OFFICE OF THE COMMISSIONER
FOR HUMAN RIGHTS

BUREAU DU COMMISSAIRE
AUX DROITS DE L´HOMME

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 15 February 2006

CommDH(2006)2
Original: French

REPORT

BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON THE EFFECTIVE RESPECT FOR HUMAN RIGHTS IN FRANCE

FOLLOWING HIS VISIT

FROM 5 TO 21 SEPTEMBER 2005

for the attention of the Committee of Ministers and the Parliamentary Assembly

Contents

I. INTRODUCTION

In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights, I accepted the invitation of Mr Philippe Douste-Blazy, Minister for Foreign Affairs of the French Republic, to visit France officially from 5 to 21 September 2005. I was accompanied by Mr Alexandre Guessel, Mr John Dalhuisen and Ms Aurélie Campana, all members of my office. I would like to start by thanking the French authorities for the efforts they made, and the resources they deployed, to make the visit a success. I should also like to express my warm thanks to Ms Annie-Claire Mari, of the Ministry of Foreign Affairs, for her precious help in preparing the visit, in implementing the programme and throughout the visit itself, during which she accompanied me. I am very grateful, too, to Mr Jean-Paul Delevoye, the French Ombudsman, for providing valuable advice, helping to arrange the programme and joining me at several points in the journey.

During my visit, I had the full co-operation of the French authorities, who allowed me to visit all the places and institutions I wished to see. I was also able to share my impressions with various leading members of the government – Mr Nicolas Sarkozy, Minister of the Interior and Regional Planning, Mr Philippe Douste-Blazy, Minister for Foreign Affairs, Mr Pascal Clément, Minister of Justice, and Ms Catherine Vautrin, Minister of State with responsibility for Equality and Social Cohesion, all of whom I thank for the constructive discussions I had with them. However, I regret that I was unable, during the several weeks I spent in France, to meet Mr Azouz Begag, Minister of State responsible for promoting equal opportunity.

The visit also gave me an opportunity to talk to various representatives of the judiciary. I am particularly grateful to Mr Renaud Denoix de Saint-Marc, Vice-President of the Conseil d'Etat, Mr Bruno Cotte, Criminal Chamber President in the Court of Cassation, Mr Régis de Gouttes, Principal Solicitor General at the Court of Cassation in Paris, Mr Yves Bot, Principal State Prosecutor at the Paris Appeal Court, Mr Bestard, Principal State Prosecutor at the Aix-en-Provence Appeal Court, and Mr Jacques Beaume, State Prosecutor in Marseilles. Unfortunately, I have no room here to name all the people I met, but I thank them most warmly for their helpfulness and the frankness with which they spoke to me. I was also able to discuss a wide range of issues with representatives of several judges' associations.

I was very pleased to hear the views of representatives of various French Bars on the present situation regarding public liberties. I would particularly like to thank Mr Jean-Marie Burguburu, President of the Paris Bar, Mr Thierry Wickers and Mr Frank Natali, President and Vice-President of the Conference of Bar Presidents, Mr Laurent Pettiti, Member of the Council of the Paris Bar Association and President's representative for human rights, for the time they gave me. More generally, I would like to thank all the judges and lawyers I spoke to for the information they gave me and the opinions they voiced.

In all the regions and cities I visited - Marseilles, Aix-en-Provence, Avignon, Paris, Normandy, Pau, Lannemezan, Corsica, Bastia, and Strasbourg - I had useful discussions with the Préfets: Mr Christian Frémont, Préfet of the Bouches du Rhône and the PACA region, Mr Jacques Barthélémy, Préfet of Seine-et-Marne, Mr Pierre Mutz, Préfet de Police, Mr Emmanuel Berthier, Préfet of the Hautes Pyrénées, and Mr Jean-Claude Faugère, Préfet of the Bas-Rhin and the Alsace region.

My thanks, too, to the local officials and elected representatives who gave me a full picture of the situation in their areas. They included Mr Allégrini, Deputy Mayor of Marseilles, Mr Shapira, Deputy Mayor of Paris, and Mr Grossman, President of the Urban Community of Strasbourg.

I would also like to thank the directors of the many facilities I visited – prisons, holding centres for foreigners, waiting zones at airports – and the senior officers at the police stations which I inspected.

I am deeply grateful to Ms Josette Durrieu, Senator for the Hautes-Pyrénées, for her invaluable help in preparing and organising my visit to Lannemezan, on which she kindly accompanied me.

My very full programme included meetings with the presidents of various independent authorities, Mr Schweitzer, President of the Supreme Authority responsible for Anti-Discrimination Measures and Equality (Haute Autorité de Lutte contre les Discriminations et pour l'Egalité = HALDE), and Ms Blandine Kriegel, President of the Supreme Integration Council (Haut Conseil à l'Intégration). I also had very useful discussions with Ms Claire Brisset, Ombudsperson for Children, Mr Jean-Paul Delevoye, French Ombudsman, and Mr Doucin, Human Rights Ambassador. I particularly appreciated the reception I was given by the National Consultative Commission on Human Rights (Commission Nationale Consultative des Droits de l'Homme = CNCDH), and my very full discussions with the NGO representatives present at that meeting. My most sincere thanks to its president, Préfet Thoraval.

I also met Mr Mohamed Boukry, Representative in France of the Office of the United Nations High Commissioner for Refugees (UNHCR), and various civil society representatives. I should like to insist on the vital role played by the non-governmental organisations and associations which are working daily in the field, and which helped me enormously while my journey was being prepared and throughout the visit. My special

thanks are due to Ms Hélène Gacon, President of Anafé, Mr Pierre Henry, Secretary General of "France Terre d'asile" and Mr Laurent Giovannoni, Secretary General of CIMADE. Unfortunately, I cannot name all those who gave us their assistance, but they have my very sincere gratitude. Thanks to the helpfulness of the NGOs which run them, I was able to visit a wide range of facilities and engage in genuine dialogue on a number of basic human rights issues.

II. GENERAL COMMENTS

1. A founder member of the Council of Europe, France signed the European Convention on Human Rights in 1950 and ratified it on 3 May 1974. In 1981, it recognised the right of individual petition to the European Court of Human Rights (hereinafter "the ECHR"). It is also a party to the European Social Charter, and has accepted all the articles in the revised Charter. However, it has still not signed or ratified the Framework Convention for the Protection of National Minorities or Protocol No. 12 to the European Convention on Human Rights (hereinafter "the Convention"), which is regrettable. Moreover, although it has signed the European Charter for Regional or Minority Languages, Protocol No. 14 to the Convention, restructuring its control machinery, and Protocol No. 13, concerning abolition of the death penalty in all circumstances, it has not ratified these instruments, important as they are for the prevention of human rights violations. I can only urge it to consider ratifying them in the near future.

2. Many Europeans see France as the homeland of human rights, and it does in fact provide a high level of human rights protection. It has comprehensive human rights legislation and plays an important part in this area at the international level. Nonetheless, it still has persistent, not to say recurrent, problems – a fact reflected in the many cases brought against it in the European Court of Human Rights. Those most concerned by these problems – particularly government representatives - are aware of and acknowledge them. Indeed, I should emphasise the openness which marked my visit and the unstinting help I was given by all the authorities involved in organising it. This allowed me to visit all the facilities I wished to see, including those regarded as sensitive.

3. France's positive human rights image owes much to the efforts and commitment of the NGOs and associations which are working on the ground to protect the most vulnerable members of the community. My visit allowed me to form some idea of the immense work they do, and the contribution they make to their country's good reputation in this area. Spotting problems is another major facet of their work, and the many reports they produce help to highlight difficulties peculiar to France, and make people aware of them. I have always insisted that the role of civil society is vital - and the fact that France has, in recent decades, delegated certain state prerogatives to associations or NGOs seems to me to make it even more important. Undoubtedly, too, NGO involvement helps to diversify approaches to problem-solving. At the same time, NGOs, and the work they do for the most vulnerable, least privileged members of society, are largely dependent on public funding. When that funding declines, as it seems to be doing at present, a whole

range of human rights activities, if not actually endangered, at least become less certain. Indeed, I could not escape the impression that there was some discrepancy between theory and practice.

4. Moreover, although France has strong laws in this area, my visit did prompt me to raise a number of problems. However, before discussing the chief ones I noted, I should like to make one general comment. Wherever I went, I noted that the full application of the law was occasionally obstructed by habit. Repeatedly, I heard: "we've always done it like that", "it's been like that for years" or "it takes time to make changes". This is by no means a trivial matter, since it raises a clear question concerning the extent to which human rights are respected and practised. I am not saying that the French authorities are blind to the problems. On the contrary, as I said earlier, those problems are not new, and policy-makers, both national and local, are generally familiar with them.

5. However, I do have the impression that France does not always give itself the resources it needs to operate a relatively full legal arsenal, providing a high level of human rights protection. In some areas, there seems to be a gap – sometimes a very wide one – between law and practice. This general comment applies throughout this report, which discusses France's main shortcomings in human rights protection and the major challenges facing it today.

III. FUNCTIONING OF THE LEGAL SYSTEM

1. General observations

6. The functioning of the legal system is one of the issues I have to review in all the member states, whether newly democratic or with long democratic traditions. Obviously, France is no exception, and my visit gave me an excellent opportunity to inspect the present state of its legal system, form a better picture of its successes, and discuss its problems with the people I met.

7. France's achievements in building a law-governed state need no recalling here. No-one doubts the effectiveness of its laws, some of which are central to the whole concept of human rights. I shall say nothing here of the Declaration of the Rights of Man and of the Citizen of 1789 – the founding text in this domain, which has left its mark on our continent's history. France's great tradition in the field of law and justice is also reflected in another legislative text of primary importance, the Civil Code of 1804.

8. Before saying something of the problems which affect its legal system today, and which various legal professionals described to me, I should like to make a general point which they made repeatedly to me. Indeed, all of them, judges, lawyers and government representatives, spoke of a trend which has, apparently, become very marked in the last few decades – the knee-jerk passing of new laws in response to new social problems. The result has been a steady increase in the number of laws adopted.

9. Obviously, the law must keep pace with social change, but not at such a rate that neither lawyers nor the public can keep abreast of the process. However, that – according to the many people we spoke to – seems increasingly to be happening. Some of the French bar representatives we met refered to a "legislative proliferation".

10. The court officials we talked to were also worried. At a very interesting meeting, the State Prosecutor at the Marseilles Regional Court told us that the flood of new laws, including laws on criminal procedure, was causing serious problems for judges and lawyers. He said, for example, that criminal procedure was changing so rapidly that, increasingly, judges were having to spend far more time on formal issues than on the substance of cases.

11. In the long term, the increasing speed with which the law is changing may well create a problem of legal insecurity, since legal professionals will no longer have time to prepare themselves for the coming into force of new texts. For example, the people we talked to told us that the recent "Law adjusting the legal system to deal with new types of crime" (the so-called Perben II law) has caused various problems for French judges and lawyers.

12. This is actually an important and very ambitious text, designed – among other things – to enable France to modernise its criminal procedure and catch up on some of its international obligations. For one thing, it brings rules on the European arrest warrant into French law. For another, it allows France to satisfy the requirements of the ECHR concerning procedure in cases where judgement is given in absentia. And these are only two of its important contributions. At the same time, its 224 sections have amended 350 of the Code of Criminal Procedure's 934 articles, and 70 articles in the Criminal Code, making this one of the most sweeping reforms of French criminal procedure. Most of these changes took effect more or less at once, i.e. 4 or 5 days after the law had been published in the Official Gazette, creating major problems for legal professionals. Indeed, it is quite understandable that judges and lawyers should not find it easy to take such radical reforms on board so quickly.

13. This is why I think that French lawyers must be listened to when they plead for a break in what they call this "legislative rainstorm", giving them time to absorb the new texts. I must say, however, that I found the French government very understanding on this point. In fact, the Minister of Justice, Mr Pascal Clément, told me at our meeting that he fully understood the anxieties of legal professionals, and said that the government had indeed decided to call a temporary halt and reduce the number of bills tabled in parliament.

14. Some of the people I met made even stronger points. While noting the definite tendency to pass new laws whenever new problems arose, none denied that changes in criminal procedure were necessary. Many felt, however, that the changes had sometimes been made too quickly, and cited the 1994 reform of the Criminal Code as an example to be followed. That reform was well prepared, particularly by the Badinter Commission, which spent about 10 years drafting a new Code. The same care was taken with the coming into force of the new text, which was introduced in stages.

15. The people I spoke to accordingly suggested that a general discussion of the needs and future of French criminal in the 21st century would be useful. This might lead to the drafting of a new Code of Criminal Procedure, and, as far as possible, to preparation of its coming into force on a consensual basis.

16. I would like to make a number of specific points regarding the functioning of the French legal system which came up during my visit.

2. Working conditions in courts

a. Practical problems connected with premises

17. Some of the French courts' problems are well-known, indeed, have been broadly aired in public for some time. The slowness with which they operate, for instance, has been condemned by the ECHR in several judgments, some of them recent.[1]

18. The courts' excessive caseload is certainly not the only problem; there have been other criticisms too. That is why I made a point of visiting several courts, to discuss their main problems with judges – and also to see those problems for myself. I went to the regional courts in Paris, Marseilles, Bobigny and Bastia, and the Appeal Courts at Paris and Aix en Provence, not to mention the Court of Cassation and the Conseil d'Etat, where I had very useful discussions

19. I am very grateful to all the judges and lawyers who agreed to see me and gave me the benefit of their views. They know the strengths and weaknesses of the courts better than anyone, and this made their comments particularly useful. Seeing the courts for myself, I could often see exactly what they meant.

20. One does not have to be an expert on courts to see how glaringly short of resources the French system is. In fact, most of the court premises I saw were small, not to say cramped. This is not just a problem at the Palais de Justice in Paris. That imposing, historic and celebrated edifice no longer has room for all the courts it houses, but – modern as they are - newer, custom-built courthouses, like the Regional Court at Bobigny, also seem small and overcrowded.

21. There are various reasons for these problems, and I feel the main ones should be mentioned. Nearly all the people I met told me that the courts were seriously under-funded. I was very struck by the bitterly ironic tone which lawyers and judges adopted when they spoke of state spending on the courts, which they compared with state spending on culture. In the 1980s, the Government decided that at least 1% of the total budget should go to culture. They have stuck to this in the meantime, which is clearly a good thing – but it appears that the budget for the courts has never attained that level and still falls short of 1%. That figure speaks for itself, and the effects are plain to see.

22. In fact, some court premises are positively run-down, and seem a throwback to another era. The judges' offices I saw were cramped and inadequate, particularly as judges do not use them simply to study cases, but also to receive parties and hold certain hearings.

23. The situation in certain holding facilities is particularly bad. These are guarded areas, usually consisting of cells for one or more occupants, which are used to house detainees

[1] The most recent are: the Kress judgment 7/6/2001 (*Application No.* 39594/98), the Zannouti judgment 31/7/2001 (*Application No. 42211/98*), the Malve judgment 31/7/2001 (*Application No.* 46051/99), the Laidin judgment (No. 2) 7/1/2003 (*Application No. 39282/98*), the Benmeziane judgment 3/6/2003 (*Application No. 51803/99*).

from police stations or prisons, who are brought to courts for hearings or other procedural reasons. Legally, they are – like courthouses as a whole - the responsibility of judges. In practice, however, they are the responsibility of the police officers who guard the prisoners. The result, I was told, is that neither judges nor police feel totally responsible for them.

24. Because this is so, conditions in some holding facilities are disastrous, and totally at odds with a modern society's requirements. To assess the question for myself, I visited the facilities at the Palais de Justice in Paris and the Regional Court in Bobigny.

25. The Palais de Justice is a very old, history-laden building, and reflects the events it has witnessed over the centuries – but the holding facility gives a highly unflattering image of the French legal system. It shares its location with the holding centre for foreigners awaiting deportation, which itself seemed to hark back to an era which any civilised person would expect to find long past in France (I shall return to this in the chapter on foreigners). The facility differs little from the centre, although some work does seem to have been done on it recently.

26. I also visited the holding facility at Bobigny. I was very pleased to find that substantial work was being done on it, and the first results - refurbished cells, with proper sanitation and adequate lighting - are already visible. This work is not complete, and I can only urge the authorities to pursue their efforts to improve conditions in the country's worst holding facilities rapidly. I would draw their special attention to the facility at the Regional Court in Evry where conditions, I was told, are particularly bad. Unfortunately, my programme was too full for me to inspect it, but I have no reason to doubt the alarming accounts of it I heard from the judges and lawyers who work in that court.

27. This being so, I feel that improving court premises, including holding facilities, should be one of the Government's priorities.

b. Lawyers and court officials

28. I concentrated on two main categories here – registrars and barristers – and will start by considering the first.

29. Obviously, courts and judges cannot function without the help of registrars, whose role in connection with both judgment and enforcement is a vital one.

30. The court officials I spoke to told me that court registries are chronically underfunded, that courts do not always have enough registrars, and that vacancies are not always filled. There are various reasons for this, one being the nature of the competition for admission to the school which trains registrars. The fact that recruitment and placement is organised nationally creates problems when registrars who have completed their training are being assigned to courts, since they may well be appointed to posts far from their home areas.

They are not particularly well paid, and many refuse appointments because the problems of moving seem insurmountable.

31. Some of the people we spoke to suggested that holding competitions at regional rather than national level might help to solve the problem of unfilled posts and allow courts to function more effectively. As things stand, the shortage of registrars makes for longer proceedings and deprives judges of necessary help. To take only one example, the copying of files needed for parties to proceedings is sometimes an excessively long process, simply because there are not enough staff to do the job. The President of the Regional Court in Marseilles told us that - particularly in cases involving several accused and/or civil parties – the court had been trying for some time to minimise the use of photocopiers and facilitate document reproduction by saving documents on computer. She told us that the necessary equipment had been purchased, but that the court lacked staff to scan files, which delayed the computerisation process and left costly facilities idle.

32. This, as I say, is only one of the examples we were given, but it does illustrate the courts' serious lack of technical facilities - and I can only add my voice to those of the court officials who are urging the authorities to face up to the problems and set about solving them.

33. Several of the people we spoke to pinpointed another problem which lies behind the delays. This is the distribution of the courts, which, we were told, is obsolete and no longer keeps pace with social change in France, particularly economic, demographic and social change. Regional courts, for example, appear to be badly distributed: some towns which no longer need courts still have them, while courts in others have excessive case-loads, because demographic change in recent decades has created a totally new situation. Similarly, the areas covered by certain appeal courts no longer coincide with economic regions, which makes it harder for the courts to function effectively and causes serious delays. I think it highly desirable that a comprehensive study of all these questions be made with a view to finding appropriate solutions.

c. Security problems

34. My conversations with judges highlighted another problem which should not be ignored - the problem of security in French courts. Obviously, one should not be too alarmist and suggest that attacks on judges are increasing, but the judges I spoke to did express concern, and the authorities should listen to them.

35. French courts are, in the fullest sense of the term, public areas, and their being open to the public is not just a tradition, but a constitutional principle. This freedom of access must be preserved and defended at all costs. Indeed, it was largely because the public would not have access to them that French judges refused to sit in "delocalised" courts, e.g. the projected court in the waiting zone at Roissy Charles de Gaulle International Airport (ZAPI 3). I shall be discussing this point later, but I think it important to mention it

already, since French judges' rejection of any interference with the public character of hearings is proof of their high level of professionalism and dedication to human rights principles.

36. I was also told that there has been an increase in the tension and even violence in courts in certain regions. This violence is generally directed at judges while they are hearing cases or at court staff, starting with registrars.

37. The judges who raised this problem painted a disturbing picture of certain behaviour patterns on the part of persons involved in court proceedings, which they encounter almost daily. They told me that public respect for justice and its representatives is declining; many judgments are contested and greeted with incomprehension by the accused, who find it hard to see that they have acted wrongly. Sentences sometimes provoke violent reactions, which may be accompanied by threats to judges or victims - threats which may even be carried out. Several days before my visit, for example, the terrible crime committed in a courthouse by a female prisoner against a woman registrar, who had just communicated the court's judgment to her, shocked the country. Acts of this kind are intolerable.

38. As a rule, no police are on duty at courthouse entrances or in courtrooms, and this unfortunately helps to create a certain sense of insecurity. Moreover, it should not be thought that criminal courts in difficult outer-city areas are the ones most affected. My interlocutors told me that it was regional courts, mainly dealing with "minor" local disputes, which had the worst problems. Most regional court judges are women; a number have received threats and felt insecure, since these courts are considered quiet and are not policed. I would urge the Ministries of Justice and the Interior to agree on ways of ensuring that hearings can be held safely, while preserving their public character. Above all, a balance must be struck between security needs and the need to provide better facilities for the public in courts.

3. The role of counsel

39. Among the issues most frequently raised at our meetings with lawyers, two were particularly prominent. One was the role of counsel during police custody, the other was the difficult situation created for them by the recently adopted "Perben II Law". I should like to say something on both of these important points.

a. Police custody and the presence of counsel

40. Most of the lawyers, judges, police officers and civil society representatives I met during my visit were particularly concerned about issues raised by police custody and counsel's role at that stage. Some said that things had improved in this area in recent decades. Others said there were still serious shortcomings, particularly concerning assistance from counsel during police custody, and called for reforms to remove them. In view of what

they said, I think it important to look more closely at the procedure and make a number of comments.

41. Before doing so, however, I should like to say how surprised I was to be told that French law currently provides for 18 different systems of police custody. Being a lawyer myself, I can easily understand how hard legal professionals in France, starting with judges, must find it to cope with this complexity. I can see that each of these systems was probably introduced to cater for a specific situation and meet a specific need, but proliferation on this scale – sometimes misleading even the most expert of lawyers – makes me wonder whether, as I suggested earlier, the time may not have come to start considering a thoroughgoing reform of criminal procedure.

42. Police custody is a measure which allows the police to hold a person who has not yet been charged with an offence, but who must be kept available for investigation purposes, on non-prison premises for a time determined by the gravity of the charges which may subsequently be brought. Under Article 63 of the Code of Criminal Procedure (hereinafter "CCP"), the normal period of police custody is 24 hours, and this may be extended for a further 24 hours with the State Prosecutor's written authorisation. However, the law also provides for special situations, in which police custody may exceed the 48 hours provided for in ordinary law, and last up to 96 hours for persons suspected of committing exceptionally serious offences, particularly offences connected with organised drug trafficking and terrorism. Whilst this report was being written, a law extending police custody from 4 to 6 days for terrorist crimes was been adopted, but has not yet enter into force.

43. The rights of all persons in police custody are defined in Articles 63-1, 63-2, 63-3, 63-4 and 77 of the CCP. Thus, under Article 63-1, persons placed in police custody must be informed of their rights, the most important being the right to be told the nature of the crime which is being investigated, the right to be examined by a doctor and the right to inform their family that the police are holding them. These rules are obviously in line with European standards, and France respects them fully.

44. I note, however, that the right to remain silent, of which persons in police custody had to be informed under Law No. 2000-516 of 15 June 2000, reinforcing the presumption of innocence and the rights of victims, has now been tempered. The right still exists, but the changes made by the law of 4 March 2002 mean that the police are no longer required to inform detainees of it. In other words, to avail of that right, they must know themselves that it exists, or be informed of it by counsel. I regard France's retreat on this point as highly deleterious, since concealing legal rights is never a good thing. The right to remain silent must be fully reinstated and all detainees must be informed of it, either orally when they are arrested or by giving them a printed list of their rights. The 2002 law would also have to be amended.

45. That said, the main problem, as I see it, concerns the presence of counsel. Under Article 63-4 of the CCP, all persons detained by the police are immediately entitled to ask to see a lawyer. If they cannot name a lawyer, or the lawyer they choose is unreachable, they may ask the bar president to appoint one.

46. The lawyer chosen or appointed may communicate with the detainee in conditions which ensure confidentiality. In principle, counsel is informed by the principal or a subordinate police officer of the nature and presumed date of the offence which is being investigated.

47. Having seen the detainee for a period which may not exceed 30 minutes, counsel may submit written observations, which are added to the file. He/she may not discuss the interview with any other person while the detainee remains in police custody. If custody is extended, the detainee may again ask to see a lawyer on the same terms as before. If the offence is particularly serious, however, the lawyer may intervene only on expiry of a period of 48 hours (organised crime) or 72 hours (terrorism and narcotics).

48. Access to a lawyer for persons in police custody is today accepted by all Council of Europe member states, and recognised as one of the principal rights of the defence by the ECHR[2] - but is relatively new in French law. In fact, it was not until 1993 that Law No. 93-2 of 4 January gave persons detained by the police the immediate right to see a lawyer in private for 30 minutes, except in cases of drug trafficking or terrorism, in which they were allowed to see a lawyer only on expiry of a 48-hour period. My informants told me that the whole question had given rise to long and heated discussion. They said that police representatives had been very much against the change, arguing that secrecy was vital in the early stages of investigations, and pleading a long tradition in this matter.

49. Ultimately, this right was introduced – which is indispensable. I have, however, strong reservations concerning the fact that French law allows persons in police custody to refuse to see a lawyer. I feel that a lawyer's assistance is valuable for people who are in trouble and often bewildered. It is also important to remove the possibility that police officers may influence detainees, and encourage them to refuse such assistance, on the ground that seeking it would be an admission of guilt.

50. Such reasoning is patently absurd. Moreover, most real criminals are well aware of their rights, and (although they rarely refuse it) have less need of legal assistance than first-time detainees. In any case, obliging all detainees to accept it would remove all suspicions and so benefit all the parties.

51. I should also like to say something about the role of French lawyers during police custody. Being more formal than active, it is - it must be said - still very limited. In fact, lawyers have no access to the file and have only such information on the case as detainees can give them. Detainees, too, have no access to their files, and so the questions put to them are the only ones of which they can inform their lawyers. Moreover, lawyers may intervene only at the outset, and may not attend when detainees are being questioned. They must inform the latter of their rights, and may advise them on conduct

[2] ECHR, Murray v. United Kingdom of 8 February 1996

but, having no access to the police file, they know nothing of the nature and gravity of the charges which may be brought – and this leaves them very little scope for acting as counsel.

52. Many of the people I spoke to, both lawyers and others – complained of these restrictions. Some even claimed that the lawyer's role during police custody was not that of counsel.

53. It is not for me to comment on their remarks. However, I feel that no democratic society has anything to fear from the presence of responsible lawyers, who respect their profession's ethical code, during police custody. On the contrary, many European states have found that many police officers, who start by having serious doubts about the presence of lawyers, are strongly in favour once they see what it involves. In fact, if a lawyer is present when detainees are being questioned, the police have no need to fear unfounded allegations of violent and illegal behaviour, since he/she can confirm that any such accusations are false. The presence of a lawyer is also a useful safeguard for police officers in danger of losing their temper, since it may stop them from breaking the rules.

54. This is why I think it that French law-makers need to start thinking about extending the role of lawyers during police custody. I had an opportunity to put my views to the Ministers of the Interior and of Justice, who are primarily concerned by this question. I fully understand that national traditions, particularly in the matter of criminal procedure, are tenacious, but I feel that the time is ripe for change. To ensure that the fundamental rights of persons in police custody are respected, I think it essential that the role of lawyers be strengthened by giving them the right to be present when their clients are being questioned. This is common practice in most European countries (e.g. Spain, Italy and the United Kingdom). If this change is thought too radical, it is important to start moving in this direction. The first step might be to allow the lawyer to be present when the detainee is signing his/her deposition - which would provide an extra guarantee that his/her rights are being protected.

55. I also have strong reservations concerning the fact that no legal assistance whatsoever is allowed for 72 hours in drug-trafficking and terrorism cases. I am fully aware that these are very serious accusations and take longer to investigate than ordinary offences. At the same time, the absence of all legal assistance for 72 hours does not strike me as appropriate, particularly since these are cases in which we are defending our democratic values against potential enemies of democracy and human rights – which seems to me to make it even more necessary that we should respect those values ourselves.

56. I fully understand that investigations must be kept secret to ensure that they succeed, but I am also sure that there are ways of reconciling respect for our fundamental principles with the need to protect investigations. When I visited the Court of Cassation, a possible compromise solution was suggested. The eminent lawyers I met there responded with interest and understanding when I voiced my concern regarding the excessively long absence of a lawyer when (to take only that example) suspected terrorists are being held in police custody.

57. Applying European criteria, I believe that access to a lawyer must be guaranteed before 72 hours have expired. The rules on police custody in drug-trafficking, terrorism or indeed any other cases should not differ from the norm. This is a matter of affirming our values' superiority to the lies put forward by extremists of all sorts, who are only too pleased to boast that we are frightened and that their attacks have forced us to retreat from our principles. This is why I believe that the presence of a lawyer should be accepted from the beginning of police custody, and urge the French authorities to give this step, which many of our member states have already taken, their close attention.

58. However, I can see that it would not be appropriate to allow some persons held by the police on suspicion of participating in terrorism or large-scale crime to choose a lawyer, since this might seriously jeopardise the investigation. This being so, a lawyer should be appointed as soon as a person is placed in police custody, obviously on condition that the detainee might later call in a lawyer of his/her own choice (the sooner the better, since I am far from having a rooted preference for appointed, rather than selected lawyers). Moreover, since these cases are highly important, appointing official defence counsel impartially from among the best at the bar would make eminently good sense. In this connection, I particularly welcome the suggestion, made by one of my distinguished interlocutors, that official defence counsel in cases of this kind be appointed from among the 12 secretaries to the Paris Bar Conference ("*secrétaires de la Conférence de stage du Barreau de Paris*") since police custody in terrorism cases is commonest in Paris. This seems to me a very sound proposal, and one which might meet security needs, while also promoting respect for fundamental rights.

59. I think it important that France should move forward in this matter, since it faces condemnation by the ECHR[3], which found, in *Murray v. United Kingdom*, that depriving a detainee of access to a lawyer for the first 48 hours violated the Convention[4]. The Court has since confirmed this ruling, and I feel that France should conform to it.

60. In my view, reform in the matter of access to a lawyer for persons in police custody is urgently needed in France, and I urge the French authorities to effect it on a consensual basis, having first consulted all the legal groups concerned and found a solution which ensures that fundamental rights are respected.

---

[3] The EU Commission's Green Paper on "Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union", COM(2003)75, also highlights these shortcomings.

[4] See ECHR, Murray v. United Kingdom of 8 February 1996: "the concept of fairness enshrined in Article 6 (art. 6) requires that the accused has the benefit of the assistance of a lawyer already at the initial stages of police interrogation. To deny access to a lawyer for the first 48 hours of police questioning, in a situation where the rights of the defence may well be irretrievably prejudiced, is - whatever the justification for such denial - incompatible with the rights of the accused under Article 6 (art. 6). […]There has therefore been a breach of Article 6 para. 1 in conjunction with paragraph 3 (c) (art. 6-1+art. 6-3-c) of the Convention as regards the applicant's denial of access to a lawyer during the first 48 hours of his police detention".

b. Questions concerning the professional position of barristers raised by the so-called Perben II law

61. Another delicate question came up in my discussions with French barristers. Those I spoke to in Paris, and also in Marseilles and Bastia, seemed to me highly anxious concerning the possible consequences for the whole profession of certain provisions in the "Law adjusting the legal system to deal with new types of crime", the so-called Perben II law.

62. Article 434-7-2 of the Criminal Code is the main point at issue.[5] I was told that this article raises serious problems for lawyers. Indeed, most of the lawyers I spoke to feel that it directly threatens the rights of the defence, or at least attempts to restrict them. In fact, if strictly applied, it may prevent the lawyer of a person facing charges from meeting a third party, for the purpose of preparing his client's defence, unless he is certain that this third party is not also liable, in certain future circumstances, to face accusations brought by the investigating judge. How can a lawyer prepare a client's defence effectively if he cannot freely meet the latter's close friends and family – the persons best placed to provide information required by the defence. Obviously, he/she is unable to act effectively if he/she cannot explain, to persons contacted in good faith, of whom he/she cannot know that they will later themselves face accusations, the purpose and nature of the investigation without running the risk of being prosecuted for disclosing "information derived from enquiries or investigations currently under way". This was why my discussion partners believed that requiring lawyers to reveal nothing to third parties on pain of prosecution might prevent them from organising their clients' defence freely.

63. I find these anxieties concerning the investigation phase entirely understandable. Obviously, lawyers who act in bad faith, violating both the secrecy of the investigation and professional secrecy, are doubly at fault. They break the law and violate the rules of their profession – and they can, and must, be punished. But when they act in good faith, intending, not to break the law, but simply to exercise their profession to the best of their ability, then the law must allow for this.

64. I therefore consider that this controversial article should be amended, to ensure that lawyers can exercise their profession fully and freely. It could be adapted by specifying that this offence must be intentional. I voiced my doubts when I met the Minister of Justice. He told me that he was aware of the uneasiness caused by this problem, and promised to take steps to solve it, I hope that he will do so as rapidly as possible, and so restore a relationship of trust between lawyers and judges, the ones who are primarily affected.

---

[5] Article 434-7-2 of the Criminal Code: "Without prejudice to the rights of the defence, anyone who, by virtue of his functions, acquires, in accordance with the provisions of the Code of Criminal Procedure, information derived from enquiries or investigations currently under way concerning crimes or misdemeanours, and who directly or indirectly discloses this information to persons possibly involved, as authors, co-authors, accomplices or receivers, in committing of offences, shall, if such disclosure is liable to impede the progress of the investigations or the establishment of the truth, be punishable by five years in prison and a fine of 75,000 Euros".

IV. THE PRISON SYSTEM

65. The situation of persons deprived of their liberty has been a focus of attention on each of my visits to Council of Europe member States. Prisoners do not have more rights than other people and I do not consider that prisoners' rights should be respected more than those of ordinary citizens. Criticism on this point has, however, increasingly become the leitmotif of all those who blame human rights for all society's ills. Quite simply, I do not believe that persons deprived of their liberty should be treated less well than their fellow citizens who have not been guilty of any wrongdoing.

66. In the course of my professional duties, both at the Council of Europe and elsewhere, I have visited many prisons and have had many discussions about places of detention and the living conditions inside them. I have always been surprised at the lack of sensitivity shown by some of those with whom I have spoken, who argue that prison life is not supposed to be easy. How many times have I heard the refrain, which is the same in all languages, that if a person is in prison, it is because he deserves to be there and must be made to pay for his wrongdoing in the hardest possible way? How many times have I heard stories about prisons where the conditions are alleged to be more comfortable than in the homes of people of modest means who have never broken the law? I have even heard that the conditions in prisons are now similar to those of a good hotel since it is possible for prisoners to have television in their cells.

67. Such remarks bear no relation to the reality. Prison is first of all a punishment imposed by society on a person who has broken its laws. It is not society's revenge, and must never become that. That is also why I am firmly opposed to capital punishment, which is revenge and not punishment. The very fact of depriving a person of his liberty and taking away his freedom of action and movement constitutes a sufficient, and very harsh, punishment. Accordingly, the determination of some people to ensure that conditions of detention are harsh can only be accounted for by a desire to take revenge on a person who has already been punished. Such actions have no place in a democratic society. On the contrary, prisons must become places of rehabilitation, not places that harden people's attitudes and make them more likely to reoffend.

68. During my visit to France, I visited seven prisons. These were, in chronological order: Les Baumettes in Marseille, Le Pontet in Avignon, La Santé short stay prison (*maison d'arrêt*) in Paris, Fleury-Mérogis short stay prison in the Paris region, Lannemezan prison in the Hautes-Pyrénées, Casabianda prison in Corsica and Elsau short stay prison in Strasbourg. I also visited five police stations, where I focused particular attention on the places where persons remanded in police custody are held. I should above all like to thank the French authorities once again for having granted my requests to visit these establishments and for the completely transparent organisation of these visits, in the course of which I not only met prisoners but was also provided with explanations by the prison staff, to whose professionalism I would like to pay tribute.

69. I have a rather mixed overall impression. The most striking aspects are the problem of overcrowding and the fact that most of the establishments visited lack the necessary operating resources. I shall set out a number of thoughts on this problem, which is widely shared by most of our member states, before addressing some specific issues related to the problem of special detention regimes and care for prisoners suffering from medical conditions, in particular those suffering from psychiatric disorders.

1. General problems related to the shortage of funding

a. Overcrowding

70. It is a general fact identified by all the people we met in all the establishments visited: French prisons have been suffering from chronic overcrowding for many years. This is especially true of the short stay prisons, where there is no upper limit on the prison population as there is in the establishments for sentenced prisoners. In the great majority of places visited, from the oldest, such as La Santé prison, to the newest, such as Le Pontet prison, which opened in 2003, the number of inmates exceeded the number of places initially planned for these establishments. The officials we met did not deny this.

71. This painful problem is a consequence of the specific developments which French society has undergone in the last few decades. Above all, it is connected with two main causes: an increase in the number of convictions and in the length of sentences, and a lack of funding to respond to this trend by building new prisons, not only in order to increase the number of places, but also to improve the quality of prison life.

72. The trend towards an increase in the number of prisoners continues to rise. According to the latest statistics supplied by the French authorities, on 1 November 2005, 58,082 people were in prison in France, which is 1.6% up on the previous month (57.163 prisoners)[6]. At the same time, the number of places officially available was 51,195, which brings the average occupancy rate in prisons to 113.5%. On the same date, 20,676 prisoners were awaiting trial, as compared with 37,406 sentenced prisoners. Female prisoners accounted for around 4% of the total. The number of juvenile offenders in prison was 637, accounting for 1.1% of the total.

73. These figures are in themselves evidence of the difficulties facing the prison sector in France. They show that a large number of establishments are exceeding their capacity. In many establishments, moreover, the situation is even more complex than that suggested by the figures, because it is inappropriate and even quite dangerous to work on the basis of averages when the living conditions of a large number of people are involved. According to the figures given to me by representatives of NGOs, at the time of the visit, 125 establishments out of 185 had more inmates than places available. When I visited Fleury-Mérogis prison, I was informed that its overall population was 3,390, as compared

[6] Ministry of Justice, press release dated 14 November 2005.

with a theoretical capacity of no more than 3,160 places[7]. This is only one example among others; unfortunately, I cannot cite every single one.

