



DIGNITY IN PRISON

WHAT IS THE SITUATION TWO YEARS AFTER
THE EUROPEAN COURT OF HUMAN RIGHTS
RULED AGAINST FRANCE?

June 2022



A report published with the support of Amnesty International

Amnesty International France welcomes this report which examines the conditions of detention in France two years after the European Court of Human Rights judgment of 30 January 2020 in the case of JMB and others v. France, which found conditions of detention in France to be inhuman and degrading.

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List of abbreviations

ECHR	European Court of Human Rights
CGLPL	Contrôle général des lieux de privation de liberté (the French independent body for inspecting prisons)
CNCDH	Commission nationale consultative des droits de l'homme (French governmental organisation that monitors human rights)
CNB	Conseil national des Barreaux (National organisation representing the legal profession)
CPIP	Conseiller pénitentiaire d'insertion et de probation (Penitentiary integration and probation counsellor)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DDD	Défenseur des droits (Defender of Rights, independent administrative authority of the French government)
LPJ	Loi de programmation 2018-2022 et de réforme pour la justice (2018-2022 Planning and Reform for the French Justice system Law)
OIP	Observatoire international des prisons (a not-for-profit organisation working for human rights in prisons)

Note to the Reader

All testimonies are from the OIP's information and legal advice sessions, except for those whose source is specified.

Introduction

"My neck is stiff because the cell is so cold. In the winter, I have to wear two layers of pyjamas, a dressing gown and a hat, to keep warm. The walls are wet with the damp."

On 30 January 2020, the European Court of Human Rights ruled against France for its inhuman prisons, and ordered it to take measures to rectify the situation. On 30 May of the same year, this judgment became final.

Two years on, what is the situation?

This report draws up a critical assessment of prison conditions and the action of the public authorities, which is totally out of keeping with the urgency of the situation. Every month, prison overcrowding breaks new records in prisons, with dramatic consequences: lack of privacy, non-separation of different categories of detainees, increased tension and violence, etc. The particularly poor and degrading living conditions they impose are further exacerbated by the dilapidated and unsanitary conditions of a large proportion of prisons.

Beyond the material conditions, this report also looks at the significant deterioration in the conditions of care for detainees, and the shortcomings in the provision of activities and work, in preparations for release and in health care, and the consequences for integration or rehabilitation. The situation has been compounded by the two years of the pandemic, the effects of which have disrupted the daily lives of detainees and their loved ones, even more than in the outside world.

While penal and prison reforms have been undertaken both before and after the European judgment, these have largely overlooked the factors behind the increasing prison population – and many of the measures even appear to have contributed to it. This report highlights the limitations of these measures, as well as those of the policy of continuously increasing the number of prison places, which is both costly and counterproductive. The report also condemns the powerlessness of the courts to require the administration to carry out, in a timely manner, the injunctions issued, at a time when there are increasing numbers of court rulings noting the inhuman detention conditions and demanding that urgent measures be taken to bring about change.

Unfortunately, this is not a new observation and it is one that has also been widely acknowledged. Time after time during the last two years, bodies responsible for monitoring compliance with human rights: the European Committee for the Prevention of Torture (CPT), the French National Preventive Mechanism regarding monitoring of places of deprivation of liberty (Contrôleur Général des Lieux de Privation de Liberté - CGLPL), the National Human Rights Commission (Commission Nationale Consultative des Droits de l'Homme - CNCDH), have all sounded the alarm about the condition of French prisons and their overcrowding.

Echoing their recommendations and France's obligations with regard to the requirements of the European judgment, this report calls for the implementation of a national action plan to combat prison overcrowding, which should include: the decriminalisation of certain offences, a reduction in the use of pre-trial detention, a revision to the conditions of judgment and the length of sentences, and an increase in alternatives to imprisonment. This is a project that requires strong political will, as well as a review of budgetary priorities in favour of improving care for detainees and the development of non-custodial measures rather than the expansion of the prison estate.

France is condemned for its inhuman prisons

1. The indignity of French prisons: a long-standing and persistent observation

The squalor of French prisons is not a new phenomenon. Fifty years ago, the first survey published by the Groupe Informations Prisons (GIP), created on the initiative of – among others – the philosopher Michel Foucault, painted an “intolerable” picture (“Intolérable” was the name given to their publication) of the living conditions in twenty prisons: the detainees told of overcrowding, unsanitary conditions, a lack of medical care and privacy, violence, censorship and arbitrary treatment.

Early in the year 2000, the publication of Véronique Vasseur’s book *Médecin Chef à la Prison de la Santé* (“Chief Medical Officer at the Prison de la Santé”) triggered a media storm and led to the establishment of two parliamentary enquiries into prisons. Again, the conclusions were damning: over-crowded remand prisons, a mass of people awaiting trial, a prison population from the poorest areas, human rights violated, prisons that operate outside the law, a climate of arbitrariness, non-existent controls, etc. In their report, French senators described prisons as a “humiliation for the Republic”.

Although French prisons have undergone major transformations since then, successive reports by the European Committee for the Prevention of Torture (CPT), and the Contrôleur Général des Lieux de Privation de Liberté (CGLPL, a national mechanism created in 2008 with the aim of preventing torture and ill-treatment in places of detention), continue to highlight the multiple rights violations that prevail in French prisons. Indisputable observations have been made about the lack of respect for human dignity: in overcrowded prisons, detainees are sometimes forced to live two, three or four to a cell of nine square metres, twenty-two hours out of twenty-four; sharing an unpartitioned toilet; sleeping on mattresses on the floor; living among cockroaches and with bedbugs; suffering the cold in winter and the extreme heat in summer, due to poorly insulated walls.

2. The European Court of Human Rights (ECHR) judgment in J.M.B and Others v. France: a landmark ruling

AN INCREASING NUMBER OF APPEALS TO THE ECHR

In response to the inaction of the public authorities in the face of multiple allegations of inhuman physical conditions of detention and the ineffectiveness of domestic measures to remedy this, the OIP decided in 2015 to launch a campaign before the European Court of Human Rights. In February 2015, the organisation supported the filing of the first individual cases by inmates of the Ducos Prison. This was followed by Nîmes (March 2015), Nuutania (June 2016), Nice (2017) and finally Fresnes (November 2017). In total, some 40 claims were filed against seven penal institutions. In particular, they complained about overcrowding, lack of privacy, cohabitation with pests (cockroaches, rats, mice, beetles, etc.), unsanitary conditions, lack of hygiene and extreme temperatures. These findings were supported by the Contrôleur Général des Lieux de Privation de Liberté (CGLPL), the Commission Nationale Consultative des Droits de l'Homme (CNCDH), the Défenseur des Droits (DDD), the Conseil National des Barreaux (CNB) and various organisations and bar associations that partnered in several of the cases initiated. The aim of this campaign was twofold: for the inhuman conditions of detention in France to be condemned, but, above all, to obtain a pilot decision that would force the government to redirect its penal policy to reduce recourse to custodial sentences.

A “NEAR-PILOT” JUDGMENT URGING FRANCE TO REFORM ITS PRISON SYSTEM

With the JMB and others v. France judgment of 30 January 2020, the ECHR issued a decision grouping together 32 of these cases in six of the prisons concerned, and condemned France for the inhuman conditions of detention imposed on 27 of the applicants, in violation of Article 3 of the European Convention, which prohibits inhuman and degrading treatment. Above all, the Court found that “occupancy rates in the prisons concerned demonstrate the existence of a structural problem” and recommended that France “adopt general measures” aimed at “guaranteeing prisoners conditions of detention that comply with Article 3”, in particular by ensuring the “definitive reduction of prison overcrowding”. It included France in the list of countries subject to a “pilot” or “near-pilot” judgment requiring a reform to the prison system.

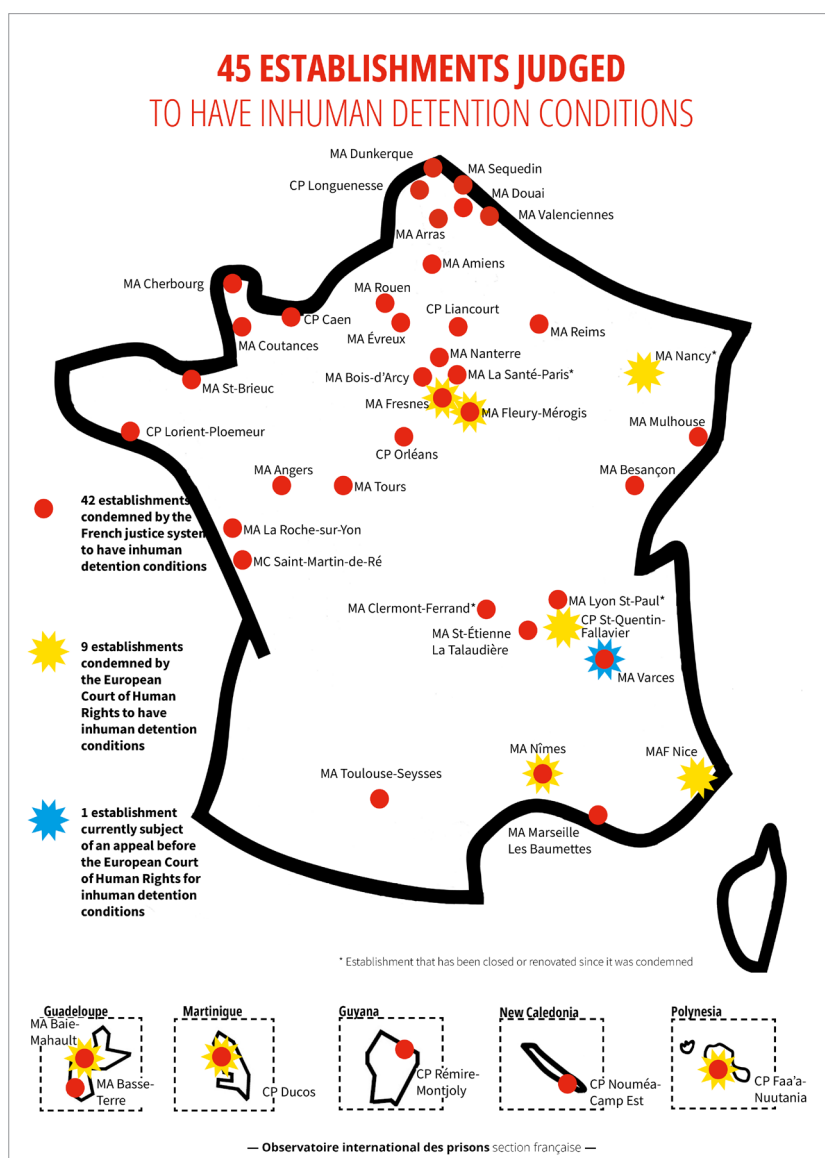
In the 32 cases, the Court found France to be in violation of Article 13 of the European Convention on Human Rights, which sanctions the absence of effective domestic solutions to remedy detention conditions that violate human dignity. In particular, it underlined the ineffectiveness of summary proceedings that could be brought before the administrative judge, and especially in the case of “référé-liberté” (injunctions to protect liberties). On the one hand, it highlighted the limited scope of the injunction power conferred on the judge in chambers by case law, who considered that it was not within his scope to pronounce on structural measures such as the renovation of buildings or the increase in resources for rehabilitation and probation services: only isolated and limited measures, generally having very little effect on the conditions of detention, could be obtained. On the other hand, the Court noted that the judge in chambers made his intervention dependent on “the resources available to the administration”. Thus, the latter could invoke “the extent of the work to be carried out or its cost to obstruct the injunction power of the judge in chambers”. Finally, the Court stressed that the execution of the injunctions issued was subject to “delays that are not in line with the requirement for a timely resolution” and that these injunctions “did not always produce the expected results”.

3. 45 prison establishments condemned

While the JMB v France judgment is exceptional in that it identifies prison overcrowding as one of the factors contributing structurally to inhuman detention conditions and calls on France to take general measures, it is part of a series of judgments against France for violating Article 3 of the European Convention on Human Rights by imposing inhuman or degrading treatment on detainees. In addition, national courts have also condemned France on this basis, before and after the European judgment (see below).

In total, 45 French prisons were considered by the French justice system and/or the European Court of Human Rights to be exposing detainees to inhuman or degrading treatment. In detail:

- 42 establishments have to date been condemned by the French courts.
- 9 establishments have been condemned by the European Court of Human Rights.
- 1 establishment is currently the subject of an appeal before the European Court of Human Rights: the Grenoble-Varces prison.



The situation two years later

On 1st May 2022, there were 71,038 people being detained in French prisons. This figure is even higher than the one for which France was condemned by the European Court of Human Rights in January 2020. After a short-term decline in the prison population in the early months of the pandemic, the country has returned to endemic overcrowding in its prisons. Combined with the dilapidated and unsanitary conditions of many prisons, this situation keeps prisoners in inhuman conditions – particularly in the prisons most affected by high occupancy rates, lack of activity and frequent poor care. This was compounded by the pandemic, the repercussions of which are still being felt even more acutely inside the prison walls than outside.

