its deep concern at the latest figures attesting [...] to a worsening situation, [...] a steady growth in the prison population; and urged the authorities to reconsider their strategy for combating overcrowding, by tackling its root causes". He then invited the authorities to "seriously and rapidly examine the idea of introducing a binding national prison regulation mechanism".
Shortly before, we too were alerting[8] , at our own level, to the extreme urgency of tackling the root causes of this endemic overpopulation, a major issue for

[8] Prison overcrowding: proposals from the CGT IP - CGT insertion probation (cgtspip.org)

the indignity of detention conditions in French prisons. Overprisonment and penal inflation are the root causes of prison overcrowding, and the measures taken to date are not only useless but counterproductive. For us, it is therefore essential to give serious thought to mechanisms that will genuinely and sustainably curb prison inflation and the ever-massive recourse to imprisonment. This could involve setting up a binding prison regulation mechanism, which the Minister of Justice is refusing to take up at the moment.

A - Penal inflation

Penal policies evolve according to the sometimes demagogic political stakes involved, or in response to the latest news, in an increasingly repressive direction.

During the previous presidential quinquennium, for example, 120 offences were created[9] or made more stringent, most of which concerned misdemeanors. This legislative inflation is driven in particular by subjects that have a particular impact on the media and public opinion. A recent example is the issue of sexual and domestic violence, which in less than two years has led to the introduction of three laws and tougher penalties for several offences: telephone harassment of a spouse, +2 years' imprisonment; repeated threats to commit a crime against a spouse, +1 year, and so on.

We could also mention the so-called "comprehensive security" law, which strengthens penalties for perpetrators of violence against public officials.

The creation of new offences and tougher penalties inevitably lead to over-imprisonment.

In a report published in October 2023, the Cour des Comptes (French National Audit Office) also points to this toughening of criminal law as the primary factor behind prison overcrowding.

The extension of the penal net also leads to longer periods of detention: when you enter prison, you stay there longer, leaving people in deplorable prison conditions for longer.

However, victimization surveys, based on declarations by victims of crime, attest to a decline in the commission of the most serious offences. The most important of these, the Vécu et ressenti en matière de sécurité (VRS) survey conducted annually by the ipsos polling institute, highlights a stable or declining level of delinquency[10] .

So, until we put an end to the penal inflation of recent years, or even start thinking about the decriminalization of certain behaviors, it seems eminently difficult to combat prison overcrowding and, by extension, unacceptable prison conditions.

This paradigm influences the measures taken by the French government to combat overcrowding, and prevents alternatives to incarceration from being effectively considered as real sentences, rather than as substitutes or handouts for convicted offenders.

The question of the dignity of prison conditions cannot escape the need for penal and prison deflation, and a genuine French introspection on the meaning of punishment and incarceration.

B - Measures that defeat the purpose

None of the penal policies implemented in recent years has been able to provide a viable solution to the problem of prison overcrowding.

[9] "Un quinquennat de nouvelles infractions pénales, au risque de compliquer le travail de la justice", Jean-Baptiste Jacquin, article published in Le Monde on March 16, 2022
[10] The VRS (Vécu et ressenti en matière de sécurité) / Interstats survey - Ministry of the Interior (interieur.gouv.fr)

By devoting 341 billion euros to the construction of new prisons by 2024, the prison administration and the Ministry of Justice are persisting with a policy of magical thinking, which for years has proved ineffective in combating prison overcrowding and conditions that are as unworthy as they are inhumane.

It's a fact that nature abhors a vacuum. Worse still, the more we build, the more we reinforce the illusion that imprisonment is a useful punishment in all circumstances. The more budget we allocate to building prison places, the more we reduce the budget allocated to rehabilitation, preparation for release, activities, educational, health or social care.

The March 13, 2019 Justice Programming and Reform Act (LPJ) and the December 22, 2021 Confidence in the Judiciary Act were intended to be ambitious, particularly in terms of alternatives to detention and sentence adjustments. The results have not lived up to this ambition. In 2022, 48% of convictions were prison sentences.

Genuine reductions in prison and penal numbers cannot be achieved without modifying trial procedures, without giving real time to the individualization of decisions, which is not possible with immediate appearance, even though there will be almost 59,000 such cases by 2022. What's more, the creation of the "delayed appearance" procedure, which is supposed to make the courts more fluid, is simply a new door open to the use of pre-trial detention.