74. What exactly do the above figures mean? Above all, they show that this prison has 230 inmates more than it can hold. They also mean that these 230 people are living in conditions which fail to meet the statutory requirements. They do not have enough room in their cells and their access to activities, which are already fairly limited, is likely to be restricted. In short, their life is made even more difficult because the state is unable to offer them the conditions provided for under its legislation. These people are therefore undergoing a double punishment. A situation such as this is unacceptable in itself. Furthermore, it is likely to produce an effect contrary to the one sought through imprisonment, as I have already noted. Instead of leading towards rehabilitation, this tendency risks alienating the person concerned and causing him or her to rebel against the society that placed them there. On many occasions when visiting prisoners, I have heard shocking and disturbing remarks from prisoners, asking me why the state is punishing them and demanding reparation from them for breaking the law when it is itself in breach of certain rules, in particular those relating to conditions of detention.

75. It is true that some things I saw during my visit were deeply distressing and shocking. They are largely the result of problems of overcrowding, which deprive a large number of inmates from being able to exercise their basic rights.

76. Unsanitary cells, toilets and washing facilities in a bad state of repair, limits on the number of showers that prisoners are allowed to take each week, poor-quality bed linen and blankets – these were virtually constant features during our visit. It was difficult for me, in early 21st-century France, to hear prisoners complaining about the insufficient number of showers and the fact that they were not allowed to have a shower every day, even during the summer, when there are often periods of intense heat. The lack of measures to provide protection from heat was also mentioned on numerous occasions. I feel that it is important to find ways of improving the situation without further delay.

77. In this connection, I heard a great deal about funding problems in the prison sector. During my meeting with the Minister for Justice, he confirmed to me that the government is taking this question very seriously and has given itself three years to improve the current situation. A major rehabilitation programme is apparently under way; the aim is to improve the general condition of places of detention, although the main results are not expected until around 2008.

78. I was able to see the first signs of change when I visited the new Le Pontet prison in Avignon. Its more spacious and better furnished cells, its more human exercise areas, its football pitch and its relative cleanliness contrast sharply with what can be seen at La Santé or Les Baumettes. This is undoubtedly a step forward; other facilities are under construction. At the same time, this does not mean that old facilities can be left in place without taking urgent measures.

[7] See activity report of Fleury-Mérogis short-stay prison.

79. Indeed, I was shocked by the living conditions I saw at La Santé and Les Baumettes. These facilities seemed particularly lacking in resources. In my view, the inmates' living conditions are on the borderline of the acceptable, and on the borderline of human dignity. When I conveyed this view to the Minister for Justice, he informed me that the government was taking the situation very seriously and that efforts have been made over the past two years to improve it, especially as regards Les Baumettes prison in Marseille. I cannot but welcome this action and the announcement by the Minister for Justice in November 2005 of additional funding towards the rehabilitation of prisons, including Les Baumettes.

80. Furthermore, the lack of funding is not a purely French affair; European action has also suffered. This was particularly the case when I visited Fleury-Mérogis short-stay prison. We noticed a large building in the middle of one of the detention complexes. The prison director informed us that it was a gymnasium intended for the inmates. The gymnasium was built eight years ago with European funding. Apparently, however, the designers of this innovatory project unfortunately failed to include secure entrances in their plans for this building, which has prevented it from being put into service. This story is so grotesque that it might have been amusing if it had not been so sad. It is amazing that the designers of a building intended for prisoners did not give any thought to security measures and that the constructors did not check this! The fact that this situation has been going on for years without a solution also shows the malfunctioning and problems of monitoring European investments. I call on those responsible to resolve this unfortunate situation and finally make the gymnasium available to the people for whom it was built.

81. Overcrowding makes it impossible to put into practice a real prison policy, to separate prisoners awaiting trial from sentenced prisoners and juveniles from adults. It makes it impossible to provide adequate social, psychological and other treatment and to implement action tailored to each prisoner's circumstances. This has a totally negative effect on the principle of rehabilitation. Being unable to work in this way affects future security, because prison thus becomes a dumping ground and not a place where rehabilitation is prepared for.

82. In connection with the financial problems affecting places of detention, I should like to raise another issue which I find disturbing. I am referring to the custody cells in police stations. Even though these facilities are the responsibility of the Ministry of the Interior, I would like to say here that I was shocked by the deplorable condition of some of these premises. I know that the Ministry is currently making a major effort to bring them into line with European standards. I saw this for myself when I visited the new police station in the 11th *arrondissement* of Paris.

83. However, I was very surprised to see that, in a very large number of police stations visited, the prisoners in police custody are not provided with a mattress and bed linen and sleep on the ground. On several occasions I enquired about the reasons for these squalid conditions. I received several answers which merely added to the confusion. Some people told me that there was no provision for this in the rules, others that the mattresses had been ordered but were late in being delivered, and others still that the mattresses did not

have the same dimensions as the "beds" or else that it was not worth providing them because they were very quickly damaged.

84. Human dignity must be respected everywhere and for everyone, including those in police custody. The sight of a person sleeping on a concrete floor is unacceptable. I call on the authorities to resolve this problem and to introduce uniform practices. Indeed, the custody cells which I saw when I visited Strasbourg central police station showed me that it was perfectly possible to find proper solutions, even with limited funding.

85. But a shortage of funds is not the only problem affecting prison life. Other difficulties come on top of it, exacerbating an already complicated situation.

b. Short-stay prisons and establishments for sentenced prisoners

86. Here I should like to dwell on a problem which I consider particularly worrying and which, in my view, causes a large number of difficulties both for prisoners and for prison staff. France, in common with the majority of our member states, has two main types of prison, *maisons d'arrêt* (short-stay prisons) and *établissements pour peine* (establishments for sentenced prisoners). A *maison d'arrêt* is a facility housing persons detained on remand, persons detained under a conviction which is enforceable but not yet final, persons sentenced to a year's imprisonment, and persons with prison sentences of more than one year awaiting transfer to an *établissement pour peine*. The latter are intended for persons sentenced under a final judgment to more than one year's imprisonment.

87. There are major differences between these two types of establishment. It is above all a difference related to the specific legal rules governing persons deprived of their liberty. Persons still under judicial investigation are naturally subject to certain very understandable restrictions. For example, they are unable to use the telephone or are subject to visit restrictions. Such restrictions are lifted once the investigation has been completed, which explains why the living conditions are often better in establishments for sentenced prisoners. At the same time, it is important to stress that, at present, the distinction between the two types of establishment is often still more theoretical than practical. Of the places of detention visited, many were mixed establishments housing both persons awaiting trial and sentenced prisoners.

88. I feel that a situation of this kind is extremely negative because, in addition to the more than likely mixing of prison populations, which is often highly unfavourable to those entering a prison for the first time, it makes it impossible for a large number of sentenced prisoners to exercise their rights.

89. For example, during the visit to La Santé prison, I visited a cell with three inmates, all of foreign origin. The cell showed signs of dilapidation and clearly was not designed to house so many prisoners. There were two bunk beds and a third bed placed in an unsuitable location, ie close to (virtually opposite) the toilet and washing facilities. These facilities were outdated and in a bad state of repair and were separated from the rest of the cell by makeshift partitions which the prisoners said they had set up themselves. In view of the highly artificial nature of this separation, there can be no doubt about its origin. The cell was very badly ventilated and the bed linen was of doubtful quality and freshness. What is more, the prisoners said they did work (packaging) in the cell itself.

90. I was particularly shocked by the account given by one of the people I met in the cell. He was a foreign national who had been arrested 16 months earlier and had already been finally sentenced over four months previously to more than one year's imprisonment. Yet he was still at the short-stay prison and had no news about a possible transfer. According to this prisoner, he had had no contact for 16 months with his wife and children, who lived abroad and were unable to come and see him. What is more, because he was being held at a short-stay prison, he was not allowed to use the telephone, which cut him off completely from his family, although, legally, he was no longer formally prohibited from calling them.

91. This kind of problem is apparently very common. It helps not only to worsen the psychological condition of prisoners and make life even harder for them, but also to strain relations between prisoners and staff. The latter are in fact merely obeying the rules and, according to remarks made by some of the prison warders met, they could do without such problems.

92. I asked the prison authorities why there were so many combined establishments. They replied that the main reason was a lack of funds and a shortage of prison facilities, which made it inevitable that people in different situations and governed by different rules would be placed in the same establishment. I consider this situation very disturbing because, by itself, the example of the ban on telephone communication could be likened to a kind of dual punishment, or at least a punishment not provided for by law. Furthermore, when the preparation for trial has been completed, but the trial is delayed because of congestion in the courts, persons detained pending trial should be able to avail themselves of the right to use the telephone.

93. According to the people I spoke with, another reason for the presence in short-stay prisons of large numbers of convicted persons awaiting transfer to establishments for sentenced prisoners is the fact that there is only one central department dealing with the transfer of prisoners. Every transfer is carried out by representatives of this department on a centralised basis and according to a predetermined schedule. In view of the department's heavy workload, it would be quite difficult to make changes to this fairly strict schedule. The waiting periods for transfers therefore grow longer and a large number of people are affected by this.

94. I feel that this problem must be resolved, particularly in order to ease congestion in the short-stay prisons. I discussed this point with prison sector professionals and with lawyers and judges. The Regional Director for Detention in Languedoc mentioned an interesting solution. It would be conceivable to organise the transfer department on regional lines. That might not only make it more flexible and more operational, but also bring it much closer to the prisons by making it much more responsive to their needs.

c. The cost of living

95. I was very surprised to see that, although it is a general public service, the prison administration has been decentralised to such an extent that the prices of services provided to prisoners in the different prisons vary considerably. To someone who knows nothing about the world of prisons, the above statement might seem strange. The fact is, though, that many services have to be paid for in prisons. Obviously, persons deprived of their liberty receive free board and lodging and health care. Yet their needs do not stop there.

96. In every establishment, there is a possibility of buying food, health or other products. In all the establishments visited, I asked to see the price list after receiving complaints about the cost of living. I was surprised to see that the prices vary quite considerably. For example, although a one-kilo packet of sugar costs only around 0.90€ in a supermarket in the centre of Strasbourg, the price was 1.27€ at La Santé, 1.48€ at Fleury-Mérogis and 1.50€ at Elsau prison in Strasbourg. Furthermore, according to the documents available to us, the price of sugar has risen significantly: 1.48€ in 2004 (1.28€ in 2003 and 2002), ie an increase of 15.6%[8]. And this is only one example of a widespread practice. On the one hand, I feel that even the lowest of the prices quoted is quite high in relation to those charged in shops, not to mention the fact that most prisoners are from deprived backgrounds.

97. On the other hand, I do not understand why there should be such a wide disparity between prices. I was told that the prices are set by the prison director after consultation with outside service providers chosen on the basis of calls for tenders. I realise that it is a lawful procedure. However, I feel that the administration should ensure that prisoners' interests are protected, and therefore that the prices charged should remain as affordable as possible. Public services can indeed be delivered by private service providers (of course, with due respect for all the appropriate procedures), but the aim should be to improve their quality in the interests of users, and certainly not to make as much profit as possible from them.

98. Another example of the exorbitant prices charged is that of access to television. In all establishments, inmates have to pay to have access to a television set. Most prices are set for weekly periods and are at the total discretion of the administration. Wherever I questioned prisoners, I heard complaints about excessively high prices. From what I was able to see, the prices vary considerably from one establishment to another. The range is

[8] See activity report of Fleury-Mérogis short-stay prison, p.45.

from 8€ for a weekly rental at La Santé to 5€ at Elsau short-stay prison in Strasbourg, which makes 32 and 20€ a month, respectively. Clearly, such prices are extremely high for people with low or non-existent incomes.

99. I was also told that the inmates of short-stay prisons are not allowed to buy television sets, which means that rental is the only option. The price of a television set is currently quite reasonable; in the shops, it is easy to find TVs of a similar size to those I saw at the short-stay prisons for prices in the region of 100-120 €. So it is easy to work out that, even on the basis of the cheapest weekly rental found (20 € a month), the cost of a television set is recouped in five to six months. From that point on, the prison starts to make a profit. But I do not think that the aim of the prison sector is to earn money or to become profitable. It is above all a public service.

100. For this reason, I call upon the competent authorities to act speedily to reduce the financial burden on prisoners, particularly as regards the exorbitant cost of TV rentals. I also feel that consideration should be given to the possibility of allowing prisoners serving long sentences the possibility of buying their own television set, provided, of course, it is a standard set and meets all safety requirements. I also noted a commitment on the part of the deputy director of La Santé short-stay prison, who wishes to set up in the near future a service for making television sets available free of charge to prisoners lacking funds.

d. Need to put in place a rehabilitation policy

101. As I emphasised above, the purpose of a prison sentence cannot be solely to punish wrongdoing. Neither must the sentence be society's revenge. As I have already said on several occasions, each time we send someone to prison, we must ask ourselves a simple question – what is the purpose of this step? How will this person develop during his/her stay in prison and will he/ she come out a better person?

102. These are by no means rhetorical questions. Everyone who enters a prison for the first time discovers a new world, new people and new realities. They also set out on a path which will lead them to release from prison. In this context, the public authorities have the specific responsibility of looking to each new prisoner's future by clearly defining the main function of the prison sentence and adapting it so that every means is employed to guide every new arrival towards successful rehabilitation. This means above all preventing reoffending.

103. I am therefore obliged once again to refer to the importance of investment in the prison system. This does not only mean building new prisons, which are admittedly necessary to reduce congestion in overcrowded prisons. Money should not only be invested in buildings. Significantly stepped-up funding is required for educational, health and vocational integration facilities. Prison must also serve to give fresh prospects and a fresh impetus to the people who pass through their doors. The state must also take the trouble to provide for post-release support for all prisoners. Maintaining links with the outside

world, starting with prisoners' families, is the first stage in this process, as the opposite would lead to exclusion.

104. I was very surprised to learn that, on their release from prison, individuals who were initially receiving minimum social benefits lose their entitlement to social allowances and assistance, so that a large number of released prisoners find themselves with no income at all. In this context, therefore, it is difficult to speak about any real rehabilitation policy. On the contrary, released prisoners are likely to find themselves in a situation of hardship, isolated and without any source of livelihood, which would push them towards reoffending as a way out of their hardship. Clearly, all adults are responsible for their acts and we cannot relieve them of that responsibility. At the same time, in view of the very great vulnerability of former prisoners on their release, society must accept at least some responsibility for the future of these people, because if it does not provide means of rehabilitation, and if it does not take it upon itself to frame a rehabilitation policy, it is contributing to their failure. That would mean leaving people in difficulty alone with their problems and pushing them back towards the environment encountered in prison. A democratic society cannot and must not allow its prison policy to produce such results, constituting a potential threat to its security.

105. The work done by representatives of the Ombudsman in a number of prisons is very interesting in this respect. As we saw in Marseille, the representatives of the Ombudsman help those prisoners who so request to sort out all the administrative formalities relating to the restoration of the social benefits which they were receiving before going to prison. I found the presence of the Ombudsman's representatives to be a very positive factor: it enables prisoners to better plan for the immediate future on release; at the same time, it contributes towards significantly reducing the tension in prisons over these crucial issues. I therefore believe that this initiative should be supported and extended to other establishments.

106. I therefore call on the French authorities to step up their vigilance while providing increased resources for the implementation of programmes for the rehabilitation and monitoring of released prisoners.

e. Help in preserving family ties

107. An effective rehabilitation policy must icnlude efforts to preserve ties and contacts with the outside world whenever someone is imprisoned, and especially family ties. It is important that every means should be employed to ensure that people deprived of their liberty do not feel completely cut off from their family and friends (unless the interests of the investigation so require).

108. In this context, several lines of work must be considered. The first is to do everything possible to ensure that persons serving a final sentence are held in places close to the homes of their family and friends in order to help maintain links. Unfortunately, it would seem that this is not always one of the prison administration's main objectives. During

our visits to several establishments, we heard complaints about placement policy, which some people even described as arbitrary. For example, we heard that prisoners who had committed disciplinary offences were frequently transferred from one establishment to another. These transfers were described to us as disguised punishments. They have very harsh consequences for prisoners because they help to sever the already fragile links with their family and friends.

109. Another problem mentioned to me arouses a great deal of concern. It is to do with the recent adoption of the so-called "Perben II" law, to which I have already referred. One of the measures provided for under this law is the setting up of interregional centres of competence. This means designating courts responsible for handling cases according to their specific nature. Cases are now grouped together and referred to the competent court. The risk in this situation is that prisoners will be sent far from their homes. In addition to the difficulties involved in bringing the witnesses and victims to the trial, this is also likely to weaken the rights of the defence because, in view of the distance, it will not always be possible for the lawyers appointed by the defendant to travel easily. Clearly, some regions might have more problems than others, in view of their geographical location. For example, the president of the Bar in Bastia told me of his fears regarding the probable relocation of all cases relating to organised crime to the Marseille court, which has been designated as a centre of competence for such cases. Indeed, the fact of Corsica's being an island might create a risk of weakening the rights of the defence. Everything should be done, therefore, to safeguard prisoners' rights. At the same time, it is clear that family links are likely to be further weakened if prisoners are taken far from their homes.

110. I should also like to draw the attention of the French authorities to the fact that France is lagging behind in the implementation of "family life units". These are areas within establishments for sentenced prisoners that resemble hotel rooms and enable families to be reunited for periods of a day or more. This particular way of organising visits, which enables spouses and children to preserve their private life despite the imprisonment of a family member, is very important and becoming increasingly widespread in most Council of Europe member states. In my opinion, it is a very good means of preserving families, preventing them from breaking up and encouraging the rehabilitation of prisoners, who will know that someone is waiting for them.

111. Furthermore, it is a further and by no means negligible step towards respect for human dignity. On my visit to Lannemezan prison, an establishment designed for prisoners serving long sentences, I was shocked to see the conditions in which the prisoners receive visits from their spouses, children or other family members. I saw a room divided into small compartments by pieces of cloth and by other makeshift means to allow a minimum of privacy to family members coming from all over France and unable to travel on a regular basis. These images unfortunately reflect the scant attention paid by the state to this important aspect of the lives of divided families.

112. I was informed that, at present, France has only two or three family life units operating on a trial basis. I therefore call on the authorities to make up the delay and achieve significant progress in this very important area contributing towards respect for human dignity and rehabilitation.

2. Disciplinary procedure and solitary confinement

113. In all prison systems there are special regimes designed either to ensure special treatment for prisoners to protect them or to help secure the investigation by placing them in solitary confinement, or to punish the behaviour of prisoners in breach of prison rules by applying disciplinary measures to them. These regimes have certain specific features in France and I should like to offer a few thoughts regarding the information which I received during the visit.

a. Disciplinary procedure

114. The disciplinary regime is a set of rules laying down punishments for breaches of prison rules and involving placement in special cells in a separate part of the prison known as the "disciplinary block".

115. At present, an individual is sent to this block following a decision by a disciplinary board at the prison. The disciplinary board is the decision-making body responsible for dealing with disciplinary offences by prisoners. It is chaired by the prison director, who has two assistants chosen from among the prison staff. Only the chair of the board has the power to make decisions; the assistants are present in a purely advisory capacity. All decisions are taken following a hearing of the prisoner concerned.

116. The maximum length of a disciplinary punishment is currently 45 days for the most serious offences. The disciplinary regime has undergone some far-reaching changes over the last few years. Following an important judgment by the Conseil d'Etat[9] recognising the right of prisoners to refer a punishment to review by the administrative court, a decree issued on 2 April 1996 made this procedure subject to stricter rules. In particular, it enumerates the offences which may give rise to disciplinary punishments. The procedure was subsequently modified by the law of 12 April 2000. It now offers prisoners the opportunity to be assisted by a lawyer when appearing before the disciplinary board. It also allows them to have access to the case file.

117. The procedure for implementing a disciplinary punishment is also clearly defined in the law. Prisoners against whom disciplinary proceedings are brought must receive written notice to this effect, which must set out the charges as detailed in the report relating to the incident. At the same time, they must be informed about the conduct of the proceedings, access to the file, the date on which they will appear before the board and the possibility under the law of being assisted by a lawyer (paid for, if need be, under legal aid

[9] See: Conseil d'Etat, Marie judgment of 27 February 1995

arrangements) or represented by an approved representative of their choice. The latter must be given access to these documents, as well as to any others that are examined by the disciplinary board, before the start of the hearing. The person against whom the proceedings have been brought must be able to talk with the lawyer or chosen representative before the hearing under conditions guaranteeing confidentiality. The principle of free choice of defence counsel applies.

118. Prisoners can contest a disciplinary punishment by appealing initially to the board itself, then to the administrative court.

119. It cannot be denied that the disciplinary regime has recently undergone some major changes that favour the prisoner. Among these changes, mention should be made above all of the right to be assisted by a lawyer. This is a major step forward. Prisoners are now in a better position to defend their rights, but also to understand what is going on.

120. During the visit, we discussed the reform of the regime and its consequences at length with representatives of the prison administration. I was not at all surprised to see that my discussion partners were not only in favour of the reforms, but also considered themselves to be among their direct beneficiaries. According to them, since lawyers have been taking part in the proceedings, prisoners have a better understanding not only of the proceedings themselves, but also of the reasons for the punishment, particularly as a result of the explanations provided by the lawyer. This makes it possible to reduce tension and improve relations within establishments.

121. At the same time, despite the definite progress made, a number of problems remain. For instance, the system introduced by the above-mentioned reform still has shortcomings with regard to the principles of a fair trial: these shortcomings include the composition of the trial body, the fact that it is impossible for prisoners to call witnesses, the often limited time available for preparing a defence, and the fact that lawyers lack training in prison law. In addition, the maximum period for which a prisoner may be kept in a disciplinary cell – 45 days – seems altogether excessive from the point of view of the requirement for proportionality of sentences. This makes the French disciplinary regime one of the strictest in Europe. The maximum period of punitive isolation is three days in Scotland and Ireland, nine days in Belgium, 14 days in England, 15 days in Italy and the Netherlands, and 28 days in Germany. It should be added that disciplinary punishments are not always carried out in a decent environment: some of the blocks which I visited, particularly in Marseille or at La Santé, were dilapidated and dirty and the heat was stifling. I think it would be important to consider the possibility of reducing the length of disciplinary punishments in France and providing for an improvement in the conditions of detention in these disciplinary blocks.

122. Furthermore, it must be recognised that all power is concentrated in the hands of the prison director, even though the disciplinary board may be regarded as a court. In actual fact, it offers no guarantees of independence because its members are employees coming under the hierarchical authority of the central administration. It is therefore important to start moving towards real independence for these bodies. In this connection, I think it

would be useful to consider the possibility of allowing the judge responsible for the enforcement of sentences to participate in decision-making.

b. Procedure for placing prisoners in solitary confinement

123. As we have just seen, the disciplinary procedure recently underwent a major reform, which significantly improved the status of sentenced and unsentenced prisoners alike. At the same time, another administrative procedure, which comes fully under the responsibility of the prison administration, is totally lacking in transparency and calls for rapid action on the part of the legislature. This is the procedure for placing prisoners in solitary confinement.

124. When one visits prisons, and more specifically the disciplinary blocks, one can usually see the solitary confinement blocks close by. Every prison has them. Under the law, any prisoner may be placed in solitary confinement either at his/her own request or as a precautionary or security measure[10]. In some cases, this regime is used to remove prisoners who are troublesome, under suspicion or ringleaders from the other inmates without their having committed a disciplinary offence.

125. According to the legislation currently in force, solitary confinement is not a disciplinary measure[11]. Prisoners in solitary confinement must be subject to the ordinary prison regime. However, they must not have contact with other prisoners, except by express decision of the prison director, to take part in one-off activities with other solitary confinement prisoners. The movements of solitary confinement prisoners within the prison are organised in such a way that they do not meet anyone on their way. In a few establishments, solitary confinement prisoners may engage in a gainful occupation by doing work in their cells. Usually, however, they do not have access to any gainful activity and are entirely dependent on any funds which may be sent to them from outside. All solitary confinement prisoners may, however, receive visits and exchange correspondence in the normal way.

126. There is also a stricter solitary confinement regime for prisoners regarded as particularly dangerous "because of [their] involvement in organised crime or in a terrorist movement or [their] legal and criminal background". It is for the prison director to determine which solitary confinement prisoners fall within this category. They are subject to particular security measures. Some are regularly transferred from one prison to another, roughly every six months. They remain constantly in solitary confinement and never mix with other prisoners.

[10] See: Code of Criminal Procedure, Article D.283-1
[11] *Idem*, Article D.283-2

127. Solitary confinement is usually ordered by the prison director. It may also be ordered by an investigating judge in the course of an investigation. Here I should like to dwell on the administrative procedure for which the prison director is responsible, because I feel that it raises a number of issues likely to undermine respect for the fundamental rights of persons placed in solitary confinement.

128. It emerged from most of my discussions with prisoners, lawyers, representatives of the prison administration and voluntary organisations that the procedure for placing prisoners in solitary confinement depends entirely on an administrative decision by the prison director. There are no legislative provisions or regulations governing this procedure which guarantee the rights of those subject to it, particularly by ensuring that they are given a hearing and the assistance of a lawyer.

129. In principle, there is general legislation which should govern this situation. This is Article 24 of the law of 12 April 2000 on the rights of citizens in their dealings with the public administration. Under this provision, representatives of government bodies who intend to take an administrative decision against an individual citizen must in principle notify the person concerned in writing with sufficient advance notice, specifying the reasons for the procedure. The person in question must have the opportunity to submit written observations or, if he/she so wishes, oral observations and has the right to be assisted by a lawyer or a representative (approved or not). He/she may also have access to his/her file.

130. Clearly, the decision to place a prisoner in solitary confinement would normally be covered by this. However, we were told that this legislation has remained inoperative where solitary confinement is concerned. At present, therefore, the prison director retains sole discretion where solitary confinement is concerned.

131. According to what we heard in the course of our discussions, at present the prisoners concerned are usually informed immediately before the hearing of the intention to place them in solitary confinement. They usually only have an hour in which to prepare their observations before being given a hearing, without any legal assistance, by the prison director. I believe that, as things stand, this procedure must be described as being contrary to the recommendations of the Committee for the Prevention of Torture (CPT). Furthermore, the purely administrative and non-adversarial nature of this procedure greatly increase the risk of abuses of prisoners' rights. I therefore feel that there is currently a real need to introduce legislation or regulations bringing this procedure into line with European standards.

132. Furthermore, it is particularly disturbing to see that solitary confinement may be ordered for an indefinite period, despite its frequently harmful effects on the mental state of the persons subjected to it. The initial period of solitary confinement ordered by the prison director may not exceed three months. It may be extended beyond that period only after a report to the sentence enforcement board and following a decision by the regional director of prisons. In exceptional cases, solitary confinement may be extended beyond one year following an initial decision by the Minister for Justice. In such cases, the prison

director compiles a file including, among other things, the opinion of the prison doctor and of the sentence enforcement board. The minister is responsible for subsequent extensions, for three months at a time, in accordance with the same procedure.

133. As may be seen, this procedure is entirely administrative. At present, there is no judicial involvement whatsoever. Yet it is a particularly serious measure, because, although it is not recognised as punishment, the solitary confinement regime imposes significant material restrictions on prisoners' rights, not to mention its psychological impact. During the visit, I had the opportunity to talk with persons placed in solitary confinement. Some complained about the harshness of their living conditions. According to them, being unable to communicate with anyone for long periods, sometimes well in excess of a year, is hard to bear. Prisoners placed in solitary confinement have no effective administrative remedy at their disposal, and most of those I spoke to regard solitary confinement as a disguised disciplinary punishment. In the course of the visit I met people who had been in total solitary confinement for several years.

134. It is difficult not to agree with them when you see some of the restrictions placed on solitary confinement prisoners. In view of the fact that one of the requirements of the solitary confinement regime is that the prisoners concerned should have no contact with other prisoners, it is very difficult to allow them to exercise the rights vested in all prisoners not subject to a disciplinary punishment, which should clearly be the case for those in solitary confinement. For example, to allow them to use the library or a sports hall, care must be taken to ensure that no one else enters these premises at the same time. As we know, owing to prison overcrowding, it is already quite difficult to ensure access for ordinary prisoners to these services. Most of those I spoke to therefore complained that it was impossible for them to exercise the rights to which they should normally be entitled. The same applies to the possibility of engaging in a gainful occupation. In theory, prisoners in solitary confinement are entitled to that, but in practice they may only do so inside their own cell, which is highly problematical in view of the scarcity of work opportunities in general.

135. Lastly, the exercise areas available to this category of prisoners are usually the same as those used by the prisoners in the disciplinary block. We visited one such area at Fleury-Mérogis short-stay prison. It is located on the roof of one of the prison buildings, closed in by concrete walls on all sides and covered by wire netting. It is so small that it is more a room in the open air than anything else.

136. I should like to stress that we are talking here about people who are not subject to a disciplinary measure. Furthermore, the fact that a person is left deprived of the rights secured to every prisoner is purely the result of an administrative decision against which it is difficult to appeal. I therefore call on the French authorities to take rapid action to bring solitary confinement into line with European standards, in particular those upheld by the CPT. I think there is a need for legislative provisions or regulations to govern the solitary confinement procedure. The adversarial system already introduced for disciplinary punishments should apply to the solitary confinement procedure. Lastly, I think it would be in keeping with the spirit of the principle of legal certainty if a judicial

body were henceforth able to participate in the procedure, for example the judge responsible for sentence enforcement.

137. Furthermore, without waiting for legislative reform, the authorities should act to ensure that prisoners in solitary confinement are able to participate in organised activities, particularly as regards work, culture and sports. Their walks and outdoor sports activities should be organised as soon as possible in appropriate places intended for the prison population as a whole, and not for prisoners being held in disciplinary cells. Excluding prisonners from these activities amounts to a disguised punishment. Such changes are bound to lighten the already quite heavy atmosphere which I found in the places of detention visited.

138. When speaking of the problems facing prisons, we cannot fail to dwell on one which is surely amongst the most painful. This is the presence in prisons of a large number of people whose health, including their mental health, is very fragile and calls for constant and appropriate care which cannot always be provided by the prison administration.

3. Organisation of care in prison

a. Somatic diseases and addictions

139. The law of 18 January 1994 reorganised health care in prison by attaching the prison population to the ordinary hospital system and affiliating prisoners to the social security system. Out-patient consultation and care units, known as UCSA (*unités de consultations et de soins ambulatoires*), have been set up in prisons, with the medical staff being provided by the public hospitals. Sick prisoners requiring complex medical tests, hospitalisation or surgery are transferred to a public hospital. Those requiring long-term hospitalisation are committed to the prison hospital in Fresnes.

140. In each of the prisons visited, I visited the UCSA and talked to the medical staff about the main conditions encountered, the resources available to them and the problems they face on a daily basis. The situation varies from one prison to another. On the whole, these care units are well run. The UCSA at Le Pontet, which is one of the most recent prisons, has modern facilities that allow it to carry out 95% of the treatment on the spot. An X-ray room has been fitted out within the unit. Others are older and more run down, such as those at La Santé and Les Baumettes, and their facilities are inadequate. Despite the dedication and professionalism of the staff, I can only note the great disparity in access to care between the different establishments. Furthermore, it should be noted that it is very rare for the doctors to be present at the weekend, and that some prisons do not have the services of a nurse at weekends. If need be, the emergency services are called on, but many prisoners complain about the attitude of certain warders, saying that they do not call the emergency services quickly enough.

141. Generally, the out-patient consultation and care units have seen a strong growth in their activities over the past two years. For example, on average 108 out of a total of 730 prisoners visit the UCSA at Le Pontet prison every day; the doctors gave 10,826 consultations in 2004 and the nurses 19,731, to which must be added the 283 consultations at Avignon hospital and 210 admissions to various hospitals. At Fleury-Mérogis, 24,154 medical treatments were performed by the medical staff in 2004 for an average prison population of 3,160, and the nurses provided care and consultations on 32,120 occasions.

142. There are two reasons for this increase in the number of consultations. Firstly, the poor conditions of detention increase the number of health problems and their impact on prisoner morale. Many of them perceive a consultation at the UCSA as bringing physical and psychological comfort. Secondly, it is due to the changes in the prison population. For many prisoners who were experiencing social difficulties before their imprisonment, prison is the place where diseases are discovered and diagnosed. A resurgence in contagious diseases may be observed among the most marginalised groups. For example, several cases of tuberculosis have been detected in French prisons over the last few months, including two at Le Pontet. At the same time, the number of elderly prisoners is increasing steadily, which makes for increased medical activity.

143. The conditions from which these prisoners suffer call for the intervention of specialist doctors, of whom there are very few working in prisons. It would appear that the realities associated with the ageing of the prison population are still taken insufficiently into account and are not always addressed in an appropriate manner. A suspension of sentence on medical grounds for terminally ill prisoners was introduced by the law of 4 March 2002, but the criteria governing its implementation are highly subjective. I call on the authorities to have no hesitation in adopting a humane attitude towards elderly and terminally ill prisoners.

144. Lastly, according to several studies, nearly 30% of prisoners have problems of addiction on arriving in prison[12]. Alcoholism and smoking are the most common forms of dependence. Over 10% of those who declare an addiction use narcotic drugs. While intravenous drug-taking seems to have declined in scale, multi-drug use has risen very sharply. Identified addicts receive care combining substitution treatment and, if they so wish, psychological or psychiatric support. However, a comparison between the figures given above and those for the number of patients actually treated suggests some serious shortcomings in screening and the care provided: out of the 1,606 prisoners being held at Les Baumettes in Marseilles at the time of my visit, only 150 had been identified as drug addicts and were being monitored. This very low figure raises a number of questions: firstly of how to manage potentially violent prisoners suffering from withdrawal symptoms; and, secondly, realting to detoxification and release before treatment has been completed. Very few health education programmes are implemented. I feel that better

[12] Jean-Louis Terra, *Prévention du suicide des personnes détenues*, mission report at the request of the Minister for Justice and the Minister for Health, the Family and Persons with Disabilities, December 2003, p.84.

care arrangements for these prisoners are all the more necessary in that they also raise problems in terms of psychological monitoring.

145. The increase in medical activity in prisons is also reflected in the rise in the number of outside consultations and hospitalisations. Medical interventions requiring a prisoner's removal prove very complex. The some 55,000 transfers on medical grounds carried out on average every year raise obvious security problems during transport and during consultations and care[13]. The greatest difficulties have to do with the number of people involved and staff shortages. The transportation of prisoners to a hospital for a consultation takes place under the responsibility of the prison staff. It was explained to me that the number of journeys depends on the staff quota available to the prison administration to escort prisoners. It often happens that planned consultations are cancelled at the last minute because no staff are available to carry out the transfer, which is shocking as this might sometimes even pose a threat to the life of the person concerned. Fortunately, the doctors make major efforts to reduce this risk.

146. When prisoners have to be hospitalised, the police or gendarmerie take responsibility for transport, as well as for guard duties at the hospital. Sometimes, as in Avignon, the gendarmerie transport the prisoners and the police take responsibility for guarding them. Here again, hospitalisation is subject to the availability of police officers or gendarmes. While these transfers to hospital seem to raise fewer problems at La Santé or Fleury-Mérogis, located respectively in Paris and in its suburbs, the same is not true in the provinces. A prisoner at Le Pontet who had swallowed a fork had to wait three long months for an operation. Admittedly, his life was not in danger and he was very closely monitored by the doctors of the UCSA, but such a situation is nevertheless unacceptable and reflects the increasingly wide gap between the intentions embodied in the 1994 law and practice. The latter shows a glaring lack of resources, which infringes the prisoners' dignity and their rights to appropriate medical treatment within a reasonable time.

147. Furthermore, transfers and hospitalisation often take place under conditions that hamper access to care. A circular dated 18 November 2004 authorises prison directors to require handcuffs to be worn and warders to be present during the medical examination in order to minimise the risk of escape. Only women in labour are theoretically exempt from these measures. And this restriction concerning pregnant women was only introduced following a case which very recently attracted great media attention and led the authorities to undertake to refrain from this appalling practice during childbirth. The provisions introduced by this circular infringe human rights: medical secrecy is not respected; the wearing of shackles and handcuffs adds to the suffering and discomfort; it may constitute a humiliation and inhuman and degrading treatment.

[13] For 1999 and 2000, see Fatome, Vernerey, Froment and Valdes-Boulougue, *L'organisation des soins aux détenus*, June 2001, p.57; for 2005, see article entitled "Que cesse le scandale du traitement hospitalier des détenus!" (End the scandal of hospital treatment of prisoners!), *Le Monde*, 8 March 2005.

148. I am surprised at the content of this circular, given that the European Court of Human Rights has found against France twice, in 2002 and 2003, for the wrongful use of handcuffs and shackles during transport to hospital[14]. Furthermore, the figures for escapes in 2004 are no justification for imposing such measures: even if four prisoners escaped in that year while being transferred for medical treatment, that is only a very small percentage in relation to the 55,000 transfers carried out every year. I therefore call on the French authorities to take, as a matter of urgency, all the necessary measures to ensure that the transfer of prisoners on medical grounds and their hospitalisation take place in decent conditions that respect their rights and take due account of their state of health. This calls for immediate amendment of the circular of 18 November 2004.

149. The French authorities intend to make secure rooms, of the kind already found in some emergency units or other hospital departments, a general feature of all hospitals. Building such rooms will certainly make it possible to admit prisoners under better conditions. However, depending on the prisoner's particular medical condition and the treatment required, it is not always possible to place him or her in such a facility, where the comfort can only be described as spartan. Although, as things stand, this solution is not completely satisfactory because it cannot be applied everywhere and in all circumstances, it does at least have the merit of reassuring the hospital staff and not exposing prisoners to the looks of others.

150. The proposed solution for dealing with the increase in the amount of care required and the number of transfers on medical grounds is the construction of secure interregional hospital units (interministerial decree of 24 August 2000). These are conventional healthcare facilities guarded by staff of the prison administration. This seems a good idea, in that such facilities would resolve the security problems posed by outside hospitalisations. A question arises, however, regarding their ability to absorb the growing demand from prisoners for medical treatment. At first sight, the answer is negative: ultimately, eight of these units should be built, with a total of 182 beds, by 2008-2010, although the timetable has not been finalised. Only three are operating so far, in Nancy, Lille and Lyons. Moreover, many problems remain to be solved, especially as regards the organisation of transport. It would seem that the police and prison administration are having difficulty reaching agreement on this.