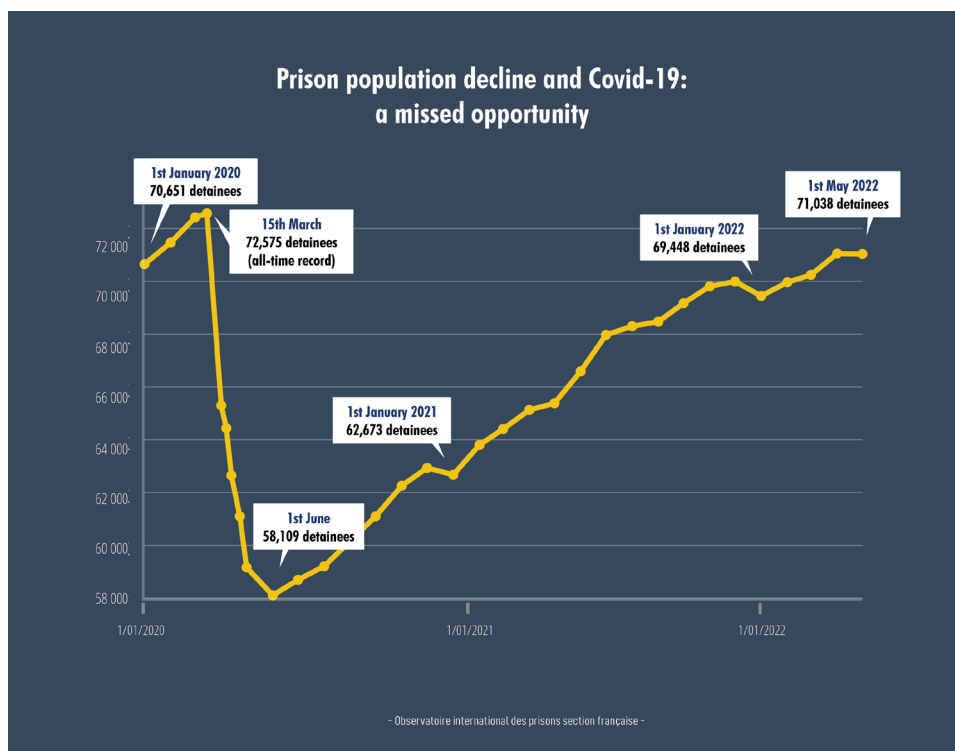
1. Overcrowding in remand prisons

HOPES DASHED AFTER AN UNPRECEDENTED DROP IN PRISON NUMBERS DURING THE PANDEMIC

In spring 2020, during the first months of the pandemic, the combination of emergency release measures and a drop in the number of people entering prison marked a suspension in the rising prison numbers and the resulting systematic overcrowding: in two months, the number of people being detained decreased by more than 13,500. For the first time in decades, there were fewer prisoners than prison places.

Seizing this exceptional opportunity, a thousand people launched an appeal to the President of the French Republic in an open letter, expressing their “great hope” that this reduction in the prison population would be long-term: “We ask that, in the area of prisons, as in many other areas, lessons be learned. That emergency management be replaced by a genuine policy to decrease the prison population in order to guarantee individual cell confinement and dignified conditions of detention, and to encourage those who can or must to be rehabilitated in the community”, wrote the signatories. All the conditions seemed at the time to have been met: unanimity among professionals that pressure on prisons should be reduced, a call from international bodies to take structural measures, a detention rate in France that had not been as low for twenty years, and a minister who claimed to be strongly committed to restoring dignity to prisons – Éric Dupond-Moretti was among the first signatories of the open letter published only a few weeks before he took office.

In the absence of a proactive policy, however, the number of detainees increased steadily from June 2020 onwards, as soon as the first lockdown ended.



OVERCROWDING FIGURES

After falling below 60,000 detainees in May 2020, French prison numbers are once again at levels over 70,000: 71,038 on 1st May, according to the figures published by the prison administration. In remand prisons, the average occupancy rate has reached a level rarely attained: 138.9%. As a result, 1,850 people are forced to sleep on a mattress on the floor every night.

Behind this average there are considerable variations. Thus, four remand prisons or remand quarters have an occupancy rate of over 200%. This is the case for Bordeaux-Gradignan (225.4%), Perpignan (214.3%), Foix (213.8%) and Nîmes (208%). And 42 other prisons have an occupancy rate of between 150% and 200%. In total, there are almost 18,000 people who are locked up in institutions that are more than 150% occupied. And 40,598 people are detained in prisons that are more than 120% occupied. That is more than one in two prisoners (57%). And this situation does not only affect men: on the same date, thirteen women's sections had an occupancy rate of over 120%.

While these figures already reflect an alarming level of prison overcrowding, they are misleading and the reality is even more frightening. The occupancy rates of the sections reserved for adult men are in fact not communicated by the prison administration. The averages published include places in women's sections, juvenile sections and, in some cases, day-release premises. However, these are rarely full, which mathematically contributes to lowering the overall rate. The occupancy rates for men's sections as of 1st May 2022 are almost unbelievable: in Perpignan, the average rate for men rises from 214% to 271%; in Bordeaux, it reaches 238%; in Nîmes 230%, etc.

OVERCROWDING AND LACK OF PRIVACY

As a result of overcrowding, in many remand prisons detainees are forced to sleep two, three or even four to a cell. At the remand prison in Auxerre, “all the cells have two people, and four of them have four people”, noted the CGLPL, during a visit in January 2021¹.

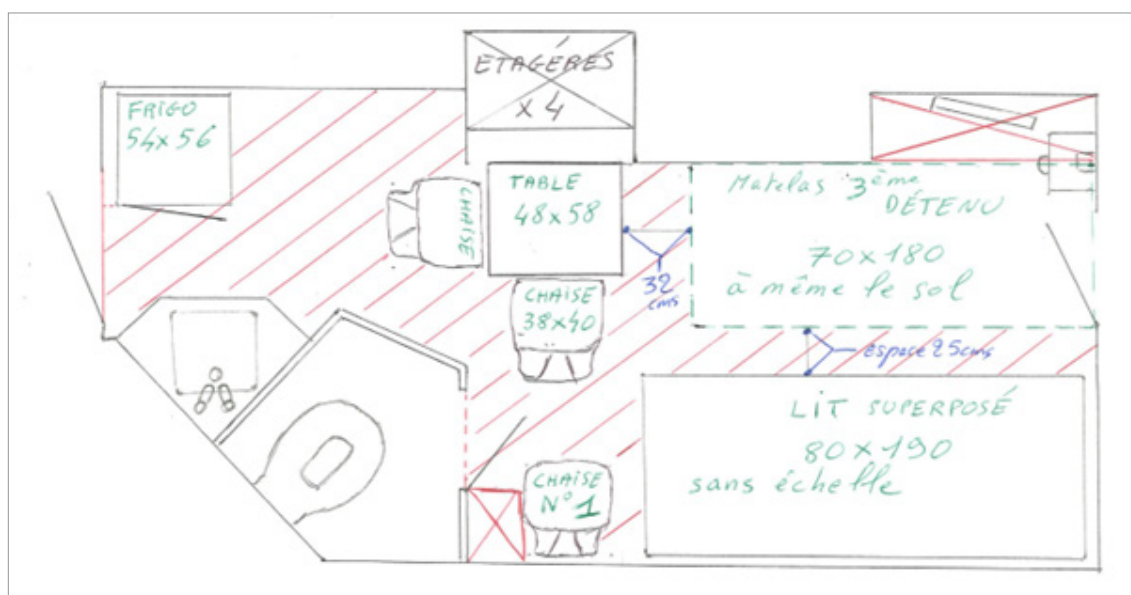
In the absence of a sufficient number of beds, mattresses are placed on the floor: “There are three of us in a cell and I sleep on the floor in a 6 square metres space [...]. We are locked up 22 hours out of 24”, wrote a detainee at Béziers prison to the OIP in September 2021. In the same prison, another confirmed: “Currently, all the cells have three people, even though they are only equipped for two. The third person sleeps on a mattress on the floor”. Again from Béziers, another detainee wrote, during the same period: “I have a certificate from the prison doctor to be in a cell alone, but nothing has been done. I sleep on the floor”.

Some older institutions still have communal cells. In a report following a visit in February 2021 to the Cherbourg remand prison, the CGLPL describes cells ranging in size from 19 to 25 square metres and accommodating up to nine prisoners: “The cells have bunk beds on three levels, which present a risk of falling; there is not enough space to move between the tables and chairs and the light is poor due to the installation of gratings. [...] Each communal cell has a shower and toilet, which are either left open or partially hidden from the view of the occupants of the upper beds by old cupboards balanced across the protective walls.”²

In many institutions, the toilets in the cells are not partitioned. “The toilets are separated by a low wall, anyone opening the door can see you, there is no privacy. Not to mention the unpleasant smells. Barely 1.5 metres from the place where you eat, it makes you lose your appetite. We burn orange peel when we have it, otherwise we open the windows wide, or we use deodorant or bleach”, wrote a detainee at the Bourg-en-Bresse remand prison to the OIP in October 2021. Another person, detained in Lorient, wrote in September 2021: “I was moved to the so-called “protected” area, in a cell with another prisoner. The cell was very small for two, resulting in a very crowded and extremely undignified environment. The cell’s toilets were closed off by simple wooden partitions only about a centimetre thick, letting in bad smells

1. Report from the second visit to the Auxerre remand prison (Yonne), visit between 4 and 8 January 2021.

2. Report from the third visit to Cherbourg remand prison (Manche), visit between 1st and 5 February 2021.



Sketch of a cell in Perpignan prison by a detainee, December 2021.

and embarrassing noises. After a month, I had a health problem. For several days, I had been unable to evacuate and my stomach was getting worse and worse. I started having spasms, shaking, bleeding, I was very scared. I finally saw a nurse who sent me back to my cell with liquid paraffin to swallow. What followed was traumatic: I spent most of the afternoon on the toilet, the pain was terrible and the situation was humiliating and degrading because of the presence of my fellow prisoner". Some people describe turning the television up to drown out the noise from the toilet. At Baumettes remand prison, in Marseille, the overcrowding meant that a disabled detainee was unable to occupy an individual cell. Despite two medical certificates describing "severe disabilities" and "disabling sphincter, anal and urinary disorders" recommending individual confinement, the detainee was kept in a double cell until his release.

Overcrowding also affects communal areas, which are not designed to accommodate such a large population. For example, at the Majicavo prison in Mayotte, staff describe 20 to 30 square meters exercise yards accommodating between 50 and 70 inmates: in September 2021, the remand prison had 450 inmates for 238 places³. After its visit to the Cherbourg remand prison in February 2021, the CGLPL criticised "insufficient communal areas and a single room that serves as a gymnasium, a place of worship and a classroom. The exercise yards are cramped and have no facilities"⁴.

NON-SEGREGATION OF DIFFERENT CATEGORIES OF PRISONERS

Within each prison, it is in principle the responsibility of the management to separate remand prisoners from convicted prisoners, and prisoners "who have not previously served a custodial sentence" from those "who have already undergone multiple incarcerations"⁵. The head of the institution must also avoid placing inmates who have reached the age of majority in detention and are under 21 years of age with other adults in the same cell. In practice, however, overcrowding often prevents this separation. Thus, the CGLPL noted, after its visit to Rochefort prison in February 2021, that "the 185% occupancy rate of the establishment results in a mixture of remand prisoners and convicted prisoners in the same cell"⁶.

The principle of separating smokers and non-smokers, which is recommended by the texts – even if it has no regulatory status – does not stand up to overcrowding either. In August 2020, a detainee wrote to the OIP: "When I arrived in prison, I was placed in a cell with a smoker. I told the prison officer that I wanted to be in a non-smoking cell because I'm asthmatic and I had a medical certificate with me. The prison officer put me in a single cell. Then, two or three days later, he assigned a fellow inmate who smoked to my cell. I told the warden (...) that I was asthmatic and that I had a document confirming this. The warden told me that he didn't "give a sh** and that I could die", that if I wasn't happy, I could just make a complaint.

AN INCREASE IN TENSION AND VIOLENCE

While tension and violence are often seen as an inherent part of prison, they are further exacerbated by the effect of overcrowding. "Very often locked up in communal cells in remand prisons for 22 of 24 hours and for long months without any activity, prisoners are bound to explode": this observation was made in 2007 by a working group on prison violence set up by the prison services and has been corroborated over the years by the increase in occupancy rates in remand prisons.

"In certain cells, there are six people, everyday there are more, crammed in", wrote the mother of a prisoner in Albi in February 2022. "With two people it's already difficult, but with four, or six, with all that's going on, the risk of violence, it can quickly become dangerous for both the prisoners and the guards".

In late 2021 and early 2022, there were a number of protests by prison guards, some of whom went so far as to block access to prisons, to denounce the increase in incidents in detention. "Overpopulation = overcrowding = conflict = unsafe conditions", was written on a banner in front of La Roche-sur-Yon remand prison by prison officers on 2 December 2021⁷. "We are breaking all records for overcrowding, and the prison could become a pressure cooker in

3. "Le centre pénitentiaire de Majicavo au bord du gouffre" (Majicavo Prison on the brink of collapse), Mayotte Hebdo, 28 April 2021.

4. CGLPL, *Op.cit.*

5. Article D. 93 of the French Code of Criminal Procedure.

6. Report of the third visit of the Rochefort remand prison (Seine-Maritime), visit from 1st to 9 February 2021.

7. "La Roche-sur-Yon. Surpopulation carcérale: le cri d'alerte des surveillants de la maison d'arrêt" (La Roche-sur-Yon. Overcrowding in prisons: the cry for help from prison guards), Ouest France, 2 December 2021.

the next few days or weeks”, a union representative said a few days later when talking about Nantes remand prison, described as “on the verge of collapse”⁸. A representative of the Force Ouvrière union explained, during a blockade organised on 7 February 2022: “You have to understand that we are at 150% capacity in Villeneuve-lès-Maguelone. This results in a lot of mattresses on the floor, a lot of problems with violence, and increased solitary confinement measures.”⁹

This context of pressure certainly increases the risk of violent behaviour among inmates and against staff, but also on the part of prison officers. Thus, the CGLPL described, in relation to Toulouse-Seysses remand prison, which they visited in June 2021, “a general climate of violence”, exacerbated by overcrowding and the forced inactivity of inmates. It stated that: “Exercising the profession of supervisor in these conditions is clearly difficult. The inspectors also received numerous and concordant testimonies from inmates denouncing the excessive use of force and violence (verbal and physical) on the part of the guards” (see focus below).

2. Particularly deteriorated material conditions

DILAPIDATED AND UNSANITARY INFRASTRUCTURES

Overcrowding is often all the more unbearable when it is coupled with particularly poor living conditions. In 2017, the Commission des Lois du Sénat (the French Senate’s law commission) noted that more than a third of all cells were considered dilapidated¹⁰. This situation persists because of “chronic under-investment in buildings” in terms of maintenance and renovation, as French Minister of Justice, Jean-Jacques Urvoas, noted in 2016, and as the Rapporteur for the prison budget at the National Assembly, Bruno Questel, pointed out in relation to the 2022 budget: “The dilapidation is such that [the establishments] cannot be renovated using maintenance funding alone”.