Article 137 of the French Code of Criminal Procedure establishes the principle of the freedom of all persons under investigation. As such, pre-trial detention should only be used in exceptional cases. Yet, even today, the number of remand prisoners in prisons is still considerable (almost 26% of all inmates), contributing to prison overcrowding.
The development of ARSE, as provided for in the Confidence in Justice Act, is not an alternative to imprisonment, but rather an alternative to freedom. We need to define a policy that will limit the number of remand prisoners, and encourage the use of judicial supervision, entrusted to the SPIP, a measure that seems more than ever to have been abandoned in favor of detention, whether in an institution or under electronic surveillance (ARSE).

One of the aims of the March 2019 LPJ was to promote sentence adjustment ab initio, i.e. "from the outset", i.e. directly at the bar, by prohibiting sentences of less than one month, making it compulsory to adjust sentences of between one and six months "unless this is impossible", and enshrining the principle of adjusting sentences of between six months and one year "if conditions and the situation allow". Under the guise of a desire to combat over-imprisonment, this law actually poses two problems.
On the one hand, it limits the magistrate's ability to adjust sentences of more than one year and less than two years, as previously provided for by law.

On the other hand, there is what is known as the "ripple effect". Since sentences of less than 6 months must be modified, some judges have increased the number of sentences of more than 6 months (in order to avoid this obligation), as well as those of more than 1 year. The Cour des Comptes, in a report published in 2023[11] , confirms this effect of the LPJ, which runs counter to the stated objective.

[11]Cour des Comptes, thematic public report of October 2023 "Persistent prison overcrowding, a sentencing policy in question".

The Confidence Act of 2021 creates a new form of automatic release from prison (LSC-D) when the initial sentence was less than 2 years and the remaining sentence is less than or equal to 3 months, unless it is materially impossible for the prisoner to find accommodation. Here too, we note several pitfalls.
On the one hand, the number of people excluded from this scheme: perpetrators of crimes, perpetrators of domestic violence, perpetrators of violence against persons holding public authority or prisoners who have been disciplined for certain acts committed while in detention. These exclusions considerably reduce the number of people eligible. What's more, given the conditions of the accommodation, the most vulnerable people are effectively excluded.

On the other hand, we consider that a sentence adjustment granted automatically, without preparation and without construction with the person, is more akin to an anticipated dry release. This managerial vision of the sentence execution process not only overburdens staff, particularly at the SPIP, but also places prisoners in a situation where they are likely to fail once released, especially given the impoverishment of public services under ordinary law.

C - <u>The need for genuine reflection on the implementation of a binding prison regulation mechanism</u>

In July 2024, a number of associations brought a case before the Montpellier administrative court seeking to halt incarceration at the Carcassonne prison due to overcrowding, detention conditions and serious and manifestly illegal infringements. In his ruling, the administrative judge acknowledged that the conditions of detention were unacceptable (19th century facility, 25 mattresses on the floor, surface area per inmate of less than 3m2...) but that he *could* not "*order"* a suspension of incarceration *"without interfering in the prerogatives of the judicial authority, which alone has the power to impose imprisonment"*.[12]
The administrative judge also referred to the "stop-écrou" system previously set up in Grenoble and Bordeaux-Gradignan in response to overcrowding in these establishments and the resulting violation of dignity. Once a certain occupancy threshold had been reached, these local initiatives stopped incarceration for as long as it took to identify and grant early release to certain inmates. In addition to the considerable amount of work required by the prison clerks and SPIPs, this mechanism, which only serves as an incentive for magistrates, does not offer sufficient guarantees or consistency. What's more, the alert threshold would only be fully meaningful if it were situated upstream of a 100% occupancy rate, failing which French prisons would tirelessly condemn their inmates to unsatisfactory, even undignified or inhuman conditions of detention.

It is therefore becoming necessary and urgent to think about setting up a real national and binding mechanism for regulating prisons.

The CGLPL, like many other organizations, associations and unions concerned with prison issues, agrees with this opinion[13] .

[12]TA Montpellier, July 24, 2024, no. 2404067
[13]https://www.cgtspip.org/communique-de-presse-surpopulation-carcerale-seul-contre-tous-le-gouvernement-soppose-a-an-emergency-solution/

For our organization, regulation should not be considered solely in terms of early release from detention to reduce prison pressure. It would be advisable to think about regulation upstream of incarceration, which would enable us to better guarantee the dignity of prison conditions, or at the very least to get rid of the excess indignity induced by prison overcrowding.