[14] Judgment in the case of Mouisel against France, Application No.67263/01, 14 November 2002; judgment in the case of Hénaf against France, Application No.65436/01, 27/11/2003, final on 27 February 2004.

b. Mental illnesses

i. Overview

151. In a report by Jean-Louis Terra published in December 2003, it is estimated that 55% of all new prisoners have a psychiatric problem: 30% of men and 45% of women suffer from depression, and one in five prisoners have been undergoing psychiatric treatment before being imprisoned[15]. A more recent study, published in December 2004, puts the number of people in prison with a psychiatric illness at 80%. It shows that 7% of prisoners are schizophrenic, which is seven times the percentage among the general public, and that 40% of prisoners suffer from depression[16].

152. These alarming figures were confirmed by information given to me on my visit by prison staff and doctors: in Le Pontet prison, a third of the prisoners are under somatic or psychiatric treatment; at Lannemezan, 20% of the inmates have psychiatric problems, 10% have a serious illness and 25% are under psychiatric treatment (among these, 25% take psychoactive drugs and 8% take neuroleptics); in Strasbourg, there are between 100 and 120 psychotic cases per year.

153. Another equally worrying factor is the fact that the suicide rate in prisons is particularly high. It has been relatively stable since 2002, but it has still reached an alarming level: 115 prisoners committed suicide in 2004 and 53 between 1 January and 15 June 2005. Most suicides are committed in the first six months following imprisonment. Nearly half of suicide victims were being detained pending trial. Prisoners in disciplinary cells are also more likely to take their lives. Similarly, transfers, particularly those which are not explained to prisoners and take them away from their families, can trigger suicides. The suicide rate is slightly higher among women (26.2%) than men (23.1%).

154. Some of the officials I met were very concerned about psychiatric disorders and suicides in prison. The governor and doctors at Strasbourg prison told me of their disarray when two prisoners had committed suicide on two successive days, on 8 and 9 September 2005, just one week before our visit. Neither had been identified as being potentially at risk or given any sign of what they were about to do. Preventing suicide has certainly become one of the prison staff's main tasks: they are given relevant training, and prevention work is done with all prisoners and with first-time prisoners in particular. For the latter, there is a week-long introductory period, during which they can consult medical staff at any time. The doctors at Les Baumettes prison have proposed that the number of social workers operating in the first-time prisoners' wing should be increased so that these prisoners can be given proper support. Unfortunately, this suggestion was rejected by the prison governor. It seems to me, however, that it could have helped to improve contact with the

---

[15] Jean-Louis Terra, "*Prévention du suicide des personnes détenues"* ["Preventing prisoners from committing suicide"], op. cit.

[16] Dominique Simonnot, "*La prison, un monde de détenus murés dans leur folie*" [Prison – a world of prisoners caged in their madness"], *Libération*, 8 December 2004, and Cécile Prieur, "*La majorité des détenus souffrent de troubles psychiques*" ["Most prisoners have mental illnesses"], *Le Monde*, 8 December 2004.

prisoners, contributing to efforts to identify those that are most psychologically vulnerable and to prevent suicide.

155. The number of prisoners with mental illnesses poses enormous problems, both in terms of how they should be treated, as they are primarily patients, and in terms of how they should be managed as prisoners. While the proportion of drug addicts partly accounts for this trend, it is not the only cause of the increase. There is a high percentage of sex offenders – nearly 25% of the total prison population – and numbers have risen steadily in the last ten years. This poses major problems for prison staff as some of these illnesses lead to violent behaviour towards warders and other prisoners. Prison staff are not trained to control violent people and deal with unpredictable reactions. I received many complaints from staff representatives, particularly from prison warders, concerning the dramatic deterioration in their working conditions, in response to which no genuine measures had been taken.

156. A number of changes to practice and legislation in this field are also important. The doctors I met in the seven prisons I visited agreed unanimously about the impact of the opening of psychiatric hospitals in the 1980s. They also highlighted the effects of the increasing tendency to penalise the mentally ill: since the adoption of Article 122-1 of the Criminal Code, experts have been tending to favour impaired judgment over diminished responsibility and hence to send people with mental illnesses to prison[17]. Consequently, at the beginning of the 1980s, 17% of convicted persons were held to have shown diminished responsibility but this figure had dropped to 0.17% by 1997[18], and has changed little since. Punishment seems to take precedence over treatment, which is not always provided in prison. This was already noted in a report by the Senate in 2000[19], but no serious conclusion seems to have been drawn since. Worse still, everyone I talked to said that the situation had markedly declined, as a result of all the factors described above and the flagrant lack of resources for psychiatric care in prisons.

ii. Regional Medico-Psychiatric Units

157. In 1986 specialised services called Regional Medico-Psychiatric Units ("SMPRs") were set up in certain prisons. There are now 26 such units spread among the nine regional directorates of mainland France's prison authorities. Each has 10 to 32 places. Their tasks are to detect mental illnesses, prevent suicides and provide care. Only consenting patients may be placed in such units.

---

[17] Article 122-1 of the Criminal Code, which renews Article 64 of the Criminal Code of 1810, states that "all people with a mental or neuropsychiatric disorder which has affected their judgment or prevents them from controlling their acts shall still be punished; however the court shall take account of this circumstance when deciding on the sentence and the prison regime to be applied".

[18] Joseph Minervini, "*Psychiatrie en milieu pénitentiaire: Etat des lieux*" ["Psychiatry in prison – An overview"], contribution to a conference on psychiatry in prisons, June 2001.

[19] Senate, *"Prisons: une humiliation pour la République"* ["Prisons – a humiliation for France"], 2000, p. 43.

158. However, although they are granted substantial funds, SMPRs are faced with many problems. For instance, some are housed in dilapidated buildings which are unsuitable for medical care. Les Baumettes SMPR in Marseilles has 32 beds, which are divided among 14 cells each measuring 10 sq. m. Six of these cells are occupied by three patients on bunk beds. These conditions seriously undermine the standard of treatment provided and make the carers' work considerably harder.

159. The main point to emphasise is the very low number of places available in SMPRs in the light of actual needs. This means that they have very rapidly lost any regional function and prisons which do not have their own SMPR are reduced to providing routine treatment whereas they do not always have the support of a specialised medical team. In some prisons such as Le Pontet, psychiatric units have been incorporated into UCSAs, but there are no signs of this becoming a general approach.

160. The situation is even more difficult for women, as there only two SMPRs reserved for women in the whole of France. Fleury-Mérogis prison houses one of these but offers only ten places. In mixed prisons, women do not always have access to the types of therapy managed by SMPRs. At Elsau prison in Strasbourg, the right to such therapy has recently been taken away from women. They can still consult the doctors on site, but they are no longer given the medical supervision to which they were formerly entitled. I wonder why it was decided to deprive women of treatment to which they had consented when the psychiatrists I met felt that the treatment of women and men together was working rather well. I would say that it is essential to re-establish equal treatment as soon as possible and no longer deprive women of the extra chance this gives them of receiving treatment and being more comprehensively cared for.

iii. Treatment of prisoners outside prisons

161. Far from all those prisoners requiring care and supervision in a specialised facility are able to be admitted to SMPRs. This can be because these services lack places and resources, because ailing prisoners will not give their consent (in most cases because they are afraid of being transferred to a prison far away from their family or not being able to return to their initial prison after treatment) or because they have an illness which calls for special treatment in a proper psychiatric ward. Compulsory hospital treatment in a psychiatric ward can be ordered by a prefect at the request of the governor of the prison in which the person is being detained[20]. The number of prisoners sent to psychiatric hospitals is constantly on the increase: whereas only around one hundred prisoners were committed in 1994, 1,800 prisoners were committed to ordinary psychiatric wards in 2004, not including those committed to problem-patient wards, which are sent the most difficult cases.

[20] Questions linked to compulsory hospital treatment will be dealt with below (see above, paras. 100 and 101).

- *Committal to psychiatric hospitals*

162. Committing prisoners to psychiatric hospitals raises numerous problems. The security arrangements which are applied when prisoners are sent to hospital for somatic illnesses are not provided for in law when they are confined in psychiatric wards[21] with the result that no police officers supervise such prisoners during their confinement. Most prisoners in psychiatric wards live alongside the other patients and no special security arrangements are made for them. Medical staff, who are not trained to deal with patients of this sort and who do not see this as their main function, must nonetheless, keep a particularly close watch on them as well as providing them with psychiatric care. Situations like this give rise to serious logistical and operational problems for medical teams and it is easy to understand the fears of nursing staff and the reluctance of psychiatric hospitals to take in such patients, particularly after the tragic incident in Pau and the recent escapes by a number of prisoners being held in psychiatric hospitals.

163. Conflict situations arising from the presence of prisoners in psychiatric hospitals also have an impact on prisoners' access to care: hospitalisation is delayed or cut short and it is not uncommon for a prisoner to return to prison after only three or four days in a psychiatric hospital. In such cases, it is by no means certain that the prisoner's state of health will have improved in such a short time. Furthermore, the medical staff in such hospitals, who admit that they are helpless when dealing with such patients, do not try to conceal the fact that they lock them in secure rooms even though their state of health may not warrant doing so and this affects their treatment.

- *Wards for Difficult Patients ("UMDs")*

164. Prisoners with the most serious illnesses are committed to Wards for Difficult Patients, which are much more secure than "ordinary" wards and have staff trained to deal with the outbreaks of violence to which some of the patients confined in such wards are prone. However, another problem arises when prisoners leave such wards and return to prison, where no provision is made for a smooth transition or the proper management of their illness. This is illustrated by the case of a man I talked to in the Wards for Difficult Patients at Montfavet hospital, who told me he had been there for thirty years and even claimed to be the oldest prisoner in France. According to other people I interviewed, the committee which decides on committals to psychiatric hospitals decided in 2004 that this prisoner should not be allowed to return to prison, taking the view that the patient was not ready to cope with prison again and that he could not be accommodated within a prison again in complete safety.

165. It has to be said that France does not have any appropriate facilities to deal with these types of prisoner since their problems are mostly psychiatric in nature and they cannot be returned to prison after such a long time in a specialised unit, as this may lead to a deterioration in their state of health and in turn to the possibility that they will become violent with prison warders or their fellow prisoners. The result is that, for want of

[21] See Article D.398 of the Code of Criminal Procedure.

anything better, they are kept in Wards for Difficult Patients, even if their behaviour has significantly improved.

- *Specially adapted hospital wards ("UHSAs")*

166. Law No. 2002-1138 of 9 September 2002 introduced a new system for the committal to hospital of prisoners suffering from psychiatric disorders. Taking the new arrangements for somatic care as its model, the Law on General Principles and Planning for the Justice System provides for the establishment of specially adapted wards for prisoners requiring psychiatric care. It is planned to set up 19 such wards between 2007 and 2012, providing a total of 705 beds. It is intended that these special facilities form part of health care establishments providing general health care or psychiatric hospitals. In other words, they will be the confirmation that prisoners with major psychiatric illnesses must be treated in hospital under the supervision of the prison authorities. It is planned to open the first five special wards by 2008. One will be in the region of Provence Alpes Côte d'Azur, one in Nord Pas de Calais, one in Picardy and the two remaining ones in the Ile-de-France region. They will provide 290 beds. The pace of implementation has been stepped up in response to protests by health-care professionals following the events in Pau.

167. While the principles underlying this policy seem to match the real needs of psychiatric care in prison and the security concerns of conventional hospitals, two questions arise. The first is whether it will be genuinely capable of accommodating the ever increasing numbers of prisoners suffering from serious mental illnesses. The disparity between the figure of 1,800 prisoners committed to hospital in 2004 and the 700 beds which the new special wards will ultimately provide leaves some room for doubt about this. The government's efforts should be welcomed but at the same time it has to be said that the resources allocated for the implementation of the project seem somewhat inadequate in view of the problems caused by the large number of people with mental disorders in French prisons. Accordingly, I entirely understand the fears that some of the people I talked to expressed as to the feasibility of this project, which they felt may ultimately be no more than a public relations exercise. I hope therefore that everything possible will be done to ensure that this project is genuinely implemented.

168. The second question relates to the interim period and the fact that no firm arrangements have been made for 2005 to 2008. One proposal has been to build separate wards in hospitals, which would each have four to five secure rooms allowing prisoners to be accommodated in decent conditions and providing a calm setting for doctors and nurses to work in. Plans for this kind of ward are currently being looked into at Lannemezan hospital. It seems to me that this approach has a number of potential benefits both for medical staff and for prisoners. However, in view of the extremely unsatisfactory state of psychiatric care in French prisons, it should not be regarded as a purely transitional measure. It could also be encouraged to continue and function alongside the specially adapted wards described above, to offer psychiatric care in prison the resources it currently misses so sorely and counter the threat to the smooth running of the French prison system, which is already on the verge of collapse.

V. POLICE WORK

169. Clearly, the police play a vital role in any democratic society in preserving public order and protecting citizens' rights. The police are often the first public body to which people turn when they have problems. Consequently, the image and the public view of the police are often at the root of people's perceptions about the way in which the state deals with its citizens. This is why these actions must be exemplary in all democracies. No abuse of public power should be tolerated by the state in this area otherwise the image of the state itself will inevitably suffer. The security forces should therefore co-operate with the judiciary to form the vanguard of those who champion human rights.

170. This is why, in each country that I visit, I insist on meeting police representatives from all ranks, and I made no exception to this rule on my visit to France. I visited several police stations – in Marseilles (northern district), Paris and the surrounding region (stations in the 18th and 11th districts and in la Courneuve) and Strasbourg (city centre). At the end of my official visit, I was given certain final clarifications by the French Minister of the Interior, Mr Nicolas Sarkozy, and was able to put a number of questions to him concerning matters within his Ministry's remit.

171. In my discussions with police officers, I did not hesitate to raise the subject of violent police conduct. Everyone I talked to maintained that instances of police violence were few and that everything possible was done to punish police offenders. The Police Commissioner, Mr Pierre Mutz, told me that all police officers receive training in professional ethics. He also confirmed that all complaints gave rise to a detailed investigation conducted by the National Public Services Inspectorate (IGS) or the National Police Inspectorate (IGPN). However, I have a number of lingering concerns.

1. Need to apply the principle of proportionality in police work

172. As mentioned above, the police's work in a modern, democratic society is highly complex. This is both because police officers have to cope with ever more violent conduct and because society increasingly expects police activities to be entirely irreproachable. Police activities are also attracting more and more attention from the media, who also perform an important function of civic scrutiny in their professional activities. Whether we like it or not, this is a social reality and I believe it is a positive achievement. However, it does need to be exercised with caution to ensure that the police's work is not disrupted when they are attempting to combat terrorism or serious crime.

173. At the same time the police must never lose sight of the fact that they are statutorily bound to act with the utmost regard for two essential principles of democratic societies, i.e. the presumption of innocence and proportionality. The crucial importance of these two principles is clearly reflected in the fact that they are referred to at the very beginning of the French Code of Criminal Procedure, in its introductory article[22].

174. Against this background, I should say that, although I was somewhat reassured by the statements of the highest police authorities, the situation is still delicate and the need for increased vigilance remains, as I have received a number of complaints and reports causing my concerns about police activities to grow.

175. For instance, whilst visiting the Paris suburbs, I learned about several cases of violence and rape involving police officers from the Saint Denis police station (in Seine-Saint-Denis). The spotlight has been focused on this station because of recent cases of police brutality but it is far from the only one that has been involved in violence.

176. Several people I talked to, who are members of associations or representatives of independent bodies, told me of their concerns about the increase in cases of police brutality since 2000. The number of complaints to the National Commission on Police Ethics (CNDS) had increased by 34% between 2003 and 2004. Most complaints were aimed at police officers, whereas *gendarmes*, who mainly operate in rural areas, seem to be less associated with this kind of case.

177. As regards general trends, reports by the various relevant Commissions[23] show that nearly 50% of cases of brutality occur at night, when people are stopped and questioned on the street or taken into custody. A large majority of complaints (36%) come from French nationals of foreign origin or foreign nationals and so the CNDS rightly wonders whether there is not "an element of discrimination in these breaches of professional conduct"[24]. Another point worth noting is the disproportionately high number of cases of police brutality and violence that occur in and around Paris. This tendency is accounted for by the underlying tensions in certain "difficult" neighbourhoods" and the fact that young graduates just out of French police academies are systematically posted to Paris and its suburbs.

178. I would also like to raise another point concerning the police. Apparently, police officers are not obliged to identify themselves or even to give their number when they are engaged in routine activities. In particular, they are under no obligation of this type when they come into contact with members of the public, even if they are asked specifically to identify themselves. This practice is said to derive from a custom which enables officers to keep their identity secret so that their security can be preserved. We put the question to

[22] See Code of Criminal Procedure, preliminary article.
[23] The 2003 and 2004 reports by the National Commission on Police Ethics and the 2004 report by the National Citizens-Justice-Police Commission. The latter is made up of representatives of the French League of Human Rights, the Movement against Racism and for Friendship between Peoples (MRAP), the judges and prosecutors' union, the *Syndicat de la Magistrature*, and the French Lawyers' Union.
[24] 2004 report by the National Commission on Police Ethics, p. 7.

several police officers in the street, who confirmed that they were under no obligation. Clearly, such a practice is justifiable in the context of a serious social conflict or situations in which officers' lives might be at risk, but it cannot be justified in the course of routine interaction with the public. I call on the authorities to ensure that police officers can be identified in the course of their everyday activities, at least by means of their officer numbers, particularly when they come into contact with the public.

2. **Supervision by the National Commission on Police Ethics**

179. Besides the inexperience of certain young officers, there is a more general problem with the training and supervision of police officers. Mr Pierre Truche, the Chair of the CNDS, with whom I held a long talk on my visit to Paris, considers that a particular effort has to be made in the area of supervision, and I agree entirely with him on this point. I also share his view that there is a need to overcome the excessive corporatism, which so often prevails among the police, so that a full light can be shed on cases of police brutality and violence.

180. Yet, it would seem that at present the prevailing mood among police officers is one of impunity. As a result, few cases of police violence result in convictions which are proportionate to the offences committed. Procedures are highly complicated for victims and investigations are a delicate matter. The sense of mutual loyalty between the different branches of the security forces accounts partly for the fact that statements very often match one another perfectly. In many cases, police officers anticipate the victims' complaints and file their own complaints for insults to or the obstruction of officers in the course of their duties.

181. In this difficult context, the CNDS plays a key role as an independent body and must be protected and supported at all costs. In the course of my meetings with representatives of civil society, a major meeting at the National Consultative Commission of Human Rights and my conversations with police officers, it became clear to me that everyone I talked to held the work done by the CNDS in very high esteem. This work has, moreover, begun to yield the desired results, despite the CNDS's limited resources in terms of staff and finances. It was therefore with some considerable surprise that I learnt of the financial problems that this body has been experiencing recently. Many of the people I spoke to talked of the difficulties that it had been encountering and the fact that its budget had been frozen for reasons that were not very clear. Furthermore, it would seem that of all the independent authorities that are currently operating, the CNDS is the only one to have been faced with this type of problem. Far be it from me to think that this was the price that had to be paid for the CNDS's honest, impartial, responsible and publicly lauded work.

182. I was delighted therefore to learn, in a written communication by Mr Pierre Truche himself, that the decision to freeze the CNDS's budget had been dropped and it had been able to resume its activities. Its scope for action is, however, still somewhat limited. Firstly, its material and human resources no longer allow it to deal satisfactorily with the

increase in the number of complaints. Secondly, while it is entitled to conduct investigations, it can only make recommendations. Lastly, the system of indirect complaints seems to me to be deficient. A person who has been the victim of or a witness to police brutality may only apply to the Commission through a Member of Parliament. The Prime Minister and the Members of Parliament may file an application with the Commission on their own authority, as can the Children's Ombudsperson. However, no legal provision is made for the ordinary ombudsperson to intervene.

183. It would be highly desirable to plan for a reform of the functioning of the CNDS in order to extend its powers, and back this up with a suitable increase in its budget. In view of the fact that, on 16 September 2005, France signed the Optional Protocol to the United Nations Convention against Torture, some thought should be given to the new role that the CNDS could play as a co-ordinating body for codes of conduct or even as the control mechanism referred to in the UN text.

VI. THE SITUATION OF FOREIGNERS

184. On my visits I have always set much store by the treatment of foreigners and, in particular, of asylum seekers and refugees. France is undoubtedly a country with a long and generous tradition in this area. Even today, it is still the European country which grants refugee status to the largest number of applicants, even though numbers have declined steadily over the last decade. This point deserves to be emphasised and welcomed.

185. At the same time, France, like several of its European neighbours, has recently introduced tougher legislation in this area. The Order of 2 November 1945 was repealed by that of 24 November 2004, save for two articles. It was replaced by the Code on the admission and residence of foreigners and the right to asylum, which was introduced under the Order of 24 November 2004 and came into force on 1 March 2005 (hereafter the "Code"). Generally speaking, as I have already said on several occasions albeit in other circumstances, toughening up immigration policies does entail a degree of risk. If excesses are not curbed, tougher policies can mean that asylum seekers suspected of being economic immigrants are stigmatised. Clearly, it is not my role to comment on the content of the policies pursued by the member states' governments. However, I do note – and regret the fact – that the stricter understanding of asylum now prevailing in France is likely to undermine the rights of genuine asylum seekers.

186. I looked into various aspects of the new legislation and the different stages in the procedure for those who arrive in France without the requisite papers but wish to seek asylum there. I also investigated problems linked to the removal to the border and expulsion of illegal immigrants. To do so, I visited the waiting zones at the Port of Marseilles in Arenc and the Charles de Gaulle airport in Roissy. I also visited the holding centres at Arenc and Mesnil-Amelot, near Roissy, and the one under the Paris *Préfecture*.

As well as the ministers concerned, I talked to Mr Renaud Denoix de Saint-Marc, the Vice-President of the *Conseil d'Etat*, and Mr Jean Loup Kuhn-Delforge, Director General of the French Office for the Protection of Refugees and Stateless Persons ("the OFPRA") and his associates. Lastly, I met representatives of various associations and NGOs which help foreigners. I would like to thank these people for their availability and the precious information they passed on to me.

1. **Waiting zones**

187. In France, there are 120 waiting zones in airports, ports and stations open to international traffic. A law of 26 November 2003 extended the definition of waiting zones to include any area "located near the disembarking site … to which foreigners must proceed, either as part of an ongoing procedure or out of medical necessity". The first thing that struck me when I visited the Arenc and Roissy waiting zones was their status, as the authorities seemed to take the view that they were not part of French territory. Yet, in so far as I could make out, these zones are physically located in France and not floating somewhere in outer space. Furthermore, there are a number of laws which relate specifically to such zones and establish separate rules for them and so French law should apply to them. Yet, according to the officials I talked to, this was not so – a circumstance which gives these zones an uncertain legal status which should be remedied as soon as possible so as to dispel the legal ambiguity with which they are surrounded.

a. Procedures for keeping foreigners in waiting zones

188. Three categories of foreigners may be kept in waiting zones – non-admitted persons, who have been refused entry to the country because they do not satisfy the conditions set down in the Code; foreigners in transit, whose journey has been interrupted because they have been prohibited from boarding a plane, boat or train or entering the country of destination; asylum-seekers at the border, who in virtue of the Geneva Convention constitute an exception and are not required to produce travel documents. I shall return to the so-called asylum-at-the-border procedure later.

189. Irrespective of the foreigner's status, a border police officer must notify him/her of the decision not to admit him or her onto French territory and keep him/her in a waiting zone for an initial period of 48 hours, which can be renewed once under the same conditions. Only after this four-day period is the case referred to the judge responsible for decisions on release and detention, who can decide to extend the waiting period by eight days. After this twelve-day period, the foreigner's case is presented by a legal representative to the same judge, who may extend the waiting period for a further eight days. Under no circumstances may the period in which an foreigner is kept in a waiting zone exceed twenty days. Once this period has elapsed, foreigners whom it has been impossible to escort back to the border are authorised to enter French territory on a provisional eight-day visa, on condition that they will leave France by the time this visa has expired.

190. Throughout their time in the waiting zone, foreigners are entitled to the assistance of an interpreter and a doctor and to communicate with a legal adviser or any other person of their choice. Information sheets listing their rights are available in several languages. However, on examining some of the written translations provided at Arenc, I realised that they did not all reproduce the French text faithfully. For instance, whereas the sheet in French refers quite clearly to the possibility of applying for asylum, the Russian version omits this detail. It should be possible to resolve this problem rapidly by carefully checking the translations and bringing them into line with the original text.

191. The law of 26 November 2003 introduced a major change: prior to this, foreigners had systematically been granted one day's grace, during which they could not be sent home. This twenty-four hour period often proved invaluable for people trying to put a situation that the border police regarded as doubtful in order, for instance by contacting their consulate. This day is now granted only if foreigners specifically request it by ticking the appropriate box on the list of their rights that they are required to sign. However, it would seem that some foreigners do not understand the implications of this decision, either because no interpreter is physically present or because they do not understand the legal terminology. Apparently, in some such cases, police officers have been known to take advantage of foreigners' unfamiliarity with the laws and procedures and the language used to incite them to waive this right. I consider any such pressure to be inadmissible and regard it as an even more serious matter where such techniques are used on minors, with the result, according to what I have been told, that they are sent back home even before a specific protection procedure has been set up. Manoeuvring of this type constitutes a grave danger and I would ask the authorities to amend the legislation to make it impossible for minors to waive their right to a day's grace before they can be sent home.

192. Another amendment proposed by the law of 2003 is a source of some controversy. It relates to the relocation of hearings during which judges responsible for rulings on release and detention decide whether waiting periods should be extended or terminated. The first delocalised court was opened in the immediate vicinity of the Coquelles holding centre (in Nord Pas de Calais) in June 2005, but the one at Roissy has remained closed as the lawyers and judges involved refuse to hold hearings, arguing that the room provided does not allow the hearings to be public and fails to guarantee the independence of the justice system. I entirely understand the judges' and lawyers' concerns. It is true that the room in its present state does not create the necessary conditions for a fair trial. Several of the people I talked to told me that work would shortly be beginning to separate the hearing room physically from the border police's offices and make it freely accessible to the public. Once these safeguards have been implemented, holding hearings at Roissy should no longer be a problem. I cannot see any objection, if and only if all the aforementioned requirements are met, to it being the judges who have to travel to the airport and not the foreigners who are transported to the court at Bobigny, where they wait for hours in the same place as prisoners awaiting trial, in conditions in which their dignity is not always respected.

193. A final matter to address is that of foreigners who are not allowed to enter the waiting zone. Representatives of specialist NGOs passed on several reports to me which show that gangway checks are on the increase and lead on occasion to immediate expulsion or removal to international areas of the airport terminal, preventing the persons concerned from being registered or reaching the waiting zone. The chief of the border police acknowledged the importance of checks on people immediately after they disembark from planes, which were designed to identify passengers without travel documents and possibly also to identify networks and send foreigners back on the same plane. He assured me that none of these operations gave rise to any irregularities.

194. However, consistent information I have received on this subject raises doubts in my mind about the validity of refusing to notify foreigners that they may go to a waiting zone and placing them for some hours or more in an international area at Roissy airport. In a decision of 29 July 1998, the *Conseil d'Etat* reiterated that "placement in a waiting zone [was] an obligation and failure to comply with this requirement [rendered] the procedure illegal". While practices of this sort are rarer than they used to be, it would seem that they have not been eradicated, and they are a transgression which I would call on the French authorities to combat firmly. I propose in particular that airlines be required to notify the public prosecutor's department in writing of all cases of non-admission and expulsion. This would bring all expulsion procedures to light in as transparent a manner as possible.

b. Conditions in which foreigners are kept in waiting zones

195. Most waiting zones have seen a steep decline in their activities in the last two years as the French authorities have stepped up controls further up the line, introducing airport transit visas and sending a number of liaison officers to foreign airports. The latter are entitled to check passengers' travel documents after the foreign authorities have conducted an initial check and before boarding. As a result, whereas 23,072 foreigners were held in waiting zones in 2001, only 14,291 were held in 2004. This decline has also resulted in a change in accommodation conditions.

196. The Foreigners Code states that waiting zones are accommodation centres "providing hotel-like services" (Article L. 221-2). Conditions in the waiting zones I visited at Marseilles-Arenc and Roissy airport varied. The former has room for 20 people in two separate rooms while the latter has 172 places. Neither zone was full when I visited it. There was only one person in Marseilles, and there were less than one hundred people at Roissy. I was shocked, however, to see children wandering around the corridors of the Roissy waiting zone among the adults. They were with their parents who had been placed in the waiting zone. Families had family bedrooms and access to a room for children only, containing a few games and toys. I would argue nonetheless, and I will elaborate on this below, that children should not be kept in an enclosed facility, offering little in the way of activities and few, if any, outings, and where their safety cannot be guaranteed. An alternative solution should be proposed to families with children.

197. The Arenc waiting zone has a number of flaws. The first is the fact that it is not separated from the holding centre as the law expressly requires. Furthermore, the two rooms of which it is composed are somewhat dilapidated and cramped, a characteristic it shares with the holding centre, as described below. The freedom of movement of people placed in the waiting zone is restricted to their bedroom. While the effect of the decline in the number of foreigners arriving in France has been to give more room to those who are housed in this facility, the cramped conditions, the lack of ventilation, and the extreme scarcity of outings still pose problems. Conditions are better at Roissy. This is the result of the recent renovation of the waiting zone and the fact that the number of foreigners accommodated there is steadily declining. Moreover, the zone now covers only the building referred to as waiting zone No. 3 (or "*ZAPI 3*"), as waiting zone No. 2 ("*ZAPI 2*") was already located on the site of the holding centre and has now been fully incorporated into it.

198. In both places, access to health care seems guaranteed. A nurse is present during the day at Arenc and a doctor holds consultations for several hours a day. There is a much larger team in Roissy, including three nurses, who are there every day from 8 a.m. to 8 p.m., and three doctors who work successive shifts during the day. Some residents complained, however, that they had had difficulty in obtaining treatment when medical staff were absent. Only emergencies were dealt with under these circumstances, in which case either the emergency medical services or the airport emergency services were called in. Yet, it would seem that it is left to the border police officers to assess whether a situation amounts to an emergency.

199. Since October 2003, there has been a Red Cross team at Roissy airport. Mediators from this world-renowned NGO assist foreigners after they have been notified of their rights. They listen to the problems of people kept in waiting zones and can give them legal advice. For this is one of the main problems mentioned by foreigners, namely that they do not know the rules that are applied to them and, in many cases, they do not understand French. As I have already said, some police officers take advantage of this unfamiliarity to refuse to register certain applications. The Red Cross staff have helped to reduce conflict by acting as intermediaries and offering a listening ear to people with complaints as well as material assistance. I was able to see the value of their work during my visit and welcome this initiative.

c. Asylum applications at borders

200. The purpose of the so-called asylum-at-the-border procedure is to decide whether foreigners reporting at the border without any documents shall be allowed to enter France as asylum seekers. Once such foreigners have been registered by the border police, an on-site OFPRA official examines their application. At the Paris airports, an interview is held in the OFPRA's airport offices. Elsewhere in France, applications are examined on the basis of a written record of the applicant's statements. The OFPRA official submits an opinion to the Ministry of the Interior as to whether the application is "manifestly well-founded" or not. If their application is considered to be well founded, foreigners are

allowed to enter French territory to seek asylum. They are issued a safe-conduct enabling them to submit documents supporting their claim to the OFPRA. Investigations into the merits of applications are conducted later as part of the ordinary asylum proceedings. On the other hand, if the application is found to be "manifestly ill-founded", the applicant's right to appeal has no suspensive effect and so he or she may be expelled immediately.

201. Generally speaking, there has been a substantial decline in the number of requests to enter French territory for the purpose of applying for asylum ("*demande d'admission au titre de l'asile*"). 2,513 decisions were given in 2004 compared to 5,633 in 2003[25]. It is worth noting that 95% of such requests are submitted at Roissy airport and only 2.5% at Orly, while provincial airports account for the remaining 2.5%. There is a link between this reduction and the fall in the number of foreigners placed in waiting zones. It can also be attributed to a narrower interpretation of the "manifestly well-founded" nature of applications. This is reflected by a low rate of admission to the country as a result of asylum applications. The figure was 18.7% in June 2005.

202. I was also struck by the very low number of asylum applications submitted at French ports. When I visited Arenc, I learnt that there were only some twenty applications a year. Only seven had been made from January to September 2005. On examining the register of entries and exits, I realised that illegal immigrants spent very little time in the waiting zone before being expelled. The average length of time they are kept at Arenc is somewhere between two and three days. As the senior officer who showed me around explained to me, illegal immigrants arriving by boat are often sent back the same day on the same boat they arrived on.

203. This makes me wonder whether foreigners are really given the opportunity to apply for asylum. It would seem that some stowaways are not even allowed to disembark from the ship on which they were discovered and are detained on board until the ship sets sail again. Such practices can have tragic human consequences, as illustrated by the recent story of two Congolese citizens without documents who were expelled after two days in the waiting zone without being able to apply for asylum, and protested against their treatment by jumping through one of the portholes of the ship that was taking them back to Africa. Their desperate actions caused them serious injuries, as a result of which both had to be taken to hospital. As I have already pointed out, it is a legal requirement, which must be met regardless of the circumstances, for foreigners to be taken to waiting zones, as it is to record and consider asylum applications.

2. **Asylum applications under ordinary law and asylum seekers**

204. In 2004, 65,600 applications for asylum were recorded in France. This makes France the number one destination for asylum seekers, although it has not escaped the overall declining trend observed throughout Europe in recent years. The number of initial asylum applications has indeed fallen, and this trend was confirmed in the first few months of 2005, which brought 27,000 applications, or 12% less than last year. The increase noted

[25] Data provided by the OFPRA.

in 2004 is accounted for primarily by a tripling in the number of applications for review, which were made possible by new legislation introduced in 2003 and 2004. While these new laws have made for a number of advances which deserve to be highlighted, some of their provisions have undermined the guarantees afforded to asylum seekers.

a. Asylum law reform

205. A law of 11 December 2003 and a decree of August 2004 have reformed French asylum law. Some of the new rules adopted have enhanced asylum seekers' rights, particularly when it comes to the extension of the scope of the Geneva Convention and the concept of agents of persecution. Persecution by non-state agents is now taken into account if the state concerned is incapable of offering protection to the person in danger. Secondly, the reform introduces a new form of so-called subsidiary protection. It allows persons who will be exposed to certain serious risks if they return to their country of origin to stay in France for a renewable period of one year. In such cases therefore, it is not so much motives as the possible nature of the persecution which is taken into account. Subsidiary protection seems to be rarely applied. It was offered to 83 people in 2004 and 130 in the first six months of 2005.

206. The reforms also assigned an increased role to the OFPRA, making it France's sole asylum-granting body. The OFPRA was founded in 1952 and placed under the authority of the Ministry of Foreign Affairs. It grants refugee status, offers subsidiary protection and provides legal and administrative protection for refugees and stateless persons. Its sphere of activity was extended by a decree of 21 July 2004, transferring the asylum-at-border office, which was previously attached to the Ministry of Foreign Affairs, to the OFPRA. At the same time, its budget was increased, particularly in order to tackle the 34,000 or so applications that were pending on 31 December 2001. By the end of 2004, this backlog had been reduced to 11,600.

207. In addition to these positive points, the reforms of 2003 and 2004 have given rise to a number of problems. The first relates to the shortening of time-limits. Applications for asylum under ordinary law are made at *préfectures*. Having entered France, asylum seekers must go to the *préfecture* of their choice and submit their application and collect the OFPRA forms they are required to fill in. Within the next two weeks, *préfectures* must then issue applicants with a paper known as the "admission to stay" document. This is valid for thirty days and gives asylum seekers provisional status, entitling them to emergency accommodation. In practice, *préfectures* vary enormously in their approach, causing injustices which are only likely to be eliminated if the necessary efforts at co-ordination are made. Applicants have 21 days after registering at the *préfecture* to make their application to the OFPRA; only if they submit their application on time are they entitled to a further temporary stay permit, which is valid for three months and renewable. The deadline for submitting the application to the OFPRA was previously one month.

208. In the opinion of many of the representatives of associations I met, the shortened time-limit does not give applicants enough time to fill in the forms, assemble the documents required and prepare a coherent account. Furthermore, as was pointed out to me by the people I met from the organisation, *France Terre d'Asile*, the paper given to asylum seekers at the *préfecture* does not include any mention of the 21-day time-limit. It is mentioned in the explanatory note joined to the form but this is only provided in French. Confusion is also created by the fact that the temporary residence permit issued on registration at the *préfecture* is valid for thirty days. Lastly, whereas, in 2003, one of the defining features of the French system was the length of time it took to process asylum applications, the abrupt shortening of procedures introduced by the new legislation might raise some doubts as to the standard of the accelerated processing of applications.

209. The 21-day time-limit would probably be acceptable if the reform had not included another requirement, which I would describe as discriminatory, namely that the forms submitted to the OFPRA must be completed in French to be taken into consideration. This means that applicants who do not have the necessary language skills have to employ a translator at their own expense, which is a very costly process. Asylum seekers who have no French, or not enough to draft a coherent, structured text, have drastically reduced chances compared to French-speaking applicants. Clearly also, most asylum seekers will not have enough money to pay an interpreter or translator. This measure is also totally at variance with the Order of 1945, under which interpretation must be provided.

210. I call therefore on the French authorities to reconsider their position and, if they continue to insist on the use of French, to offer non-French-speaking asylum seekers the linguistic assistance they need to submit an application in due form.

b. OFPRA procedure

211. If all the right papers are submitted with the appropriate supporting reasons, the application is registered and the procedure continues. The applicant's account and motivations are examined, an investigation can be conducted and the applicant is invited for an interview. If, however, the application is incomplete, does not meet linguistic requirements or is submitted late, the asylum seeker's application will be refused. If this happens, a further application can be made, but this is examined under the priority procedure described below. Lastly, if the application and any appeal have been rejected, applicants may apply for the decision to be reviewed, if and only if they have new evidence or new documents. The same procedure is then applied as in first instance cases. The number of applications for review has been increasing steadily since the new legislation came into force.