The age of some buildings, built in the 19th century, is not the only reason. Design flaws, chronic over-occupation and lack of maintenance have accelerated the deterioration of some infrastructures, including the most recent constructions. “Entirely renovated two years ago, the Parisian prison of La Santé already looks like a dilapidated old slammer”, wrote Le Canard Enchaîné in summer 2021¹¹.

Many detainees described cells with decaying and cracked walls, poorly insulated windows and insufficient ventilation. “I wake up feeling ants on my body. There is a hole in the wall through which ants come in, the wall is eaten away and crumbles away every day”, wrote a detainee in Saint-Étienne in April 2021. “When it is cold, we seal the gaps around the window with plastic or cloth as best we can”, explained another, incarcerated in Perpignan, in December 2021.

Thermal insulation problems are often exacerbated by old, inadequate or dilapidated heating systems: “I am writing to you from a prison in eastern France. My neck is stiff because the cell is so cold. In the winter, I have to wear two layers of pyjamas, a dressing gown and a hat, to keep warm. The walls are wet with the damp, there are only two pipes for heating. I have terrible back pain. I think I have the beginnings of rheumatism even though I am not even 30 years old. I don’t understand how we can be put through such hell, especially in winter”, a detainee testified in December 2021. These writings echo others received from all over the country: “The cold in the cell is unbearable, I sleep with my jacket and two pairs of trousers on”, wrote an inmate in Grasse. “I am currently in a cell that has had no heating for two months now, despite making many requests. And it is not only me who is complaining about the heating. It’s the whole MA2 building where there is no heating and at night, it is very cold”, warned another, held in Rennes-Vezin prison. In some establishments, breakdowns lead to regular water cuts – this is the case in particular at Beauvais prison¹² – while in others, prisoners are deprived of hot water in their cells, which was denounced by the Paris parliamentarian Lamia El Aaraje after her visit to Limoges remand prison in November 2021¹³.

8. “Nantes. La maison d’arrêt est ‘une cocotte-minute’, selon le syndicat FO” (Nantes. The remand prison is ‘a pressure cooker’, according to the FO union), Ouest France, 19 December 2021.

9. “Surpopulation carcérale: malaise à la maison d’arrêt de Villeneuve-lès-Maguelone” (Prison overcrowding: unrest at the Villeneuve-lès-Maguelone remand prison), France 3 régions, 7 February 2022.

10. Report no. 114 (2017-2018) on the prison administration budget.

11. “Des fuites qui ne font pas rêver le taulard” (Leaks that disturb prisoners’ sleep), Le Canard Enchaîné, 14 July 2021.

12. “Cluster et coupures d’eau à la prison de Beauvais” (Covid cluster and water cuts at Beauvais prison), Oise Hebdo, 5 January 2022.

13. “La députée PS de Paris, Lamia El Aaraje, saisit le Garde des Sceaux après avoir visité la prison de Limoges” (The PS Parliamentarian for Paris, Lamia El Aaraje, contacts the Minister of Justice after visiting the prison in Limoges), Le Populaire du Centre, 27 November 2021.

UNSANITARY CONDITIONS, POOR HYGIENE AND PESTS

“The shower room is unsanitary, the ceiling is crumbling, the water is lukewarm in winter and boiling hot in summer”, wrote an inmate in Salon-de-Provence in November 2021. Indeed, the dilapidated state of the infrastructure is often coupled with problems of poor sanitation. At the Château-Thierry prison, an inmate described the communal showers: “Dirty, damp ceiling, excrement”. A lack of hygiene that does not only affect the sanitary facilities: testimonies abound of mattresses that are torn, unprotected, and smelling of urine, as well as dirty bed linen that is too rarely washed, for example a detainee placed in the disciplinary ward of Saint-Étienne prison reported in May 2021: “The cell and the mattress were full of urine, I was not given the necessary items to wash”.

In many establishments, detainees also complain of the presence of pests. “In some cells, there may be a hundred cockroaches”, explained an inmate in Nanterre in September 2021¹⁴. At the Fresnes prison, many letters addressed to the OIP complain about the presence of mice, cockroaches, bed bugs and fleas, as well as rats in the outside areas. In September 2021 a prisoner wrote: “I have tried to commit suicide several times. I can’t stand the rats, I can’t sleep. The cockroaches, the abuse between inmates, I feel scared”. “While exercising or during the night, we see rats coming out of the sewers, it’s just filthy”, described a prisoner from Nantes in a letter in November 2021. In February 2022, a mother whose son is incarcerated in Albi wrote: “My son had to put his mattress on two tables so that he wouldn’t have to sleep with the rats and cockroaches”.

This situation, as well as exposing inmates to inhuman living conditions, often contributes to worsening health conditions. In February 2021, an inmate who was sleeping on a mattress on the floor in Seysses prison was diagnosed with leptospirosis, a bacterial disease transmitted by rat urine. He was taken to hospital in a serious condition and admitted to a special care unit. Rats are rampant in this institution (see below).

“As an asthmatic, my health is neglected because the conditions in which I am detained are unhygienic”, wrote a detainee in Mont-de-Marsan in July 2021. “Outside, in front of my window, a heap of several cubic metres of rubbish, food and other waste is left to decompose. The smell in this heat is absolutely stifling. Even with the window closed, it is impossible to breathe.”

3. Care that is weakened by overcrowding

FORCED INACTIVITY

According to the Council of Europe, inmates should be able to access activities outside the cell for at least eight hours per day. However, coupled with overcrowding, the lack of resources devoted to the care of prisoners means that prison time is often devoid of activity. On average, inmates benefit from 3 hours 40 mins activities per day during the week and less than half an hour at weekends, including all activities (i.e. the possibility of accessing weight training equipment in a room the size of a cell, as well as carrying out a professional activity, taking part in training or participating in socio-cultural workshops)¹⁵. But in overcrowded remand prisons, the reality is that the majority of detainees spend 22 or 23 hours out of 24 locked in their cells waiting for an hour of exercise.

“There are no activities. The only time when we can go out is during exercise time. There is just one sports session on Tuesdays from 8:30–10am, but they come to get us around 8:45 or 8:50 and take us out of the sports hall before 10am without explanation. And when we say that we’ll contact you, their reply is: “we don’t care, contact them, it won’t change anything for us”. This is what we go through on a daily basis”, wrote an inmate from Metz prison to the OIP in September 2021. During the same period, another person, held in Beauvais, wrote: “We have no activities, no footballs or pull-up bars when we’re outside. This is not normal! We have no facilities, no football, no weight training. When they leave us on the football pitch, we’re not given a ball, we’re only allowed to run around the field. I had to write several times for six, seven

14. “Cafards, rats et surpopulation, bienvenue à la prison de Nanterre” (Cockroaches, rats and overcrowding, welcome to Nanterre prison), Streeppress, 27 September 2021.

15. Spot investigation by the French Directorate of Penitentiary Administration, late 2016.¹ Enquête flash de la Direction de l’administration pénitentiaire, fin 2016.

2. « En prison, des mineurs privés de promenade », communiqué OIP, 23 novembre 2021.

months to get into the activities...". Many women also complain of restlessness: "There is no motivating mental or physical activity, except for one hour a week in the gym", wrote a woman inmate at the Bonneville women's remand prison in October 2021.

In the case of minors, although the obligation to attend school seems to be respected, in at least three of the six French prisons for minors, no exercise is organised when an activity is proposed to the young detainees. An illegal practice, which deprives many minors of daily access to the open air¹⁶.

POOR MANAGEMENT OF PRISONERS

The monitoring and management of prisoners also suffers with overcrowding. Penitentiary integration and probation counsellors (CPIPs) are often overloaded and are unable to follow up on all prisoners. One counsellor may have to follow up with up to 120 people, so in practice people may be released without having met with a counsellor, in particular those with short sentences. In January 2022, a man held in Maubeuge contacted the OIP in order to ask for advice in preparing for his release, scheduled for the following month: he had been unable to meet with a CPIP since he said that the establishment had only one for every 400 detainees. In February 2022, a woman who had been held in the Riom prison wrote to the OIP: "I have been released after four months in prison. No CPIP, no social security, no money. I am back in my home region, with nothing but the obligation to sign in twice a week at the police station. I had a permanent job and a stable family, I have nothing, no job, my family has turned their back on me. So what do I do? I feel wiped out and I just want to die. That's all".

The same applies to health care, as the number of health care workers has not kept pace with the number of prisoners. Moreover, due to a lack of incentives, many posts remain vacant, with sometimes dramatic consequences. In October 2021, for example, the OIP warned of the absence of a dentist at Châteaudun prison for almost two years. As medical extractions were reserved for the most serious conditions, the other inmates had to make do with "palliative" treatments with painkillers and antibiotics. The same applies to the treatment of mental illness, even though one in four inmates may suffer from psychotic disorders. In November 2021, a prisoner in Tulle wrote: "There has been no psychiatrist at the prison since March".

16. "En prison, des mineurs privés de promenade" (In prison, minors denied exercise), OIP press release, 23 November 2021.

4. A situation exacerbated by the pandemic

In overcrowded prisons where the risk of virus transmission is heightened, the pandemic further exacerbated these problems, beginning with healthcare. "I have a 72-year-old friend who was incarcerated in November 2021", wrote one person. "He requested medical care (for diabetes and other quite serious problems) and got no response "because of Covid". In the meantime, my friend is not receiving any care. What can be done, please? Covid's not the only illness, the rest still matter, right?" In fact, the pandemic has affected the functioning of health units, some of which were already understaffed, due to the increase in screening tests (contact cases, pre-examination, pre-hospitalisation, return from leave) and the Covid vaccination. In the case of a Covid cluster, medical follow-up is even more limited: "Usually three times per week we can go and get medication. But then, that was not possible anymore. So the nurses delivered it to the cells. Unless it was serious, we couldn't go to the doctor. All the psych appointments were cancelled with no exception. During the four weeks of the Covid cluster", wrote a person held at the Muret detention centre affected by a cluster in February 2022.

In many establishments, access to activities, to teaching and sometimes to workshops was reduced to limit interactions between detainees. As a detainee explained in February 2022: "Classes are usually limited to six students whereas there are around 15 seats. At the prison in Muret, they are a little more generous, there are ten of us in the room". At Fresnes prison "most activities where people gather together are unfortunately suspended", said a prisoner in January 2022. According to him, only "non-contact" sport was allowed. At the Lille-Annœuillin prison, affected by a Covid cluster in February 2022, several detainees reported that activities had been suspended and that their cell doors remained closed during the day, including in the

so-called “Respect” parts of the prison, where the cell doors were normally open during the day.

Self-isolation rules, which had to be followed for some detainees, forced management to group others to excess. “Each new detainee has to spend seven days in quarantine. It’s a real headache for organising the cells”, commented a guard in Roche-sur-Yon prison on 2 December 2021¹⁷. “How can we manage the isolation of detainees when they return from leave after the Christmas holidays?”, commented a union official in Nantes prison during the run-up to Christmas¹⁸. For prisoners requesting a residential family unit (UVF) or permission for leave, this time of self-isolation also includes a suspension of access to workshops – which had implications for their wages.

Above all, access to visiting rooms has been subject to operating rules that are constrained by the health situation. Because of suspensions to visits, the installation of full-height Plexiglas panels and strict respect for preventative measures, some detainees have not touched their loved ones for two years and have been deprived of essential moral support. “Two years without touching my three-year-old daughter, without a hug, it’s unacceptable”, wrote a detainee in Saint-Denis, Reunion, to the OIP. In addition, there has been a lot of tension around the delivery of laundry and Christmas parcels, which also represent material support for the prisoners.

¹⁷. “La Roche-sur-Yon. Surpopulation carcérale : le cri d’alerte des surveillants de la maison d’arrêt” (La Roche-sur-Yon. Prison overcrowding: the cry of the prison guards), Ouest France, 2 December 2021.

¹⁸. “Nantes. La maison d’arrêt est ‘une cocotte-minute’, selon le syndicat FO” (Nantes. The prison is ‘a pressure cooker’, according to the FO union), Ouest France, 19 December 2021.

The Toulouse-Seysses prison: an example of inhuman detention conditions

The Toulouse-Seysses prison, opened in 2003 with a capacity of 644 prisoners, housed 1,051 prisoners on 1st May 2022. The detention conditions there are particularly challenging, made worse by overcrowding. Despite warnings by the bodies responsible for ensuring compliance with fundamental human rights, and despite court convictions, the situation has been left to continue.

In May 2021, the OIP warned about a case where a person detained in Seysses contracted leptospirosis, an illness transmitted by rat urine. "A contamination symptomatic of the degraded conditions of detention", wrote the organisation. This man was forced to sleep on a mattress on the floor of a cell that he shared with two other people.

One month later, the CGLPL (the General Controller of places of deprivation of liberty), Dominique Simonnot, made an unannounced visit to the establishment. "I saw three guys crammed into 10 square metres, 22 hours per day. If you remove the space taken by the sanitary facilities, the bunk beds, the table and chairs, they have 1.28 square metres per person. And of course they have no privacy since all the toilet doors are broken. I don't know if you can imagine the humiliation", she commented after her visit. "Some people sleep with toilet paper in their ears, so that the cockroaches don't crawl in. There are also bed bugs in all the mattresses, almost 200 of which are on the floor"¹.

This observation led her to publish urgent recommendations

for public authorities the following month. She denounced a "dramatically high" overcrowding problem resulting in particular from local penal policy producing "numerous and short prison sentences". The proportion of those serving sentences of six months or less was 35%. In addition to the overcrowding, cramped and unsanitary conditions, and the presence of pests, the CGLPL was concerned about the deterioration in healthcare access for those detained due to a severe drop in medical transport – the result of a lack of vehicles – and the shortage of doctors in some specialised disciplines. Finally, she was concerned about the "permanent climate of violence and insecurity" in the establishment, not only between prisoners but also between prison staff and prisoners.