However, France stubbornly refuses to do so, preferring to focus all its efforts on building new prisons. Legislative changes only address the issue of increasing the number of people leaving prison, without ever considering the number of people entering, or the central role of incarceration.

II. Comments on legislative measures taken to protect journalists, human rights defenders and associations, particularly those working in the fields of human rights, migration and the environment, from censorship, harassment and deterrence through SLAPP suits, and to prevent the exercise of these abusive recourses by providing for the possibility of rejecting them at an early stage - explanations of the measures taken to raise awareness among judges and prosecutors of measures designed to punish abuse, notably by ensuring that the cost of the procedure is borne by the person lodging the appeal, and measures providing concrete assistance to people subject to these procedures

In its response, the French government essentially refers to the legal guarantees afforded to journalists in terms of protection against possible attacks on their freedom of expression and against gagging procedures to which they may be subjected. While journalists are indeed the first to be affected by such dissuasive procedures, we feel it is essential to remember that Article 19 of the International Covenant on Civil and Political Rights concerns freedom of expression in its entirety. Thus, attacks on freedom of expression extend beyond the journalistic sphere to include trade union activity and expression.

We believe it is important to bear witness to the use of defamation proceedings to punish and discourage union expression on subjects of public interest, such as the fight against sexist and sexual violence and the protection of victims.

By way of example, four of our union's former national secretaries are personally under investigation for defamation and public insult as a result of a complaint lodged by the management of the École Nationale d'Administration Pénitentiaire (ENAP), following the publication of press releases denouncing the existence of sexist and sexual violence, and the school's inadequacies and even failings in dealing with victims.

As a trade union organization, we would like to draw your attention to the use of bailiff procedures by employers, including public employers, against freedom of association, which is protected by article 22 of the International Covenant on Civil and Political Rights, and the freedom of expression that goes with it.

A number of points also call for vigilance or questioning:

* on the cost of these procedures:

The measures taken to transpose the Directive on the protection of whistleblowers opened up the possibility of a fine of 60,000 euros in the event of gagging proceedings brought against a whistleblower. In addition to the fact that recognition of whistleblower status is subject to a number of requirements that are not always obvious, this a posteriori fine does not protect the party who is the subject of a gagging procedure from costs, particularly legal costs. These costs can be a major obstacle to guaranteeing the right to a fair trial, all the more so as most gagging proceedings reveal the great inequality of resources between the parties to the proceedings.

→ *We believe it is necessary to consider legislative changes that would enable the defaulting party to bear the entire cost of the trial (or even to envisage an a priori mechanism, i.e. before any decision is taken?)*

* the absence of any possibility of rejection at an early stage

Under French law, victims of a press offence such as defamation can lodge a complaint with the examining magistrate to open a judicial investigation. This is a particularly effective way of avoiding the case being dropped or the public prosecutor's office failing to respond. The purpose of the investigation is to identify the perpetrators, but it does not rule on the merits of the case, i.e. whether the defamation is indeed justified. This is the responsibility of the criminal court. Once a perpetrator has been identified, referral to the court is inevitable. It has to be said that this identification is a mere formality, since article 42 of the law of July 29 1881 on the freedom of the press institutes a de facto cascade liability of the publication director, or failing that of the authors, printers, sellers...

However, defamation suits are a type of procedure that can be used to intimidate the judiciary, by abusing the civil action procedure and forcing the defendant to appear before the criminal court.

Not only does French law provide for an exception for defamation claims, which can expose defendants to financial and psychological repercussions (lawyers' fees, hearings, professional insecurity...), but it does not provide for any possibility of rejection at an early stage, for example at the investigation stage.

→ *We believe that further thought should be given to the possibility of early dismissal, at the request of the defendant, with the onus on the complainant to prove that the complaint is not manifestly unfounded.*

Finally, France's response does not provide any figures or balance sheets.

It would seem appropriate to produce :

- a report on the "whistleblowers" activity of the Défenseur des droits

- figures on the number of defamation actions brought, including the rate of acquittal, any fines imposed and details of the perpetrators (particularly in the case of public employers or institutions)