212. The increased resources placed at the OFPRA's disposal have allowed it to invite more asylum seekers for interview. In the last quarter of 2004, 82.4% of initial applicants were invited and the overall percentage (for initial applications and reviews) was 73%. This trend seems to be continuing, with a rate in the first six months of 2005 of 81%. The

amount of interviews actually conducted has also been rising, increasing from 49% in 2003 to 58% in June 2005. The disparity between numbers invited and the actual number of interviews can be accounted for in part by the fact that applicants are required to report to the OFPRA's offices at their own cost. This rule also covers asylum seekers living outside Paris, who do not always have the means to travel to Paris. Some thought should be given to the possibility either of reimbursing applicants' travel expenses or of opening up OFPRA branches elsewhere in the country. The latter possibility needs to be looked at closely as the OFPRA officials I talked to said that the number of applications made to *préfectures* in the provinces is steadily increasing. It seems to me that it would be to everyone's benefit for three or four regional branches to be opened so that all applicants would be relatively close to one of them and could report for their interview without having to spend a large sum of money on a ticket.

213. A number of comments need to be made regarding interviews. My colleagues and I were able to attend several interviews and we all noted the professionalism of the OFPRA officials given the task of conducting these interviews to ensure that the applicants' statements are consistent. Each specialises in a geographical area, albeit a wide one, and most know the countries from which applicants hail in considerable detail. Interviews last an hour on average and applicants can ask for the assistance of an interpreter at the OFPRA's expense. In this connection, one of my colleagues noticed that one of the interpreters translating from Russian to French was not always translating the applicants' words accurately. Most people applying for asylum have experienced tragic and complicated events and so it is important that interpreters are employed who have knowledge both of the language and of the situation of the countries concerned so that technical words, acronyms and expressions referring for example to a military unit are accurately translated and geographical places referred to by the applicant almost without thinking are properly located. This type of approach, which has been observed by my colleagues in other interview situations, is the only way of ensuring that the events described by the interviewee are properly understood.

c. The Refugees' Appeal Board (CRR)

214. In 2004, the OFPRA approved 9.3% of all initial applications, with the result that 6,358 asylum seekers were granted refugee status. This rate seemed to be declining slightly in 2005, being at 7% in June 2005. Rejected applicants may appeal to the Refugees' Appeal Board, which serves as a kind of appeal court on such matters. Appeals must be filed no more than one month after the OFPRA has notified the applicant of its decision. It is clear that this possibility is being increasingly taken up by applicants. In 2004, the Board dealt with 51,707 appeals. Lodging an appeal has the effect of extending the applicant's residence permit. The Appeal Board has been allocated additional resources to process the flood of appeals (some 47,000 cases in 2004). This is of course a highly positive development.

215. It should also be a source of satisfaction that the United Nations High Commissioner for Refugees has been given an important role in the appeal procedure, as one of the assessors on this collegiate judicial authority is appointed by the UNHCR and takes part in its deliberations and decisions. This is an encouraging forward step.

216. However, I was told me of two major problems with the Board. The first is that, since the reform, it has been possible for the President of the Board to issue an order on the basis of a report. Deciding a case in this way strips the decision of its collegiate nature and precludes an oral hearing. Furthermore, applicants have no means of arguing their case, as they do under the usual Appeal Board procedure. According to the UNHCR representative in France, Mr Mohamed Boukry, up to 28% of cases are decided by order. Decisions taken by order are not supported by reasons and the criteria governing them are nebulous. It seems to me that the Board's increased workload can be no justification for the widespread use of orders, as the practice could be abused.

217. The second problem raised was the recurring differences of opinion between the OFPRA and the Appeal Board. Applications from Bosnia and Herzegovina provided a good illustration of this, as most nationals of this state were rejected by the OFPRA, whereas 78% of their appeals were allowed by the Appeal Board. If it disagrees with the OFPRA, the Appeal Board has the power to grant the applicant refugee status. Consequently, it has a corrective role, raising the total rate of acceptance to 18% (initial applications and appeals combined). Given this, it is regrettable that the OFPRA does not always follow the Board's case-law. For some applicants, this merely adds to the formalities, as for some, like the Bosnians, an appeal to the Board has simply become a routine part of the process of being granted asylum.

218. It would seem that in late November 2005 the French government indicated that it was planning to reduce the time-limit for applications to the Appeal Board to two weeks[26]. This additional shortening of time-limits does not seem to me to be a step in the right direction. Bringing an appeal involves quite burdensome formalities. Rejected applicants must, in particular, prepare a letter in French in which they explain the reasons for their appeal, fill in a new set of forms and assemble the documents required by the Board. They are given neither legal nor linguistic assistance. As a general rule and in addition to my previous comments, it seems to me that the provision for legal aid should be extended, as it is currently only provided for foreigners who have arrived in France legally.

219. Furthermore, in my discussion with Mr Renaud Denoix de Saint-Marc, the Vice-President of the *Conseil d'Etat*, reference was made to the need to extend the independence of the Appeal Board from decision-making to its budget. The Board had *de facto* independent decision-making powers but, administratively, it was still part of the OFPRA set-up and financed from the OFPRA ordinary budget. Although this link appears to be a purely logistical one, I agree that in order to secure and enhance the total independence of this appeal body, it should also be financially independent.

---

[26]Marie-Christine Tabet, "*Immigration: la course aux projets de loi*" ["Immigration – the race to adopt bills"], *Le Figaro*, 22 November 2005.

d. Social rights of asylum seekers

220. The temporary residence permits issued to asylum seekers give them certain rights. For instance, they have access to the housing provided under the national asylum system and, under normal circumstances, should be housed in one of the specialised asylum seekers' reception centres ("CADAs"). On 1 January 2005, there were 15,719 places in these centres, supplemented by 1,000 or so places in the 28 temporary accommodation centres scattered around the country. There is not enough room, however, for all applicants in these accommodation facilities and so social services are forced to house some in emergency accommodation centres or in down-market, insanitary hotels, which can even be dangerous, like the Paris Opéra hotel, where a fire in April 2005 left 24 dead. Some are taken in by friends or family but others find themselves on the street.

221. Housing is a key issue for two reasons. Applicants need an address to claim social benefits and, in particular, to obtain health cover. Several associations run centres which offer addresses to asylum seekers without a place in a CADA or other stable accommodation. I visited one of the centres run by the association *France Terre d'asile*, in rue Doudeville, Paris, and was impressed by the work done by its employees. Some 12,000 applicants have their address here and around 1,200 of them come in every day to pick up mail and seek information on emergency accommodation or legal advice. These centres have become a key component in the mechanism for the management of asylum seekers and are made all the more important by the fact that, under decrees adopted in 2004, applicants are required to prove that they have a proper address for their temporary residence permit to be renewed. As the National Consultative Commission of Human Rights noted in an opinion of 17 June 2004, this new provision merely makes things more difficult for applicants, particularly in view of the general lack of social housing.

222. Secondly, surveys conducted by several associations show that asylum seekers' chances vary according to the facility in which they are accommodated. During a very interesting conversation with representatives of *France Terre d'asile*, I was told that as a whole, those who had secured a place in a CADA had a dual advantage in that they are given legal and administrative support at their place of residence for all the formalities they must complete and, although they are not entitled to an integration allowance, which is restricted to persons housed in accommodation other than CADAs, they do have automatic access, subject to their income, to universal medical cover (CMU) and the related supplementary insurance scheme. As a result it is estimated that an applicant accommodated in a CADA is five times more likely to be granted refugee status. Sixty to 80% of asylum seekers in CADAs are granted refugee status compared to a national average of 16%. Yet, the situation in CADAs is complicated still further by the fact that certain categories of people who are supposed to have left them are still there, i.e. official refugees who cannot find housing and rejected asylum seekers, who sometimes take several months to leave. There are therefore major disparities in access to refugee status. Stability and the proximity of administrative and legal support increase certain applicants' chances. Clearly it would be unrealistic and idealistic to insist that the ten or so thousand missing CADA places should be created, but, nonetheless, it seems essential to me for some thought to be given to ways of securing equal treatment for all asylum seekers.

e. List of safe countries of origin

223. On 30 June 2005, while discussions remained deadlocked at European level, the OFPRA adopted a list of 12 countries said to be "safe" and regarded as respecting human rights: Benin, Bosnia and Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Mali, Mauritius, Mongolia, Senegal and Ukraine. Both the principle and the composition of this list raise a number of questions. I doubt very much whether all these countries can be considered safe countries of origin. On this point I fully share the concerns expressed to me by the representative of UNHCR in France, Mr Mohamed Boukry, particularly as these countries continue to produce refugees.

224. Inclusion on the list of safe countries of origin has significant consequences for asylum seekers who are nationals of one of these countries: their applications for temporary residence permits are systematically refused, so that they are deprived of the social rights granted to ordinary asylum seekers and their applications are processed under a priority procedure.

f. Priority procedure

225. The priority procedure is an expedited procedure for examining asylum applications. It concerns several categories of asylum seekers. The first is that of asylum seekers whose applications the OFPRA has refused to register and who have been notified that they are not allowed to stay, either because their application was considered fraudulent, unreasonable or dilatory or because the *préfecture* considered that they constituted a serious threat to public order. The second category is that of asylum seekers in holding centres, an issue that I shall address in detail further on. Thirdly, the priority procedure concerns nationals of countries regarded as "safe". Lastly, it may be applied to requests for review of a decision. Although not all reviews are dealt with under priority procedure, 63% of them are.

226. Since 2002 there has been a steady increase in the amount of cases dealt with through the priority procedure: they accounted for 8.3% of total applications in 2002, and 18% in the first five months of 2005. This increase is firstly due to the very broad manner in which some *préfectures* interpret the concept of fraudulent, unreasonable or dilatory application. Secondly, the application of the priority procedure to nationals of safe countries of origin is a major contributing factor. The UNCHR also fears that it may be almost automatic for persons who have recently arrived in France and who are stopped and questioned for various reasons on the public highway when they have not yet filed their applications with the OFPRA.

227. This procedure has been speeded up still further with the introduction of very strict deadlines: asylum seekers have two weeks to submit their application completed in French to the *préfecture* (circular of 22 April 2005); the OFPRA then has two weeks to decide (decree of 14 August 2004). According to the figures supplied by the OFPRA, it deals with priority procedures concerning initial applications in an average of six days (3.8 if the asylum seeker is in an administrative holding centre) and in less than four days if a decision is being reviewed. The proportion of asylum seekers called to interview rose somewhat throughout 2004, from 20% in July to 35% in December, but it remains small.

228. These deadlines seem to me extremely short for a careful examination of applications. I also consider them incompatible with the requirement that asylum seekers file their applications in French. The rate of acceptance under priority procedure is insignificant since it concerned only 1.8% of applications in 2004 (2.7% of initial applications and 0.8% of requests for review). This means that the priority procedure is far from providing the same safeguards as asylum applications under ordinary law. In the final analysis, it offers asylum seekers only minimal chances: the appeals they can lodge with the Refugees' Appeal Board do not have a suspensive effect on the rejected applicants' expulsion.

229. France therefore has a two-track system of asylum applications, which tends to be reinforced by the recent asylum reforms and the mistrust generally surrounding foreigners. I consequently wish to point out that a priority procedure must absolutely not become a special procedure. While some formalities can indeed be speeded up in the light of the data in some applications, the priority procedure must not become a summary procedure and each application must be fully and carefully examined.

g. Rejected asylum seekers and access to State Medical Aid

230. Foreigners whose asylum applications are rejected have one month to leave French territory. This provision is very rarely complied with and most rejected asylum seekers then remain in France unlawfully or become immigrants with no legal status. It is estimated that between 200,000 and 400,000 people are currently living unlawfully in France. Many of them are destitute, have no access to assistance and live in constant fear of deportation. The difficulties they encounter and the problems they pose in terms of both undeclared work, housing conditions and in some cases crime call for urgent discussion and comprehensive action to improve these people's circumstances.

231. Yet recent developments give the most serious cause for concern. Hitherto, immigrants with no legal status were entitled to State Medical Aid (AME), a part of Universal Medical Coverage (CMU), which gave them access to health care. Several decrees reforming the AME were adopted in 2004, then in July 2005, abolishing immediate access to the AME and making access more complicated. The first reforms affected children and adolescents, introducing a requirement based on length of stay, except in life-threatening emergencies. Following reactions from numerous associations, institutions and organisations, including condemnation by the European Committee of

Social Rights, the French Government stated in the circular of 16 March 2005 that all care provided to minors in a hospital environment was regarded as meeting an emergency, but the principle introduced by this reform has been maintained. Thus, since the 2005 decrees, each patient has had to prove that he/she has been living in France for three months. Asking persons living unlawfully in France to provide such a document is absurd and may deprive them of access to care or delay treatment, thus jeopardising its chances of success. I call on the French authorities to reverse this provision, which can have tragic consequences, without delay.

3. Administrative holding centres

a. Procedure for placement in administrative holding centres

232. Administrative holding centres for foreigners (hereafter referred to as CRAs) were set up in 1981. They accommodate foreigners subject to a judicial removal measure (removal to the border) or an administrative one (deportation order), foreigners who have been banned by a court from remaining on French territory and foreigners under an enforceable removal measure taken by one of the European Union member countries and reported to the Schengen Information System to ensure that they are not readmitted. The purpose of detention is to organise the deportation measure when it cannot be carried out immediately. There are currently 18 CRAs in mainland France (excluding the overseas *départements* and territories).

233. The law of 26 November 2003 altered the rules governing administrative holding centres and extended the maximum length of detention from 12 to 32 days. A foreigner awaiting removal to the border or banned from remaining on French territory is placed in a CRA for 48 hours by decision of the *préfet*. At the end of these two days he or she is brought before a judge responsible for rulings on release and detention, who can extend detention by two weeks. After that period the matter is again referred to the judge, who may decide to further extend detention by two weeks. The foreigner may at all times appeal against his or her detention, but the appeal does not have a suspensive effect.

234. In addition to the 18 CRAs in mainland France, there are administrative holding facilities. According to the CIMADE they increased in number in 2004. These facilities, which are set up by order of the *préfet* for a more or less determined duration, are usually located in police stations. They temporarily accommodate foreigners whom it has not been possible to place in a CRA immediately. In theory such foreigners cannot be held for more than 48 hours, but this provision does not always appear to be observed. Furthermore, living conditions in some of these facilities are far from meeting basic standards.

b. Conditions of detention

235. The conditions of detention I was able to observe vary from one CRA to another. The detainees I met in the three centres I visited reported common difficulties such as the fact that they are kept in the dark about developments in their applications or that they were subjected to violence when stopped and questioned before being placed in a CRA.

236. More specifically, the detainees in the Marseilles-Arenc centre complained of the lack of hygiene, the difficulty of gaining access to health care, the infrequency with which they were allowed out into a tiny fenced courtyard and the cost of phone cards and other products available from vending machines. I was, incidentally, surprised by the price of the cigarettes sold by a vending machine, which substantially exceeded the price normally offered by tobacconists. The administration explained that the price was set by a private firm. Unless this is the firm's way of contributing to the anti-smoking campaign and to detainees' health, I rather had the impression that this was an unscrupulous attempt to make money out of people's misfortune. A public administration must not allow such conduct under its auspices. In the Mesnil-Amelot CRA, at least, the price of the cigarettes sold in vending machines was strictly aligned on those practised by tobacconists.

237. To return to the general conditions observed in the Arenc centre, I am bound to note that the cramped nature of the facilities and their location on the top floor of a large warehouse are not signs of good conditions of detention. When I visited the centre, 59 foreigners including four women were held there for a capacity of 60 places. The common room, which was for men only, was small, smoky and very poorly ventilated – an example of the generally dilapidated state of the building. Generally speaking, I cannot but emphasise the necessity of closing down the Marseille-Arenc centre without delay, in August 2006.

238. Overall conditions are better at Mesnil-Amelot, despite the constant noise of aircraft taking off and landing on the runways of Roissy Charles de Gaulle airport, in which the CRA is located. Although hygiene problems were reported to me, there are obvious improvements due to the recent refurbishment of the centre. The 140 to 160 detainees can move around freely in the CRA, which covers 3.5 hectares, from 7am to 8pm. At other times they are confined to each of the six buildings, but can still go out into the courtyards surrounding the dormitories. Men and women are accommodated in separate buildings, but can spend time together during the day. Detainees have access to sports activities and to a library run by the Red Cross.

239. Conversely, the situation in the men's holding centre located under the holding facility (*dépôt*) of the Palais de Justice in Paris is disastrous and unworthy of France. I am pleased to have ultimately been able to visit these premises, which I was absolutely set on doing, despite a few initial problems which were apparently due to organisational difficulties. The CRA is located in the basement and consists of two floors, both equally dilapidated. The premises are very cramped and poorly lit; hygiene is sorely lacking and the sanitary facilities are in a disgraceful state. Television is the only occupation offered to detainees, who admittedly have access to a courtyard, but measuring only a few square metres. Moreover, almost a third of the ground surface of the courtyard is covered by a grid looking down onto the courtyard intended for the detainees, occupying the lower basement. The courtyards, if such places can be described as such, are the sole source of natural light. The detainees held in the lower basement can see nothing but the shoes of those in the upper basement and the cigarette ends caught in the grill. These inhuman and degrading conditions are unacceptable for the detainees placed there, but also for the officials working there. It is a matter of great urgency to close down this place, which is in itself a blatantly serious violation of human rights. I hope that its closure, which was announced some time ago, will take effect as soon as possible. As I told the Minister of the Interior and the Préfet de Police, no delay can be tolerated because a place of this kind at the heart of the French judicial system remains unacceptable.

240. The women's facility is in a much better state. It is clean and better ventilated and offers more acceptable conditions to the 12 women held there at the time of our visit. It is simply regrettable that the open-air exercise yard, which is a few corridors away from the rooms and common areas, is not freely accessible. In any event, I am bound to draw attention to the remarkable work done by the nuns of the religious congregation who, in co-operation with the prison authorities, look after the women's area of the CRA in the Paris holding facility.

241. Generally speaking, access to health care is provided in all the CRAs I visited. I was impressed by the professionalism of the nurses and doctors working in the centres at Arenc, Mesnil-Amelot and the holding facility in the Palais de Justice in Paris, and also appreciated the work, legal advice and assistance provided by the CIMADE in the first two centres I visited. This association also has a branch in the CRA in the holding facility of the Palais de Justice in Paris, but it is open only a few hours a day. Lastly, officials of the National Agency for the Reception of Foreigners and Migration (ANAEM) are on duty at each of the centres. Their main task is to explain to foreigners, on arrival, the procedures for requesting asylum and the manner in which the CRA functions. At the same time, I had the impression that the detainees I was able to talk to seemed to prefer the assistance and advice given by the CIMADE representatives to that given by the ANAEM officials. According to some detainees I questioned, the latter rather gave the impression of wanting to dissuade them from requesting asylum than of helping them with their applications. In any event, the presence of these institutions and associations and the fact that they give detainees someone to talk to greatly helps to alleviate the very palpable tensions in each of the centres I visited.

242. These tensions stem from the conditions of detention and the overcrowding generated by the growing number of removals and the increase in the length of detention; they are also a consequence of the increase in the CRAs' holding capacity and the growing promiscuity. Some of them are also due to the very strong resentment expressed by some of the detainees. While 20 to 40% of these, depending on the centre, had just left prison, some detainees were stopped and questioned "by chance" on the public highway or during identity checks conducted in neighbourhoods known to accommodate large numbers of persons living there unlawfully.

243. Most of the latter had been in France for several years and had jobs, housing and in some cases families. They forcefully told me about their feelings of bewilderment and helplessness when informed that they were soon to be deported to a country with which they had very few remaining ties. It is not my role to give an opinion on France's immigration policy. However, I note that the increase in holding centre capacity, which is sometimes effected artificially without actually enlarging the facilities, changes the nature of these centres and generates strong tensions among detainees and between the detainees and the police or gendarmerie officers guarding them. I am somewhat puzzled at the plan to build a 290-bed centre at Vincennes and I wonder how such a large centre will be able to provide detainees with decent conditions of detention.

c. Asylum applications in administrative holding centres

244. I was concerned about the procedure for requesting asylum when in a holding centre. It was explained to me that foreigners placed in holding centres can apply for asylum only within five days of their admission and of the written notification of their rights. The asylum application is forwarded by the police, the gendarmerie or the CIMADE to the competent *préfecture*, which sends the detainee an application form. The application is then processed by the OFPRA under priority procedure. Yet the OFPRA has no branches in the CRAs, even though numerous asylum applications are submitted there: 675 at Mesnil-Amelot between January and December 2005 and 30 to 40 at Arenc in the first half of 2005.

245, In addition, as mentioned above, under the new provisions introduced by the Code on the Entry and Residence of Foreigners, applications have to be entirely completed in French. Non-French-speaking detainees therefore have to secure the services of an interpreter and pay for them. However, even if they can afford it, which is seldom the case, it is very difficult to find an interpreter who will agree to go to a holding centre at such short notice. This is even harder in the case of little-used languages. Representatives of the CIMADE at the Mesnil-Amelot CRA told us that an Iranian held in the centre in summer 2005 had submitted an asylum application and sought an interpreter, whom he was able to pay, but could not find one. He sent his application to the OFPRA, explaining why he had been unable to fill in the forms in French. His application was rejected and he was removed to the border at once. This story is self-explanatory. No one even tried to understand the reasons why this man had submitted an asylum application, quite simply because the form had been completed in a language other than French and because the

formal requirements were not met. It is truly appalling to take account of form alone, disregarding the fate of the human being behind it. Unfortunately, however, the current rules increasingly tend to encourage such conduct.

246. The overwhelming majority of rejections by the OFPRA are due to the failure to comply with the language provision. The CIMADE also points out that the *préfectures* frequently fail to forward applications to the OFPRA when they are not completed in French. The very specific context of the holding centres and the very short time-limits granted to asylum seekers held in CRAs should encourage the French Government to review this language requirement and speedily introduce a reform to that effect.

247. Besides these major language difficulties, there is the problem of the OFPRA's processing of asylum applications. On receipt of the application, the OFPRA has 96 hours to decide on it. While it has admittedly made an effort to improve the proportion of detained persons called for interview, the rate remains very low and rather random. The acceptance rate is infinitesimal: of the 675 applications submitted by persons held at Mesnil-Amelot between January and September 2005, only four were accepted according to the figures supplied by the CIMADE representatives on the spot. Overall, the OFPRA rejects 90% of asylum applications submitted in holding centres. Furthermore, as in the case of the priority procedure, the appeals that foreigners are entitled to lodge do not have a suspensive effect.

248. The processing of an asylum application submitted in a CRA does not offer the same safeguards as an application lodged in another context. The OFPRA advocates using video-conferencing to increase the rate of calls for interview and avoid transferring detained foreigners to its premises for interviews. This solution is acceptable only if it gives asylum seekers the same guarantees, especially in terms of interpretation. In my view, setting up OFPRA branches in the holding centres, along the lines of those in the waiting zones, would ensure greater fairness in the processing of applications. I invite the French authorities to consider it.

d. The small proportion of detainees removed to the border

249. Foreigners are held for an average of 8.5 days at Arenc and 11 days at Mesnil-Amelot. However, almost 25% of persons detained at Mesnil-Amelot remain there for more than 17 days. If a foreigner has not been removed after 32 days of detention, he or she is released and given a seven-day safe conduct together with an order to leave French territory. Few people comply with this requirement and many go on to swell the ranks of migrants remaining unlawfully in France.

250. According to the statistics supplied to me by the CRAs I visited, only about half of the foreigners placed in a CRA are actually deported: 46% of the persons held at Mesnil-Amelot and 54% of those held at Arenc. The figure is steadily rising, and rose from 20% in 2001 to almost 50% in 2004; 11,500 foreigners were deported in 2004 and 7,885 in the first half of 2005, ie 22% more than during the same period in the previous year. The

increase in the number of removals is due to the hardening of legislation on foreigners and to an added emphasis on removals. The Minister of the Interior asked that 50% more foreigners living unlawfully in France should be removed to the border in 2005 by comparison with 2004. Setting quotas is a disturbing practice which is liable to result in the use of devices such as mass arrests in targeted zones to meet the stated objectives, stopping and questioning persons who come to the *préfecture* to deal with their formalities, and various abuses.

251. There can be several reasons for not removing a foreigner. Firstly, the administrative court may set aside the deportation order. Secondly, the person concerned may obstruct his or her identification. Foreigners who persist in refusing to identify themselves may be tried and sentenced to a prison term. The same applies to foreigners who refuse to be removed. In this case, on leaving prison, they will be directly sent to an administrative holding centre for a further attempt to remove them to the border.

252. A further reason for not removing a foreigner may be failure to co-operate on the part of the consulate of his or her country of origin. If the person concerned has no travel documents, he or she cannot be deported or removed to the border unless the consulate of the country of origin issues a pass. This means that the consulate must first ensure that the foreigner concerned is indeed one of its nationals and must officially recognise him or her. As my contacts themselves admitted, co-operation with consulates is uncertain. Some refuse to co-operate, making it impossible to remove their alleged nationals to the border. Some countries have no diplomatic representatives in France and cannot therefore perform the official recognition which is a prerequisite for issuing a pass: Surinam, for example, has no embassy in mainland France and only one consulate in Cayenne. Yet even if the consulate's negative answer is speedily received, it would seem that in most cases foreigners are held for 32 days, then released. Placement in a CRA is then tantamount to a penalty imposed on the foreigner concerned. Criminalising foreigners is extremely harmful and leads to inextricable situations in which these persons, who are in no sense offenders, are treated as if they were guilty.

253. Several detainees told me they had repeatedly been brought to the consulate of the country of which they had said they were nationals in order to speed up the procedure. Some of those who refuse to state their nationality or have no documents corroborating their claims are brought to the consulate of their presumed country of origin. One person even complained that he had been brought to a different consulate from that of the country of which he had said he was a national. These practices are disturbing because they reveal a strategy of aiming for removal at all costs. Occasionally a foreigner may be brought to the consulate although he or she has filed an asylum application on arrival at the CRA to which the response is still pending, which is a serious breach of procedure and entails a risk to the foreigner.

e. The presence of children in administrative holding centres

254. Several persons raised another issue which I consider important and which is indicative of the failings of current practices directed at foreigners: the placement of children in holding centres. The Senate even considers that the presence of minors in holding centres is becoming standard practice[27]. More and more families are subject to removal measures. There may be several reasons for this: either the parents do not have the necessary documents to remain in France and can be deported; or they have filed an asylum application in another European Union country and are being returned there under the Dublin Convention. All of these may be placed in a holding centre until their removal to the border or their transfer is organised.

255. Placing children in holding centres is contrary to the United Nations Convention on the Rights of the Child and to French law, which provides that under-age foreigners cannot be removed to the border (section L.511-4 of the Code on the Entry and Residence of Foreigners). Yet a legal vacuum makes it possible to place children in CRAs and deport them, on the grounds of concern not to separate them from their families. The French authorities nevertheless appear to completely underestimate the legal and humanitarian problems posed by the presence of children in holding centres.

256. There are unfortunately all too many cases of children placed there. The Ombudsperson for Children, Ms Claire Brisset, told me about very young Roma children placed with their mothers in the Bobigny holding centre. This centre is admittedly equipped with special beds and changing mats, but provides neither nappies nor suitable food. The supplies needed for the care of infants had to be brought in by volunteers from outside. As no provision is made for it in the rules and regulations, each centre manages the presence of children according to its own resources, which results in extremely difficult situations.

257. Conditions in the CRAs are precarious and placing children there poses obvious security problems. Very few centres are equipped to receive them. In any event, no children should be detained on the grounds that their parents do not have the necessary papers to remain in France, in places marked by overcrowding, dilapidation, promiscuity and very strong tensions. The placement of children in CRAs raises legal questions, yet it would seem that compulsory residence orders, which are provided for by law, are little used.

258. Another practice causes me the greatest concern: the fact that children are "stopped and questioned" in the presence of one of their parents, or even in their absence. I heard several consistent accounts of children being taken from school or from their homes by police officers and taken to the police station to join their parents or, worse still, to compel their parents, who were under a deportation order, to go there. This illegal practice is also traumatic for children and proves that no distinction is made between

[27] Sénat, Proposition de Résolution tendant à la création d'une commission d'enquête sur les conditions de rétention et de placement en zone d'attente des mineurs étrangers (Motion for a Resolution on foreign minors' conditions of detention and placement in waiting zones), Appendix No.130 to the minutes of the sitting of 17 December 2004.

minors and adults. Children are victims of the criminalisation of foreigners in the same way as adults, and their rights under the United Nations Convention on the Rights of the Child are not respected. I call on the French authorities to bring detention practices into line with French legislation and with the instruments France has signed.

4. Allegations of assault during deportations and removals to the border

259. Deportation or removal to the border is sometimes marked by violence. About 17% of deported persons are escorted by officers of the border police (PAF), who told me that they used proportionate means. I have no doubt as to their professionalism, but I have received reports of cases in which excessive force was used, either against foreigners placed in waiting zones and removed to the border or against persons held in CRAs and deported.

260. During its visit to Roissy airport from 17 to 21 June 2002, the CPT heard several allegations of ill-treatment and blows when foreigners boarded an aircraft or were transferred to the aircraft from the waiting zone or the holding centre[28]. The doctors at Roissy also told me that when they found marks indicative of blows, whether on the foreigner's arrival or after he or she had refused to board an aircraft, they drew up a medical certificate which they gave the person concerned. The prosecuting authorities do not appear to be notified unless an assault affects a child or someone has been raped.

261. As I have already said in the case of police violence, insults, blows and other forms of ill-treatment are unacceptable and must be punished. The Minister of the Interior showed great sensitivity on this point. He proposed that each deportation should be filmed to reduce any risk of disproportionate use of force and any false allegations of ill-treatment. This would demonstrate the French authorities' concern to put an end to these entirely reprehensible practices. It might also be possible to forward to the public prosecutor all medical certificates testifying to signs of assault, in order that investigations might be conducted without delay.

5. "Charters"

262. In July 2005 France, the United Kingdom, Germany, Italy and Spain decided to introduce European charters to return foreigners whose papers are not in order to their countries of origin. A "specially chartered aircraft" took off for Afghanistan with 40 persons on board. France had already carried out mass deportations of this kind in 2003, although they had been strongly criticised by the National Commission on Police Ethics and ruled contrary to French law by the Conseil d'Etat. Besides the serious problems of lawfulness raised by the organisation of such flights, one issue seems to me of key importance.

[28] Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants du 17 au 21 juin 2002, CPT/inf (2003) 40, Strasbourg, 16 December 2003.

Collective returns of this kind can take place only if the situation of each deportee has first been examined on a case-by-case basis.

263. Secondly, although the charters are partly designed to reduce the tension attendant on making a deportee board a commercial flight, some of the persons returned by charter in 2003 remained handcuffed at the beginning of the flight. The presence of a Red Cross official admittedly helped calm things down on both sides. The Red Cross decided to withdraw from the July 2005 flight at the last minute, but its representatives were considering whether to take part in the next charter flight. It seems to me that the presence of an outsider provides additional safeguards for the conduct of these flights and should be carefully reviewed.

VII. THE SPECIFIC SITUATION OF MINORS

1. Under-age offenders and the debate on criminal responsibility

264. The judicial system for minors, which concerns juvenile delinquents and children in danger, is governed by the Order of 2 February 1945. This order introduced the concept that education prevails over punishment, together with the system of specialist courts and the extenuating circumstance of the offender being under-age. These basic principles still prevail, but the order has been amended several times. Among the most significant recent developments, Law No. 2002-1138 of 9 September 2002 establishing general principles and a programme for the judicial system introduces a tougher criminal response to juvenile delinquency.

265. Many of those I spoke to considered the 1945 Order outdated and unsuited to coping with developments in juvenile delinquency, which rose sharply at the beginning of the 21st century. Though juvenile delinquency stabilised and in fact dropped slightly between 2002 and 2003, it remains very substantial: minors accounted for 18.8% of all those against whom proceedings were brought in 2003, and this figure remains stable. Statistics also show that the juveniles stopped and questioned are increasingly young and behave with increasing violence. Juvenile delinquency among children under the age of 12 rose by 12.2% between 2002 and 2003, while that among children aged 13 and over decreased slightly[29].

266. The changes in juvenile delinquency fuel the debate on the age of criminal responsibility. The 1945 Order provides that the judicial response should vary according to the minor's age. Firstly, it provides that only minors capable of understanding can be regarded as criminally responsible. The criminal concept of understanding, which is applied on a case-by-case basis, involves determining whether the child was able to "understand and intend" the offence with which he or she is charged. Secondly, the law introduces three age levels – 10, 13 and 16 years – before full age (18 years), and these condition the type of response given by the judicial system.

[29] *Annuaire statistique de la Justice*, 2005 issue.

267. From the age of understanding to 10 years, minors can be tried by a criminal court, but no penalties can be imposed on them. On the other hand, the youth court can order educational measures such as supervision of the incriminated minor in his/her family. Since the adoption of the law of 9 September 2002, children aged 10 to 13 years have been subject to educational penalties: for example, they can be banned from entering a particular place or meeting the victim or their accomplices, or can be required to follow a civics training course. Those who fail to comply with these penalties can be placed in a centre for juveniles. Once they have reached the age of 13, minors can be given a prison sentence. However, they can only be detained on remand if they are charged with a serious offence. If they are charged with a minor offence, only judicial supervision can be ordered.

268. However, since the adoption of the law of 9 September 2002, minors can be placed in a closed educational centre under this judicial supervision measure. Furthermore, if the minor "intentionally fails to comply with the requirements of judicial supervision", the youth court can order him/her to be remanded in custody (Section 18). The distinction between serious offence and minor offence is waived in respect of minors between the ages of 16 and 18, who may therefore be remanded in custody irrespective of the type of offence committed.

269. Some regard lowering the age of criminal responsibility as the best way to deal with the increase in and new features of juvenile delinquency. The police, in particular, told me that they felt helpless in the face of minors who know they will receive no punishment and therefore develop a strong sense of impunity. Some police officers support this proposal, which they regard as a necessary adjustment to the increasingly young age of juvenile delinquents. While I can understand their concern, I do not at all support this strategy. In my view, giving very young children prison sentences would simply compound the problem. It would in fact be absurd. I discussed this issue in depth with judges, lawyers and association representatives, all of whom said they were opposed to such a measure. The Minister of Justice also showed sensitivity on this issue, taking the view that the legislation on minors must not be turned into criminal law. I fully share his position and encourage the French authorities to give preference to educational intervention over punishment.

270. Minors who commit an offence must not be regarded as beyond redemption. The accent must be placed on a re-learning process and on education. Yet, as several judges told me, the judicial system for minors is currently failing to deal with juvenile delinquents both in the short term and in the long term. The priority should therefore be to reduce the time required for minors to be offered care by the specialist social services and the time they spend awaiting trial. Minors currently wait two to 18 months for a hearing in the investigating judge's office and six months to two years for a court hearing. Yet it is often during this time that they commit a further offence. The length of proceedings does not suggest an effective response and can fuel some juveniles' strong sense of impunity. These structural problems deprive the judicial system of its educational function. So it will not be possible to change the judicial system for minors without boosting its

resources. It is also essential to reinforce the Judicial Youth Protection agency (PJJ), which is in the best position to restore the broken social ties in these juvenile delinquents' lives.

2. Facilities for juvenile delinquents

271. There are various facilities for minors in danger and juvenile delinquents, which offer a structured range of responses according to the circumstances. Educational homes (*foyers d'action éducative*) accommodate juvenile delinquents or juveniles in danger who are placed there for a certain period by court order. Emergency placement centres (*centres de placement immédiat*), set up in 1999, provide emergency accommodation for juvenile delinquents or minors in very serious difficulties. Their primary purpose is to withdraw minors from their family and social environment, then to assess their situation before directing them to other educational facilities. Secure educational centres (*centres éducatifs renforcés*) accommodate juvenile delinquents and marginalised juveniles by court order for a period of three to six months. Permanent social supervision is provided in the centres to restore a few of the bearings these juveniles have lost. Closed education centres (*centres éducatifs fermés*) pursue a similar aim and are designed as an alternative to imprisonment.

a. Closed educational centres

272. Closed educational centres, which were set up under the law of 9 September 2002, accommodate minors placed under judicial supervision who have received a suspended sentence or been given conditional release. Most of these are persistent offenders who have already been sentenced in criminal proceedings. Each centre accommodates eight to ten minors who may be aged either 13 to 16 years or 16 to 18 years. The court fixes the period of placement, but if the juvenile is under judicial supervision, this is a once renewable period of six months. Most of these facilities are run by state-approved associations. Fifteen of them were opened between 17 March 2003 and 15 June 2005; five others should be brought into service by the end of 2005 and 12 more should open in 2006.

273. These centres are closed, meaning that minors cannot leave them unless accompanied by an adult. If they abscond, the law provides for them to be imprisoned or returned to prison. Several youth officers criticised this use of coercion and said they regretted the confusion between the educational approach and the fact of closed centres. Yet such facilities can prove useful in dealing with some particularly disturbed and violent juveniles. I was impressed by the supervision and range of activities provided to children placed in the centre at Saint Denis Le Thiboult in Normandy, and gained an idea of the positive albeit lengthy and difficult process most of them experienced in the centre. I wish to thank the staff of the centre for their warm welcome and Ms Muriel Eglin, assistant to Ms Claire Brisset, Ombudsperson for Children, who accompanied me on this trip, for the useful information she provided.

274. This centre, which opened in June 2003, was one of the first. It is run by the association *Les Nids*, which does wonderful work with the eight juveniles ranging in age from 13 to 16, who are accommodated there for an average of eight months. A staff of 27 professionals – youth officers, teachers, sports instructors and psychologists – care for these juveniles. As there are so many staff, the juveniles receive close supervision and extra educational support, chiefly focusing on re-learning basic skills, on tuition – or vocational training for the older ones – and on personal development and socialisation. Each juvenile has an individual care plan, drawn up in the light of his or her previous history.

275. On the whole, the centre at Saint Denis Le Thiboult achieves positive results. Of the 27 adolescents who have been accommodated there since it opened, only five were subsequently imprisoned, including three because they absconded[30]. Other centres, however, have had much more mixed results. The success of a juvenile's stay in a closed educational centre depends largely on his or her personality and effective agreement with the plan drawn up on arrival. But success is also a matter of continuing supervision after departure. This was one of the main pitfalls mentioned by the staff of the Saint Denis centre, to whom I talked at length. The work of the judicial system and that of the Judicial Youth Protection agency is not always properly co-ordinated and juveniles may not be efficiently supervised when they are reintegrated into their families or into another facility. Minors leaving closed educational centres remain fragile and can lapse into delinquency again at any moment. It is therefore essential to ensure that there is no break in supervision, so that they keep their bearings after placement ends. I therefore consider it advisable to increase the resources of the Judicial Youth Protection agency so as to monitor juveniles after they leave the centres and thus ensure that court orders and socio-educational measures dovetail more closely.