During a previous visit to the Toulouse-Seysses prison in 2017, the CGLPL had already denounced "serious violations of the dignity of persons", resulting from the detention conditions, without any significant reaction from the public authorities. Condemning an "overall deterioration in the conditions of care for detainees" in the establishment and the indifference of the administrative and judicial authorities, the CGLPL demanded, after this new visit, "urgent measures concerning overcrowding in prisons, cell renovation, disinfection, access to healthcare" as well as "the ending of the climate of violence".

Following these recommendations, the OIP and

the Toulouse Bar Association referred the matter to the judge in chambers of the Toulouse Administrative Court on 16 September 2021, in order to force public authorities to act urgently in accordance with these recommendations. In a decision handed down on 4 October 2021, the judge in chambers confirmed that the living conditions in the establishment seriously and manifestly violated the right to life, the right not to be subjected to degrading treatment and the right to respect for the private and family life of the persons incarcerated. The judge then ordered the implementation of eleven urgent measures, including especially the improvement of living conditions in cells, access to exercise, the reinforcement of pest control, the equipping of exercise areas, and the cleaning and renovation of sanitary facilities, etc. Noting that access to healthcare for detainees was insufficiently guaranteed, the court finally ordered the Minister of Health to define, in collaboration with the Minister of Justice, "a protocol for coordinating emergency and specialised medical care to ensure that care, consultations and examinations relating to the most serious pathologies and emergencies are dealt with within a reasonable time".

In December 2021, it was the turn of a detainee in the establishment to ask the courts to rectify his appalling detention conditions: he shared a cell – whose toilets were not partitioned – with two other detainees, had been sleeping on a mattress on the floor for several months, was subject to the presence of pests (cockroaches, bedbugs, rats),

was locked up 24 hours a day for fear of being subjected to violence in the exercise yard, and had no access to work despite their many requests to this effect. In a particularly surprising detailed order, the judge rejected their request as inadmissible: he argued that if the prisoner had “behaved as a dignified and law-abiding citizen”, he would not have been confronted with this situation; that while pests are not the preserve of prison cells, they are easily destroyed

by insecticide; that although cell overcrowding is “an obviously uncomfortable and inconvenient situation”, nevertheless “human relationships are primordial, even under difficult circumstances”; and that the absence of work “is not specific to the prison world”. Fortunately, this decision was overturned by the Toulouse Court of Appeal on 17th February. However, the latter indicated that the plaintiff’s request for release was no longer relevant: in the meantime, he had been

hospitalised to be treated for tuberculosis, probably contracted in detention.

1. “Prison de Toulouse Seysses: ‘Certains dorment avec du papier toilette dans les oreilles, pour que les cafards ne rentrent pas dedans’” (Toulouse Seysses Prison: ‘Some sleep with toilet paper in their ears, so that the cockroaches don’t get in’), Le Journal Toulousain, 22 July 2022.

The shortcomings of the public authorities' response

In its action plan, submitted to the Council of Europe's Committee of Ministers in June 2021, concerning the implementation of the J.M.B. and others v. France decision¹⁹, the French government referred to the development of prison capacity, with the objective of creating 15,000 additional prison places in ten years, as well as the measures taken within the framework of the LPJ (Planning and Reform for the French Justice system Law), especially those implemented with a view to "generalising the use of alternatives to imprisonment".

These solutions are not new. For thirty years, a succession of building plans to create additional prison places has failed to absorb prison overcrowding and has put a strain on both the budget dedicated to improving prison conditions and on that for developing alternatives to prison. Furthermore, the reforms whose provisions aim to develop prison alternatives, although positive in principle, remain marginal, not to mention that their limited effectiveness is further reduced by other provisions which, on the contrary, increase the prison population. Since these two strands of action persist in denying the principle that deprivation of liberty should be a sentence of last resort, they miss the central focus that should guide them, expressed by Michel Foucault fifty years ago: "We are told that prisons are overcrowded. What if it was the population that was over imprisoned?"

19. Action plan (30/06/2021) - Communication from France concerning the case of J.M.B. and others v. France (request n° 9671/15) [DH-DD(2021)680].

20. Hearing in the context of the Report of the Commission of Inquiry n°449 (1999-2000), "Les conditions de détention dans les établissements pénitentiaires" (Detention conditions in prisons), J.-J. Hyst and G.-P. Canabel, submitted 29 June 2000.

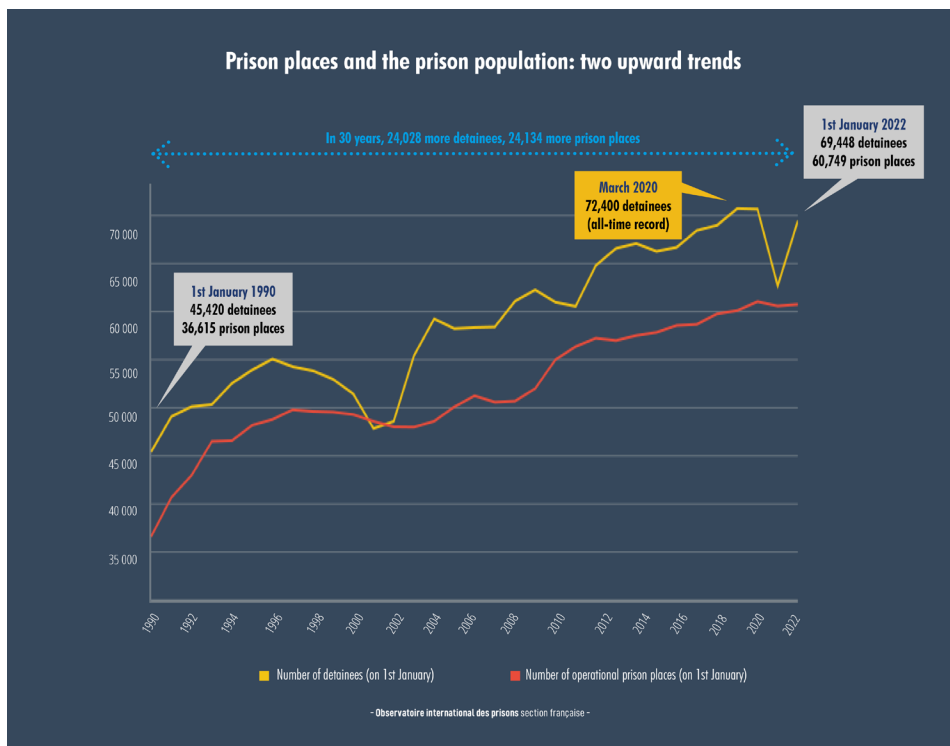
21. French Ministry of Justice, Séries statistiques des personnes placées sous main de justice, 1980-2021 (Statistical series on persons placed in custody, 1980-2021).

1. A costly and counterproductive prison construction policy

"THE MORE WE BUILD, THE MORE WE FILL"

For decades, increasing prison facilities has been the main focus of government policy in combating prison overcrowding. But this has not been successful. "The more prisons you build, the more prisoners you have in a country. This is a law that no one has managed to challenge", said Ivan Zakine, former President of the European Committee for the Prevention of Torture, in the early 2000s²⁰. France is no exception: between 1990 and 2020, the number of prison places has increased from 36,600 to 61,000²¹. However, this increase has had no effect on prison overcrowding, since during the same period, the number of people detained has increased from 45,500 to 70,700. For more than thirty years, the number of prison places and the number of prisoners have evolved in parallel.

The short-term outlook provides very little hope of reversing this trend. The French government's June 2021 action plan stated: "Increasing the number of prison places to 75,000 by 2027, the prison building programme will make it possible to reduce overcrowding in remand prisons and achieve an individual cell population rate of 80%". However, this statement



is contradicted by other governmental forecasts: last April, the Ministry of Justice expected 80,000 detainees by the same date²².

PRISON PROPERTY: A FINANCIAL SINKHOLE

The ineffectiveness of the French government's property policy is all the more worrying because it is extremely costly, both economically and socially. For the year 2022 alone, nearly one billion euros of real estate investment is planned²³. This sum is in addition to the property debt of almost 5 billion euros, spread over almost thirty years²⁴.

These amounts stifle the prison administration's budget, to the detriment of policies to humanise detention conditions, rehabilitate detainees and develop alternatives to imprisonment. Thus, for 2022, the budget allocated to the prevention of re-offending and to rehabilitation is only 90 million euros, ten times less than that allocated to the construction of new prisons. Only 80 million euros are allocated to so-called "heavy maintenance" for the renovation of dilapidated buildings. This is a dramatically small amount given the scale of the work to be done. For example, for the Fresnes prison alone, which has been criticised several times for its inhuman detention conditions, the government estimates that more than 500 million euros will be needed for renovation work²⁵. As for the amount allocated for 2022 to prison alternatives and sentence adjustments, it is stagnating at less than 40 million euros.

Although there is no recent or exhaustive comparative data, that which does exist nevertheless highlights that prison is the most expensive penal response to implement. "The cost of a day's detention ranges from 64 euros to 140 euros depending on the establishment, not including investments", wrote the Conseil Economique, Social et Environnemental (Economic, Social and Environmental Council) in its report on the rehabilitation of prisoners²⁶. "Even though they vary according to the sources, the figures are clearly higher than the cost of alternatives or adjustments: in 2016, the general inspections of finance, judicial services and social affairs estimated electronic surveillance at 12 euros per day (3,807 euros per year), external placement at 31 euros per day (11,432 euros per year), semi-liberty at 59 euros per day (21,604 euros per year)."

²². "Jean Castex s'engage sur les 15 000 places de prison supplémentaires" (Jean Castex commits to 15,000 additional prison places), Le Monde, 19 April 2021.

²³. Operations carried out by the Agence Publique pour l'Immobilier de la Justice (Public Agency for Justice Property) under the 15,000 new prison places programme (financial authorisations of 917 million euros).

²⁴. Sum of the repayment of rents due under partnership contracts (1.322 million euros) and credits relating to property operations launched before 31 December 2020 (3.505 million euros).

²⁵. Statement by Stéphane Scotto, Interregional Director of Penitentiary Services in Paris during the visit to Fresnes by a delegation from the National Consultative Commission on Human Rights (CNCDH), 2 March 2022.

²⁶. "La réinsertion des personnes détenues : l'affaire de tous et toutes" (Rehabilitation of prisoners: everyone's business), 26 November 2019.

This cost is all the more staggering given that the crime generating effects and de-socialising nature of prison are unanimously recognised. Although figures on reoffending must be handled with great care, existing research concludes that the risk of reoffending is greater after imprisonment than after a non-custodial sentence²⁷. An open letter published in *Le Monde* in 2017 and signed – inter alia - by the current Minister of Justice – then a lawyer – stated in this respect: “We know, with statistical data and studies to back it up, that prison reinforces delinquency factors and increases reoffending”²⁸.

2. Addressing the causes of the increasing prison population

The persistence of prison overcrowding despite prison construction programmes is above all a sign of the failure of a purely quantitative approach, which is content to absorb the flows without questioning their origin. “There are undoubtedly some who think [...] that we should simply continue as we are by constantly increasing the number of prison places. This view exists, but it turns a political, social and moral problem into a real estate problem, which is always convenient but does not solve anything”, explained the President of the French Republic himself in a speech in March 2018²⁹. A reflection that echoes an analysis made in 2006 by criminologist Sonja Snacken, then president of the Council of Europe’s Council for Penological Cooperation, which was behind the European Prison Rules. According to Mrs Snacken, the construction of new prisons “only addresses the consequences of overcrowding, not the mechanisms or factors that cause it. If no action is taken at the same time on penal policy and the factors that lead to an increase in the prison population, prisons will sooner or later find themselves again in a situation of overcrowding”.

AN INCREASE THAT DOES NOT REFLECT THE CRIME RATE

Contrary to what is regularly claimed, an increase in the prison population does not reflect an increase in crime. Already in 2012, the CGLPL insisted on this point: “We must firmly reject the common idea that the number of people imprisoned is linked to the level of crime in the country and that the more crime increases, the more prisons will fill up (and, moreover, that the more people detained, the better the evidence of crime)”³⁰. On the contrary, although crime data only gives an imperfect and fragmented view of the phenomenon, “over a long period, no element demonstrates a rise in crime”, notes the Centre d’Observation de la Société (Centre for the Observation of Society) in a study published in October 2020³¹. It even points out that “since the mid-1980s, the most violent incidents have been decreasing”. What has changed, however, is society’s growing intolerance, the “feeling of insecurity” that is particularly sensitive to media coverage.

An increase in the prison population is moreover also uncorrelated with demographic growth, since the number of prisoners per 100,000 inhabitants has almost doubled in less than forty years, rising from 57 in 1982³² to 105.3 on 31 January 2020³³.

THE CONSEQUENCES OF TOUGHER PENAL POLICIES

In fact, the factors leading to the increase in the prison population are essentially due to the criminal policies carried out over the last few decades, including:

- The criminalisation of an ever-increasing number of behaviours, with the creation of new offences: passive soliciting, aggressive begging, occupation of a site for a gathering, occupation of a building entrance hall, street vending, illegal entry into the country, criminalisation of the lack of a driver’s licence or insurance and, more recently, the use of false documents in order to avoid a vaccination obligation, or the fact of avoiding a PCR test for a foreigner who is subject to deportation.
- The development of rapid trial procedures that are particularly prone to result in incarceration, such as immediate trials. Immediate trials multiply the probability of an unconditional prison sentence by 8.4 compared to a traditional trial hearing³⁴.

27. See in particular: Annie Kensey, Abdelmalik Benaouda, “Les risques de récidive des sortants de prison. Une nouvelle évaluation” (The risk of re-offending by prison leavers. A new assessment), *Cahiers d’Études Pénitentiaires et Criminologiques*, French Ministry of Justice, 2011.

28. “Prétendre qu’il faudrait plus d’incarcération relève d’une imposture” (The claim that there should be more incarceration is a sham), *Le Monde*, 3 April 2017.

29. Speech by Emmanuel Macron at the École Nationale d’Administration Pénitentiaire (French National Prison Administration School), 6 March 2018.

30. CGLPL, *Avis du 22 mai 2012 relatif au nombre de personnes détenues* (Report of 22 May 2012 on the number of persons detained), published in the *Journal Officiel*, 13 June 2012.

31. Centre d’Observation de la société, “L’insécurité ne progresse pas, mais la société y est plus sensible” (Crime is not increasing, but society is more sensitive to it), 22 October 2020 (online).

32. Jean-Baptiste Jacquin, “En infographies: des peines de prison de plus en plus sévères” (In infographics: increasingly severe prison sentences), *Le Monde*, 14 October 2021.

33. Council of Europe Annual Penal Statistics, *SPACE I – 2020 – Prison populations*. Marcelo F. Aebi and Mélanie M. Tiago (2021).

Increased repression, which is reflected in:

- An explosion in prison sentences. The Minister of Justice recently welcomed the increase in the number of years of imprisonment handed down, from 89,000 in 2005 to 113,000 in 2016 (+27%), and the number of unconditional prison sentences handed down, from 120,000 in 2015 to 132,000 in 2019³⁵ (+10%).
- An increase in the number of people in prison awaiting trial, from 15,395³⁶ in 2010 to 21,297 in 2022³⁷ (+38%).
- An increase in short prison sentences. The number of prisoners sentenced to less than one year in prison was 14,316 in 2015, and 15,809 in 2020³⁸ (+10%).
- A sharp increase in long sentences. The number of prisoners serving a prison sentence of at least 5 years has more than doubled: from less than 6,000 in 1980, it has risen to 14,093 in 2021³⁹ (+135%).
- The doubling of the average length of detention in less than forty years, from 5.8 months in 1982⁴⁰ to 8.6 months in 2003, and to 11.8 months in 2020⁴¹ (+103%).

3. Penal reforms with minimal or even counterproductive effects

Since they do not address the core mechanisms that contribute to the increase in the prison population, the penal policy reforms implemented by the French government in recent years have failed to solve the problem of endemic overcrowding in French prisons. Some have even contributed to an increase in the number of prisoners.

SHORT SENTENCES: THE EXPECTED FAILURE OF THE LPJ

While the provisions of the LPJ came into full force on 24th March 2020, the 11% increase in the number of people detained between 1st January 2021 and 1st January 2022 signals its predictable failure.

For the French Ministry of Justice, the purpose of the law was to overhaul sentences “to avoid short prison sentences that do not prevent reoffending and can be de-socialising”⁴². In particular, it makes it impossible for judges to hand down sentences of less than or equal to one month’s imprisonment⁴³; sentences of between one and six months must be converted to an adjusted sentence (placement under electronic surveillance, external placement or day release), “unless it is impossible due to the personality or situation of the convicted person”; and, for sentences of between six months and one year, judges are encouraged to hand down an adjusted sentence “if the situation or personality of the convicted person allows it, and unless it is materially impossible”.

Apart from the fact that this range of sentences remains centred around the reference to prison, these provisions in fact bring little that is new. The law already provided that prison sentences should only be imposed as a last resort and that sentences of less than two years⁴⁴ should be adjusted as far as possible⁴⁵. Above all, the reform remains vague, as the exceptions can be interpreted very broadly by judges, and do not force them to change their practices. Recent statistics confirm this fear: in 2021, 26% of prisoners were sentenced to a term of less than or equal to six months, compared to 9.3% in 2019⁴⁶.

In addition, the law reverses the provisions that previously allowed the sentence enforcement judge to propose an *ab initio* sentence adjustment – i.e. at the time of the judgment and therefore before incarceration – for sentences of between one and two years’ imprisonment. In the absence of available data, it is difficult to measure the effects of this measure. However, the

34. Observatoire International des Prisons – Section française, “La comparution immédiate” (Immediate court appearances), 22 February 2018.

35. Response by E. Dupond-Moretti, Questions to the French Government “Justice et sécurité” (Justice and security), French National Assembly, 18 May 2021.

36. French Ministry of Justice, *Séries statistiques des personnes placées sous main de justice, 1980-2021* (Statistical series on persons placed in custody, 1980-2021).

37. *Statistiques des personnes écrouées et détenues* (Statistics on detained and imprisoned persons), Dap (figures include accused and convicted persons on remand, using the calculation method applied in 2010).

38. French Ministry of Justice, *Séries statistiques des personnes placées sous main de justice, 1980-2021* (Statistical series on persons placed in custody, 1980-2020 and 1980-2021). Analysis of this data stops on 1 January 2020 because, after that date, the category of sentenced persons detained no longer takes into account persons with the dual status of sentenced and accused.

39. French Ministry of Justice, *Séries statistiques des personnes placées sous main de justice, 1980-2021* (Statistical series on persons placed in custody, 1980-2021).

40. Average length of custody in 1982: 5.8 months.

41. French Ministry of Justice, *Séries statistiques des personnes placées sous main de justice, 1980-2020 et 1980-2021* (Statistical series on persons placed in custody, 1980-2020 and 1980-2021).

42. Press release: “Loi de programmation 2018-2022 et de réforme pour la Justice”, French Ministry of Justice.

43. In this case, the judge may impose an alternative sanction to prison.

44. Less than one year in the event of a repeat offence.

45. Article 132-19 of the French Criminal Code.

46. Budget général du ministère de la Justice - Projet annuel de performances du programme 107 “Administration pénitentiaire”. Annexe au projet de loi de

proportion of prisoners sentenced to between one and three years' imprisonment increased by 0.8 points between 1 January 2020 and 1 January 2021⁴⁷.

finances pour 2022. (General budget of the French Ministry of Justice - Annual performance project of programme 107 «Prison administration». Appendix to the 2022 Budget Bill.)

47. Administration Pénitentiaire, Séries statistiques des personnes placées sous main de justice (Statistical series on persons placed in custody), 1980-2021.

48. French Ministry of Justice, Statistiques trimestrielles de milieu ouvert (Quarterly statistics for open centres), 30 September 2021.

49. M.-S. Devresse, researcher and teacher at the École de Criminologie de l'Université Catholique de Louvain, interview by Anelli L. (June 2021), "Grand entretien - Une mesure qui n'a de sens que dans sa dimension punitive" (Big discussion - A measure that only makes sense in its punitive dimension), Dedans Dehors, n°111.

50. French Ministry of Justice, Statistiques trimestrielles de milieu ouvert (Quarterly statistics for open centres), 30 September 2021.

51. Impact study for bill for confidence in the judiciary, 13 April 2021, p.111.

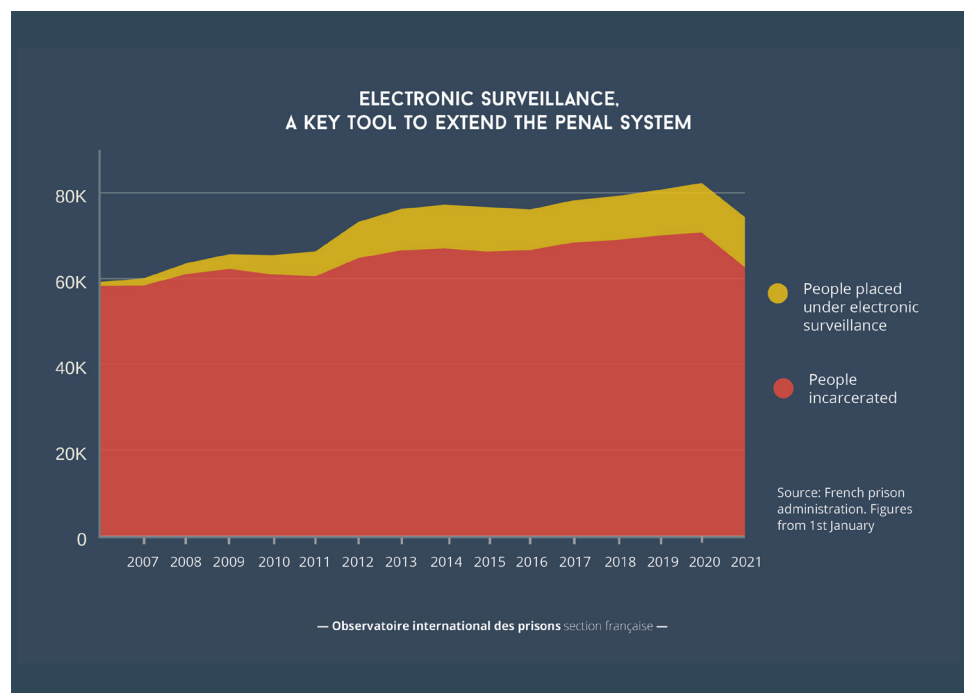
52. The latest figures available before these provisions came into force on 1 June 2019.

THE DEVELOPMENT OF ELECTRONIC TAGGING: A FLAWED IDEA

The LPJ's stated aim of developing alternatives to imprisonment is also inconclusive.

It has made electronically monitored house arrest (DDSE-sentence) – which could previously only be imposed as an adjustment of a prison sentence – a principal sentence. This decision is open to criticism in several respects. On the one hand, because it is a system that favours control and constraint over support. Secondly, because failure to comply with it could result in imprisonment for the remainder of the sentence (up to six months). Lastly, and above all, because this sentence, which is rarely used by judges – 1,363 people were in this category on 30 September 2021⁴⁸ – is often given to people for whom a prison sentence would not necessarily be used. This practice reinforces the trend that already exists with regard to the use of electronic surveillance as a prison sentence adjustment: the significant use of the DDSE-adjusted sentence – 15,064 people on 1 May 2022 – does not lead to less recourse to prison. The idea that electronic surveillance "will suddenly replace prison, is more of a myth than a reality", notes researcher Marie-Sophie Devresse⁴⁹. In fact, the number of people placed under electronic surveillance and the number of people imprisoned have invariably increased in parallel, fuelling a phenomenon of widening of the penal system.

The government's stated intention to develop electronic monitoring (in the form of electronically monitored house arrest - Arse) as an alternative to pre-trial detention is no more convincing. As of 30 September 2021, 486 defendants were subject to such a measure, while 19,136 were incarcerated⁵⁰. The Law on Confidence in the Judiciary, which came into force on 22 December 2021, aims to develop this system to limit the length of pre-trial detention. But its provisions have a particularly limited scope: they apply to correctional cases and only after eight months in prison. In other words, by 1st January 2021, they would only concern about twenty people⁵¹.



FAVOURING EARLY RELEASES: EFFORTS WITH LIMITED EFFECTS

The LPJ also aimed to generalise “licenced” releases, a mechanism that allows a person sentenced to a term of less than or equal to five years to complete the last third of his or her sentence outside prison, subject to control and monitoring measures; the aim being to reduce the length of incarceration and encourage a supported release. But here again, the changes made remain inconclusive. The sentence enforcement judge can oppose it if he or she gives reasons for his or her decision based on extremely broad criteria. On 1st May 2022, this early-release mechanism affected 992 people, compared with 527 on 1st April 2019⁵². This is a relatively small change compared with the still very high percentage of convicts released at the end of their sentence, 64.8% in 2020.

In view of this low effectiveness, the Law on Confidence in the Judiciary, which came into force on 22 December 2021, made the use of licenced release automatic for prison sentences of less than two years when the balance to be served is less than three months. However, it excludes, for example, people without housing, who are the most precarious and isolated and therefore have the greatest need of support. Moreover, it is mainly implemented under the electronic surveillance regime, which places the objective of control in the forefront and relegates the objective of rehabilitation, which is central to the adjustment of the end of the sentence. According to the impact study of the bill, this provision would concern 6,000 people. However, its beneficial effects – which will only be observable once it comes into force on 1st January 2023 – risk being rendered invisible by the repeal of sentence reduction credits under the same law.

REFORM OF SENTENCE REDUCTIONS: THE RISK OF A SHARP INCREASE IN THE LENGTH OF IMPRISONMENT

Currently, sentence reductions, which allow a convicted prisoner to be released before the end of his or her sentence, are of two types. Sentence reduction credits (CRP) are deducted from the prison sentence from the outset: three months in the first year, then two months per year. They are granted automatically, but can be withdrawn in whole or in part by the sentence enforcement judge in the event of misconduct by the convicted person. In addition to the CRP, supplementary sentence reductions (RSP) may be granted up to a maximum of three months per year of incarceration when the convicted person has shown “serious efforts at social rehabilitation”. The law of December 2021 – applicable from January 2023 – standardised the system of sentence reductions: they will be reserved for convicts “who have given sufficient evidence of good conduct and who have made serious efforts at rehabilitation”, up to six months per year of imprisonment. A reform presented as “common sense” but which will very likely lead to a sharp increase in the prison population and a lengthening of long sentences. The release date can no longer be anticipated and may therefore occur even before the person has become eligible for licenced release. Above all, if judges maintain the rate of granting reductions in sentences that they do today (45%), the impact study of the bill predicts 10,000 additional prisoners. This figure, although already worrying, is probably underestimated: the extra workload that the new system will generate for these judges is likely to change their practices and lower this rate. Finally, long sentences will inevitably be lengthened, since the mid-sentence deadline after which they can be adjusted will be mechanically pushed back.

The shortcomings of the French justice system's response

In the last two years, court rulings have again found violations of Article 3 of the ECHR, which prohibits inhuman and degrading treatment in many French prisons. However, the protection provided by the administrative judge to detainees subjected to undignified prison conditions remains limited, and the legal recourse created in application of the European ruling against France has not managed to compensate for this inadequacy, for lack of real effectiveness.