276. In addition to the basic difficulties relating to the supervision of minors, I was told about two further problems. The first is that closed educational centres were thoroughly stigmatised even before they opened. Some municipalities, for example, strongly opposed locating them on their territory. *Les Nids* was faced with this problem; although relations with the mayor now appear to have improved, difficulties persist and the director of the association is still struggling to obtain a building permit to carry out works inside the centre. Such situations cannot be said to arise everywhere, but elected representatives in some regions such as Provence-Alpes-Côte d'Azur seem to refuse any form of dialogue. Admittedly, the arrival of eight to ten young people with problems can cause anxiety among local residents. However, this should be dispelled by looking at the positive way in which most of the centres already opened have become integrated into the local community.

[30] The reoffending rate is therefore much lower than after a stay in prison, when it ranges from 50 to 60%.

277. The second problem is the shortage of these facilities. The 15 centres currently in operation offer 150 places, which the judges and police officers I met considered totally inadequate. Moreover, there are no closed educational centres for girls, and only three mixed centres. When the law was adopted in 2002, it was announced that there would be 600 places by 2006, but this objective seems to have been downgraded. The cost per day in a centre admittedly averages 550€ per person as against 285€ in prison. I am nevertheless convinced that trying to set a juvenile offender straight by introducing close socio-educational supervision and drawing up a personal plan which minimises the risk of reoffending is an investment in terms of future security. If spending some time in a closed educational centre can help to achieve such results in difficult cases, it is imperative to encourage this type of initiative as long as all the necessary resources are provided to help the young people concerned rebuild themselves.

b. Juvenile units in prisons

278. I visited juvenile units in the Le Pontet and Elsau prisons. It is always very difficult to meet children in prison. I talked to a boy under the age of 16 who was serving his third prison sentence. In his own view, none of the time spent in prison had done him any good. On the contrary, it seems to have been more like the beginning of his career as a juvenile delinquent. While imprisonment is unavoidable in the most serious cases, I emphasise that it should be exceptional.

279. At 1 November 2005, 637 young people under the age of 18 were in prison for periods averaging two to three months. There was a marked drop in the number of imprisoned minors in 2004-2005, which I certainly welcome. However, concern remains over the proportion of remand prisoners among the minors held in prison. Juveniles detained on remand account for more than 65% of imprisoned minors. According to the governor of Elsau Prison, the number of remand prisoners has been gradually diminishing in his establishment since the procedure for immediate appearance in court was introduced, but this does not appear to be the case with all courts. At 1 October 2005, under-age remand prisoners accounted for the alarming percentage of 70.4% of imprisoned minors. Compared to the average length of prison sentences, I wonder what meaning detention on remand can hold for a minor. This question seems to me all the more relevant because in many cases the sentence given amounts to the time spent in detention on remand. In that case, the exemplary nature of a court judgment becomes completely meaningless.

280. On the whole, conditions in the juvenile units I visited were better than those I saw in adult units. Admittedly, Le Pontet is a newly-built prison and the juvenile unit in Elsau Prison has recently been refurbished. The principle of individual cells was complied with. However, two problems call for comment. The first is the failure to separate remand and sentenced prisoners. As I have already pointed out, this deprives sentenced prisoners of some of their rights. This state of affairs is even more unacceptable in the case of minors. The second problem is that minors are able to come into contact with adults, although the law provides for them to be strictly separated. This requirement is more fully observed in Avignon, where the newly-built prison has separate buildings. Juveniles thus have their

own courtyard, located in such a way as to make it difficult to communicate with adult prisoners. The more old-fashioned design of the prison in Strasbourg makes it harder to apply this principle. In any event, communication between juveniles and adults exists and poses problems with regard to the imprisonment of juveniles because of the damaging influence adults can have over them.

281. Minors enjoy special facilities and appropriate activities such as tuition, vocational training, sport and free television. Prison officers are trained to supervise this sometimes highly violent population. In the two units I visited, the various players involved were careful to co-ordinate their work in order to ensure continuous dialogue with the juveniles. Strasbourg is taking part in an experiment: a team from the Judicial Youth Protection agency is permanently on duty in the juvenile unit, offering each juvenile personalised supervision and endeavouring to prepare for his departure. This co-operation, which is likewise taking place in parallel in nine other prisons, is proving positive although the short periods of detention often leave room for no more than initial contact with the juvenile, not to mention the fact that substantive work in this area needs to be pursued outside. Obviously, co-operation between the prison administration and the specialist services deserves to be extended.

282. Despite these efforts, several problems persist and sometimes hamper the work of the youth officers, who stressed their feelings of helplessness in dealing with growing numbers of juveniles with psychological problems. These require care and a specialist approach that prison cannot provide. Lastly, to a still greater extent than in other facilities for minors, supervision suffers from many shortcomings, either because the young people concerned evade it or because the Judicial Youth Protection officials do not have enough resources to work with them continuously. The reoffending rate among minors is higher than among adults: between 50 and 60% reoffend on leaving prison, a rate which in itself demonstrates that prison is unsuited to minors and that the educational measures taken in prison are ineffective. Prison fosters reoffending rather than helping to prevent it.

283. While this comment is more acutely relevant to boys, it also concerns girls. They are much fewer in number, but do not receive the treatment normally reserved for minors. They are imprisoned with adults in the women's unit on the grounds that there are too few of them to set up a juvenile unit. When I visited the Fleury-Mérogis remand prison on 13 September 2005, 11 minors were held with 317 women. The authorities' argument on this point is quite simply unacceptable; the prison administration must comply with the law which requires strict separation of adults and minors, irrespective of circumstances. Placing girls among adults also has other adverse consequences in that they do not have equal access to the activities and facilities offered to boys. They are therefore much more isolated and partially deprived of the educational provision offered to boys. I consider this situation unacceptable and call on the authorities to resolve this problem without delay.

284. The law of 9 September 2002 provides for the construction of prisons for minors accommodating 40 to 60 young offenders. The first of these prisons should be brought into service at the end of 2006. On the face of it, building such prisons seems positive. In the form announced, they should make it possible to separate minors from adults and provide them with more suitable care, since prison administration staff and Judicial Youth Protection staff will work together as part of an educational approach. Several questions nevertheless remain as to the future of the juvenile units in prisons. I believe it has not been decided to abolish them. If they were to be maintained, this would mean two-track conditions of detention and would cast doubts on the French Government's objectives.

285. Furthermore, the question of separating remand and sentenced prisoners is not addressed in the general plan. Yet I consider it essential. I urge the authorities to think about it carefully so that as soon as they open, these prisons comply with the different detention regimes. Lastly, the increase in staff and the supervision offered to minors can only have a real impact if the minors' departure is carefully prepared. I was told that it was essential to build semi-open units to avoid a break in supervision and ensure gradual reintegration into society. The authorities should take account of this proposal, which seems to me particularly suited to the specific situation of minors.

3. Separated foreign children

286. Separated foreign children are affected by two sets of problems, as foreigners and as minors. They are under the age of 18 and travel alone or with an adult who does not have parental authority. Most are from North Africa or sub-Saharan Africa. Some arrive in France in the hope of joining a member of their family who is living lawfully in France and of subsequently legalising their status. This practice is termed "unauthorised family reunification" and such minors are known as *rejoignants*. The practice has developed in recent years to get round red tape and the stricter requirements for family reunification. It is contrary to the child's interests but may unfortunately gain momentum in the wake of the fresh restrictions on family reunification introduced in November 2005. Other children, fleeing persecution and violence, arrive in France to seek asylum. After a sharp increase between 1999 and 2002[31], the number of separated children seems to be stable, but remains high. About 728 separated children arrived at Roissy airport alone in 2004[32].

287. The law on admission to French territory does not distinguish between minors and adults, and minors are not automatically admitted. This legal vacuum, which also exists in other European countries, is contrary to several provisions of the United Nations Convention on the Rights of the Child. Thus, minors can be placed in a waiting zone in the same way as adults and are subject to the same procedure. They are not in fact separated from adults, except for children under the age of 13, who are cared for by a childminder in a nearby hotel. This failure to separate them poses serious problems. A stay in a waiting

[31] According to the statistics supplied by the border police (PAF), 847 in 1999 and 1,400 in 2001.

[32] It will nevertheless be noted that the figures fluctuate from one government department to another and that it remains very difficult to measure this trend precisely.

zone is particularly traumatic for a separated child faced with a world of sometimes violent adults. I call on the French authorities to be more humane and regard separated children as children in danger, which means sparing them a stay in a waiting zone. Minors should be placed in special reception facilities.

288. Some new measures have admittedly been taken. Since 2003 French law has provided for an ad hoc administrator to be appointed by the public prosecutor for separated children placed in waiting zones and for those filing asylum applications at the border or on French territory. The ad hoc administrator is responsible for assisting the minor concerned and representing him or her in all legal and administrative procedures concerning the stay in a waiting zone and the asylum application. This institution, which was introduced by the law of 4 March 2002 and came into force by decree in September 2003, has been the target of much criticism. There has been a distinct improvement at Roissy since representatives of the Red Cross took over this function, replacing the previous administrators who were from the association "SOS–victimes 93".

289. However, there are still few requirements as to the skills, especially legal skills, demanded of ad hoc administrators. In its opinion of 23 April 2003, the National Consultative Commission on Human Rights considered it regrettable that the bill did not mention the specific knowledge of legislation on foreigners, asylum seekers and refugees that should be required of all candidates[33]. I indeed find it hard to imagine that administrators should not have specialist skills in this area when they are faced with highly specific legal issues every day.

290. Moreover, a children's judge from the Bobigny youth court considers that in two thirds of cases the child has already been returned before the administrator intervenes. Thus, during the first four months of 2005, 55% of the 259 minors placed in waiting zones were returned without the administrator having been called in or having had time to arrive. The administrator is hardly ever present when the child is admitted to a waiting zone and notified of his/her rights. The law does not in fact require this, but provides that the administrator must be physically present during the interview at the OFPRA and the hearings before the administrative court and appeal court. Yet, although minors lack legal capacity, the border police officers frequently make them sign the document stating that they waive their right to the clear day. Panic-stricken by an unknown environment, a language they do not understand and procedures whose content and significant points are beyond their grasp, children frequently sign without realising what they are doing. It would therefore be advisable to provide for the ad hoc administrator to intervene earlier in the procedure, ie as soon as the separated child is admitted to a waiting zone, to ensure that such practices, which deprive children of essential safeguards such as the right to request asylum, disappear. As indicated above, I consider that it should simply be impossible for minors to waive their right to the application of the clear day[34].

---

[33] CNCDH, *Avis sur le projet de décret relatif aux modalités de désignation et d'indemnisation des administrateurs ad hoc représentant les mineurs étrangers isolés*, 24 April 2003.

[34] See below § VI-1-a, p.52-53.

291. Generally speaking, minors are surrounded by greater mistrust than adults and are almost systematically regarded as abusing the system. Doubts are often cast on whether they are really under age, in which case police officers may order medical tests to assess their age. However, the techniques adopted – clinical observation of pubescent development and bone tests – are considered scientifically unreliable. On 23 June 2005 the National Consultative Committee on Ethics expressed reservations on the bone and tooth tests conducted to determine young foreigners' age. It declared these techniques unsuitable, especially as they are usually practised on young people between the ages of 15 and 20, when uncertainty is greatest. This controversy, which is not specific to France, raises the distressing problem of classifying some minors among adults, which in practice deprives them of the administrative and judicial safeguards afforded to them.

292. Not only is suspicion of minors the norm, but it is reflected in unacceptable practices. I was deeply concerned at a number of accounts I heard. It would appear that some minors are returned almost immediately after a walkway check on passengers and are not admitted to a waiting zone. As a result, they do not appear on any registers and do not exist in the eyes of the French administration. This practice, which I have already mentioned with regard to foreigners in general, is even more scandalous when it affects children, some of whom are very young. A little girl under the age of 10 from sub-Saharan Africa, for example, was returned although members of her family were waiting for her with the requisite documents. She was put back on the plane almost at once and nobody kept any trace of her passage. Several questions arise: what would have happened to this child if her family members had not done their utmost to locate her, if they had not made an emergency application to the Ombudsperson for Children and if no one had been awaiting her when she got off the aircraft? Ms Claire Brisset's intervention in fact ensured a happy ending: the girl came back to France at the French Government's expense and with its apologies.

293. However, I find it incomprehensible that police officers should return children on the basis of a mere assumption, without any precautions whatsoever and outside any legal framework. I therefore urge the French authorities to consider ways of listing the supposedly separated children who arrive in French airports: the border police should be obliged to inform the youth court of any cases of separated or supposedly separated children. Airlines could also perform this function, which would not demand a huge amount of additional work since they are required to submit an up-to-date passenger list and ensure that passengers' residence permits are in order. This would also preclude minors being released after 20 days in a waiting zone without the prosecuting authorities being informed and without being offered any form of care. I therefore believe that there is an urgent need to introduce legislation on foreign minors and new provisions which will ensure full respect for their rights as soon as they arrive on French territory and will spare them a traumatic stay in a waiting zone.

4. Young vagrants

294. The term "young vagrants" refers to foreign separated minors, most of whom have arrived illegally in France by land, sea or air and are in a state of vagrancy. As they are under the age of 18, they cannot be deported. Most of them are from North Africa and Eastern Europe, especially Romania. The Child Welfare Service and the police also note a growing influx of young Chinese. Some of these children come to France on their own initiative to flee a conflict, poverty or their families. In fact some of them were already on the streets before they arrived. Others are sent to France by their relatives in the hope that they will bring back some money. Still others find themselves in a state of vagrancy either because their family lives in France and forces them to beg or engage in illegal activities, or because they have fled a violent family environment or an unauthorised family reunification they did not want.

295. Marseilles appears to be one of the cities most seriously affected by this trend, but there are also young vagrants in Montpellier, Paris and Strasbourg – a non-exhaustive list. The pattern is the same everywhere: the overwhelming majority of these children, who are lost, who have little sense of identity and lead a completely hand-to-mouth life on the streets, become delinquents or, worse still, victims of prostitution networks. However, over and above crime problems, the main question is how to care for them.

296. The task of dealing with this extremely vulnerable group is chiefly entrusted to associations such as "Jeunes errants", which was set up in Marseilles in 1994. This association has done a wonderful job since its inception, helping to place young people in danger in homes, to identify some of them and to locate their families. However, associations alone cannot cope with a trend which is on the increase. They lack the resources to provide the children with all the help they need and are not equipped to combat some aspects of vagrancy such as the likelihood of their being forced into networks before or after they arrive in France. The government should tackle this distressing problem comprehensively, especially by taking joint action with the local authorities concerned and the associations involved. It should also ensure that the grants provided to associations of this kind are fully restored, since there seem to have been highly damaging cuts in funding.

297. Obviously, the issue of young vagrants is neither simple nor one-sided. Care of vagrants is undoubtedly hampered by the lack of facilities for children in danger and juvenile delinquents. In a report dated 2003, "Jeunes errants" notes that separated minors who are neither seeking to join relatives nor applying for asylum have more and more difficulty in finding places in the accommodation facilities provided by the Child Welfare Service. It must also be pointed out, however, that the extremely volatile and diverse nature of this destructured, marginal group makes it hard to supervise them. For example, not all those placed in homes remain there. And while separated children and the groups they form generally remain in the same town, it is extremely difficult to help them, either because they refuse any help or because they are trapped in group or network practices. Others spend their time with other young people, but have relatives in France who send them off begging or stealing. This would appear to be the case of the young people from central

and eastern Europe who have turned to crime in and around Strasbourg and who, in the police's view, have families living in caravans nearby whom the police are unable to identify.

298. There is also an international dimension to this issue, which involves the French Government and the authorities of the minors' countries of origin. But co-operation proves difficult on this issue, as on that of return for those wishing to return to their countries. An agreement has been signed between France and Romania to help those who so wish to return to Romania and carry out a project of their own. This solution can only be envisaged if every effort is made to ensure that the young people concerned do not fall back into the situation they fled. It is not part of my remit to give an opinion on the terms of the agreement, but I would simply note that it is very seldom applied.

299. A further issue should also be raised: besides that of young vagrants who are placed in homes and manage to leave the streets, the issue of foreign separated children, whether cared for by the Child Welfare Service or by a member of their family. The law of 26 November 2003 introduces a restriction on the acquisition of French nationality. Before this law was introduced, minors in this situation could apply for French nationality simply because they were cared for by the Child Welfare Service. Since the adoption of this law, French nationality can be requested by "a child who, for at least the past five years, has been taken in in France and brought up by a person of French nationality or who, for at least the past three years, has been cared for by the Child Welfare Service", and "a child who has been taken in in France and brought up under circumstances enabling him or her to receive a French education for a period of at least five years" (Section 67).

300. These new provisions exclude children in the care of the Child Welfare Service who were over the age of 15 on arrival and those who have been brought up by a member of their family living lawfully in France and were over the age of 13 on arrival on French territory. There are consequently many adolescents who find themselves in a completely illegal situation once they have reached the age of 18. During my visit I was told about a young man from Cameroon, who was the father of a young child and was attending secondary school in the Paris area. He was placed in a holding centre in September 2005 and an attempt was made to deport him, though this was stymied by the concerted action of his relatives, the pupils from his school and the passengers on the aircraft. For the time being, his situation looks brighter: he has been granted a one-year temporary residence permit on humanitarian grounds. Few young people are so lucky, but many come up against similar situations and live under the constant threat of a deportation order from the *préfecture* although they are pursuing their education.

301. On 17 October 2005 the government issued a circular suspending the deportation during the school year of young people over the age of 18 who are at school, but there is an obvious paradox in the French authorities' policy towards foreign minors living illegally in France once they become adults. These young people are cared for and attend school, and it was decided a short time ago that those over the age of 16 can be trained as

apprentices by decision of the *préfet*[35]. Yet there is no provision for granting temporary residence permits to young adults attending school after being enrolled for several years in a French educational establishment. This would at least enable them to complete their education and to emerge from the illegal situation in which the law places them as soon as they are 18 years old. I invite the French authorities to consider this solution or any other which would ensure decent treatment for these young people who are determined to pursue their education.

VIII. THE PROBLEMS OF RACISM, ANTI-SEMITISM, XENOPHOBIA AND THE FIGHT AGAINST DISCRIMINATION

302. Many of the people with whom I spoke voiced their concern over the significant increase in the number of racist and anti-Semitic acts since the year 2000, and the increase in instances of discrimination.

1. Main trends

a. The increase in racism

303. 2004 saw an unparalleled increase in acts of racism: the number of racist and anti-Semitic acts recorded in 2004 was up 132.5% on 2003, rising from 833 to 1,565, and this number was 19.2% more than the already high figures for 2002. Although there was a marked fall in such incidents in the first half of 2005, it remains a deeply worrying phenomenon.

304. These alarming official figures show that the Jewish community is the prime victim. In 2004, almost 60% of racist acts targeted Jews or Jewish property. When I met members of the Representative Council of Jewish Institutions in France (CRIF), including the Chair, Mr Cukierman, I was keen to assure them of my support in the fight against this intolerable situation. They stressed the difficulty teachers found in teaching about the Holocaust in a number of junior and senior high schools. It is extremely painful for a representative of the Council of Europe, an international organisation founded on the ruins of a Europe devastated by the Second World War, to learn about any attempt at revisionism. I hope that the determined action taken by the French authorities since 2002 will quickly bring this deplorable trend to a halt.

305. At the same time, there has been an increase in racism directed towards the Maghrebi communities, and Muslims in general. Furthermore, the nature of the racist acts committed has changed: violence against people and property has intensified and there has been an increase in the number of attacks on Jewish and Muslim places of worship. Lastly, violence in schools was up 12% in the period 2003-2004. Racist insults are

[35] I refer to the "De Villepin" circular on work permits issued to separated foreign juveniles with a view to concluding an apprenticeship or job training contract.

becoming commonplace amongst young people and this is another cause for concern. This age group is particularly susceptible to the preconceived ideas conveyed in certain quarters and consequently renewed efforts should be deployed among the young to prevent and stamp out all forms of violence.

306. Those who carry out racist or anti-Semitic acts are for the most part members of extreme right-wing parties or groups. They also find recruits among young people from difficult neighbourhoods. Through ignorance, some of them make simplistic generalisations between the Israeli-Palestinian conflict, the French context and their own social difficulties. This violence, although it may not be orchestrated, is doubly worrying as it results from broadly disseminated biased views and reflects a defensive form of insularity on the part of those who, considering themselves to be victims of exclusion, opt to express their feelings of frustration, the nature of which is primarily social, in this way.

307. The two regions most affected by the increase in racist acts are Ile-de-France and Rhône-Alpes. Corsica, coming third in this sorry catalogue, is notable for the violence targeting the Maghrebi community. Among the acts of violence committed in 2004, seven attacks were claimed by *Clandestini Corsi*, a group of young adults motivated by a mixture of nationalism and racism. However, the arrest of members of this group has done nothing to halt the violence against members of the Maghrebi community; several attacks have targeted them directly, in particular on 3 November, the day of Al-'id al-kabir, marking the end of Ramadan.

308. Since the second half of 2004 there has been some improvement in this situation which had been growing steadily worse since 2000. Police figures for the first part of 2005 show that anti-Semitic acts were down 48% on the same period in 2004[36]. This is a welcome development and should encourage officials and associations committed to the fight against racism, anti-Semitism and xenophobia to step up their efforts.

b. The main forms of discrimination and the victims concerned

309. All the studies carried out and the action taken show that 50% of instances of discrimination concern access to employment, next come obstacles to the acquisition of housing, services and leisure activities. In general, French nationals of foreign origin, or who have foreign-sounding names, and foreigners are the main victims of discrimination. However, other groups may also be affected. These include, but are by no means limited to, people with disabilities, the elderly, women and homosexuals.

310. From my conversations with representatives of civil society, it would appear that the question of discrimination is currently a major social concern in France. It is, moreover, a difficult problem to address since instances of discrimination are often latent or hidden, even though everyone knows that they occur. It is an issue which is difficult to broach in Europe and particularly in France, given the profoundly anti-discriminatory and anti-

[36] Figures given in "Un 'modèle' de lutte contre l'antisémitisme", *Libération,* 27 July 2005.

racist nature of Republican legislation and traditions. Unfortunately, opinions are not always in step with the laws.

311. I understand the difficulties encountered by the political authorities in dealing with this shameful and delicate subject. However, it is impossible to make a proper diagnosis and prescribe the right treatment if the problem is never mentioned or is ignored. So, above and beyond the successes of anti-racism policy, it must not be forgotten that many difficulties remain. Even though it was quite recently still not politically correct to speak about certain matters, the vast majority of the population is perfectly aware of their existence. While it might be hard to discuss them, discuss them one must. Quite clearly, there is a real risk, in the majority of cases, that a CV submitted by an individual with an Arab-sounding name will not be processed as attentively as it should be, even though it may well show that the person in question has an excellent profile. It is also clear that a foreign family applying to rent somewhere to live will often not be given the appropriate level of attention by certain property agencies. And, it was particularly shocking to hear that in 2003 some rabbis were suggesting that young Jews cover up their kippah skull caps with other hats so as not to provoke other young people overly incensed by the tensions in the Middle East.

312. All the people I spoke to claimed that discrimination was commonplace in all walks of life. It was a result of racism or more simply of ignorance. Nonetheless, while discrimination is more often than not an isolated occurrence, it can also be institutionalised. Several NGO representatives I met told me that a recent reform of the electoral arrangements for professional guilds had resulted in non-EU tradespeople no longer having the right to vote they previously had. The HALDE, the Supreme Authority for Equality and the Fight against Discrimination, is taking this matter up and the government seems to be prepared to change the legislation. I cannot but encourage them to do so.

313. With regard to discrimination in the employment field, the most frequent form of discrimination, there are three categories of people who are affected most: those over the age of 40, women and people of foreign origin and/or those from difficult neighbourhoods. First of all, many men and women older than 40 suffer from age-related discrimination. Some companies have no qualms about putting an age criterion in their vacancy notices (under 40, under 50) even though this is illegal. This is a worrying trend because it excludes a large proportion of the working population and can lead those concerned into the vicious cycle of impoverishment. Above all, it is quite paradoxical, given that the retirement age has been raised.

314. Where women are concerned, the situation is more complex. Women find it more difficult than men to find a job; there are more women than men who work part-time. Furthermore, they continue to be affected by unfavourable pay differentials. Their low remuneration increases their social and financial difficulties, especially if they are brining up children alone. Ms Vautrin, Minister of State with responsibility for equality and social cohesion, told me that the government is committed to eliminating these

inequalities by 2010; a bill on equal recruitment opportunities was recently tabled before the National Assembly.

315. This bill is clearly needed. But it will not deliver unless there is also a change in attitudes. Although French society has changed considerably and while women have in recent decades gained a strong foothold in the public arena, carrying out all sorts of jobs, a number of stereotypes remain. Women still find it hard to be appointed to positions of responsibility. Politics is a prime illustration of this: despite several initiatives and the constitutional reform of 1999, equality still far from being achieved. Women remain very much in the minority and account for just 10% of members of the National Assembly, mayors and *département* councillors.

316. Lastly, all the figures show that people of foreign origin are greatly discriminated against in being offered employment. A recent INED survey revealed that where they have identical qualifications, they are 1.5 or 2 times more likely to be unemployed than "natives"[37]. The authors of the survey report claim that this likelihood of being unemployed is an effect of discrimination, also reflected in the type of job carried out. The majority of French nationals of foreign origin or foreigners in France have underqualified jobs, or are in insecure employment. This particularly applies to young people under the age of 25, with men generally being in a slightly better position than women, who have to cope with the two-fold stigma of being a woman and an immigrant.

317. Several explanations have been put forward. The concentration of people of immigrant origin and/or people in severe social difficulties in outer-city neighbourhoods has led to a situation of urban segregation. The violence regularly breaking out in what are today termed "sensitive" neighbourhoods, and the proliferation of all sorts of trafficking and gang rivalries have further damaged their image. These neighbourhoods, seen from the inside as an area to be defended, and from the outside as an impenetrable and unassailable fortress, constitute a social stigma. Added to which are the instances of discrimination linked to the inhabitants' foreign origin. The inequality observatory claims there is a 17 percent difference between the unemployment rate of non-Europeans compared to the rate for French nationals in equivalent circumstances.

318. Such a situation is a result primarily of highly deplorable discriminatory practices. It also reflects the inadequacy of integration policies and the shortcomings of the urban policies adopted by the various governments. The neighbourhoods in question need to become less like enclaves so that they can open up to the outside and enable everyone to enter freely. All the national representatives I met seem to be aware of this state of affairs; in Strasbourg, Paris and Marseilles I was told about current or projected regeneration initiatives. In my view, these need to go hand in hand with social and educational measures in an attempt to reintegrate the young people from these neighbourhoods into a society which at the moment they largely reject.

[37] Dominique Meurs, Ariane Pailhé and Patrick Simon, *Mobilité intergénérationnelle et persistance des inégalités: l'accès à l'emploi des immigrés et de leurs descendants en France*, Working documents of the Institut National des Etudes Démographiques (INED), No. 130, 2005, p. 12.

319. The urban violence that shook the whole of France in November 2005 has been interpreted as expressing deep-rooted social resentment. While it is undeniable that the discrimination suffered by these young people has given rise to significant frustration, it would be wrong to overlook other factors that led to this violence (crime, revenge against the police, gratuitous violence, copy-cat incidents, competition between neighbourhoods, etc.). Nothing can justify the use of violence to express anger or resentment, particularly as this violence affected first and foremost those from among the most disadvantaged sections of the population, and the community and public property used by the inhabitants of the neighbourhoods in question. I was disgusted by the burning of schools, churches, synagogues and a mosque in Carpentras. While the troublemakers must be punished, there must also be a more comprehensive reflection involving all the local and national stakeholders, in order to ensure that such violence, so frequent in the past, does not erupt again.

2. **Measures to combat racism, anti-Semitism and discrimination**

a. The fight against racism, anti-Semitism and xenophobia

320. Successive French governments have since 2002 taken a number of concerted measures to step up the fight against these evils. A decree of 8 December 2003 led to the setting up of an interministerial committee on the fight against racism and anti-Semitism. The fight against racism was declared a major national cause in 2004. In parallel, awareness-raising measures were taken in schools, with the high point being the anti-racism week in March of that year. France has also adopted sound legislation to combat all forms of racism. The Lellouche Law, passed on 10 December 2002 and entering into force in early 2003, makes racist motivation an aggravating circumstance. Chapter IV of the Perben II Law of 9 March 2004 provides for heavier penalties for those who commit offences motivated by racist considerations.

321. Nonetheless, the legislation in question is not often applied and little punishment is meted out. In 2004 proceedings were initiated in respect of just 85 racist acts. This paradoxical situation, reflecting a problem concerning the efficacy of the many available resources, results in a climate of unease in the communities most affected by the rise in racism. I would therefore encourage the French authorities to continue along their current path but ensure that the existing legislation is applied more effectively.

322. Lastly, I would like to highlight the role which religious representatives can play in easing tensions fuelled by the rise in racism. Not that France has not instigated intercultural dialogue; this exists at the very highest level in the country and is extremely fruitful. In order to gain greater insight into current trends, and as I do in all member states, I met representatives of the various religious communities so that I could discuss with them a variety of topical issues and look at prospects for the future. I had some very interesting and frank conversations with eminent figures representing the Catholic, Protestant and Jewish communities. Unfortunately, my scheduled meeting with the

President of the French Muslim Council had to be cancelled because Mr Dalil Boubaker was at the last minute unable to attend.

323. The religious representatives I met expressed their concerns to me. It would appear that certain family allowance funds refuse to cover the cost of holidays taken by the most disadvantaged children on the grounds that the association running their holiday has a religious connotation. This violates the principle of equality between social associations and constitutes discrimination in the youth services.

324. Nevertheless, as I have always said, the monotheistic religions represented in France have a clear role to play in maintaining social cohesion, promoting dialogue and transmitting the values of respect, tolerance and acceptance of others, and consequently in combating racism and promoting human rights. I stressed this throughout my visit, and particularly during my discussions with representatives of local and municipal authorities who are the main institutional points of contact for religious communities.

b. Action to combat discrimination

325. France has recently strengthened its legal resources for combating discrimination. The law of 9 March 2004 provides for heavier penalties for those who are guilty of such behaviour, especially when a discriminatory refusal to provide goods or services takes place in premises open to the public, or with the aim of denying access (Chapter IV, Section 41). Despite these undoubted positive advances, it is a matter of great regret to me that the French authorities still have no plans to accede to Protocol No. 12 to the European Convention on Human Rights relating to the general prohibition on discrimination. I call on the government to review its position and consider acceding to this Protocol as an additional step in the fight against discrimination.

326. However, France recently set up a new body to contribute to combating discrimination: the Supreme Authority for Equality and the Fight against Discrimination (HALDE), complying with a European requirement. This body, which I very much welcome, was set up by the law of 30 December 2004 and Mr Louis Schweitzer was appointed as its head on 23 April last. It has jurisdiction in matters of direct or indirect discrimination, can have cases referred to it by anyone believing themselves to be victims of discrimination, or can decide to look into matters on its own initiative. Moreover, I learned that very recently, on 1 December 2005, the Prime Minister announced that its powers would be extended, as it will soon be able to impose penalties and order individuals or companies guilty of discrimination to pay fines of up to €25,000.

327. Quite naturally, I was keen to meet the President of HALDE in order to discuss aspects of the fight against discrimination which are very close to my heart. Mr Schweitzer said that HALDE was a very young body which was currently working out a comprehensive strategy. Since it started operating, it had focused primarily on processing the claims submitted to it. As of 31 August 2004, it had received more than 600 complaints. This number, which is very impressive for a new body which is not yet well known to the

general public, is an indication of the role it could play in a society which is becoming increasingly uneasy as a result of the increase in the number of all types of discrimination. The fact that the members of its advisory committee includes associations and NGOs shows that its leaders have a clear commitment to establishing strong institutional links with civil society.

328. Despite this progress, there is still a very low number of convictions, even though the courts have recently accepted the discrimination testing method as evidence. While the number of instances of discrimination leading to formal complaints is constantly increasing, the number of criminal cases that are tried is stagnating at a very low level (some 20 cases tried in 2004). There is therefore a problem concerning the application of the resources provided for by French legislation. Failure to enforce the law gives rise to a feeling of impunity among those guilty of discriminatory acts and encourages them to carry on. The laws in force must therefore be applied more strictly.

IX. TRAVELLERS AND ROMA

329. Travellers and Roma are among the minorities that continue to suffer constant discrimination in the majority of European countries. More often than not, such discrimination is not on the part of the authorities but derives from prejudices held by the majority population in our countries. Nonetheless, the public authorities are still at fault through their failure to act, resulting in ongoing difficulties encountered by Travellers and Roma in their day-to-day lives. In the light of these problems, I always establish contact with these communities during each of my visits to member states. My visit to France was no exception.

330. First of all, a little clarification is called for. There has been some confusion caused by treating Travellers as synonymous with the Roma from central and eastern Europe who have settled in several encampments and shanty-towns on the outskirts of Paris. In point of fact, they are two separate communities with totally different characteristics. Some groups of Travellers are admittedly of Roma origin, but today they have only very little connection with the Roma of central and eastern Europe.

331. The term “Travellers” covers individuals belonging to a variety of cultures, who say that they are of Roma, Sinti, Yenish or Gypsy origin. They have been settled in France for several generations, sometimes for several centuries, and have French nationality. The vast majority have retained a traditional nomadic-based culture and lifestyle. They number approximately 400,000 and they travel all or part of the year. The Roma, who originate from central and eastern Europe, are migrants who came to France to flee the poverty and discrimination they suffered in their own countries. The majority were sedentary before their departure for France. It is estimated that there are several thousand of them living in deplorable conditions in France.

1. Travellers

332. Travellers have to cope with numerous problems deriving from the fact that there is no full recognition of their itinerant lifestyle. The most immediate difficulties they face on a daily basis concern the parking of their caravans. Law No. 2000-614 of 5 July 2000 on the reception and accommodation of Travellers (known as the Besson Law) obliges municipalities of more than 5,000 inhabitants to provide a camping site, with facilities and access to water and electricity. In July 2005, 93 of the anticipated 96 *département* plans had been signed (overseas *départements* in which there are no Travellers are exempt)[38]. But in June 2005, only 8,000 camp sites had been fitted out. This makes a shortfall of over 20,000 sites according to the authorities and 60,000 according to the associations.

333. The law on local responsibilities and freedoms of 13 August 2004 extends the 2 year deadline provided for in the Besson Law, with effect from its expiry. Overall, however, it can be assumed that the Besson Law is complied with only to a very small degree, and in some *départements* not at all. For example, the *département* plan in Seine-Saint-Denis stipulates that 26 campsites should have been made available since it was approved in August 2003. But there is no funding and the budget has made provision for the construction of just two sites.

334. The shortage or lack of camp sites creates tension exacerbated because the Travellers are not allowed by law to park in tourist camp sites and the Besson Law and the 2003 law on internal security provides for heavy penalties for any camping other than on specially designated sites. The successive delays in implementing the Besson Law and the harsher penalties for camping on unauthorised sites place Travellers in an extremely awkward situation, causing them all sorts of difficulties. One of the consequences of this is that Travellers' children are not always able to attend school.

335. The hostility towards Travellers openly shown by some local elected representatives is not only totally reprehensible, it also makes it impossible to initiate dialogue, which is essential if an acceptable arrangement is to be worked out. The *Sous-Préfet* of Seine-Saint-Denis, whom I met when I visited Bagnolet, stressed the need to shift away from the confrontational approach which sometimes exists, and to set up a long-term dialogue so that the grievances on both sides can be aired and just and acceptable solutions worked out. As a result, an agreement with the Travellers has been signed at *départemen*t level, and one representative per family and two representing Travellers' associations have been appointed. This is a very commendable initiative and should serve as an example so that dialogue can prevail wherever problems occur and so that everything can be done to combat the prejudices and stereotypes surrounding Travellers.

336. It should also be noted that Travellers are subject to special legislation which applies to no other French citizens. Under Law No. 69-3 of 3 January 1969, still in force, anyone over the age of 16 not settled in any one place must be in possession of a travel permit of

[38] Figures taken from the website of the Ministry of Employment and Housing

which there are two types depending on whether the person concerned has a regular income from an occupational activity or not. For those without regular incomes, the permit has to be countersigned every three months on the day it expires by a police or gendarme commander, or an administrative authority; the permit for those with regular incomes has to be countersigned every year. Any delay in renewal entails heavy fines (€ 750 for each day overdue). Anyone not in possession of this document is liable to a sentence which can be as much as a one-year term of imprisonment (Section 5).

337. These documents are not regarded as an identity card. Nonetheless, Travellers must be able to present the document when so requested, even when they have an identity card, failing which they are given a fine. However, the format of these permits is not at all practical and they cannot, for example, be slipped into a pocket. The obligation to carry them and have them countersigned at regular intervals is a manifest example of discrimination. Travellers are the only category of French citizens for whom the possession of an identity card is not sufficient to comply with legal requirements. As French citizens, as most of them are, Travellers should not have to be subject to such constraints and should be entitled to the same rights as their fellow citizens. I can accept the idea of a travel permit, but I find it deeply shocking that it can be required to be shown at any time even when Travellers have an identity card, and that it has to be countersigned at regular intervals. In addition, representatives of Travellers' associations told me about certain difficulties encountered by Travellers in obtaining identity cards. I call on the authorities to remove these obstacles at the earliest opportunity.

338. The 1969 law also stipulates that Travellers must be assigned administratively to a municipality (Section 7). Once this has been approved by the *Préfet*, two years must elapse before any change can be made, and even then the *Préfet* has to agree and good reasons have to be given with the application for it to be accepted. I am concerned about these obligations, as they place Travellers in a situation in which they feel under permanent surveillance. Furthermore, the law states quite clearly that the number of Travellers accommodated by a municipality may not exceed 3% of the local population. These provisions violate the freedom to settle in the municipality of one's choice, which is a right enjoyed by all other French citizens.

339. The special law applying to Travellers has another clause which is just as discriminatory: Travellers are not entitled to vote until three years have elapsed since being assigned administratively to a municipality. For other citizens, including those of no fixed abode, the qualifying period is just six months. I call on the French authorities to put a halt to this situation which restricts Travellers' civil and political rights.