1. Administrative law finding: inhuman detention conditions in many prisons

INSTITUTIONS CONDEMNED DURING EMERGENCY PROCEEDINGS

The “référé-liberté” (procedure to protect liberties) allows the judge in chambers to order, as a matter of urgency, “all measures necessary to safeguard a fundamental freedom” when the administration has “seriously and manifestly unlawfully interfered with” this freedom⁵³. Although deemed insufficient by the European Court in the JMB v. France judgment (see below), the “référé-liberté” has been used on several occasions in the last two years to try to obtain improvements in the general conditions of incarceration in certain establishments, notably on the initiative of the OIP and its partners.

Nouméa

In February 2020, OIP referred the situation in the Nouméa prison to the judge in chambers at the administrative court in New Caledonia. In urgent recommendations published in December 2019, the CGLPL (Controller General of places of deprivation of liberty) was concerned that several hundred people were locked up in maritime containers that served as dilapidated and unhygienic cells. The CGLPL had denounced a “situation that seriously violates the fundamental rights of detainees”. Taking up this observation, the judge in chambers ordered the administration to put an end to the various hygiene and cleanliness failures in the establishment, to bring the electrical installations in the cells up to standard, to remedy the sewage rising in the courtyards, to improve the reception conditions in the visiting rooms, to intensify the fight against mosquitoes and to recruit an addiction specialist⁵⁴. On appeal, the French Council of State supplemented the injunctions of the first court by also ordering the Minister of Justice to immediately undertake work to bring the various exercise yards of the establishment up to standard, to ensure the complete separation of the sanitary facilities in all cells and to take all possible measures to improve the material conditions of the prisoners, in particular with regard to the luminosity of the cells and the replacement of defective windows⁵⁵.

⁵³. Art. L. 521-2 of the French Code of Administrative Justice.

⁵⁴. TA Nouvelle-Calédonie, 19 February 2020, OIP-SF, n°2000048.

⁵⁵. CE, 19 Oct. and 18 Nov. 2020, n° 439444.

Lorient-Ploemeur

In March 2021, the OIP and the Nantes Bar Association filed a joint petition for a “référé-liberté” against the conditions of detention in Ploemeur prison, which is characterised by a very high occupancy rate and dilapidated and unsuitable infrastructures. At the end of this case, the court found that the detention conditions within the establishment exposed the detainees to a “violation of human dignity” as well as to a “risk of a serious violation of the right to life”. The French Minister of Justice was ordered to ensure the separation of the sanitary space from the rest of the living space in all the cells of the prison, to clean the shelters in the exercise yards and to guarantee regular access to showers for detainees in the disciplinary section in conditions that provided hygiene and privacy⁵⁶.

Toulouse-Seysses

In September 2021, the OIP and the Toulouse Bar Association joined forces to bring the situation of the Seysses prison to the attention of the judge in chambers, after the CGLPL had noted “a significant number of serious dysfunctions which lead us to consider that the living conditions of detainees in this establishment are inhuman”⁵⁷. In an order dated 4 October 2021⁵⁸, the judge in chambers at the Toulouse administrative court confirmed that the living conditions in the prison seriously and manifestly violated the right to life, the right not to be subjected to degrading treatment and the right to respect for private and family life. He prescribed a wide range of measures for the French Minister of Justice to implement as a matter of urgency: equipping the exercise yards with a shelter, benches and exercise facilities, as well as cleaning, eliminating rats and renovating the sanitary facilities in these yards; fitting out the nursery exercise yards and the regional medical-psychological department; improving the cleaning of the establishment; ensuring the separation of the sanitary space from the rest of the space in all cells; reinforcing pest control; refurbishing and reorganising the four cells reserved for persons with reduced mobility; and ensuring the systematic recording of all acts of violence, whether involving a prisoner or a staff member, as well as taking all necessary measures to record prisoners’ requests and applications, and to issue a receipt.

Nanterre

For the first time, in a decision handed down on appeal on 16 December 2020, the French Council of State’s “référé-liberté” judge granted the request of an individual detainee for improvements to his conditions of imprisonment. This was a rare occurrence until this point. The detainee complained, among other things, of cockroaches climbing onto his bed, preventing him from sleeping at night; a defective toilet flush in his cell causing unbearable odours; a tap from which only a trickle of cold water flowed; sheets that had not been changed for several months; and the cold that seeped in through an old window. In its decision, the High Court upheld the first court’s injunctions to install additional heating in the applicant’s cell, to disinfect all the cells in the prison and to regularly wash the bed linen provided to the detainees⁵⁹.

⁵⁶. TA Rennes, 17 March 2021, n°2101070 ; CE, 23 April 2021, n°451276.

⁵⁷. Urgent recommendations published in the Journal officiel on 13 July 2021.

⁵⁸. n°2105421.

⁵⁹. CE, 16 Dec. 2020, n°447141.

Faa’a Nuutania

On 2 March 2021, the French Council of State once again upheld an individual request concerning conditions in the Polynesian prison of Faa’a Nuutania. The complainant objected in particular to the proliferation of rats in one of the buildings, which he described as “infested”, and the fact that the exercise yard “is frequently covered with waste water, including human excrement”. Noting the inhuman and degrading treatment that this constituted for the detainees and the inadequacy of the measures taken by the administration to remedy it, the French Council of State ordered it to “strengthen the effectiveness of the fight against rats” and to increase the frequency of cleaning the drains..

IN FRESNES, WORK ORDERED FOLLOWING AN “ULTRA VIRES APPEAL”

An ultra vires appeal is an appeal by which a person requests the cancellation of an administrative decision. This process, which can take several years to complete, is rarely used by detainees to challenge their conditions of detention. However, the Administrative Court of Appeal of Paris has made an important decision regarding the conditions of detention in a case initiated in 2015 by a man incarcerated in Fresnes prison. He had asked the prison director to renovate the exercise yards, complaining that they were too small, dirty and dilapidated, and that there were no water points, urinals, shelters, benches or sports equipment. He then asked the administrative judge to rescind the director’s refusal.

In the first decision of 10 July 2020⁶⁰, the Administrative Court of Appeal confirmed that the conditions in which exercise was conducted in Fresnes were contrary to Article 3 of the ECHR. In a second decision on 19 November 2020, it confirmed certain injunctions that had been issued in the first instance by the Administrative Court of Melun to remedy the situation. In addition, the court ordered the French Minister of Justice “to take, within a period of one year (...), all measures intended to stop violations to the dignity of the prisoners concerned”. However, despite the one-year deadline set by the Administrative Court of Appeal, no work seems to have started yet to renovate the exercise yards at Fresnes prison...

60. N°18PA03088.

61. TA Polynésie-Française, 20 Oct. 2020, n°2000267 and 2000270 (2 decisions); 29 May 2020, n°1900406 and n°1900375 (2 decisions). See also TA Polynésie-Française, 14 Dec. 2021, n° 2100390 ; 7 Dec. 2021, n°2100151.

62. TA Nîmes, 26 March 2021, n°1901116.

63. CAA Paris, 3 Feb. 2022, n°21PA00777 to n°21PA00781 (4 decisions).

64. TA Nantes, 30 Nov. 2021, n°1804307; 29 Dec. 2020, n°1707535.

65. TA Lille, 14 Oct. 2021, n°180579 ; 8 July 2021, n°1801842.

66. TA Lille, 15 July 2021, n°1801926; 30 April 2021, n°1811587.

67. CAA Nantes, 7 Oct. 2021, n° 21NT01289.

68. TA Poitiers, 5 March 2020, n°1801695.

69. TA Rouen, 12 Jan. 2022, n°2104015.

AN INCREASING NUMBER OF RULINGS IN THE CONTEXT OF COMPENSATION CLAIMS

Since the mid-2000s, compensation proceedings have been the preferred way for detainees to challenge their conditions of imprisonment. Over the last two years, this trend has continued and the French State has been ordered to pay compensation to several dozen people complaining of having been detained in conditions that violate human dignity.

Some of these convictions concerned prisons to which the European Court of Human Rights referred in the JMB v. France judgment of 30 January 2020. A few months after this judgment was handed down, the Administrative Court of French Polynesia ruled against the incarceration of several people in overcrowded cells within the Faa’a Nuutania prison, “with toilets partitioned by a simple piece of cloth (...) prohibiting any form of privacy and leading to hygiene risks”⁶¹. Similarly, in March 2021, the administrative judge found the conditions of detention at the Nîmes prison to be degrading. The court noted that the plaintiff had been forced to live for more than six months “with two other prisoners, one of whom slept on the floor” in a cramped cell. It further noted that “the partial partitioning of the [cell’s] toilets by broken ‘saloon-style’ doors did not protect the inmates’ privacy and [that] these toilets, lacking a specific ventilation system, were located in the immediate vicinity of the living and eating area. Finally, the barred window was covered with a grating that did not allow for a satisfactory renewal of the air or sufficient natural light”⁶².

Other convictions also affected establishments not targeted by the JMB v. France judgment, such as the Nouméa penitentiary centre⁶³, the remand prisons in Angers⁶⁴, Arras⁶⁵, Longuenesse⁶⁶ and La Roche-sur-Yon⁶⁷, and the central prison in Saint-Martin-de-Ré⁶⁸. On 25 October 2021, thirty-five people detained at Évreux prison referred their detention conditions in this establishment to the administrative judge. Three months later, the state was ordered to pay compensation of up to 7,000 euros in 12 of the first 15 cases heard⁶⁹, on the grounds that the applicants had been locked up for several months in shared cells in which they had less than 3m² of personal space.

2. The persistent ineffectiveness of appeals before the administrative courts

These multiple decisions by the French administrative courts recognise the unacceptable detention conditions, but are not sufficient to put a stop to them. Already, in its *JMB v. France* judgment of 30 January 2020, the European Court of Human Rights had found a violation of the right to an effective remedy (guaranteed by Article 13 of the ECHR), on the grounds that no remedy allowed detainees to obtain an end to the ill-treatment. In reaching this conclusion, the Strasbourg Court, which confirmed that the ultra vires appeal and the action for damages did not constitute effective preventive remedies in the event of undignified conditions of detention, focused on criticising the limitations of the “référé-liberté” (procedure to protect liberties). Two years later, these limitations remain.

LIMITATIONS TO THE FUNCTION OF THE “RÉFÉRÉ-LIBERTÉ” JUDGE

The first of the European Court’s criticisms concerned the fact that the administrative judge assessed the serious and manifestly unlawful nature of the infringement of a fundamental freedom “by taking into account the means available to the competent administrative authority”⁷⁰. The Court considered this approach as being “incompatible with the inviolable nature of the right protected by Article 3 of the Convention”⁷¹, and ignoring the obligation of states “to organise [their] prison system in such a way as to ensure that the dignity of prisoners is respected”, regardless of the material and financial obstacles they encounter⁷².

However, in its decision of 19 October 2020 on the conditions of detention in the Nouméa penitentiary centre, the French Council of State refused to make any substantial changes to its legal precedent⁷³. It went a step forward by deciding to assess the manifestly illegal nature of the violation of the detainees’ dignity regardless of the means available to the administration. But at the same time, it reintroduced this criterion when it defined the injunctive measures that could be ordered, some of which could still be set aside on the grounds that the administration would not have the means to implement them.

In the same ruling, the French Council of State also confirmed the limited powers of the judge in chambers, whose ruling considered that he could not order structural measures “based on public policy choices” that cannot be “implemented and have an effect very quickly”⁷⁴. More recently, the judge in chambers based his decision on the structural nature of the measures requested to refuse to order the administration to undertake the necessary work to allow prisoners at the Faa’a Nuutaniaa prison to have access to hot water in their cells⁷⁵, or to ensure that the electrical installations were brought up to standard and to improve the ventilation of the cells at the Ploemeur prison⁷⁶.

NON-ENFORCEMENT OF COURT ORDERS

Another criticism made by the European Court concerned the major difficulties surrounding the enforcement of the administrative courts’ injunctions. Here again, these difficulties persist: they result above all from an obvious lack of haste on the part of the administration, which subjects the execution of certain injunctions to abnormally long delays, or even more or less expressly manifests its refusal to comply with certain measures ordered.

Thus, in a decision of 11 February 2022, the French Council of State noted that several measures that had been ordered two years earlier to the French Minister of Justice to improve detention conditions at the Nouméa penitentiary centre had still not been implemented. Firstly, it noted that the sanitary facilities and water points in the juvenile section were still “unhygienic and in a state of disrepair”, despite the fact that their renovation had been ordered. It then noted that the administration still had not shown that it had taken the necessary measures to allow detainees who needed it to benefit from a follow-up by an addiction specialist. It also noted that the administration had not demonstrated that it had replaced defective windows in the cells, that it had provided repellents and mosquito nets free of charge to prisoners in

⁷⁰. CE, 28 July 2017, OIP-SF, n° 410677.

⁷¹. Ibid.

⁷². Cour EDH, 22 Jan. 2010, *Norbert Sikorski c. Pologne*, req. n° 17599/05, § 158.

⁷³. Conseil d’État (French Council of State), 19 October 2020, OIP-SF, n°439372 and 439444.

⁷⁴. CE, 28 July 2017, OIP-SF, n° 410677.

⁷⁵. Conseil d’État (French Council of State), 2 March 2021, n°449514.

⁷⁶. Conseil d’État (French Council of State), 23 April 2021, n° 451276.

mosquito-infested cells, or that it had guaranteed prisoners effective access to the telephones made available to them during their exercise. The French Council of State also noted that some other injunctions had still not been fully implemented – in particular the upgrading of electrical installations, the improvement of hygiene conditions in certain buildings or the renovation of fans installed in cells to combat heat. On 24 December 2021, the French Council of State had already noted the partial non-execution of an injunction issued almost five years earlier, in April 2017, this time concerning detention conditions at the Fresnes penitentiary centre.

There is also a question around which procedures can be used to obtain the enforcement of court decisions. The avenues explored so far by the OIP have not been conclusive, either because the procedures are far too long to meet the urgency of the situation or, in the case of rapid procedures, because the OIP was asked to prove that the administration had not taken the measures requested by the court – which was hardly possible: the organisation does not have access to prisons to check the steps that have been taken and the administration usually does not respond to such requests for information.

3. An unsatisfactory judicial remedy

In its decision of 30 January 2020, the European Court of Human Rights ruled against France for the indignity of its detention conditions and also for violating Article 13 of the European Convention on Human Rights, condemning the lack of effective domestic remedy in this area. It urged the government to implement “a preventive recourse enabling detainees, in combination with the recourse to compensation, to effectively redress the situation of which they are victims”.

This mechanism was provided for by a law of 8 April 2021 “aimed at guaranteeing the right to respect for dignity in detention”. This text was adopted under pressure from the French Constitutional Council, which, in a decision of 2 October 2020, took note of the European decision and considered that the law did not comply with the Constitution by not providing this remedy.

The text thus provides that persons who allege that they are being held in undignified conditions may apply to a judge (a liberty and custody judge or sentence enforcement judge, depending on their status) to request that the conditions be rectified. However, this procedure remains largely unsatisfactory in several respects. On the one hand, the procedure for examining the appeal, consisting of four stages, is complex and can be very lengthy. After checking the admissibility of the application, the judge examines the merits of the application. If the judge finds that the applicant’s detention conditions are unacceptable – and therefore considers the application to be well-founded – they give the administration a period of up to thirty days to improve these detention conditions. It is only at the end of this period, and if it is found that the conditions of incarceration remain unacceptable, that the judge makes a ruling: they can then order the transfer of the complainant or his release (an immediate release in the case of a person on remand, possibly under judicial review or house arrest with an electronic tag; or a conditional release in the case of a prisoner who has been definitively convicted). The examination of the application can thus take up to three months and 20 days in the event of an appeal: a timeframe that is incompatible with the speed required by the existence of ill-treatment.

The system also gives the prison administration far too important a role as both a judge and a party in the process. It is up to the prison administration to make observations on the conditions in which the applicant is held, and it is also up to the prison administration to find solutions if it is established that these conditions violate human dignity. The judge can certainly carry out additional checks, but the text stipulates that they cannot order the administration to take specific measures and that the administration alone is competent to assess the implementation methods⁷⁷. In the event of a transfer decided by the administration, the judicial judge cannot review the condition of the applicant’s detention conditions in the establishment to which they have been transferred. As for the detainee, they cannot challenge either the relevance of the measure proposed by the prison administration or the assessment made by the judge.

⁷⁷. New article 803-8.-I. of the French Code of Criminal Procedure, introduced in law on 8 April 2021.

Above all, the solution proposed by the legislator is essentially based on a process: the transfer of the prisoner to another prison. Although the law provides that convicted persons may refuse this transfer if it would “excessively interfere with their right to respect for their private and family life”, there is no guarantee that family ties will be maintained if the person is on remand, or that other fundamental rights will be safeguarded, such as the right to health if the person is undergoing treatment, or the right to rehabilitation for people who are training, working or preparing a case to have their sentence adjusted. There is no guarantee either that the host establishment will provide detention conditions that are consistent with human dignity. Finally, by giving priority to transfers, the proposed mechanism does not solve the problem at the origin of the procedure, namely the unacceptable conditions of detention in the original establishment.

According to information gathered by the OIP, few detainees have, to date, used this new appeal procedure to challenge their detention conditions. This finding tends to confirm that the system is a deterrent, particularly because of the risk of transfer that it entails.

French prisons under the scrutiny of rights monitoring bodies

France is regularly criticised for the inadequacy of its detention conditions by national and international mechanisms responsible for ensuring respect for fundamental rights. In the last two years, it has been criticised by the *Contrôleur général des lieux de privation de liberté* (CGLPL, the French National Preventive Mechanism in charge of monitoring places of detention), by the National Human Rights Commission and by the European Committee for the Prevention of Torture. In addition, the Committee of Ministers of the Council of Europe, which is responsible for monitoring the execution of the decisions of the European Court of Human Rights, has expressed its dissatisfaction with the measures taken by France to comply with the recommendations of the January 2020 decision, which condemned it for the condition of its prisons.

1. Respect for Dignity in Prison: A View from the *Contrôleur Général des Lieux de Privation de Liberté* (CGLPL)

The CGLPL is the national preventive mechanism set up pursuant to France's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is responsible for ensuring that the fundamental rights of persons deprived of their liberty are respected. During its visits to prisons, the CGLPL is regularly led to observe conditions of detention that amount to inhuman and degrading treatment.

INDIGNITY OF PRISONS: AN ONGOING OBSERVATION

In 2018, the CGLPL published a report on “fundamental rights in the context of prison overcrowding”⁷⁸. On that occasion, it noted that prison overcrowding “undermines all fundamental rights and distorts the meaning of custodial sentences”. It highlighted that the consequences of prison overcrowding (non-respect for the right to individual cell confinement, poor reception conditions, violations of privacy and hygiene), but also on the provision of quality care, safety, links with the outside world and rehabilitation.

Since this report and despite the condemnation of France by the European Court of Human Rights, reports of recent visits carried out by the CGLPL to prisons continue to detail living conditions that are often inhuman, to which those detained are exposed, in particular in remand prisons or remand quarters. For example, during their visit to the Aiton prison⁷⁹ in January 2021, the CGLPL noted that: “The premises, although properly maintained, do not respect the dignity of the occupants: the shower cubicles still have no doors, in disregard of the user's privacy, and no hook for hanging clothes or towels. At the time of the visit, the exercise yards had no facilities, neither benches or tables, nor even shelter. The disciplinary and

⁷⁸. CGLPL, *Les droits fondamentaux à l'épreuve de la surpopulation carcérale* (Fundamental rights in the context of prison overcrowding), Dalloz, 7 February 2018.

⁷⁹. *Rapport de la deuxième visite du centre pénitentiaire d'Aiton (Savoie), visite du 11 au 15 janvier 2021* (Report of the second visit to the Aiton prison (Savoie), visit of 11 to 15 January 2021).

solitary confinement area is dilapidated and unsuited to its functions: a tiny disciplinary committee room, no waiting room (the courtyard is used as a waiting room), no office for interviews with lawyers, and in “normal” times (outside of the pandemic), interviews are held in the shower, which is also used as a telephone booth. At the Loos-Séquedin prison, visited in February 2021⁸⁰, the CGLPL noted that, within the remand quarters, “several cells are dilapidated (water seeping through the window of at least three cells). Several mattresses are of dubious cleanliness”; while in the disciplinary quarters, “the cells are dirty, covered in graffiti and, except for those recently repainted, the paint on the walls is coming off”. After a visit to the Cherbourg prison⁸¹, also in February 2021, it concluded: “Since the work has not been carried out, we can only repeat what was said in the 2016 report: ‘the living conditions for the majority of prisoners in this remand centre are truly unacceptable.’ The same for the Rochefort remand centre⁸² where, again in February 2021, the CGLPL criticised: “the chronic overcrowding from which this prison suffers with all its consequences on the deterioration in the care of prisoners: the inability to separate remand prisoners from convicted prisoners, the lack of individualised monitoring and observation of new arrivals, overcrowding in the cells, the lack of staff and workers, the inability to comply with the isolation rules during the Covid 19 pandemic”. In Toulouse-Seysses⁸³, it noted: “a significant number of serious dysfunctions which allow us to consider that the living conditions of detainees in this establishment are unacceptable”, a situation which led it to publish urgent recommendations to the authorities in July 2021 (see below).

These observations led the General Controller, Dominique Simonnot, to publish an article in the newspaper *Le Monde* on 7 February 2022, in which she urged French parliamentarians and magistrates to visit prisons: “Enter the prisons! Come and see for yourselves the colonies of cockroaches running around in tight rows and the rats munching in the yard! See these three men in 4.30 square metres of living space who turn up the TV loudly when one of them goes to the toilet”, she wrote. She continued: “You’ll see what the CGLPL has been observing and criticising for a long time. You’ll see for yourselves how overcrowding harms absolutely everything. It’s not just rats, cockroaches, bedbugs and poor hygiene. Overcrowding is also a source of violence between prisoners and guards. It also prevents access to normal health care; everything is insufficient, nothing works”. She concluded by saying: “Solutions do exist!”. Solutions that she reiterated in this article, but which she had already outlined four years earlier in her report on “fundamental rights in the context of prison overcrowding”.

THE CGLPL’S RECOMMENDATIONS IN FAVOUR OF REDUCING PRISON NUMBERS

In this report, published on 7 February 2018, the CGLPL notes that France “is one of the very few European countries where the prison population continues to rise”, and calls for the implementation of a public policy to reduce prison numbers. According to the Controller, this requires, among other things, an effort to inform and raise awareness in public opinion, which is currently paralysing political action. “We must continue the efforts undertaken so that criminal sanction is not reduced in the collective imagination to the sole penalty of imprisonment”, she notes. This also means abandoning the property policy, described as an “ill-adapted measure”. On this subject, she insists on the fact that “the reduction of prison overcrowding and the attainment of the objective of individual cell confinement cannot be achieved through building measures”.

In this report, the CGLPL includes the following recommendations:

- The definition of a public policy to combat overcrowding, which must cease to be seen as essentially a prison-based problem;
- A review of the calculation of prison capacity and an improvement of available data;
- Better attention given by magistrates to prison conditions;

⁸⁰. Rapport de la deuxième visite du centre pénitentiaire de Lille-Loos-Séquedin (Nord), visite du 1er au 10 février 2021 (Report of the second visit to the Lille-Loos-Séquedin prison (Nord), visit of 1 to 10 February 2021).

⁸¹. Rapport de la troisième visite de la maison d’arrêt de Cherbourg (Manche), visite du 1er au 5 février 2021 (Report of the third visit to the Cherbourg remand centre (Manche), visit of 1 to 5 February 2021).

⁸². Rapport de la troisième visite de la maison d’arrêt de Rochefort (Seine-Maritime), visite du 1er au 9 février 2021 (Report of the third visit to the Rochefort remand centre (Seine-Maritime), visit of 1 to 9 February 2021).

⁸³. Recommandations en urgence relatives au centre pénitentiaire de Toulouse-Seysses (Haute-Garonne), 13 juillet 2021 (Emergency recommendations for the Toulouse-Seysses prison (Haute-Garonne), 13 July 2021).

- A legislative review to readjust the scope of prison sentences, in particular by replacing prison sentences for certain offences with other sentences, as well as taking measures to decriminalise certain offences;
- A review of the operation of the criminal courts, in terms of both their organisation, and the resources allocated to them. In this context, it calls for a review of the immediate trial procedure, which leads to a large number of prison sentences being handed down;
- The introduction by law of a prison regulation mechanism, with the aim of preventing any establishment from exceeding a 100% occupancy rate. “The prison regulation mechanism requires an individual analysis of each situation, choosing detainees who seem best prepared for release, coupled with a refined analysis of new arrivals into detention. Its implementation could be based on systems that allow for the local management of incarceration and release measures in a concerted manner between all the actors in the penal chain.

France out of step with the European trend

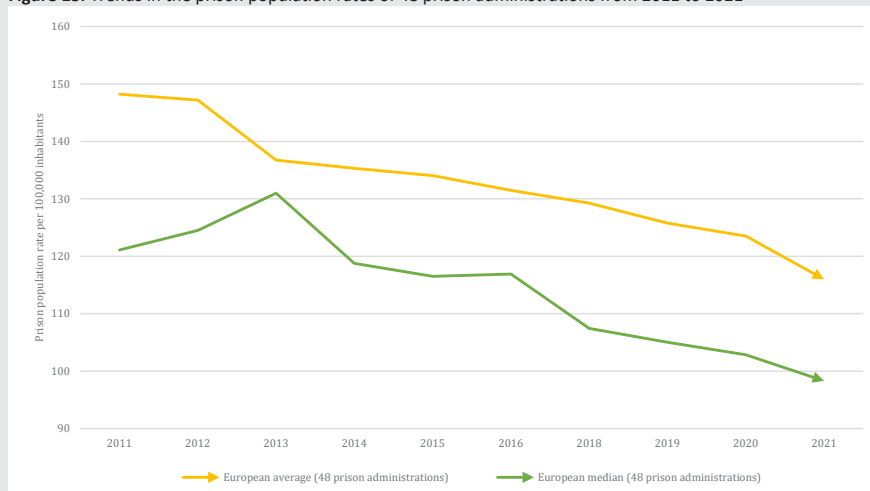
As noted by the CGLPL, the European trend is towards a substantial reduction in the prison population. France is the only country in the European Union that is not following this trend¹.

France also runs counter to the sharp decline in the average number of prisoners per 100,000 inhabitants in Council of Europe countries (down by over 20 percentage points between 2010 and 2020)².

¹. Jean-Baptiste Jacquin, “En infographies: des peines de prison de plus en plus sévères” (In infographics: increasingly severe prison sentences), Le Monde, 14 October 2021.

². Council of Europe, Prisons and Prisoners in Europe 2020: Key Findings of the SPACE I report, Marcelo F. Aebi and Mélanie M. Tiago (2021).

Figure 15. Trends in the prison population rates of 48 prison administrations from 2011 to 2021



2. The effectiveness of fundamental rights: opinion of the Commission Nationale Consultative des Droits de l'Homme (CNCDH)

On 24 March 2022, the CNCDH (the French Consultative Commission on Human Rights), an independent institution responsible for monitoring the effectiveness of France's human rights commitments, published a report on "The effectiveness of fundamental rights in prisons"⁸⁴. In this report, which was considered in the light of the ruling against France by the ECHR in the *JMB and others v. France* judgment, the CNCDH regretted the persistence of numerous violations of fundamental rights in places of detention, more than two years on. Recalling that "the same observations have been made many times", the Commission stressed that "the reluctance to resolve these shortcomings calls into question the political will of the French public authorities". It therefore called on the government to move "from observations to remedies to reduce prison overcrowding and the use of confinement" via twenty "accessible and sustainable recommendations that the legislator should translate into law".

Without claiming to be exhaustive, it reiterated the need to provide effective access to rights and to justice, the rights to dignity, health, private and family life and rehabilitation. Above all, the Commission insisted on the compulsory nature of the right to dignity, which requires the adoption of structural measures to improve the material conditions of detention and to comply with the right to individual confinement.