340. This special law also relates to the status of Travellers' caravans which are not considered as housing. They are consequently not entitled to any housing assistance and find it difficult to obtain social assistance in general. Paradoxically, despite all the problems encountered and not resolved, on 23 November 2005, the National Assembly approved a bill levying a form of council tax on mobile homes. The tax rate was originally set at € 75 per square metre for all caravans larger than 4 m^2. On the adoption of the budget the amount was reduced to € 25. This certainly represents an improvement on the initial

proposal. However, given the great financial difficulties of a large proportion of the Traveller population, I cant help wondering whether such a levy is at appropriate at all. I note, moreover, that whilst Travellers will now face a tax equivalent to a residence tax, they enjoy none of the advantages offered by housing benefits. One can easily detect the risk of inequality here.

2. **Roma**

341. As specified above, the Roma are migrants from the countries of Central and Eastern Europe (Romania, Bulgaria, Hungary and the Balkans). They may or may not have a residence permit, be asylum seekers or have entered the country without any documentation. Since 1 January 2002, Roma of Romanian origin, like all Romanian citizens, have not required short-term visas to enter the Schengen zone. They are entitled to stay 90 days and benefit from the provisions of the Convention implementing the Schengen Agreement by crossing the borders every three months.

342. The French authorities have recently begun applying Article 5C of the Schengen Agreement, which stipulates that all foreigners arriving in the Schengen zone must be able to prove that they have minimum assets, set at €500. However, application of this provision is very random and does nothing to solve the general problems concerning the Roma. Accordingly, turning people back is ineffective and the individuals in question return a few weeks later. The situation is exacerbated by the ineffectiveness of the repatriation programme for Roma from Romania introduced by the Ministry of the Interior in January 2003: the €153 per person paid by the International Organisation for Migration is very small; the promise of welfare provision is not always honoured, and most importantly, the problems which led them to flee in the first place remain.

343. Having fled poverty and discrimination in their own countries and arriving in France without any resources, these people (estimated at about 5,000) live in conditions of total destitution. I visited two Roma encampments in the Paris region where they are concentrated.

344. The first, in Saint-Denis, is a squalid shanty-town, wedged under a bridge between a motorway and a railway line, three minutes away from the Paris *périphérique*. It has been there for four years, and around one hundred and fifty families live there. Despite all the efforts made by the community to make the encampment presentable, it has not been possible to conceal the deplorable conditions in which people have to live. I was horrified by what I saw. Never before in the daytime have I seen so many rats in such a small area; they were running around everywhere alongside the children. Such squalor clearly represents a major health hazard for those living there.

345. It is true that the authorities, especially the town council, has at various points made great efforts to help this community. For example, the council has assumed responsibility for public services, such as water, electricity and roads. *Médecins du Monde* and Roma associations also get involved regularly. However, all these initiatives are not enough to

tackle the problems facing these people, who, since the reforms of 2004 and July 2005, no longer qualify for state medical, and are not allowed to work, since they are asylum seekers, or have either no papers or tourist permits which preclude any gainful employment. Finding themselves in such dire straits, some Roma work illegally, with all the risks of exploitation that that entails, especially for the younger members of the community; others slide into crime, criminal networks or prostitution.

346. The situation of the community in Bagnolet is somewhat different. Clearly, the Roma there are not able to work and are faced with the same social problems as those living in Saint-Denis, but following a fire in the squat where they were previously staying, the town council decided to provide them with housing. They have placed them in a large house in the town centre, which happens to be the only historical monument in the municipality. Conditions inside the house are far from perfect: several families live in the few rooms that there are with no separation whatsoever, not even artificial dividing walls. But, they are under a roof, and the house has bathrooms and hot water. Bagnolet town council should be congratulated on its decision, which is a genuine gesture of solidarity by an authority which is far from being one of the richest in the Paris region. However, this initiative has also generated tension with other immigrant communities who believe that they are not being offered the same level of support. Something similar can be seen in Saint-Denis which has various communities with major social difficulties.

347. Following my visit to Bagnolet, and while this report was being written, I was contacted by the mayor's office with a request for assistance to the municipality in its attempts to address the ongoing problems. The arrival of winter has brought with it a further problem: it would appear that the sanitary installations are no longer adequate for the number of people living in the building. Accordingly, the town council would like to provide additional facilities in the courtyard as a stop-gap solution. But the cost is too high for the municipal budget which had not anticipated such expenditure. Unfortunately, the Office of the Commissioner does not have the resources to assist Bagnolet town council and I would therefore appeal to the public authorities to help the municipality cope with this difficult situation.

348. In general, the local elected representatives in Bagnolet and Saint-Denis told me they felt they had been left on their own to deal with the many problems caused by the unauthorised camping of Roma groups. They are doing their utmost to help them, offering health, social and educational assistance. They have entered into dialogue with Roma associations representing the communities that have settled in their midst. Agreements have been signed in Saint-Denis and in Bagnolet. The former is aimed primarily at ensuring the children can attend school; the latter concerns the payment of water and electricity charges. A promising experiment is currently being carried out in Saint-Denis, with four families being placed in houses. All the elected representatives are in favour of granting recognition for these families, providing them with social welfare and allowing them, or at least the heads of family, to work. This would undoubtedly be one of the most effective ways of combating criminal networks and crime.

349. Not all encampments are given the support that the municipalities of Bagnolet and Saint-Denis offer. This applies to Roma families that have settled in squats, or parked their caravans on industrial or other wastelands. They have to cope with not only poverty, but also a lack of healthy living conditions and sites that have transformed from being temporary encampments into shanty-towns. The children are the hardest hit by these conditions. The *Espoir* association notified us of several cases of tuberculosis among children in the Villetaneuse and Aubervilliers encampments. This is an association which works with these children who do not attend school and whose part in the communities' battle to survive means begging in the streets of Paris. The association told me in particular that both the Roma children and their parents lived in fear of eviction.

350. Evictions are indeed frequent. The law on internal security of March 2003 authorises the police to act within 48 hours, without any prior ruling by the administrative court, or the express consent of the owner of the land, where there is a threat to law and order, public health, peace or public safety[39]. More often than not, evictions can be violent, with force and sometimes tear-gas being used, personal property being destroyed, movable caravans being towed away, and others impounded. During one eviction in July 2005 in Vitry-sur-Seine, children were left alone on the site without assistance or protection. I was apprised of this by representatives of Roma associations and NGOs working with Roma, and I found it most alarming since the violence used seemed both unnecessary and gratuitous. In September 2005, in the *département* of Seine-Saint-Denis, shots were fired during a similar operation. In both cases, the police acted without prior negotiation and without warning the Roma concerned .

X. VULNERABLE GROUPS

1. Domestic violence

351. The extent of domestic violence is difficult to gauge for two main reasons. Firstly, there are very few statistics on this problem, which is largely concealed – it was not until the year 2000 that the first survey was carried out. Secondly, the subject remains taboo, and only a minority (approximately 6%) of women victims lodge official complaints.

352. The survey showed that one in ten women claimed to have suffered verbal abuse, psychological pressure or physical attacks by their husband or partner in the preceding 12 months. Recent figures indicate that one woman dies every four days as a result of domestic violence in mainland France[40]. These figures are all the more alarming as they reflect just the tip of the iceberg. It concerns all social classes and all age groups, although the survey showed that women aged between 20 and 24 are most affected.

[39] Amendment to Article L 2215-1 of the General Code of Local and Regional Authorities.

[40] "Marital violence: the government wants harsher penalties" *AFP*, 23 November 2005 and National survey of violent deaths in the home in 2003-2004, commissioned by Catherine Vautrin, Minister of State with responsibility for equality and social cohesion.

353. France has recently adopted legislation to take more account of this phenomenon. In criminal law, violence which does not result in total incapacity to work now constitutes an offence. In addition, investigations can be initiated even without a formal complaint by the victim. The Divorce Law of 26 May 2004 provides for a violent spouse to be removed from the family home. This provision, which entered into force on 1 January 2005, is a significant step forward as it enables the wife to recover some of her dignity by enabling her to remain in her familiar surroundings and ensuring maintenance of part of her income in a particularly difficult period. Nonetheless, some caution is required in applying these provisions and, in particular, care must be taken to ensure that husbands removed from the family home comply with the decision. Lastly, on 24 November 2004, a plan to combat violence against women was presented by Ms Nicole Ameline, then Minister for Gender Equality and Equality in the Workplace. It sets out to improve the autonomy of women who have suffered from domestic violence and contains a series of social and legal measures to help them reintegrate into society.

354. However, despite the many legislative, legal and social provisions, there are certain gaps. First, the Divorce Law, which provides for removal of violent spouses from the family home, applies solely to legally recognised families, and not to cohabiting or civil union partners. This creates a damaging legal vacuum, since domestic violence knows no legal boundaries. Catherine Vautrin, Minister of State with responsibility for equality and social cohesion, recently said that she would like to toughen the sentences handed down to violent men and extend aggravating circumstances to former spouses and former partners. This seems to me to be a step in the right direction.

355. Second, several NGOs, including the Marseilles-based *SOS Femmes Accueil*, voiced their fears to me about the conflict between women's and fathers' rights. For example, a woman who leaves the family home with her children to escape a violent environment is obliged to give the father the children's address (i.e. her own as well). It would appear that the legislation has made no provision for any exception to this in the case of women who are victims of domestic violence. It puts women who choose to leave in danger. The Ombudsman, Mr Jean-Paul Delevoye, who accompanied me on this visit, said that he agreed with me on the need to legislate in order to address this issue. I call on the French authorities to give urgent consideration to this legal problem and come up with an appropriate solution.

356. This does not mean that fathers should be deprived of their rights. Quite the contrary, fathers should be able to maintain close links with their children. Which is why it seems to me to be a good idea to increase the number of places where meetings can take place on neutral ground, while the justice system is doing its job and a solution regarding custody of the children is being found. Representatives of associations told me however that there is a drastic shortage of such places. Moreover, those that do exist are threatened with closure through lack of subsidies. L'Archipel, the only such place in Marseilles, is under direct threat of closure, as the relevant ministries have apparently stopped the funding given to the association that runs it. I call on the French authorities to look into this matter and keep these meeting places open, so that parent-child relationships can be preserved in a peaceful environment.

357. In general, although particular political attention has been focused on the fight against domestic violence, putting the arrangements into practice has come up against a number of difficulties. There has been a delay in getting the measures set out in the plan to combat violence against women off the ground. Victim-support associations complain that the reduction in public funding jeopardises their work. They also point to difficulties encountered by women in finding housing, particularly social housing, in an overall context in which there is a severe shortage. In Strasbourg, the association *SOS Femmes Solidarités* has a 6-9 month waiting list; in the meantime victims are either accommodated in hotels, have to manage on their own resources, or carry on living under the same roof as their violent spouse.

358. Accordingly, while the French authorities claim that domestic violence is a priority issue, the actual situation in which victims find themselves is extremely rarely taken into consideration. More effort should therefore be directed towards implementing the existing provisions more effectively. There are plans to place battered women with families from January 2006. This seems to me to be a particularly sound measure, since it allows victims to change environment, but still have someone around them. All stakeholders, police officers and judges, the ones coming into most direct contact with domestic violence, also need to be made more aware of the issues involved.

359. Lastly, I would like to highlight the special difficulties faced by migrant women with violent husbands. Some of them who arrive in France under family reunification arrangements, as refugees or as asylum seekers, find themselves very isolated, speak little or no French and are totally dependent on their husbands. They can be given a residence permit, provided they can prove that they have made an official complaint and provide the appropriate documentation. The language barrier, poor knowledge of French legislation (despite the new provisions applying to new arrivals) and the strong grip exerted by husbands make it impossible for most of them to do this. In addition, I was told that the length of the procedure severely hampers implementation of this possibility and that there is a shortage of places in emergency accommodation facilities.

360. These women are also faced with other types of violence, which have always existed but are only now being acknowledged by the authorities. First of all, there is forced marriage, which, according to the Supreme Council for Integration, may involve some 70,000 adolescents. While certain aspects of this question come under international private law, France recently took a major, albeit incomplete, step to combat forced marriages. On 29 March 2005, the Senate raised the minimum legal age of marriage for women to 18, bringing it into line with the age for men. Previously, it was 15 (Article 144 of the Civil Code). However, the National Assembly has not yet passed this law, which is still at the bill stage (Bill No. 2255). I find it most surprising that this text, tabled on 14 April 2005, has still not been put to the vote in the National Assembly.

361. Another type of violence is sexual mutilation, which is hard to measure in terms of numbers, although apparently very widespread in certain communities originating from west Africa. French legislation punishes both the parents who allow excision to be performed, and also the person carrying it out. But it would appear that such sexual mutilation takes place most often in the family's country of origin. In its annual activity report of January 2004, the Supreme Council for Integration commented on the need to enact legislation along the lines of that for sex tourism, making it possible for proceedings to be initiated whether or not the person living in France has French nationality. Clearly, this proposal warrants consideration.

2. **Human trafficking**

362. France is a country of destination for trafficking in human beings. 75% of trafficking victims are of foreign origin. The majority come from Eastern Europe and the Balkans (primarily Romania and Bulgaria) and West Africa (mainly Nigeria and Cameroon). A recent development is the increasing number of Chinese nationals involved in prostitution in Paris and the surrounding region. However, most Chinese are employed in the textile and restaurant sector. The report of the International Labour Office published in 2005 estimates the number of Chinese people illegally resident in France at about 50,000, having arrived by means of networks that subsequently exploit them. It also states that there are some 6,000 new arrivals every year.

363. France has improved its legislation in the field of human trafficking. The law of 18 March 2003 on internal security introduces the crime of human trafficking. It also provides for protection for men and women forced to enter prostitution. Apart from social assistance, they may be given a provisional residence permit, on condition that they co-operate with the police in securing the arrest of the person controlling them. If the latter is convicted, the victim may be issued with a residence card[41]. In 2004, 180 victims of human trafficking obtained permits under this scheme. However, this figure is very low (there are various reasons for this, one of them being that trafficking networks are very well organised and highly mobile), and I was also told that provisional residence permits are not systematically renewed, and that the protection provided to guarantee victims' safety is inadequate in many respects. Furthermore, help with reintegration is poor and in some regions non-existent.

364. While there are problems with implementation of the provisions of the legislation on human trafficking, some aspects of the issue are not sufficiently addressed by French law. For example, in the Siliadin v. France judgment of 26 July 2005[42], the European Court of Human Rights recently held that slavery and servitude were not rendered illegal as such in French criminal law. It concluded that there had been a violation of Article 4 of the European Convention on Human Rights. Some thirty cases, similar to the one dealt with by the ECHR, are brought to the attention of associations every month. Girls, not yet of age in the majority of cases, are obliged to work without any pay and in terrible and

41 Article L. 316-1 of the Code on the entry and residence of foreigners
42 Case of Siliadin v. France, Application No. 73316/01 of 26 July 2005.

shameful conditions. Almost one third are subject to sexual violence by the people who exploit them[43]. The Court reminded France of its obligation to strengthen its legislation stemming from the Law of 18 March 2003, whose aims are to render illegal and punish any instance of slavery and forced labour. I cannot but agree completely with this and recommend that France strengthen its legislation in this field.

365. Lastly, there are a number of complicated situations in certain border locations, which render the provisions of French legislation inoperative. For example, the prostitutes working in certain areas of Strasbourg are housed by networks controlling them in Germany, on the other side of the border. They therefore only come to Strasbourg "to work". The first time they are arrested, they are more often than not escorted to the border; if they return, they are given an immediate summary trial and generally forbidden to enter France. The police officers I met told me of their feeling of helplessness in dealing with the upsurge in this problem and the total lack of harmonisation of legislation at European level. France has of course ratified several international legal instruments and increased its co-operation, particularly through the activities of the Central Office for Combating Human Trafficking, responsible for the fight against trafficking networks in France and abroad. I call on the French authorities to continue in this direction and to sign the Council of Europe's Convention on Action against Trafficking in Human Beings, recently adopted by our organisation. I also call on the member states of the European Union to address the sorry question of human trafficking at European level in order to make the fight against transnational networks more effective.

3. **People with mental disabilities and compulsory hospital placements**

366. I visited two psychiatric hospitals, in Montfavet and Lannemezan, in order to assess the situation of the mentally ill and the arrangements for the compulsory placement in hospitals of persons suffering from mental disorders.

367. I visited several units at the Montfavet Hospital, including the unit for difficult patients (UMD). This is one of four such units in the country for patients whose behaviour represents a particular danger for themselves and for others. The other three are in the Villejuif, Sarreguemines and Cadillac hospitals. These four units have a total capacity of 520 beds, which seems a little on the small side for France as a whole. This situation reflects the lack of psychiatric resources in France.

368. Montfavet hospital has embarked upon a series of initiatives to improve the living and working conditions of patients and staff. I was able to see for myself the excellent conditions provided by the recently renovated buildings, especially the one housing the "Green Oaks" unit, which ultimately will become a pre-discharge evaluation unit. The Esquirol unit, which houses certain UMD departments, is due for renovation in the near future. Nonetheless, conditions are satisfactory there and patients are given devoted care

[43] Jacqueline Coignard, "Un ex du PSG, esclavagiste présumé"**,** *Libération*, 22 August 2004.

and a whole series of tailor-made activities. The recommendations made by the CPT during its visit in 1996 seem to have been taken on board.

369. Similarly, the psychiatric unit in Lannemezan hospital offers an excellent care environment provided by dedicated staff. It is a shame, however, that the various buildings housing the psychiatric unit are locked. This is to ensure that those that have been forcefully placed there do not leave, but it also deprives those who have been admitted of their own volition of some of their freedom.

370. Indeed, the arrangements for compulsory placement in hospitals, as described to me and as set out in the relevant texts, raise a number of questions. Such placements account for around 20% of admissions at Lannemezan each year, a percentage which is close to the national average. Involuntary placement in hospital is ordered by the *Préfet* or, in Paris, by the Police Commissioner. It applies to patients who require urgent treatment or who represent a danger to themselves or others. A doctor from outside the facility in question must issue a medical certificate in support of the request. If there is an imminent danger, the mayor, and in Paris, the police commissioners, may take provisional placement measures, but must refer the matter within 24 hours to the *Préfet*, who takes the final decision on placement.

371. Placement in hospital at the request of a third party is decided upon by the director of the hospital concerned, who again must refer the matter within 24 hours to the *Préfet*. This applies to patients suffering from mental disorders preventing them from giving their consent, whose state of health requires immediate treatment. The request must be made in writing and presented by a member of the patient's family or by a close friend. In all cases, two medical certificates must be produced, one of which must be issued by a psychiatrist from outside the hospital in question.

372. Those placed involuntarily in hospital may appeal to the psychiatric placement committee in the *département* concerned. They may also appeal to the administrative court, which rules on the legality of the measure, or to the president of the regional court, who must decide on its merits and necessity. The legislative part of the Public Health Code therefore makes provision for judicial review after the event. While patients do have channels of appeal, the figures we were given showed that very few appeals are filed before the president of the regional court. The state of health of those concerned and the fact that they are placed under treatment clearly explain the low number of appeals.

373. Both compulsory placement and placement at the request of a third party amount to deprivation of freedom. As with every type of deprivation of freedom, it is my view that it may be ordered only by a court, and not by an administrative authority alone. Obviously, in emergencies, it is only natural for the administrative authority to take a provisional decision, but this cannot be formally confirmed until a court has approved it. Consideration should therefore be given to the possibility of involving courts automatically to confirm compulsory placements. This would provide additional guarantees for patients, remove some of the administrative burden from *préfets* and

hospital directors, and reduce the tensions that exist, particularly in Montfavet, when patients are admitted involuntarily.

XI. RECOMMENDATIONS

374. The Commissioner, in accordance with Article 3, paragraphs b, c and e, and Article 8 of Committee of Ministers Resolution (99) 50, makes the following recommendations to the French authorities:

- **Functioning of the legal system and police custody**

Increase the financial and technical resources allocated to the justice system.

Improve the situation in holding facilities at French courts without delay.

Review arrangements for the recruitment of court registrars and consider organising them on a regional rather than national basis.

Initiate a process of reflection on the geographical distribution of regional and appeal courts, in order to modernise the judicial map of France.

Consider ways of ensuring that hearings can be held in safety, but without interfering with their public nature; Satisfy courts' security needs and the need for public reception facilities.

Reform arrangements for the involvement of counsel during police custody; Make the assistance of a lawyer compulsory; Extend the role of lawyers and require their presence during questioning, or at the very least, when the detainee is signing his/her statement; Make provision, in all the various custody procedures, for the presence of a lawyer from the outset.

Amend Article 437-7-2 of the Criminal Code, introduced by the Perben II Law, in order to guarantee the effective exercise of the profession of lawyer and safeguard the rights of the defence.

Reintroduce the obligation for police officers to notify persons being questioned of their right to remain silent.

Provide mattresses immediately in all custody cells, and harmonise practice in this area.

- **Prison system**

Increase the resources allocated to prisons; build new prisons to ease the overcrowding in existing establishments; Ensure that sentenced prisoners and prisoners awaiting trial are kept apart.

Improve prisoners' living conditions; Reduce the financial burden placed on prisoners, especially in respect of everyday consumer products.

Increase significantly the funding set aside for education, health and occupational reintegration facilities in prisons; Increase the resources allocated for programmes focusing on the rehabilitation and monitoring of prisoners post-release.

Make available the necessary funds to complete the work to secure access to the gymnasium in the Fleury-Mérogis prison.

Re-organise the prisoner transfer department along regional lines in order to make the system more flexible and operational.

Make every effort to ensure that finally sentenced persons are held close to their homes to help maintain links; Extend the system of family living units to all prisons.

Adopt at the earliest opportunity legislation or regulations bringing solitary confinement into line with rule-of-law guarantees; Make provision for a judicial authority, such as the judge responsible for the enforcement of sentences, to be involved in this procedure; Ensure, in advance of any legislative reform, that prisoners in solitary confinement are able to participate in organised activities, particularly as regards work, culture and sport.

Increase the resources allocated for somatic and psychiatric care in prison; harmonise access to health-care; Modernise the UCSAs and the SMPRs, which suffer most from a lack of staff and equipment; allocate more resources to drug-addiction units; Show more humanity to elderly prisoners and the terminally ill by making greater use of suspension of sentence on medical grounds.

Take, as a matter of urgency, all the measures needed to ensure that prisoners moved to hospital for medical reasons are transferred and accommodated in proper conditions, respecting their rights and taking due account of their state of health; Repeal without delay the circular of 18 November 2004 on the handcuffing of prisoners who are being transferred and admitted to hospital.

Reinforce measures to prevent suicide in prisons, particularly by increasing the number of social workers in sections set aside for first-time prisoners.

Ensure equal care provision for women and men in SMPRs, particularly by ensuring that women are given the same treatment and the same medical supervision in mixed prisons.

Ensure that prisoners held in psychiatric hospitals are treated with dignity and provided with appropriate care; Ensure that staff working in these establishments can do so in security.

Revise the planned construction of UHSAs by increasing the resources allocated; Plan without delay for the period 2005-2010 and the creation of secure wings in hospitals.

- **Law enforcement agencies**

Take a firm stand against all reported instances of police brutality or violence; take action against the violent behaviour of certain police officers; Improve the in-service training of police officers and gendarmes and their supervisors; Ensure that serving police officers can be identified, at least by their service numbers.

Ensure that the CNDS is given the funding it needs to operate effectively; Give consideration to reforming the CNDS, by extending its powers and increasing its budget.

- **The situation of foreigners**

Clarify the legal status of waiting zones.

Ensure that foreigners are under no pressure from police officers to forego their right to a one-day grace period; amend the law, to ensure that minors may in no circumstances refuse the one-day grace period before they are returned.

Take firm action against immediate returns before foreigners are placed in waiting zones; Make absolutely sure that asylum applications submitted by foreigners in waiting zones are systematically registered and processed.

Develop alternatives to placing families with children in waiting zones.

Harmonise the practices followed by the different *préfectures* with regard to asylum applications.

Remove the requirement for foreigners to submit their asylum application in French or provide non-French-speaking asylum seekers with the linguistic assistance they need to submit their applications in due form.

Consider reimbursing the travel expenses of asylum seekers living in the provinces who have to travel to Paris for OFPRA interviews, or open OFPRA branches in the provinces.

Encourage the OPFRA to take account of the case-law of the CRR in its decisions; Give the CRR budget autonomy.

Consider extending legal aid to all asylum seekers.

Consider ways of effectively ensuring that all asylum seekers are treated equally, irrespective of where they are accommodated, in order to put them all on an equal footing, especially with regard to access to legal advice.

Review the priority procedure, to ensure that files submitted under this procedure are examined fully and carefully.

Give urgent thought to the fate of persons without legal status, particularly in respect of health-care; Immediately repeal the new rules introduced by the recent reform of state medical aid.

Close immediately the administrative holding centre in the Paris Police Headquarters and the one in Arenc.

Consider opening OFPRA branches in the holding centres.

Bring holding practices into line with national legislation and France's international commitments; Adopt a text prohibiting the placement of minors, alone or not, in both waiting zones and holding centres.

Take firm action against the practice of stopping children, either in their parents' presence or alone, "for questioning", as a means of exerting pressure on parents subject to deportation orders.

- **The specific situation of minors**

In all cases, emphasise education rather than punishment.

Allocate greater resources to the judicial system for minors; strengthen judicial youth protection services; Introduce proper monitoring of young offenders when they leave child welfare establishments or are released from prison; Improve co-operation between the prison administration and specialist departments.

Build new facilities for young offenders, particularly closed educational centres, and make every effort to combat the stigma attached to these centres.

Ensure that minors are completely separate from adults in all prisons; Find a lasting solution to ensure that this also applies to girls; ensure that girls have access to the same activities as boys.

Clarify what is to happen to the juvenile wings in prisons; review plans for the building juvenile prisons, giving consideration to separating sentenced and remand prisoners, and setting up semi-open units in preparation for release.

Introduce legislation on foreign minors, and new regulations to ensure that their rights are fully respected from the moment they arrive in France; Consider ways of systematically registering supposedly unaccompanied children arriving at French airports, or those released from waiting zones when the statutory 20-day period has elapsed.

Reform the role of ad hoc administrators and provide for their involvement at an earlier stage in the procedure.

Reconsider the problems posed by young vagrants and step up joint action with the municipalities and associations concerned.

Consider the possibility of issuing provisional residence permits to young people over the age of 18 who, having entered illegally, complete their studies in France.

- **The fight against racism, anti-Semitism, xenophobia and discrimination**

Step up efforts to combat racism, anti-Semitism and xenophobia.

Enforce existing legislation more effectively, and punish those who commit racist, anti-Semitic or xenophobic acts.

Implement the anti-discrimination rules embodied in French law more effectively.

- **Travellers**

Combat discrimination against Travellers.

Comply with the Besson Law and speed up the construction of camp sites for Travellers.

Ensure widespread dialogue at both national and local level with representatives of Travellers.

Repeal the special law on identification of Travellers, and the specific legal situation which restricts their civil and political rights.

Review the projected “council tax on caravans”.

- **Roma**

Find, without delay, solutions enabling Roma communities in France to move out of the shanty towns in which they live, bearing in mind the need for dialogue and consultation.

Help municipal authorities to solve the humanitarian, health and social problems caused by unauthorised Roma camps.

Consider giving heads of family the right to work, in order to combat the threat of criminal networks and crime.

Put an end to the violent and unacceptable practices employed by police officers in evicting Roma from encampments.

- **Domestic violence**

Extend the laws on combating domestic violence to cover co-habiting and civil union partners.

Provide a legal response to the conflict between women's and father's rights permitting the whereabouts of the victim to remain undisclosed whilst ensuring that fathers can exercise their rights vis-à-vis their children.

Maintain and increase the number of places where meetings can take place on neutral ground, in order to preserve the parent-child relationship in a peaceful environment.

Ensure that police officers and judges, the ones most directly in contact with domestic violence, are made more aware of the issues.

Pay special attention to foreign women subjected to domestic violence.

Increase measures to prevent forced marriages.

- **Human trafficking**

Provide effective protection for victims of trafficking networks who co-operate with the police; Ensure that the provisional residence permits of victims who collaborate are renewed; provide greater assistance for their reintegration.

Take more active steps to combat modern slavery and incorporate into French law the ECHR's case-law in this field.

- **People with mental disabilities and compulsory placement in hospitals**

Remedy as soon as possible the shortage of psychiatric resources in France.

Introduce the judicial control of the compulsory placement procedure; Consider the possibility of automatically involving the courts to confirm compulsory placements after the event.

A P P E N D I X

FRENCH CONSIDERATIONS
FOLLOWING THE REPORT OF THE HUMAN RIGHTS COMMISSIONER,
MR ALVARO GIL-ROBLES, ON HIS VISIT TO FRANCE

[in French only]

La France attache une importance toute particulière à la protection des droits de l'homme et des libertés fondamentales. Elle a fondé son identité même dans ces principes, la liberté pour tous, l'égalité pour tous, et notamment l'égalité des chances, la fraternité, la solidarité, la laïcité.

Au-delà de l'énoncé et de la défense de ces principes, le gouvernement français s'efforce, dans son action, d'assurer leur mise en œuvre concrète pour chacun.

A cet égard, le travail effectué par le Commissaire aux droits de l'homme du Conseil de l'Europe constitue une aide précieuse. La France a accueilli le Commissaire aux droits de l'homme avec un esprit de totale ouverture et de transparence complète. **Elle le remercie pour son rapport et ses recommandations, dont elle a pris connaissance avec le plus grand intérêt.**

Suite à ce rapport, la France souhaite présenter les orientations actuelles des politiques suivies dans les différents domaines évoqués par M. Gil-Roblès ; elle apporte ainsi des réponses, des éclairages nouveaux ou des compléments détaillés aux remarques formulées par le Commissaire.

****

1. **La France consacre un effort important à l'amélioration de son système judiciaire et pénitencier.**

Cette politique se traduit d'abord **par des moyens budgétaires significatifs** (près de 6 milliards d'euros pour l'ensemble du ministère de la Justice) **et en forte augmentation** (avec près de 5 % d'augmentation de ses crédits, la Justice est l'un des seuls ministères à bénéficier de moyens supplémentaires).

Le bon fonctionnement du système judiciaire est une priorité. Cet effort vise notamment à améliorer les conditions matérielles de son fonctionnement et à renforcer les recrutements de personnels judiciaires.

Des efforts importants sont également mis en œuvre pour rendre la vie carcérale plus sûre et plus digne. **Les crédits consacrés à la modernisation des prisons ont plus que doublé au cours des trois dernières années**. 13 200 places de détention nouvelles seront créées, dont les premières seront disponibles dès 2007. 3740 emplois nouveaux seront créés dans les prisons d'ici 2007.

Les équipements collectifs des établissements pénitentiaires, qui ont retenu l'attention du Commissaire, sont en cours de modernisation. Des unités de vie familiales sont en cours d'essai. Le placement sous surveillance électronique comme substitut à l'incarcération connaît un essor significatif. Une politique de suivi et d'accompagnement des sorties de prison est en cours de mise en place. Enfin, une politique spécifique est mise en place pour les prisonniers souffrant de troubles psychiatriques. **Toutes ces mesures devraient permettre d'obtenir, dès 2007, une réelle amélioration du régime carcéral.**

La procédure pénale fait actuellement l'objet de réflexions approfondies notamment à la suite de l'affaire d'Outreau, pour parvenir à plus d'équilibre et de célérité. Instruction collégiale et renforcement des droits de la défense sont les deux axes de la réflexion en cours.

Il convient également ici de signaler que la France a su se doter au fil des années **d'un dispositif législatif anti-terroriste qui permet de concilier efficacité et respect de l'état de droit.** La France a en effet fait le choix dans ce domaine d'une législation dérogatoire mais respectueuse des normes de l'état de droit et placée sous un strict contrôle judiciaire. Ceci permet d'éviter de devoir adopter des mesures d'exception, comme c'est le cas dans d'autres pays.

2. La France poursuit son effort pour mettre en œuvre, de manière juste et efficace, le droit d'asile.

En raison de sa situation géographique, de son passé et de son ouverture, la France est un pays de destination de nombreux immigrants ou demandeurs d'asile**. En matière d'asile, 9.790 personnes ont obtenu le statut de réfugié en 2003, 11.300 personnes en 2004.**

Deux priorités orientent l'action du gouvernement français en la matière : la volonté d'une mise en œuvre juste et efficace du droit d'asile d'une part, le souci d'une lutte ferme et mesurée contre l'immigration illégale d'autre part. D'importants efforts ont été décidés pour améliorer les conditions de vie et l'égalité des chances des demandeurs d'asile dans le cadre du plan de cohésion sociale adopté récemment. Depuis 2002, le nombre de places dans les centres d'accueil pour les demandeurs d'asile a augmenté de près de 70%. **Les deux centres de rétention administrative (Paris-préfecture et Marseille-Arenc), très vétustes, visités par le Commissaire, vont être fermés.**

3. La France mène une politique résolue contre toutes les discriminations.

La société française est une société riche et multiple, construite historiquement par les apports de courants d'immigration variés. Aujourd'hui, la France doit à nouveau faire la preuve de sa faculté d'accueil et d'intégration, alors que certaines franges de la population peuvent se sentir délaissées. Ce problème est réel, et il constitue l'une des toutes premières priorités de notre pays. Les politiques engagées dans ce domaine sont marquées par une volonté d'innovation.

Les pouvoirs publics français se sont engagés au plus haut niveau contre le racisme et l'antisémitisme. La loi du 3 février 2003, renforcée en 2004, a créé une nouvelle circonstance aggravante lorsqu'un crime ou un délit est commis en raison de l'appartenance réelle ou supposée de la victime à une ethnie, une nation, une race ou une religion déterminée. **Les premières statistiques disponibles pour 2005 montrent une baisse des crimes et délits à caractère raciste et antisémite.**

De manière plus générale**, le gouvernement français s'efforce de lutter contre toutes les formes de discrimination.**

Une loi de 2003 prévoit une nouvelle circonstance aggravante lorsque qu'un délit ou un crime est commis en raison de l'orientation sexuelle de la victime.

Le gouvernement français entend promouvoir une réelle égalité des chances, la parité hommes-femmes notamment en matière salariale (projet de loi en cours d'adoption) et renforcer la cohésion sociale, notamment dans les zones les plus défavorisées.

La création d'un ministère pour l'Egalité des chances ainsi que d'un organe de médiation spécifique, la Haute autorité pour la lutte contre les discriminations et pour l'égalité, la HALDE créée en 2005, manifestent la détermination du gouvernement dans ce domaine. La HALDE va être dotée d'un pouvoir de sanction administrative. Enfin, l'année 2006 a été proclamée « année de l'égalité des chances », et un projet de loi ambitieux sur ce thème a été présenté au Parlement en janvier dernier./.

- Note de synthèse -

Remarques générales

1. Conventions du Conseil de l'Europe

Dans ses **remarques générales,** le Commissaire aux droits de l'homme fait valoir au point 1 que la France n'a pas signé certaines conventions et n'a pas encore ratifié certains protocoles à la Convention européenne des droits de l'homme. La France souhaite saisir cette occasion pour rappeler les fondements juridiques et constitutionnels de ses positions pour certaines conventions qu'elle n'est pas en mesure de ratifier.

La France n'est pas en mesure de signer la **Convention-cadre pour la protection des minorités nationales** en raison de son incompatibilité avec la Constitution française. Elle est en effet contraire aux principes d'indivisibilité de la République, d'égalité de tous devant la loi sans distinction d'origine, de race et de religion, et d'unité du peuple français énoncés dans la Constitution du 4 octobre 1958. Cette incompatibilité a été rappelée par le Conseil d'Etat et le Conseil constitutionnel.

S'agisssant du Protocole n° 12 à la CEDH portant sur l'interdiction générale de toute forme de discrimination, la position française est la suivante.La France n'envisage pas, à court terme, d'adhérer au protocole n° 12 à la Convention européenne des droits de l'homme, dans la mesure où cet instrument élargit dans des proportions très importantes la compétence de la Cour ce qui paraît difficilement compatible avec la situation d'engorgement dans laquelle elle se trouve. Cette juridiction doit en effet faire face à une augmentation considérable du nombre d'affaires portées devant elle, qui a rendu nécessaire une réforme profonde de son fonctionnement (cf. Protocole n° 14 à la Convention européenne des droits de l'Homme). Aussi, l'entrée en vigueur d'un nouveau protocole, qui ne manquera pas de susciter l'afflux de nouvelles requêtes, n'apparaît-elle pas souhaitable aujourd'hui.

La France est partie aux grands instruments internationaux prohibant la discrimination. Elle a ainsi signé, le 4 novembre 1950, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, entrée en vigueur en France en 1974, et dont l'article 14 interdit toute forme de discrimination [44]. Elle est également partie à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, signée le 7 mars 1966 et entrée en vigueur en France en 1971, et elle a adhéré au Pacte international sur les droits civils et politiques du 16 décembre 1966, entré en vigueur en France en 1981.

[44] Dans la jouissance des droits et libertés reconnus par la Convention de sauvegarde des droits de l'homme et des libertés fondamentales

Ces dernières années la France a considérablement renforcé son arsenal législatif national pour lutter plus efficacement contre toutes les formes de discrimination. La France est donc dotée d'un arsenal juridique de lutte contre la discrimination particulièrement développé.

Quant au **protocole 13 à la CEDH portant sur l'abolition de la peine de mort** en toutes circonstances, il n'existe pas d'obstacle constitutionnel à sa ratification, qui devrait intervenir très prochainement.

Le protocole 14, sur l'amélioration du système de contrôle de la CEDH est actuellement en cours d'examen par les Assemblées en vue de sa ratification, conformément à nos engagements, dans les mois qui viennent.

2. Recours devant la Cour européenne des droits de l'homme

Le Commissaire observe au point 2, le nombre important d'affaires portées devant la cour européenne des droits de l'homme par des requérants français. Sur ce point, le gouvernement ne peut que rappeler la priorité politique qu'il accorde sans défaut à l'institution de la CEDH et à son bon fonctionnement (engagement français en faveur d'une augmentation de son budget et de la création d'une 5ème chambre, soutien aux travaux du groupe des sages).

Le nombre de recours illustre notamment la bonne connaissance dans le grand public et parmi les avocats français de la voie de recours de la CEDH. De plus, la jurisprudence de la Cour a largement été prise en compte dans les réformes législatives et administratives de ces dernières années. On peut citer, notamment, le statut des enfants adultérins en matière de droits successoraux, la procédure devant la Cour de cassation et le Conseil d'Etat, l'indemnisation des durées de procédure excessives aussi bien devant les juridictions administratives que devant les juridictions judiciaires, la possibilité de réexamen d'une décision pénale faisant suite à un constat de violation de la cour, le statut juridique du transsexualisme.

I. Le fonctionnement de la justice

La Justice constitue une priorité budgétaire du Gouvernement français, comme en témoigne l'adoption en 2002 de la loi d'orientation et de programmation de la Justice (LOPJ), dont l'exécution est en cours. Ainsi, alors que le budget de l'Etat en 2006 a augmenté de 1.8%, le budget de la Justice (judiciaire) connaît une croissance de 4.6%, ce qui le porte à 5,9 milliards d'euros.

1. Fonctionnement des juridictions

Le budget des juridictions judiciaires représente 42% du budget de la Justice en 2006 (2,5 milliards d'euros) et bénéficie d'une augmentation de 8%. Un effort continu est réalisé pour le recrutement de personnels judiciaires, magistrats mais surtout

fonctionnaires, au premier rang desquels les greffiers. Ainsi, en 2006, près de 2000 personnes supplémentaires, dont 651 fonctionnaires des greffes et 279 magistrats pourront intervenir sur le terrain pour rendre la Justice plus rapide et plus efficace.

Les autres priorités en ce domaine concernent la modernisation des juridictions (rénovation et construction de nouveaux bâtiments) ainsi que la sécurité dans les tribunaux. Sur ce dernier point, le Garde des sceaux vient d'engager un plan d'action sur la sécurité dans les juridictions. Le budget alloué à la sécurité est passé en 2006 de 7,2 millions d'euros à 11,8 millions d'euros. Les tribunaux vont bientôt bénéficier de la présence de fonctionnaires de police retraités (réserve civile), ainsi que de gendarmes à la retraite et de surveillants pénitentiaires retraités.

2. Procédure pénale et garde à vue

Les mesures de garde à vue en France renvoient à un système juridique dans lequel le procureur exerce un contrôle de ces mesures qui sont également créatrices de droits pour la personne qui en est l'objet, droits qui doivent impérativement être notifiés. La loi du 9 mars 2004 n'a pas complexifié les régimes dérogatoires de garde à vue mais les a simplement adaptés à l'évolution de la criminalité organisée.

Par ailleurs, à la suite d'un dialogue engagé par la Chancellerie avec le Conseil national des barreaux, en vue de préciser le champ d'application de l'article 434-7-2 du code pénal, l'infraction de crime organisé a été réécrite par la loi du 12 décembre 2005 relative au traitement de la récidive des infractions pénales. En particulier, l'élément intentionnel de l'infraction a été renforcé dans le sens d'une action volontaire de l'auteur des faits incriminés (dol spécial).

Enfin, à la suite de l'affaire dite d'Outreau, le Gouvernement a l'intention de présenter au Parlement un projet de loi modifiant la procédure pénale, destiné à renforcer la célérité et l'équilibre de celle-ci. En l'état de la réflexion, les grandes lignes de cette réforme tendent notamment à favoriser les instructions collégiales et à renforcer le contrôle de la chambre de l'instruction sur la qualité des procédures et le respect des droits de la défense.

II. Le système pénitentiaire

1. La politique pénitentiaire

La modernisation des établissements pénitentiaires et le développement des aménagements de peine amélioreront la situation des établissements pénitentiaires français. Il convient, à cet égard, de rappeler que le taux d'incarcération en France (93 détenus pour 100.000 habitants) est inférieur à celui des autres grands pays européens.

Le budget du ministère de la Justice comporte une forte dimension pénitentiaire et vise à rendre la vie carcérale plus sûre et plus digne. Des efforts importants ont été mis en œuvre pour moderniser, humaniser et accroître le parc pénitentiaire français. Entre 2003

et 2006, les crédits consacrés à la modernisation des établissements existants ont crû de 117% pour passer de 170 à 369 millions d'euros. L'Etat s'est par ailleurs engagé dans la LOPJ à créer 13200 nouvelles places de détention, dont les premières seront livrées en 2007.

Les structures pénitentiaires seront mieux à même d'assurer aux détenus des conditions de vie décentes (cellules plus confortables, douches individuelles, espaces de loisirs plus accueillants, salles d'enseignement plus nombreuses et ateliers aux normes). En parallèle, la diversité de la population pénitentiaire sera mieux prise en compte par la mise en service de structures spécifiques : quartiers courtes peines pour les primo délinquants, établissements spécifiques pour mineurs ou maisons centrales sécurisées pour accueillir les détenus les plus dangereux. Des recrutements importants vont être effectués, à hauteur de 3740 emplois entre 2002 et 2007 dans les établissements pénitentiaires.

Le maintien des liens familiaux des personnes détenues est un souci constant des responsables pénitentiaires. Des Unités de vie familiales sont pour l'instant à l'essai dans trois établissements pénitentiaires ; le dispositif fera l'objet d'une évaluation soutenue en 2007, mais les premiers résultats apparaissent positifs et ces unités devraient être étendues à de nouveaux établissements.

Un effort important est accompli pour favoriser la réinsertion des détenus. Ainsi en 2004, 35000 détenus ont suivi un enseignement et 18000 ont bénéficié d'une action de formation professionnelle. Les actions engagées en ce domaine seront poursuivies et intensifiées.

Par ailleurs, le nombre de juges d'application des peines a augmenté de 76% depuis 2002 et en 5 ans (2002-2007), pratiquement 1.000 emplois de travailleurs sociaux auront été créés pour renforcer les services d'insertion et de probation. Ces efforts ont commencé à porter leurs fruits puisque le nombre de mesures d'aménagements de peines qui stagnaient depuis 10 ans a fortement augmenté en 2004 et 2005 grâce, notamment, à l'essor du placement sous surveillance électronique. A cet égard, la loi du 12 décembre 2005, relative au traitement de la récidive des infractions pénales introduisant dans notre droit le bracelet électronique mobile, ouvre des perspectives particulièrement intéressantes en matière d'aménagements de peines.

L'objectif est d'éviter, à l'avenir, les sorties de prison sans suivi et accompagnement.

2. L'organisation des soins en prison

La prise en charge de la santé des détenus est une des préoccupations majeures et conjointes des ministères de la Justice et de la Santé.

Dans le cadre du plan psychiatrie et santé mentale (2005-2008) (cf VIII), l'axe 4 relatif à la mise en œuvre de programmes spécifiques s'adresse notamment aux personnes détenues. Les différents objectifs consistent à renforcer et diversifier les prises en charge

psychiatriques en ambulatoire dans les établissements pénitentiaires en améliorant leur qualité, notamment en direction des personnes auteurs d'infractions sexuelles et présentant un trouble mental; Plus particulièrement, il s'agit :

- De renforcer la cohérence des prises en charge psychiatriques et somatiques des personnes détenues, dans le respect des prérogatives de chacun (personnels soignants, personnels pénitentiaires, travailleurs sociaux…).
- D'intensifier la prise en charge psychiatrique des personnes détenues dans les établissements non dotés d'un SMPR
- D'améliorer l'accès à l'hospitalisation pour motifs psychiatriques et la qualité des soins en milieu hospitalier et déployer les UHSA.
- De favoriser la continuité des soins psychiatriques aux personnes pendant leur détention et à leur sortie.

- De développer la prévention du suicide par un repérage précoce de la crise suicidaire et le suivi coordonné des personnes présentant un risque élevé.

Pour cela, le plan prévoit trois actions principales

- Amélioration des soins psychiatriques des personnes détenues tant en milieu pénitentiaire (soins ambulatoires et alternatives) qu'en matière d'hospitalisation.
- Relance d'outils permettant une prise en charge globale et coordonnée et mise en place d'outils innovants : Nécessité d'organiser des collaborations par des réunions entre les différents acteurs et expérimentation de la télémédecine sur 6 sites pilotes.
- Mise en place d'un programme santé/justice développant la prévention du suicide des personnes détenues

Il s'agit de poursuivre au niveau national, les actions de formations de binômes de formateurs sanitaires (psychiatres) et pénitentiaires (psychologues) et au niveau régional, de démultiplier les formations pluridisciplinaires de personnes ressources pour l'intervention face à une crise suicidaire.

De plus, il conviendra de formaliser les modalités d'intervention coordonnées des personnels intervenant en milieu pénitentiaire à la suite du repérage d'une personne détenue en crise suicidaire.

Pour la mise en oeuvre des actions du plan, un comité national de suivi a été mis en place.

3. Les autres formes de privation de liberté

Soucieuses d'assurer le respect de la dignité des personnes privées de liberté, les autorités françaises se sont engagées depuis plusieurs années dans un important effort d'amélioration des garanties juridiques et des conditions matérielles applicables aux personnes se trouvant en garde à vue et aux étrangers placés en zone d'attente ou en centre de rétention.

En ce qui concerne la garde à vue, la circulaire du Ministre de l'intérieur du 11 mai 2003 relative à « la garantie de la dignité des personnes en garde à vue », fixe les axes d'une politique de modernisation des méthodes professionnelles et des moyens consacrés à la garde à vue.

Rappelant les exigences juridiques en matière de placement et de mise en œuvre de la garde à vue, elle définit également des normes sur les conditions matérielles inspirées dans préconisations du Comité européen pour la prévention de la torture du Conseil de l'Europe (CPT) et institue un « officier » ou « gradé » de la garde à vue chargé dans chaque commissariat de contrôler au quotidien le bon déroulement de la garde à vue.

Un groupe de travail interministériel assure le suivi de ces instructions en veillant à la mise aux normes des infrastructures et des équipements et en étant chargé de proposer l'adaptation des normes juridiques et pratiques professionnelles dans le respect des exigences d'éthique.

Dans le domaine de la rétention et du maintien en zone d'attente, une politique volontariste est menée depuis 2001 (décret du 19 mars 2001) pour améliorer les conditions matérielles de l'hébergement. Cet effort se poursuit et le décret du 30 mai 2005 donne un cadre juridique rénové à l'organisation et au fonctionnement de la rétention administrative. Fondé sur les conclusions de rapports d'inspections, ce décret impose des normes immobilières et d'équipements précises destinées à améliorer la qualité de l'hébergement, qui devront être appliquées sur l'ensemble du territoire au plus tard au 31 décembre 2006.

De même, dans le domaine de la zone d'attente, des efforts substantiels ont été fournis.

Ainsi, a été ouvert en 2001 à l'aéroport de Roissy, un nouveau lieu d'hébergement (ZAPI 3) d'une capacité de 172 places, offrant de bonnes conditions d'hébergement, des chambres bien équipées et entretenues, une alimentation correcte selon les conclusions du CPT (visite 2002).

Simultanément, il est veillé à ce que ces procédures soient entourées de garanties juridiques.

En ce qui concerne le maintien en zone d'attente, on rappellera que le maintien au-delà de quatre jours et pour une durée de vingt jours ne peut être décidé que par le juge judiciaire devant lequel peut comparaître l'étranger qui peut faire appel de sa décision. La notification des droits se fait dans une langue que l'étranger comprend. Celui-ci peut demander l'assistance d'un interprète, d'un médecin et communiquer avec la personne de son choix et un conseil. En application de la loi du 26 novembre 2003, des locaux permettant aux avocats de s'entretenir confidentiellement doivent être aménagés et sont accessibles en toutes circonstances, sauf cas de force majeure.

Depuis la loi du 4 mars 2002 l'étranger mineur est assisté par un administrateur ad hoc qui assure sa représentation dans toutes les procédures administratives ou juridictionnelles.

Un droit d'accès est reconnu aux représentants du HCR et aux associations habilitées et de manière permanente, la Croix Rouge assure une assistance humanitaire et l'ANAFE (collectif d'associations) une assistance juridique des étrangers en zone d'attente.

En ce qui concerne le maintien en rétention des étrangers en instance d'éloignement, la loi du 26 novembre, à l'instar de nombreuses législations de pays européens a porté de 12 à 32 jours maximum la durée de rétention, afin d'assurer l'effectivité de l'exécution des mesures d'éloignement. Le maintien, au-delà de 48 heures doit être autorisé par le juge judiciaire selon des modalités très strictes de proportionnalité. Les droits d'ores et déjà prévus (notification dans une langue comprise, accès à un avocat, un médecin, un interprète) ont été parallèlement renforcés par la loi pour en assurer l'effectivité (accès permanent des avocats, vérification par le juge des libertés de la notification des droits). Les étrangers maintenus en rétention bénéficient d'un soutien humanitaire apporté par l'agence Nationale d'accueil des étrangers et des migrations (ANAEM) et d'une assistance juridique de la CIMADE).

L'ensemble de ces garanties sera renforcée par l'entrée en fonction de la commission nationale de contrôle des centres et locaux de rétention et des zones d'attente institué par la loi du 26 novembre 2003 et chargée de veiller au respect des droits des étrangers retenus ainsi qu'au respect des normes relative à l'hygiène, à la salubrité, à l'aménagement et à l'équipement des lieux de rétention.

III. L'action des forces de l'ordre

Pour les autorités françaises, il ne peut y avoir de police républicaine sans un respect scrupuleux de la déontologie et des droits des personnes. Cette exigence, régulièrement rappelée à tous les niveaux, s'impose même dans un contexte de grande tension. Elle implique que sans relâche, les autorités s'emploient à prévenir par une formation adaptée les violences illégitimes et à les sanctionner lorsqu'elles sont constatées.

L'ensemble des corps de police bénéficie tout au long de leur formation, d'un enseignement de déontologie et de droits de l'homme. Cette formation qui met l'accent sur l'interdiction de tout mauvais traitements est accompagnée de formations pratiques incluant des exercices de mise en situation visant en particulier à l'utilisation de la force proportionnée et les gestes techniques professionnels d'intervention font l'objet d'une attention particulière

Le guide pratique de déontologie de 1999, révisé en 2001, qui complète le code de déontologie de mars 1986 est diffusé à l'ensemble des corps de police et explicite ces principes de respect de la dignité des personnes.

Les fonctionnaires de police qui s'écartent des lois et des règles éthiques s'exposent à une double sanction pénale et disciplinaire. Ces sanctions sont appliquées avec rigueur dès lors qu'un manquement aux obligations est établi. Ainsi en 2004, parmi les 2. 563 sanctions disciplinaires prononcées à l'égard de policiers, 84 se rapportaient à des violences avérées dont 6 ont conduit à la radiation des agents concernés. Au cours de la même année, l'IGPN/IGS a été saisie de 1. 626 dossiers dont 724 faits de violences (dont 599 violences légères). Ces 724 faits allégués sont à rapprocher des 717. 687 personnes mises en cause (0, 101 %) et des 384. 297 personnes gardées à vue (0, 118 %), au cours de la même année.

L'activité de la Commission nationale de déontologie de la sécurité (CNDS) autorité administrative indépendante instituée par la loi du 6 juin 2000 s'inscrit dans ce même contexte de renforcement des exigences déontologiques et de volonté de transparence de l'action de la police. Les avis et recommandations qu'elle rend sont étudiés avec une grande attention et viennent en appui des travaux menés par la police nationale pour améliorer l'action des services dans le respect des exigences d'éthique.

IV. La situation des étrangers

1. La politique française en matière d'immigration et d'asile

Elle repose sur deux séries de considérations : la première est liée au respect des droits fondamentaux des personnes, en conformité avec les engagements internationaux souscrits pour les droits de l'homme et les réfugiés, la seconde répond au souci de lutter contre l'immigration irrégulière et les trafics de personnes qui s'y rapportent.

La législation française est profondément marquée par l'influence des jurisprudences fondées sur les droits fondamentaux du Conseil constitutionnel et du Conseil d'Etat qui exercent un contrôle attentif des lois et de leur application.

La loi du 26 novembre 2003, qui s'inscrit dans cette perspective a renforcé la politique d'intégration en réformant notamment « la double peine » de sorte que les étrangers ayant des liens particulièrement forts avec la France ne puissent, sauf circonstances très exceptionnelles, être éloignés. Pour lutter contre l'immigration clandestine, elle a amélioré le contrôle des entrées en France et recherché une meilleure exécution des mesures d'éloignement. Enfin, elle a accru les garanties juridiques des étrangers, faisant notamment l'objet d'une mesure d'éloignement ou de placement en rétention.

La loi du 10 décembre 2003, a renforcé la protection due aux personnes exposées dans leur pays à des risques pour leur vie ou leur sécurité en leur apportant des garanties dont ils ne bénéficiaient pas auparavant.

La première garantie, c'est que la France apporte désormais, dans le cadre de la Convention de Genève, une protection contre les persécutions et les menaces qui émanent d'autorités ou de groupes non étatiques.

La deuxième garantie, c'est que des personnes qui encourent des risques graves tels que la peine de mort, des traitements inhumains ou dégradants ou qui sont menacées lors de conflits peuvent être protégées au titre de la protection subsidiaire même si elles ne sont pas reconnues comme réfugiées en application de la Convention de Genève.

Ces garanties sont fondamentales. Leur introduction a été une avancée majeure pour le droit d'asile en France.

Par ailleurs, l'Office français de protection des réfugiés et apatrides (OFPRA) est devenu le « guichet unique » pour les demandeurs d'asile (auparavant le demandeur pouvait s'adresser conjointement ou successivement à l'OFPRA et au ministère de l'intérieur responsable de la procédure d'asile territorial aujourd'hui remplacée par la protection subsidiaire). La Commission des recours des réfugiés est la seule juridiction compétente pour traiter des recours contre les décisions de l'OFPRA (les tribunaux administratifs étaient compétents auparavant si le ministère de l'intérieur avait été saisi).

Le délai total de traitement des demandes d'asile qui était supérieur à dix-huit mois avant la réforme, est actuellement inférieur à huit mois.

2. La situation des demandeurs d'asile

- *Le dispositif d'accueil, d'hébergement et de prise en charge sociale des demandeurs d'asile.*

Sur un plan général, il doit être rappelé que l'augmentation du nombre de demandeurs d'asile en France s'est produite sur une période relativement restreinte et récente. Une organisation publique de cette ampleur requiert un certain laps de temps.

Le dispositif national d'accueil se compose, à ce jour, de 245 centres d'accueil pour demandeurs d'asile (CADA), de 2 centres de transit, d'un centre d'accueil et d'orientation pour mineurs isolés demandeurs d'asile et de 27 centres provisoires d'hébergement (CPH), dont la capacité d'accueil est stabilisée depuis quelques années au profit de l'hébergement en CADA. Cet ensemble est complété par des dispositifs d'urgence.

Le gouvernement est déterminé à limiter le recours à l'hôtel pour les seules situations d'urgence. Ces hôtels, qui répondent aux normes de sécurité en vigueur, n'offrent cependant pas la qualité du suivi social proposé en CADA, qui est le mode d'hébergement le plus approprié pour les demandeurs d'asile. Dans ce cadre, il leur est assuré un accompagnement social adapté à leurs situations, permettant un meilleur suivi des personnes et un meilleur taux de reconnaissance du statut de réfugié. Entre 2002 et 2005, le nombre de places de CADA a augmenté de près de 70%. 2000 places supplémentaires seront ouvertes en 2006 et 1 000 en 2007, portant la capacité d'hébergement en CADA à près de 21 000. Un "traitement égal pour tous les demandeurs d'asile", selon les termes du rapporteur, est donc en bonne voie.

S'agissant des droits sociaux, leur accès est conditionné par la situation administrative du demandeur d'asile au regard du droit au séjour, conformément au code de l'entrée et du séjour des étrangers et du droit d'asile. Une couverture minimale est en tout état de cause assurée.

Le plan de cohésion sociale mobilise dans la loi de programmation qui le traduit 12,8 milliards d'euros sur cinq ans sur les trois piliers que sont l'emploi, le logement et l'égalité des chances (il comporte 20 programmes et 107 mesures). C'est un engagement financier sans précédent pour préparer l'avenir et répondre aux enjeux de notre société. Ce plan renforce les efforts consentis par le gouvernement depuis 2002, notamment en matière d'accueil et d'hébergement des demandeurs d'asile et d'égalité des chances.

V. La situation particulière des mineurs

1. Mineurs en difficulté

La sanction infligée à un mineur délinquant l'est toujours dans une perspective éducative. Ainsi, le recours aux centres éducatifs fermés permet à des mineurs de moins de 16 ans multirécidivistes d'éviter une peine d'emprisonnement. Les premiers résultats de ces centres sont très encourageants : 50% des mineurs qui y sont passés n'ont plus connu de problèmes judiciaires, et seuls 16% ont finalement été incarcérés. 15 nouveaux centres éducatifs fermés vont être ouverts en 2006 et 14 en 2007, ce qui portera leur capacité à 512 places.

La sanction doit être prononcée le plus rapidement possible. C'est pourquoi le nombre de juges des enfants a augmenté de 20% entre 2002 et 2005, afin de réduire les délais de jugement des mineurs grâce à la procédure de la procédure de jugement à délai rapproché. De plus, les compétences du juge des enfants ont été étendues à l'application des peines des mineurs détenus, qui bénéficient d'un suivi important de ces juges.

Concernant les mineurs détenus, leur nombre est passé de 932 en 2002 à 637 au 1er novembre 2005. Certains quartiers pour mineurs ont été réhabilités et tous vont l'être à court terme. Afin de pleinement respecter le principe de séparation des détenus mineurs et majeurs, sept établissements pénitentiaires spécifiques aux mineurs vont être créés, pour une capacité totale de plus de 400 places. La présence en cellule y sera réduite tant que possible au profit d'activités éducatives et scolaires. Les éducateurs de la protection judiciaire de la jeunesse y seront constamment présents, comme c'est déjà le cas dans la plupart des quartiers pour mineurs, et le suivi après la sortie sera renforcé. De surcroît, ces centres bénéficieront tous de places pour détenues mineures, qui seront désormais complètement séparées des autres femmes détenues.

Par ailleurs, la Chancellerie a lancé en décembre 2005 un plan pour créer un réseau de parrainage des jeunes en difficulté par la société civile. Ce plan doit favoriser l'insertion de mineurs en difficulté dans la vie professionnelle.

2. Mineurs étrangers isolés

Les conditions d'accueil et d'hébergement des mineurs ont été sensiblement améliorées en zone d'attente par la mise en place d'un suivi sanitaire adapté et le recrutement par l'ANAEM d'un éducateur chargé de mieux appréhender leur situation. Parallèlement, un nouveau service a été créé par l'Etat. Il propose aux mineurs isolés une mise à l'abri immédiate dans un lieu d'accueil et d'orientation (LAO) géré par la Croix Rouge qui offre chaque année à plus d'une centaine d'enfants des services et une prise en charge adaptée. En outre, un centre d'accueil pour mineurs demandeurs d'asile (CAOMIDA), géré par l'association France Terre d'Asile, dispose de 30 places pour accueillir les mineurs. Enfin, un dispositif d'amont a également été créé en 2003 à Paris, permettant d'aller à la rencontre des mineurs en errance. Il assure une fonction de repérage des mineurs en errance à l'occasion d'activités de maraudes diurnes et nocturnes permettant d'établir avec eux un premier contact éducatif ayant pour objet de préparer leur accompagnement ultérieur vers une prise en charge de droit commun, dans le respect de l'identité professionnelle de chaque association à qui ces missions sont confiées. Ce dispositif fournit par ailleurs un accueil d'urgence, fonctionnant de jour comme de nuit, vers lequel les maraudes peuvent orienter le jeune pour une mise à l'abri. Cet accueil fournit aux jeunes des prestations d'aide immédiate, et principalement mener une évaluation permettant leur orientation vers les services compétents de la protection de l'enfance.

En outre, il est à signaler que la loi de cohésion sociale autorise les mineurs étrangers isolés admis dans un service de protection de l'enfance à accéder aux formations en alternance dans le cadre de l'apprentissage et des contrats de qualification, sans que la situation de l'emploi ne puisse leur être opposée.

VI. Les problèmes de racisme, d'antisémitisme, de xénophobie et la lutte contre les discriminations

1. Lutte contre les toutes les formes de racisme

Conformément aux décisions du comité interministériel de lutte contre le racisme et l'antisémitisme et à la suite des préconisations formulées, une action destinée à améliorer le dispositif statistique de manifestations de racisme et de xénophobie a été engagée.

Les actions menées en matière de constatation des crimes et des délits et de recherche de leurs auteurs pour les déférer à la justice ont été consolidées, en diffusant très largement le guide méthodologique destiné à mieux former les policiers de terrain à la prise de plainte et aux enquêtes.

Afin de faire face à des manifestations préoccupantes d'intolérance au sein des établissements scolaires, une circulaire interministérielle visant à prévenir et signaler les actes à caractère raciste ou antisémite en milieu scolaire et à mieux sanctionner les infractions a été publiée en 2004.

974 actes ou menaces racistes ou antisémites ont été comptabilisés par les forces de l'ordre en France en 2005, soit une baisse de plus d'un tiers par rapport à 2004 (1574 faits). Selon ce résultat, cette forte décrue est en particulier imputable au reflux des violences antisémites de tous ordres (504 contre 974, soit – 48%) par rapport à 2004.

Avec 98 « actions »* et 406 « menaces »[2] dénombrées durant l'année écoulée, la violence antisémite confirme le recul enregistré depuis la fin de l'année 2004. En effet, les 98 actions recensées au cours de l'année 2005 traduisent une nette baisse du niveau des exactions antisémites par rapport à l'année 2004 (200 faits). S'agissant des menaces, les 406 faits comptabilisés durant l'année 2005 marquent une forte baisse de ce type d'actions vis-à-vis de l'année précédente (774 faits). L'Ile-de-France demeure la région la plus touchée par le phénomène.

Avec 88 « actions »* et 382 « menaces »[2] dénombrées en 2005, la violence à caractère raciste ou xénophobe offre un bilan contrasté, marqué par un très net recul de ses expressions les plus graves et un niveau qui reste élevé pour ses manifestations moins importantes.

Les 88 actions recensées en 2005 traduisent un très net repli de ce type de violence par rapport à 2004 (169 faits) et le nombre des menaces enregistré en 2005 (382) s'avère inférieur à celui relevé en 2004 (431).

Le ministère de la Justice a institué des magistrats référents au sein de chaque parquet général chargé de veiller à la cohérence des politiques pénales locales en matière de racisme, d'antisémitisme et de discrimination et de nouer des contacts réguliers avec le milieu associatif (associations de lutte contre le racisme, représentants des cultes etc.…).

---

* les « actions » regroupent les attentats et tentatives, les incendies, les dégradations et les violences, quelle que soit l'I.T.T. accordée.

[2] le vocable « menaces » recouvre les propos ou gestes menaçants, graffiti, tracts, démonstrations injurieuses et autres actes d'intimidation.

2. Lutte contre les discriminations à l'égard des femmes

Le projet de loi sur l'égalité salariale actuellement débattu au Parlement et qui sera adopté en janvier 2006 poursuit quatre objectifs :

- supprimer en 5 ans les écarts de rémunération entre les femmes et les hommes, en s'appuyant sur la négociation dans les branches professionnelles et les entreprises,
- concilier emploi et parentalité,
- favoriser l'accès des femmes aux instances délibératives et juridictionnelles,
- développer l'accès des jeunes filles à l'apprentissage et à la formation professionnelle

Concernant la lutte contre les violences faites aux femmes, l'Assemblée nationale a adopté à l'unanimité en première lecture le 15 décembre 2005, une proposition de loi sénatoriale (adoptée en première lecture à l'unanimité par le Sénat le 29 mars 2005) visant à renforcer la prévention et la répression des violences au sein du couple ou commises contre des mineurs.

La proposition de loi susmentionnée prévoit notamment :

- l'instauration, dans la partie générale du code pénal, de la circonstance aggravante de la qualité de conjoint, de concubin ou de pacsé ;
- l'extension de cette circonstance aggravante aux ex-conjoints, ex-concubins ou aux personnes ayant été pacsées avec la victime ;
- l'extension de cette circonstance aggravante aux cas de meurtres, de viols ou d'agressions sexuelles ;
- l'extension aux couples non mariés de l'interdiction du domicile conjugal à l'auteur de violences quand ce couple a en commun un enfant mineur.

Une nouvelle impulsion a été donnée à la politique française de lutte contre les violences faites aux femmes, autour de quatre axes d'actions :

- le renforcement de la protection des victimes
- l'élargissement de la palette des dispositifs d'hébergement des femmes victimes de violences : ainsi que le note le Commissaire aux Droits de l'Homme dans son rapport, la palette des dispositifs d'hébergement des femmes va être élargie grâce à une expérimentation d'accueil à titre onéreux dans des familles, par extension du dispositif jusqu'ici réservé aux personnes âgées et handicapées
- la coordination des différents professionnels de santé concernés par la prise en charge des femmes victimes de violences
- la prise en charge des hommes violents

Concernant la parité politique, il convient de souligner que dans son allocution prononcée à l'occasion des vœux à la presse, le 4 janvier 2006, le Président de la République française a souhaité « que soit instituée une obligation de parité dans les exécutifs communaux de plus de 3 500 habitants, dans les exécutifs régionaux ainsi que dans la désignation des délégués aux structures intercommunales.

Il a souhaité « également que les sanctions financières prévues à l'encontre des partis politiques qui ne respecteraient pas les exigences légales en termes de parité soient considérablement renforcées pour devenir véritablement dissuasives.

Enfin, les partis politiques doivent s'engager à faire toute leur place aux femmes et aux hommes issus de l'immigration dans les candidatures aux élections locales ou aux élections nationales. »

3. La lutte contre les discriminations et l'égalité des chances

La lutte contre les discriminations et l'égalité des chances sont une priorité forte de l'action du gouvernement, qui a engagé une action volontariste et déterminée passant par :

- un renforcement de la législation pour lutter contre les discriminations,
- la création d'une Haute autorité de lutte contre les discriminations et pour l'égalité, qui est une autorité indépendante, qui sera prochainement dotée d'un pouvoir de sanction pécuniaire de nature administrative,
- une territorialisation de cette politique au travers la mise en place de plans territoriaux de lutte contre les discriminations et de commissions départementales pour la promotion de l'égalité des chances (COPEC),
- une légalisation très prochaine de la pratique du « testing »,
- une expérimentation du curriculum vitae anonyme,
- la signature de la charte de la diversité par plus de 300 entreprises, s'engageant à lutter contre les discriminations et faire de la diversité un enjeu majeur de leur politique sociale

Les violences urbaines que certains quartiers ont connues en novembre 2005 exigeaient d'abord un rétablissement de l'ordre public par le gouvernement. Si les efforts consentis ces dernières années sur ces territoires ont produit des résultats, il n'en demeure pas moins qu'il reste des quartiers où les pouvoirs publics (Etat et collectivités locales) ne sont pas assez présents. Le gouvernement a tiré toutes les conséquences de cette situation, en accentuant l'effort consenti jusqu'à ce jour :

- augmentation de la dotation consacrée à la politique de la ville de 180 M€ dès 2006,
- création de 15 zones franches urbaines supplémentaires, en sus des 85 existantes,
- renforcement des moyens alloués aux zones d'éducation prioritaire,
- mobilisation des services de l'agence nationale pour l'emploi, des missions locales et des maisons de l'emploi, pour faciliter des jeunes accès au monde du travail,
- mise en place de 1 000 bourses au mérite à la rentrée 2006,
- mise en place, d'ici fin 2007, de 1 000 équipes de réussite éducative pour les enfants en grandes difficultés scolaires,
- développement des ateliers santé ville, qui permettent la mise en réseau de tous les acteurs de la santé

C'est un plan d'action global qui est mis en place et renforcé : il concerne tant l'urbain, que l'emploi, l'éducation, la formation, la culture, le sport ou la santé.

VII. Les gens du Voyage et les Roms

Les gens du voyage et les Roms relèvent comme toutes les populations fragiles des mesures prises dans le cadre des politiques d'action sociale et de lutte contre les exclusions, notamment en matière d'hébergement, d'aide alimentaire, d'accès aux soins qui sont mises en œuvre par l'Etat et les collectivités territoriales. Le problème aigu de l'arrivée massive des Roms ne peut se régler quant à lui que dans un partenariat actif entre l'Union européenne, l'Etat et les collectivités territoriales. La France prend d'ailleurs une part active aux actions conduites au niveau européen sur les populations roms pour améliorer leur situation, en matière, d'habitat, de santé, d'éducation, d'insertion économique et de culture.

Le dispositif d'accueil des gens du voyage est défini à l'échelle départementale par un schéma d'accueil des gens du voyage, qui définit les obligations des communes et prescrit les aires d'accueil à réaliser et à réhabiliter.

Deux catégories d'aire sont à distinguer :

- les aires d'accueil proprement dites, qui sont de lieux de séjour destinées aux gens du voyage itinérants et doivent prendre en compte les besoins en matière d'actions socio-pédagogiques et de scolarisation.
- les aires de grand passage, qui sont réservées aux rassemblements de 50 à 200 caravanes environ. Leur durée de stationnement est le plus souvent d'une semaine.

La loi du 5 juillet 2000 prévoit que l'État prenne en charge les investissements nécessaires à l'aménagement et à la réhabilitation des aires, à hauteur de 70 % des dépenses engagées.

Concernant le nouveau délit d'occupation illicite du terrain d'autrui, créé par la loi pour la sécurité intérieure, l'application de cette disposition est liée au respect, par les communes, des obligations fixées par les schémas départementaux d'accueil des gens du voyage.

Créée par décret, la Commission nationale consultative des gens du voyage est une instance consultative placée auprès du ministre chargé des affaires sociales. Elle est une instance de dialogue direct entre les représentants de gens du voyage et des élus, les personnes qualifiées et les administrations Son rôle est d'étudier les problèmes rencontrés par les gens du voyage et de faire des propositions pour améliorer leur situation.

La réunion prévue de cette commission dans le courant du mois de mars 2006 permettra de réaliser des avancées significatives sur les thèmes suivants :

- faciliter la sédentarisation des gens du voyage par la création d'aires d'accueil (pouvoirs renforcés des préfets en la matière)
- renforcer l'insertion professionnelle, au travers d'actions de formation, de la création de micro-entreprises, de lutte contre l'illettrisme
- développer l'accès aux soins par la mise en place de dispositifs spécifiques
- lutter contre les discriminations

VIII. Les groupes vulnérables

Le plan psychiatrie et santé mentale (2005-2008) annoncé en Conseil des ministres le 20 avril 2005, à la suite d'une large concertation avec l'ensemble des acteurs du champ de la santé mentale, est articulé autour de cinq axes.

Il présente des objectifs ambitieux en termes de prévention, de réorganisation et de décloisonnement des prises en charge sanitaires et sociales, d'amélioration de la formation et de la qualité des pratiques ainsi que dans les domaines de l'évaluation et de la recherche. A cet effet, il est doté d'un effort budgétaire pluriannuel important, portant à la fois sur le fonctionnement et sur les investissements.

Il prévoit notamment de renforcer les garanties individuelles des personnes hospitalisées sous contrainte

-o00o-

En annexe, le Commissaire voudra bien trouver des éléments de précision sur certains points particuliers.

ANNEXES

I - Fonctionnement de la Justice

1. Le fonctionnement des juridictions

a) Problèmes de locaux

- **Point 21**

Alors que le budget de l'Etat en 2006 a augmenté de 1.8%, le budget de la Justice (judiciaire) connaît une croissance de 4.6%. Le budget des juridictions judiciaires représente 42% du budget de la Justice en 2006 (2,5 milliards d'euros) et bénéficie d'une augmentation de 8%.

b) Problèmes de personnel

- **Point 30**

Un effort continu est réalisé pour le recrutement de personnels judiciaires, magistrats mais surtout fonctionnaires, au premier rang desquels les greffiers. Ainsi, en 2006, 850 fonctionnaires supplémentaires vont être affectés dans les juridictions, notamment dans les greffes. Par ailleurs, l'affectation des greffiers devrait faire l'objet d'une réforme afin de limiter les carences en personnels dues aux vacances de postes.

- **Point 31**

Pour le recrutement de greffiers, des concours régionalisés ont déjà été organisés, notamment à Paris et Versailles. Ces recrutements régionalisés n'ont pas eu les résultats escomptés quant à la résorption des vacances de postes : en effet, ce sont surtout des provinciaux qui ont été reçus et ont demandé leur mutation dès que cela a été possible.
En outre, le recrutement régionalisé se heurte à une double difficulté. D'une part, le principe d'un jury unique doit être conservé pour préserver l'égalité de traitement entre candidats, puisque la note obtenue au concours entre en compte dans le classement de sortie des élèves de l'école nationale des greffes. D'autre part, il ne peut être envisagé un recrutement à la carte, selon les besoins des cours d'appel, car il serait impossible d'organiser une formation de 18 mois pour des mini promotions régionales

c) Problèmes de sécurité

- **Point 38**

Le budget alloué à la sécurité dans les tribunaux est passé en 2006 de 7,2 millions d'euros à 11,8 millions d'euros, ce qui permettra d'investir dans de nouveaux équipements de sécurité. De plus, les tribunaux vont bientôt bénéficier de la présence de fonctionnaires de police retraités de la réserve civile, ainsi que de gendarmes à la retraite.

2. Procédures pénales

a) Régimes de garde à vue

- **Point 41**

Si la garde à vue prive la personne mise en cause de sa liberté, cette privation est exclusivement motivée par les nécessités de l'enquête. L'élargissement, pour certaines infractions limitativement énumérées à l'article 706-73 du code de procédure pénale, du champ d'application des dispositions relatives aux gardes à vue de longue durée et aux régimes dérogatoires d'intervention des avocats par la loi n°2004-204 portant adaptation de la justice aux évolutions de la criminalité, a été rendue nécessaire par l'inadéquation de la législation pénale française face aux nouvelles formes de la criminalité organisée. Ainsi, si les régimes dérogatoires ont été étendus par la loi du 9 mars 2004 à plusieurs infractions relatives à la criminalité organisée, il est inexact de dire que 18 régimes de garde à vue coexistent en France.