But, in order for fundamental rights to be met in prison, overcrowding must also be tackled, as it is a symptom of "a context of several decades of increasingly securitarian penal policies". Indeed, the CNCDH notes that this "chronic problem" is an aggravating factor in "detention living conditions, [which] affects all stages of the penal process and increases the infringement of the fundamental rights of detainees".

In order to resolve this situation, the Commission recommends that "immediate release measures should be used to reduce prison pressure" and the urgent adoption of "a national action plan" to finally tackle the source of the problem and to reduce the prison population.

To achieve this, it sets out the different avenues of action: limiting entries into prison, supporting releases and enshrining in law "a prison regulation mechanism that prohibits any prison, and any section within it, from exceeding a 100% occupancy rate". As it recalls several times in its report, this change of paradigm necessarily requires a major budgetary reorientation: "putting an immediate end to the creation of new prison places and [...] reallocating budgets dedicated to the extension of prison premises to the improvement of detention conditions and the care and support of detainees, as well as the development of non-custodial measures".

3. French prisons as observed by the European Committee for the Prevention of Torture (CPT)

The European Committee for the Prevention of Torture (CPT) is the Council of Europe body responsible for ensuring that the fundamental rights of persons deprived of their liberty in Europe are respected. In this context, it is required, on a regular basis, to visit places of detention in Member States. On 24 June 2021, the CPT published a report on their latest visit to France, carried out in December 2019, in which it expressed concern about situations and practices that profoundly undermine the dignity of detainees, as well as about prison policy choices that are part of a "security overkill".⁸⁵

COMBATING PRISON OVERCROWDING: A BLATANT FAILURE

At the time of the Committee's visit, there were 4,000 more prisoners in French prisons than during their previous visit four years earlier. Almost 40,000 people were incarcerated in facilities with an occupational rate of more than 120%. While this overcrowding seems to be getting

⁸⁴. CNCDH, "Avis sur l'effectivité des droits fondamentaux en prison. Du constat aux remèdes pour réduire la surpopulation carcérale et le recours à l'enfermement" (Report on the effectiveness of fundamental rights in prisons. From findings to remedies to reduce prison overcrowding and the use of confinement), A - 2022 - 5, 24 March 2022.

⁸⁵. Report to the French government regarding the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in France from 4 to 18 December 2019.

worse with each visit, the Committee indicated it was no longer satisfied with the responses that had been provided by the French government, which it judged severely: “The CPT has observed that prisons have been overcrowded since 1991 and [...] has recommended that measures be taken to rectify this situation. Invariably, the responses of the French authorities have outlined a two-pronged approach: on the one hand, the creation of new places, and on the other, normative reforms aimed at reducing the occupancy rate and developing alternatives to incarceration. Despite the constant increase in prison capacity and the adoption of numerous measures and legislation, the prison population has continued to grow at an ever-increasing rate”, it noted.

DILAPIDATED AND UNSANITARY INFRASTRUCTURES, ENFORCED IDLENESS

Combined with a lack of infrastructure maintenance due to a shortage of appropriate budgetary allocations, overcrowding has inevitably meant that “over the last twenty years, the prison estate has deteriorated considerably”, the Committee noted in its report. Thus, although the Vendin-le-Vieil prison, opened in 2015, had living conditions that were judged quite satisfactory at the time of the visit, the Committee believed that “in other establishments visited, the situation was much more difficult, especially due to overcrowding, the presence of rodents and the lack of maintenance in certain buildings, some of which were very old”. The Bordeaux-Gradignan prison in particular, whose demolition and reconstruction has been planned for many years, was “in an advanced state of disrepair”: dilapidated cells with defective or broken windows, cold, damp, with mould, cockroaches... “A situation that made both detention conditions, and staff working conditions, unbearable”, the Committee noted.

In its report, the CPT also expressed concern about the detention conditions in disciplinary quarters in all establishments that they visited: the cells were sometimes unsanitary, often very dark – the bars and gratings obstructing the windows allowing very little light to pass through – and insufficiently insulated, forcing detainees to endure very cold temperatures at night and in the winter months. The exercise yards in these areas and in isolation quarters were all cramped, austere and insufficiently well-equipped, to the point that many detainees preferred not to go there.

These materially-difficult living conditions were compounded by enforced inactivity. With the exception, once again, of Vendin-le-Vieil prison, which at the time of the visit offered activities and work that allowed the majority of the prison population in the establishment to spend a large part of their day outside their cell, the Committee criticised the fact that, in the other prisons they visited, “the vast majority of remand prisoners and a large number of convicted prisoners did not benefit from any activity, apart from a few hours exercise outside and a little sport and one hour of activities per week; a situation similar to that found in 2015”. It also noted that “the supply of paid activities [was] insufficient in quantity and the pay extremely low”. The Committee recalled that “the objective should be that each prisoner can spend a reasonable amount of time in the day, eight hours or more, outside of their cell, occupied in motivating activities of a varied nature: work, preferably educational; studies; sports; leisure activities suited to each person’s needs. Particular attention should be given to the level of pay for jobs and to training that leads to qualifications”.

For detainees, this lack of activity was often coupled with a lack of support. Outside of Vendin-le-Vieil, the Committee noted that, in the establishments they visited, “the number of staff was insufficient to provide suitable care”. In Maubeuge prison, “the team in charge of rehabilitation and probation had been reduced by half”, so that its task was “unfeasible”. These absences had important repercussions for the functioning of the prisons, the safety of those being detained and their rehabilitation process.

A COMPREHENSIVE ACTION PLAN

In the conclusion to its report, the CPT called on the French government to “learn lessons from the ineffectiveness of the measures taken over the last thirty years” and to adopt a “comprehensive penal and prison strategy in order to drastically reduce the occupancy rate in French

prisons and to provide dignified conditions of imprisonment”. This strategy must “lead to a paradigm shift in the use of deprivation of liberty, which should really become the exception”, insisted the Committee, for which it was essential to involve, in this context, “all the stakeholders, the actors of the judicial and penal world, but also the legislative and executive powers and the representatives of academic circles, of independent control bodies and of civil society”.

4. France’s implementation of the European judgment: the decision of the Committee of Ministers of the Council of Europe

During a meeting from 14 to 16 September 2021, the Committee of Ministers of the Council of Europe, the body responsible for examining the follow-up by Member States to the judgments of the European Court of Human Rights, examined for the first time the implementation by France of the Court’s decision of 30 January 2020 condemning it for the substandard conditions of its prisons and the lack of an effective remedy.

With regards to the evolution of the prison population, the ministers’ representatives expressed their “concern at the latest figures, which show that it is once again increasing rapidly and significantly” after a considerable decrease due to the pandemic. They therefore “invite the authorities, in the light of the recommendations of the European Committee for the Prevention of Torture (CPT)”, to rapidly adopt “a coherent long-term strategy to reduce prison occupancy rates”.

Underlining that the increase in the prison premises envisaged by the government is not a satisfactory solution, the Committee of Ministers invited the authorities “to prioritise and strengthen the necessary means to develop non-custodial measures as well as to further increase the judiciary’s awareness of the objectives of prison reduction [...], while rapidly considering new legislative measures that would regulate the prison population in a more restrictive manner”.

The ministers’ representatives also called for the authorities “to provide information about the measures adopted and/or envisaged to increase out-of-cell activities, and about the reassessment of how prison capacity is calculated, as suggested by the Court”. In its judgment, the ECHR recommended rethinking the current calculation method to take into account criteria other than the space or square metres available to detainees. It proposed, among other things, that the time spent inside cells and the conditions of prisoner care, particularly in terms of staffing and motivating activities aimed at rehabilitation, were also taken into consideration.

With regard to the second aspect of the European ruling, namely the establishment of a preventive remedy, the ministers’ representatives “note with great interest the responsiveness of the French Court of Cassation and the French Constitutional Council”. Referred to by the OIP, these courts had indeed acted on the European injunctions and forced the legislator to take up this issue. A law enacted on 8 April 2021 had thus opened up a means of appeal allowing detainees to challenge their unacceptable detention conditions (see above). In its observations to the Committee of Ministers, the OIP had highlighted the limitations of this law: as well as the complexity of the procedure, it also criticised the mechanism as it aimed to restrict as much as possible the prospects of release by favouring prison transfers, as well as the predominant place given to the prison administration in the processing of requests, to the detriment of the judicial judge. These criticisms seem to have been heard by the Committee. It invited the authorities to comment on these concerns, “in particular on the length of time it takes in practice to examine the appeal and the place given to the administration and to the prison “transfers” that it could decide on, without verification by the judge of the new conditions of detention and, moreover, in a structural context of overcrowding”.

After its meeting, the Committee of Ministers set a new date for France: in the autumn of 2022, it will again examine the measures taken to implement its recommendations and those of the Court.

Conclusion and recommendations

More than two years after the judgment against France by the European Court of Human Rights for the undignified detention conditions in its prisons, France still has not complied with the Court's demands, which called for "the definitive elimination of prison overcrowding", as well as the implementation of "a preventative recourse enabling prisoners, in an effective manner, in combination with the recourse for compensation [...], to rectify the situation of which they are victims". In remand centres, overcrowding remains endemic and in many prisons the material detention conditions are particularly poor.

The appeal procedure set up to allow detainees to challenge their undignified conditions of detention and request that they be rectified, apart from not offering sufficient guarantees, cannot be effective given the current state of detention conditions and overcrowding in prisons. It will only make sense if the administration is able to offer acceptable solutions, namely conditions of incarceration that respect dignity, which is not the case at present.

This requires the adoption and implementation of a national action plan against prison overcrowding, including the establishment of a binding prison regulation mechanism.

It also requires a review of budgetary priorities and a redirection of budgets allocated to increasing the prison places towards improving conditions of detention and improving alternatives to incarceration.

1. Implementing a national action plan to combat overcrowding

The continuous increase in the number of detainees over the last few decades does not reflect an increase in crime but, above all, penal policy choices. It is therefore necessary to act on the factors that contribute to this prison expansion and to take inspiration from the recommendations of international bodies and the conclusions of numerous research studies that point to the de-socialising and crime-generating effects of prison.

The Council of Europe in particular invites Member States to draw up national action plans to include all actors in the criminal justice chain that provide for:

- the decriminalisation of certain types of offences; while the law punishes an increasing number of behaviours, some of them could be dealt with by administrative authorities (e.g. driving without a licence) or health authorities (e.g. drug use).

- reducing the use of pre-trial detention. Remand prisoners account for almost 30% of the detained population. Their numbers have been rising steadily in recent years, while the average length of pre-trial detention has increased. This reality undermines respect for the principle of presumption of innocence. The conditions for the use of pre-trial detention must be thoroughly revised.
- a review of the conditions for trial; due to a lack of resources, public prosecutors are increasingly resorting, for reasons of flow management, to rapid trial procedures, which is symbolic of expedited justice. These fast-track procedures do not allow for the personalisation of sentences, i.e. adapting the punishment to the facts and the situation of the perpetrator, and are therefore particularly conducive to incarceration. Their scope of application should be reviewed.
- a revision of the length of sentences that provide for a reduction in the use of long sentences and the replacement of short prison sentences by sanctions and measures applied in an open environment. This requires an increase in the resources allocated to non-custodial sentences, in order to make them credible alternatives to imprisonment.
- the development of measures to reduce the effective length of the sentence served, including conditional release, which is one of the most effective and constructive measures for reintegration into the community.

In order to define and implement such an action plan, the Committee of Ministers of the Council of Europe also set out a method: the broad involvement of all the actors in the judicial system and civil society should give the penal reform a sufficient basis to resist the risks of political exploitation.

2. Establishing a prison regulation mechanism

So far, no reform to encourage the use of alternatives to imprisonment has had any effect on the problem of prison overcrowding, which has instead continued to increase. The prison population has only been reduced by the implementation of exceptional measures during the pandemic, which allowed prisoners to be released on broad criteria. It is therefore important that the desire to reduce the use of prison is accompanied by a binding prison regulation mechanism.

In this context, the method of calculating the operational capacity of prisons should be reformed, as the European Court instructed France to do in January 2020, in order to take into account, in addition to the number of square metres available per person, the adequacy of prison conditions with the objective of (re)integration via criteria such as access to collective spaces, the offer of training, work and activities, the offer of care, or the capacities of the prison rehabilitation and probation services.

3. Discontinuing prison expansion programmes and reviewing budgetary priorities

This approach also requires a review of the policy of building expansion. Over the past thirty years, more than 36,000 prison places have been created without any effect on overcrowding and the adage that “the more you build, the more you fill” has always been true. Numerous research studies in France and abroad point to the failure of policies to increase prison real estate in order to reduce overcrowding and underline the dangers of an economically and socially costly and counterproductive prison response.

Given the ineffectiveness of plans to create new prison places in solving the structural problem of overcrowding, other solutions should be favoured, including the implementation of a national plan focusing on the decriminalisation of certain offences and non-custodial measures.

The funds intended for the expansion of prison buildings could thus be redirected towards the maintenance and renovation of the current prison buildings, the development of activities in detention, and the support of persons in the rehabilitation process, as well as an increase in non-custodial sentences and measures.

Since 1996, the French section of the Observatoire International des Prisons (OIP) has been highlighting the state of prison conditions in France, defending the rights and dignity of prisoners, campaigning for less recourse to incarceration and offering rigorous analysis of penal and prison policies, at the heart of society's problems.

Founded in 1961, Amnesty International is a global movement of 10 million people who campaign to ensure that all the rights enshrined in the 1948 Universal Declaration of Human Rights are respected throughout the world.

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On 30 January 2020, France was condemned by the European Court of Human Rights for the indignity of its prisons, and ordered to take measures to rectify this situation. On 30 May of the same year, this condemnation became final.

Two years on, what is the situation?

While the number of detainees continues to break new records every month, this report draws up a critical assessment of the state of detention conditions and the action of the public authorities, calling for the urgent implementation of a national action plan against prison overcrowding.

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A report published with the support of Amnesty International