Au demeurant, la garde à vue est une mesure hybride, qui ne saurait se résumer à la simple privation de liberté de la personne qui en fait l'objet. En effet, depuis les lois des 4 janvier et 24 août 1993, elle est également créatrice de droits pour la personne qui en est l'objet, droits qui doivent impérativement être notifiés au gardé à vue comme l'exige la jurisprudence de la Cour de cassation. Il résulte de ce caractère hybride de la garde à vue que de plus en plus de personnes faisant l'objet de poursuites pénales se plaignent, non pas d'avoir été placées en garde à vue, mais au contraire de ne pas l'avoir été. Un contentieux lié au « défaut de placement en garde à vue » se développe donc, au point que, selon la jurisprudence de la chambre criminelle de la Cour de cassation, le placement en garde à vue a tendance à devenir une obligation pour l'officier de police judiciaire dès lors que ses conditions d'application sont réunies.

Enfin, la loi du 9 mars 2004 s'est attachée à renforcer la cohérence des dispositions relatives à l'intervention de l'avocat en garde à vue, qui se fait dorénavant, sauf cas particuliers concernant les plus graves des infractions de criminalité ou de délinquance organisées, au début de la garde à vue et au début de la prolongation (auparavant, l'avocat pouvait revenir à la 20ème heure, mais devait ensuite, en cas de prolongation, attendre seize heures, soit la douzième heure de la prolongation de la garde à vue, pour s'entretenir avec la personne).

- **Point 44**

La loi n°2003-239 du 18 mars 2003 pour la sécurité intérieure n'a en rien supprimé le droit au silence qui est un droit naturel ; elle s'est contentée de dispenser les officiers de police judiciaire de le notifier aux personnes gardées à vue.

b) Intervention de l'avocat en garde à vue

- **Point 49 et 50**

La personne gardée à vue est dûment informée de son droit à s'entretenir avec un avocat, soit choisi par lui, soit commis d'office. Le législateur laisse ainsi à la personne mise en cause le libre choix des moyens d'assurer sa défense. Non seulement la notification de ce droit est obligatoire dès le début de la garde à vue en vertu de l'article 63-4 du code de procédure pénale, mais encore sa rigoureuse application est-elle contrôlée par le procureur de la République, dans le cadre des attributions de direction des activités de la police judiciaire qui lui sont dévolues par l'article 41 du code de procédure pénale.

- **Points 51 à 59**

La procédure de garde à vue doit permettre un équilibre entre le plein exercice des droits de la défense, d'une part, et l'efficacité de l'enquête, d'autre part. L'absence de droit, pour les avocats, de prendre connaissance du dossier ou d'assister aux interrogatoires répond à cette exigence d'efficacité, sans pour autant porter atteinte à l'exercice des droits de la défense. En effet, l'avocat peut s'entretenir pendant 30 minutes avec son client dans des conditions garantissant la confidentialité, et ce après avoir été dûment informé de la nature des faits reprochés et de la date de leur commission.
En outre, si l'avocat n'est pas mis en mesure de contrôler la régularité de la procédure au stade de la garde à vue, cette tâche est pleinement assumée par le procureur de la République, qui est chargé de diriger les activités de police judiciaire en application de l'article 41 du code de procédure pénale, et est en capacité de le faire, grâce à son information immédiate, par l'officier de police judiciaire, de la mesure de garde à vue entreprise, conformément aux dispositions de l'article 63 du code de procédure pénale.

- **Points 62 à 64**

A la suite d'un dialogue engagé par la Chancellerie avec le Conseil national des barreaux, représentant l'ensemble des avocats, en vue de préciser le champ d'application de l'article 434-7-2 du code pénal, cette infraction a été réécrite par la loi du 12 décembre 2005 relative au traitement de la récidive des infractions pénales. L'élément intentionnel de l'infraction a été renforcé dans le sens d'une action volontaire de l'auteur des faits incriminés (dol spécial), et les peines ont été diminuées afin de ne plus permettre le placement en détention provisoire, sauf lorsque la révélation concerne une procédure relative à des faits de criminalité ou de délinquance organisée punis d'au moins dix ans d'emprisonnement.

II. Le système pénitentiaire

1. Problèmes généraux

a) Surpopulation carcérale

➢ **Point 72**

La tendance à l'augmentation du nombre de détenus doit être relativisée par rapport à la période de référence retenue, à savoir celle du mois de novembre. En effet, une augmentation de la population pénale a toujours été observée entre octobre et novembre, en 2003, 2004 et 2005 et ce, dans des proportions proches – respectivement 1,9%, 2,3% et 1,6%. Ainsi, si l'on regarde l'évolution de la population écrouée détenue sur deux années, l'effectif était de 57573 détenus en octobre 2003, de 56620 en octobre 2004 et enfin de 57163 en octobre 2005, ce qui témoigne plutôt d'une certaine stabilité.

➢ **Point 73**

Les établissements ayant un taux d'occupation supérieur à 100% étaient au 1er novembre 2005 au nombre de 112 et non de 125 comme évoqué, pour un total de 186 établissements (ont été écartés les trois établissements non occupés – maison d'arrêt de Chaumont, maison d'arrêt de Montbéliard et maison centrale d'Arles). Dès lors, le pourcentage d'établissements dont le taux d'occupation est supérieur à 100% s'élève à 60,2 % (112/186) et non 67,6% (125/185**).**

Point 76

L'administration pénitentiaire s'attache à faire progresser l'hygiène de la population pénale et a ainsi multiplié les possibilités pour les détenus de prendre des douches (installation de points douches sur les cours de promenade, création de nouveaux établissements avec douches dans les cellules, rénovation des douches collectives dans de nombreux établissements).

Elle a de surcroît toujours pris en compte les effets néfastes de la chaleur sur la population pénale et s'est inscrite totalement dans le cadre du plan national « canicule ». Ainsi, tant en 2004 qu'en 2005, une circulaire a précisé diverses consignes tendant à prendre en compte les effets de la chaleur (permettre aux détenus d'accéder à un point d'eau, favoriser au maximum l'accès à des douches ou des systèmes de rafraîchissement et en multiplier le nombre, adapter les horaires de promenade pour éviter les heures les plus chaudes, aérer et rafraîchir par tous moyens les locaux). Au total, lors de la forte canicule de l'été 2003, aucune victime n'a été à déplorer parmi la population détenue au cours de cette période du fait de la forte chaleur.

Point 77

Pour répondre à l'accroissement de la population carcérale, le programme « 13 200 places » a été mis en place avec la construction d'établissements pour majeurs, d'établissements pour mineurs et de quartiers courtes peines. La procédure lancée pour une trentaine de structures représentent les 13 200 places tant pour la métropole que l'outre mer.

Dans l'attente de la livraison de ces 13 200 places, et pour répondre à l'urgence de la situation, l'administration pénitentiaire a mis en œuvre dès 2004 un dispositif d'accroissement des capacités. Celui-ci prévoit la création de 3 000 places supplémentaires de détention au sein des établissements existants, dont 500 places dédiées à la semi-liberté. Fin 2005, 1200 places supplémentaires ont été livrées grâce à ce dispositif, et autant le seront cette année.

L'administration pénitentiaire a également mis en place une série de mesures de gestion innovantes, dans l'optique d'utiliser au mieux l'ensemble des espaces de détention, pour un meilleur respect des conditions d'hébergement en détention. Dès la fin du mois de mars 2004, des mesures destinées à équilibrer entre les établissements le poids de la surpopulation pénale ont été adoptées (surveillance mensuelle des taux d'occupation des sites les plus sensibles, ciblage des directions régionales les plus surencombrées, programme de transfèrements prioritaires en provenance de ces directions, occupation de toutes les places encore disponibles dans les centres de détention, jusqu'à 100%, mise en oeuvre de quotas de droits de tirage dans les centres de détention afin de disposer d'une plus grande adaptabilité du parc pénitentiaire aux besoins du moment).

- **Point 79**

Le programme d'entretien et de rénovation des grands établissements concerne les quatre plus importants : Fleury-Mérogis, Paris-la Santé, Fresnes et Marseille-les Baumettes. Des travaux de remise en état de cellules insalubres ont commencé en mars 2005 à Fleury-Mérogis. Les travaux proprement dits de rénovation de Fleury-Mérogis et de Marseille ont commencé fin 2005, pour des durées respectives de 9 ans et 8 ans.
Par ailleurs, les travaux de remise aux normes de l'ensemble des structures et des installations techniques du centre de détention de Nantes ont été confirmés. Ces travaux devraient débuter en 2006. Avant la fin du premier trimestre 2006, les blocs B et C de la prison de La Santé vont être fermés, en raison de leur état de vétusté, sans attendre la mise en œuvre des opérations de rénovation/reconstruction de cet établissement.

- **Point 80**

La direction de l'administration pénitentiaire partage le constat de M. Gil Robles sur le fait que le gymnase de Fleury-Mérogis n'est pas en fonctionnement, pour des raisons de sécurité d'utilisation, et s'engage à prendre toutes dispositions pour régler cette difficulté.

b) Maisons d'arrêt et établissements pour peine

- **<u>Points 86 à 88</u>**

A titre liminaire, il convient de souligner qu'en aucun cas, un détenu mineur ne partage sa cellule avec un détenu majeur : seuls les établissements ou quartiers d'établissements habilités pour ce faire reçoivent des détenus mineurs. Dans les centres pénitentiaires comportant un quartier mineur, ils peuvent être parfois regroupés, lorsqu'ils sont en nombre limité, et dans le seul cadre d'une activité encadrée, avec des majeurs.

Outre les détenus qui sont écartés par mesure disciplinaire, de précaution, de sécurité ou du fait de prescription médicale et ceux d'entre eux qui, sur demande de l'autorité judiciaire, ne doivent pas entrer en contact avec un complice présent au sein de l'établissement, l'article D-90 du code de procédure pénale prévoit une séparation des détenus selon trois grandes catégories : les condamnés, les détenus soumis à la contrainte judiciaire et les prévenus.

La situation diffère suivant qu'il s'agit d'un établissement pour peine (centre de détention ou maison centrale), qui n'accueille que des condamnés, ou d'une maison d'arrêt. Les maisons d'arrêt sont les seuls établissements qui prennent en charge les prévenus. Néanmoins, selon l'article D-717 du code de procédure pénale, ces établissements peuvent également recevoir des condamnés. Dès lors, les contacts des prévenus avec les condamnés au sein des maisons d'arrêt ne peuvent exister qu'avec des détenus condamnés à de courtes peines, ou des condamnés à de plus longues peines en attente d'une affectation en établissement pour peine.

En France, il existe 31 centres pénitentiaires : il s'agit de d'établissements composés de différents quartiers, tels quartier « maison d'arrêt » et quartier « établissement pour peine ». Un centre pénitentiaire comportant une maison d'arrêt est donc bien destiné accueillir tous types de détenus, mais ses quartiers sont strictement étanches entre eux, et autonomes quant à la vie en détention.

En maison d'arrêt, la répartition est réalisée par le chef d'établissement, ou ses adjoints le plus souvent par délégation, conformément à l'article D-91 du code de procédure pénale. Elle s'effectue en fonction de la configuration des locaux de la maison d'arrêt, des places disponibles et des impératifs de sécurité de l'établissement. Le responsable s'efforce en priorité de ne pas réunir les primo délinquants avec des récidivistes, en application de l'article D-90 alinéa 2 du code. De nombreux critères sont également pris en considération, notamment l'état de santé physique et mental du détenu, son classement à un poste de travail, le cursus scolaire ou la formation.

Le régime de détention des prévenus se distingue de celui des condamnés notamment par les implications du principe des droits de la défense. A ce titre, si un prévenu ne peut pas avoir accès au téléphone, il peut, quelle que soit la maison d'arrêt, recevoir la visite de son conseil, sans limite de fréquence hebdomadaire. Les parloirs famille sont également facilités pour les prévenus, qui peuvent recevoir jusqu'à trois visites par semaine.

- **Point 89**

L'amélioration de l'hygiène collective et individuelle demeure l'une des priorités de l'administration pénitentiaire. A ce titre, le cloisonnement des sanitaires en cellule a été privilégié depuis 2000, sous la forme d'objectifs annualisés reconductibles, principalement dans les maisons d'arrêt, en raison des phénomènes d'encellulement de plusieurs personnes dans un même espace. Des crédits spécifiques et reconductibles ont été obtenus de 2000 à 2005 pour ce programme. A ce jour, un effort très important a été réalisé par les directions régionales pour parvenir à 76% de cellules répondant à cette norme.

- **Point 93**

Si des personnes condamnées attendent en maison d'arrêt un transfert vers un établissement pour peine dans lequel elles ont été affectées, cela est dû avant tout à l'absence de place disponible dans la structure d'accueil. Cette situation devrait être réglée lorsque le programme de construction actuellement en cours sera terminé.

Le service central des transfèrements traite avant tout de la mise en oeuvre des décisions de compétence ministérielle ; cependant il ne traite pas tous les transferts de compétence ministérielle puisqu'un service régional des transferts, situé à Marseille, planifie et met en oeuvre les transferts dits « transversaux » entre les régions Est et Sud Est (Lyon et Marseille) et Sud et Sud Ouest (Toulouse et Bordeaux). De plus, près d'un quart des décisions relevant de la compétence ministérielle font l'objet d'une « délégation » pour leur mise en œuvre au niveau régional.

Par ailleurs, le service central des transfèrements ne programme pas le calendrier de tous les transferts : les décisions d'affectation de compétence régionale (pour tous les condamnés jusqu'à 10 ans notamment) sont programmées et mises en oeuvre par les directions régionales ; de surcroît, un certain nombre d'établissements pour peine faisant l'objet d'un droit de tirage d'une autre région élaborent leur propre calendrier de transferts « arrivants » en lien avec leur direction régionale.

Le pilotage centralisé des transferts et la coordination des moyens présentent certains avantages :

- les limites des ressources du parc pénitentiaire national (7 maisons centrales reçoivent des condamnés en provenance de tout le territoire) imposent une organisation centralisée. Si chaque région dispose d'établissements pour peine, ils sont inégalement répartis et nécessitent l'organisation de droits de tirage d'une région sur l'autre, ainsi qu'une coordination des opérations de transfert de différentes régions vers une destination éloignée.
- la position géographique du service central des transfèrements en fait un instrument d'articulation des moyens de transfèrement entre les régions.
- l'organisation pour une part centralisée des transferts permet de garantir l'équilibre entre les régions.

c) Coût de la vie

- **Points 95 à 97**

Les écarts de prix enregistrés sur les produits proposés aux détenus dans le cadre de la « cantine » proviennent pour partie de la localisation géographique et de la taille des établissements. En effet, ceux-ci s'approvisionnent le plus souvent auprès des commerces de proximité. L'administration pénitentiaire a cependant créé un « panier du détenu » constitué des 20 produits les plus vendus en cantine qui lui permet de surveiller plus particulièrement leur prix. L'objectif de l'administration pénitentiaire est d'instaurer un dispositif général d'externalisation afin d'encadrer et de professionnaliser l'activité de cantine.

- **Points 98 à 100**

A ce jour, l'administration pénitentiaire proposait aux détenus par l'intermédiaire d'associations socio-culturelles et sportives des locations de téléviseurs. Ces associations fournissent aux détenus des postes de télévision en location contre le paiement d'un forfait mensuel couvrant un certain nombre de frais substantiels : fourniture du matériel et son remplacement, câblage, redevance, abonnements aux chaînes câblées et satellitaires.

Consciente que l'objet de ces associations n'est pas de gérer des locations de téléviseurs, l'administration pénitentiaire a lancé une réforme visant à leur retirer cette activité. De fait, il a été décidé de confier à des prestataires privés, par le biais de la cantine, la location des téléviseurs, laquelle est à la charge des détenus bénéficiaires, sauf exceptions (les indigents principalement). Six directions régionales sont déjà impliquées dans ce changement. Pour renforcer la baisse des tarifs, l'administration pénitentiaire a également sollicité une exonération de la redevance audiovisuelle en raison du caractère social de sa mission. Ce processus sera généralisé en 2007 par l'intégration des locations de téléviseurs dans le projet d'externalisation de la cantine. En ce qui concerne la maison d'arrêt de Strasbourg, citée dans le rapport, la location ne se fait pas à la semaine mais au mois selon la date d'arrivée et de départ des détenus. Il convient de souligner que les locations proposées offrent un riche bouquet de chaînes, y compris des chaînes non francophones.

d) Politique de réinsertion

- **Point 104**

Les personnes incarcérées ne perdent pas systématiquement leurs droits aux allocations et aides sociales. Trois types de situation cœxistent : suspension, minoration ou maintien des droits.
A l'entrée en détention, certains droits sont suspendus (allocations chômage, revenu minimum d'insertion par exemple), certains sont maintenus mais minorés (allocation adulte handicapé maintenue à hauteur de 30 % pendant la détention) et d'autres maintenus totalement, comme l'allocation parent isolé.

Lors de la sortie de détention, les droits aux allocations chômage sont récupérés pour la totalité des droits restants (si l'incarcération a duré moins de 4 ans) ; les droits au RMI peuvent être rouverts dans des délais que l'administration pénitentiaire cherche à améliorer et les droits à l'allocation adulte handicapé sont retrouvés immédiatement.

- **Point 105**

Les délégués du Médiateur ont, à l'évidence, un rôle important à jouer. Cependant, il existe d'ores et déjà dans de nombreux établissements des « points d'accès au droit » permettant aux personnes incarcérées d'anticiper les difficultés qu'elles pourraient rencontrer, sur le plan administratif, au moment de leur sortie. Par ailleurs, de nombreux partenaires institutionnels et associatifs interviennent dans les établissements pénitentiaires pour rencontrer les détenus et préparer, avec eux, leur sortie, en particulier l'agence nationale pour l'emploi (ANPE), les associations pour l'emploi dans l'industrie et le commerce (ASSEDIC), la caisse d'allocations familiales et la caisse primaire d'assurance maladie.

- **Point 106**

La réinsertion et le suivi des personnes libérées constituent une priorité pour l'administration pénitentiaire, laquelle a créé, entre 2003 et 2006, 794 emplois permettant de renforcer considérablement les services pénitentiaires d'insertion et de probation. Le concours de conseiller d'insertion et de probation a permis le recrutement de 290 élèves fonctionnaires en 2005 avec des perspectives identiques pour l'année 2006. En une législature (2002-2007), 1000 emplois auront ainsi été créés dans les services d'insertion et de probation.

Ces recrutements sont d'autant plus importants que les services pénitentiaires d'insertion et de probation ont en charge la coordination des réseaux destinés à mettre en œuvre au profit des personnes détenues l'accès aux droits sociaux, la préparation à la sortie, l'action culturelle, la formation professionnelle, la lutte contre l'illettrisme, la lutte contre l'indigence, l'enseignement, le travail, les soins, le sport et la lutte contre les toxicomanies.

e) Maintien des liens familiaux

- **Point 108**

Le premier critère pris en compte pour affecter un condamné dans un établissement pour peine est celui du maintien des liens familiaux. A titre exceptionnel, un petit nombre de détenus est effectivement transféré en moyenne tous les trimestres, pour des raisons de sécurité et du fait de leur profil ou comportement. Ils appartiennent en général à la catégorie des « détenus particulièrement signalés », c'est-à-dire inscrits dans ce répertoire par décision du Garde des Sceaux, conformément à l'article D-276-1 du code de procédure pénale. Lorsqu'ils sont prévenus, l'accord de l'autorité judiciaire compétente est requis pour ce transfert, conformément à la réglementation.

.

➢ **Points 110 à 112**

L'administration pénitentiaire s'est engagée dans une forte dynamique du maintien des liens familiaux pour les personnes détenues. Depuis septembre 2003 ont été ouvertes des unités expérimentales de visite familiale dans trois sites : Rennes, Poissy et Saint Martin de Ré. Leur objectif est de permettre et d'accompagner la création ou le développement de véritables projets familiaux (conjugaux, parentaux, filiaux…) en vue de la réinsertion des personnes détenues et de préserver les liens des familles avec leur proche incarcéré(e).

Par ce biais, les personnes détenues condamnées à de longues peines et ne bénéficiant pas de permissions de sortir ou d'aménagements de peine garantissant le maintien des liens familiaux peuvent recevoir les membres de leur famille de 6 à 48 heures (72 heures une fois par an) dans des conditions matérielles, de durée et d'intimité satisfaisantes. Ces unités sont constituées de 3 appartements de type F3, construits sur le domaine pénitentiaire. Une évaluation complète de l'expérience de ces trois sites, qui aboutira en juin 2007, permettra de décider de l'avenir de ce dispositif.

Toujours dans la perspective d'une amélioration des dispositifs aidant au maintien des liens familiaux des personnes incarcérées, la direction de l'administration pénitentiaire a décidé de mettre en place des parloirs sans surveillance directe dans les maisons centrales.

2. Procédures disciplinaires et placement en isolement

a) Procédures disciplinaires

➢ **Points 121 et 122**

Le juge administratif exerce un contrôle sur la proportionnalité de la sanction prononcée, et notamment la durée du placement en cellule disciplinaire par rapport à la faute commise par le détenu. Le Conseil d'Etat a jugé que l'article 6§1 de la Convention européenne des Droits de l'Homme, relatif aux garanties du procès équitable n'est pas applicable à la procédure disciplinaire pénitentiaire dès lors que l'autorité compétente pour infliger les sanctions aux détenus, à savoir le chef d'établissement siégeant en commission de discipline, ne saurait être regardée comme constituant un tribunal au sens de ces stipulations. Il pourrait néanmoins être envisagé, après expertise, de revoir la composition et le fonctionnement de la commission de discipline, et notamment le rôle des assesseurs. Cependant, il est indispensable pour le fonctionnement des établissements pénitentiaires que le rôle prédominant du chef d'établissement soit préservé.

En matière de comparution des témoins devant la commission de discipline, il convient de rappeler que l'article D250-4 du code de procédure pénale prévoit déjà que le président de la commission de discipline peut décider de faire entendre par la commission en qualité de témoin, toute personne dont l'audition lui paraît utile. Le

détenu ou son conseil peuvent ainsi librement demander à la commission l'audition de toute personne dont le témoignage permettrait d'éclairer la décision.
Concernant l'exercice des droits de la défense, tout est mis en oeuvre par l'administration pour permettre au détenu et à son conseil de disposer du temps nécessaire pour préparer la comparution devant la commission de discipline. Il convient cependant de rappeler que lorsque le détenu a été placé en cellule disciplinaire à titre préventif conformément à l'article D250-3 du code de procédure pénale, la commission de discipline doit se réunir dans les deux jours suivants. Dans ce dernier cas, l'avocat du détenu est avisé de la date de la réunion de la commission de discipline dans les plus brefs délais.

Enfin, concernant les observations relatives aux conditions de détention dans les quartiers disciplinaires de la maison d'arrêt de La Santé et du centre pénitentiaire de Marseille, des travaux de rénovation importants sont prévus et devraient permettre de remédier à la situation actuelle.

b) Mise à l'isolement

- **Point 126**

Il n'existe pas de régime « d'isolement renforcé ». La note du 18 avril 2003 ne fait qu'inciter les chefs d'établissements à être particulièrement vigilants lorsque des détenus exceptionnellement dangereux y sont placés.

- **Points 128 à 131**

Par l'arrêt REMLI du 31 juillet 2003, le Conseil d'Etat a opéré un revirement de jurisprudence. Il considère dorénavant que l'isolement étant une mesure faisant grief, dans la mesure où il aggrave les conditions de détention, cette mesure est susceptible de recours pour excès de pouvoir devant le juge administratif.
A la suite de cet arrêt, l'administration pénitentiaire a décidé d'entamer une réforme d'ampleur de l'isolement administratif, notamment en clarifiant par décret les règles de compétence et de calcul de la durée d'isolement. Le projet de texte prévoit une procédure contradictoire préalable à toute décision de placement à l'isolement, avec la possibilité pour le détenu de se faire assister d'un avocat ou d'un mandataire agréé.

En outre, la note du directeur de l'administration pénitentiaire datée du 21 juin 2004 et portant dispositions transitoires relatives à la procédure de placement à l'isolement a indiqué aux établissements la procédure à suivre, dès avant la réforme, lorsqu'une mesure de placement ou de prolongation d'isolement par mesure de précaution ou de sécurité est envisagée. Ces préconisations imposent aux établissements de mettre en œuvre une procédure contradictoire préalable au placement ou à la prolongation d'un isolement.

➢ **Point 132**

Il n'est pas apparu possible de limiter strictement la durée maximale de l'isolement compte tenu du profil particulier de certains détenus, qu'il est difficile, voire impossible de maintenir en détention ordinaire. En revanche, dès l'entrée en vigueur de la réforme, la prolongation de la mesure au delà de deux ans ne sera possible que si l'isolement constitue l'unique moyen d'assurer la sécurité des personnes ou de l'établissement.

➢ **Points 133 et 136**

Comme exposé ci dessus, la mesure d'isolement peut désormais être contestée devant les tribunaux administratifs par recours pour excès de pouvoir, le cas échéant accompagné d'un référé-suspension. De plus, le projet de décret précité renforce le rôle des magistrats dans le suivi des procédures de placement à l'isolement. Ainsi, toute décision de placement doit immédiatement être communiquée au juge de l'application des peines s'il s'agit d'un condamné ou au magistrat saisi du dossier de l'information, s'il s'agit d'un prévenu. En outre, préalablement à la prolongation de la mesure au delà d'un an, leur avis doit être sollicité.
Enfin, ce projet définit précisément le régime de l'isolement afin d'harmoniser les conditions de détention en fonction des établissements pénitentiaires et prévoit l'organisation d'activités communes pour les détenus placés à l'isolement.

➢ **Point 137**

Tous les détenus isolés, y compris ceux considérés comme dangereux, peuvent accéder très régulièrement aux activités culturelles et sportives qui sont organisées au sein des quartiers d'isolement (circulaire du 14 décembre 1998). Les activités proposées au quartier d'isolement varient en fonction de la personnalité et du profil pénal du détenu, lesquels sont évalués principalement en tenant compte de son passé judiciaire et pénitentiaire.
S'agissant de l'organisation des promenades, les détenus isolés pour des raisons de sécurité sont, en principe, placés seuls dans une cour en plein air. Les promenades sont organisées selon des tours et des horaires variables. Les cours de promenade destinées aux détenus les plus dangereux sont toutefois équipées d'un dispositif de protection particulier adapté aux risques encourus. Des évasions violentes ont en effet été constatées par ces lieux.

3. L'organisation des soins en détention

a) les maladies somatiques et les addictions

➢ **Point 139**

"L'hôpital pénitentiaire de Fresnes" est un terme impropre, il s'agit de l'établissement public de santé national de Fresnes (EPSNF) hôpital public spécifiquement destiné à l'accueil des personnes détenues (article R. 6147-14 du code de la santé publique).

➢ **Point 140 : fonctionnement de chaque unité de consultation et de soins ambulatoires**

Il est défini par un protocole (articles R. 6112-14 et suivants du code de la santé publique). Le médecin de l'unité de consultation et de soins ambulatoires organise les modalités de recours à un médecin en cas d'urgence en dehors des heures de présence du personnel médical à l'UCSA. Cette organisation figure en annexe I du protocole. Les modalités pratiques sont consignées dans un document, à disposition de l'ensemble du personnel concerné. Conformément aux dispositions de l'article D. 374 du code de procédure pénale, les personnels pénitentiaires doivent appliquer les directives prévues dans ce document.

Par ailleurs, la circulaire n° 27 DHOS/DGS/DSS/DGAS/DAP du 10 janvier 2005 actualise le guide méthodologique relatif à la prise en charge sanitaire des personnes détenues et à leur protection sociale. lequel précise par ailleurs les rôles et attributions des personnels pénitentiaires et hospitaliers dans le domaine de l'urgence.
Enfin, s'il est vrai que certaines unités de consultations et de soins sont vétustes, comme celles de la prison de la Santé ou des Baumettes, et souffrent de l'insuffisance de leurs équipements, l'administration pénitentiaire a prévu une rénovation et une adaptation de leurs locaux selon les normes en vigueur du ministère de la santé.

➢ **Points 142, 143 vieillissement de la population carcérale**

Les personnes détenues âgées de 60 ans et plus représentaient au 1er janvier 2004, 3,4 % de la population incarcérée en métropole (et 2,9 % outre-mer). Ce pourcentage est en très nette augmentation depuis 1995 (0,8 %). Les simulations réalisées montrent que, quelle que soit la tendance retenue pour l'ensemble de la population pénale, le nombre de personnes âgées de plus de 60 ans doublera dans les 10 prochaines années et le nombre d'aides pour la dépendance, quelle que soit son importance, concernera de 150 à 200 personnes par an.
Selon une enquête réalisée en mai 2001, la prévalence du handicap est plus fréquente en prison qu'à l'extérieur : 59,8% des personnes détenues déclarent avoir des difficultés physiques, sensorielles, intellectuelles ou mentales contre 23,8 % des personnes dans la population libre.

En 2002, l'administration pénitentiaire a engagé une réflexion associant le ministère de la Santé et les personnels de terrain, pour permettre une prise en charge adaptée de ces personnes handicapées ou dépendantes (âgées), et leur accès aux aides sociales de droit commun, selon le principe du respect des compétences entre services sanitaires et services pénitentiaires.

Les axes de travail suivants ont été retenus :

a. assurer un hébergement et des conditions de vie en détention plus dignes avec notamment l'installation de cellules spécialement aménagées.

b. revaloriser l'allocation adulte handicapé (AAH) par modification de l'article R.821-14 du Code de la sécurité sociale. Le taux de l'AAH en détention vient d'être relevé à 30 % (au lieu des 12% antérieurs). Cette modification est inscrite dans le décret n°2005-724 du 29 juin 2005 sur le handicap.

c. adapter la prise en charge de ces personnes à la situation de dépendance de chacun avec des aides analogues à celles du milieu libre.

Par ailleurs, l'action de la direction de l'administration pénitentiaire s'inscrit dans le plan interministériel d'amélioration de la vie sociale des personnes handicapées arrêté en janvier 2004.

Un comité de pilotage, associant l'ensemble des ministères concernés, a été mis en place par la Délégation interministérielle aux personnes handicapées (DIPH) pour suivre la mise en œuvre de ce plan. La direction de l'administration pénitentiaire participe à ce comité de pilotage.

Enfin, il convient de souligner que la possibilité de suspendre la peine pour des raisons médicales au profit des détenus en fin de vie, prévue par la loi du 4 mars 2002, relève de la seule décision des magistrats et non pas de celle des services de l'administration pénitentiaire. Toutefois, des consignes ont été données par la direction de l'administration pénitentiaire aux chefs d'établissements afin qu'ils signalent tout cas de condamné dont l'état de santé apparaît comme incompatible avec son maintien en détention. A ce titre, La circulaire DHOS/DGS/DAP n° 2003/440 du 24 juillet 2003 relative au rôle des médecins intervenant auprès des personnes détenues dans le cadre de la suspension de peine pour raison médicale et élaborée conjointement entre les ministères de la santé et de la justice, précise le rôle les médecins dans ces situations particulières.

En ce qui concerne la tuberculose, le dépistage est systématiquement proposé à toute personne arrivant de l'état de liberté et ne doit pas excéder une semaine. Ces dispositions, actuellement régies par la circulaire DGS/DAP 98-538 du 31 août 1998, sont reprises dans la circulaire du 10 janvier 2005 citée au point 140. Pour intégrer les données récentes sur la tuberculose, une nouvelle circulaire relative au dépistage de la tuberculose en milieu pénitentiaire est actuellement en préparation.

En ce qui concerne les personnes en fin de vie : La circulaire DHOS/DGS/DAP n° 2003/440 du 24 juillet 2003 relative au rôle des médecins intervenant auprès des personnes détenues dans le cadre de la suspension de peine pour raison médicale et élaborée conjointement entre les ministères de la santé et de la justice, précise le rôle les médecins dans ces situations particulières.

Enfin, le suivi psychologique devrait être amélioré par le renforcement des personnels soignants et notamment les postes de psychologues accordés aux UCSA.

- **Point 144 addictions**

En application de la circulaire du 10/01/05 déjà citée, « les personnes détenues bénéficient au même titre que la population générale d'actions d'éducation pour la santé.» Comme le prévoit l'article R. 711-14 du Code de Santé Publique, c'est l'établissement public de santé qui coordonne les actions de prévention et d'éducation pour la santé au sein de l'établissement pénitentiaire.

L'administration pénitentiaire participe, en ce qui la concerne, au financement des actions d'éducation pour la santé pour une somme non négligeable de 1 486 378 € par an.

Le nombre de 150 « *détenus identifiés comme toxicomanes et suivis aux Baumettes* » cité dans le rapport correspond à celui du nombre de traitements de substitution distribués en moyenne chaque jour (sachant que, pour un quart, il s'agit de méthadone et pour le reste, de subutex). Concernant l'insuffisance de prise en charge de ces détenus, le renforcement des personnels soignants et notamment les postes de psychologues accordés aux UCSA devraient permettre de mieux assurer le suivi psychologique.

- **Points 147 et 148**

La circulaire du 18 novembre 2004 vise à donner des directives claires aux personnels pénitentiaires chargés de mettre en œuvre les extractions médicales et rappelle que, quel que soit le niveau de surveillance retenu, le chef d'escorte devra veiller à ce que les mesures de sécurité n'entravent pas la confidentialité de l'entretien médical. Le dispositif mis en place peut être contesté par le médecin et, à titre exceptionnel, être modifié en accord avec le chef d'établissement ou la personne délégataire. La circulaire ne remet pas en cause le principe du secret médical qui doit être préservé quelles que soient la situation pénale et la dangerosité du patient.

Cette circulaire fait actuellement l'objet d'un groupe de travail (santé-justice) visant à repréciser l'organisation de consultations et des explorations médicales au bénéfice des personnes détenues dans les établissements de santé au sein des établissements hospitaliers, afin de préserver le secret médical et de ne pas entraver la réalisation de l'examen médical tout en respectant la dignité des personnes détenues et en permettant au personnel pénitentiaire d'assurer sa mission de garde.

- **Point 149 les chambres sécurisées**

Une circulaire interministérielle accompagnée d'un cahier des charges concernant l'aménagement et la sécurisation des chambres sécurisées (justice/santé/défense/intérieur) est actuellement en cours de finalisation. Un programme prévoit l'implantation d'une à quatre chambres sécurisées, dans tous les établissements hospitaliers ayant une UCSA, en fonction de la taille de l'établissement pénitentiaire, afin d'hospitaliser, d'une part en urgence les personnes détenues, d'autre part les personnes détenues nécessitant une hospitalisation programmée inférieure à 48 heures. Les hospitalisations programmées

supérieures à 48 heures sont dirigées sur les unités hospitalières sécurisées interrégionales (UHSI). Ces chambres sécurisées doivent offrir des conditions d'hébergement et des équipements techniques hospitaliers similaires aux autres chambres de l'établissement de santé

- **Point 150 les unités hospitalières sécurisées interrégionales**

Le programme des UHSI a été défini par l'arrêté du 24 août 2000. Il comporte la réalisation de 8 unités et précise le rôle des différents partenaires. Les personnels sanitaires délivrent les soins, les personnels pénitentiaires assurent la sécurité des biens et des personnes à l'intérieur de l'UHSI, les forces de l'ordre (police) effectuent le contrôle de l'accès à l'UHSI, la sécurité périmétrique de l'UHSI et l'accompagnement des personnes à l'intérieur de l'établissement hospitalier. La gendarmerie et la police assurent les transports des personnes détenues des établissements pénitentiaires vers l'UHSI (aller et retour). Actuellement les 3 UHSI déjà ouvertes (CHU de Nancy, de Lille et de Lyon) répondent aux besoins de leur zone de ressort. Les 5 autres ouvriront pour celles du CHU de Bordeaux et de Toulouse, début 2006, pour celle de l'Assistance Publique - hôpitaux de Marseille au cours du 2ème semestre 2006 et pour le CHU de Rennes et l'Assistance Publique – Hôpitaux de Paris, en complémentarité avec l'EPSNF, fin 2007.

b) les maladies psychiatriques

- **Point 151**

Il n'est pas exact de dire qu'une étude rendue publique en décembre 2004 fait apparaître que *80 %* des personnes sous écrou présentent une *pathologie psychiatrique*. Ces éléments relatés par un article du monde ne réflètent pas la réalité dans la mesure où il s'agit non pas de pathologie psychiatrique avérée mais de troubles de gravité diverse pouvant ne pas être constitutifs d'une maladie. Les dits troubles recouvrent des réalités différentes de personnes qui peuvent avoir des troubles anxieux jusqu'à celles présentant des troubles psychotiques. De plus, ce chiffre constitue une donnée brute dans la mesure où il ne porte que sur les personnes détenues qui ont fait l'objet de l'étude transversale et ne peut être généralisé à l'ensemble de la population pénale française. Les résultats de l'étude du Professeur FALISSARD seront prochainement connus.

- **POINT 153**

Durant les vingt dernières années, le nombre de suicides en détention a sensiblement augmenté, passant de 39 en 1980 à plus de 100 depuis 1993. La France, se classe en position médiane par rapport aux autres pays occidentaux. Cette évolution est préoccupante même s'il convient, pour en prendre l'exacte mesure, de rapporter le nombre de suicides à l'effectif moyen de la population détenue : ainsi, le taux de est passé de 10 pour 10.000 en 1980 à 24 pour 10.000 en 1999 avant de connaître une baisse relative depuis 2001 (21,6 en 2001, 18,9 en 2004).

- **Point 154**

Depuis une circulaire du 15 février 1967 complétée ultérieurement, l'administration pénitentiaire a engagé une politique de prévention des suicides en détention. Sur la base du rapport d'un groupe de travail pluridisciplinaire constitué en 1996, un plan d'action a été défini en 1997 rassemblant à la fois des mesures d'application immédiate et un programme expérimental. Puis, la direction de l'administration pénitentiaire a, en 2000 et 2001, engagé une réflexion et développé de nouvelles actions destinées à parfaire le dispositif existant, notamment en relation avec la **«** Stratégie nationale d'actions face au suicide pour 2000-2005 » lancée le 19 septembre 2000 par le ministère chargé de la Santé.

Le 26 avril 2002, une circulaire interministérielle**,** complétant celle du 29 mai 1998, a été signée par les ministres de la Justice et de la Santé. Elle tire les enseignements des différents travaux précités et relance l'effort en termes de formation des personnels, de repérage du risque suicidaire, de soutien aux personnes présentant ce risque et aux codétenus, ainsi que d'accompagnement des familles.
A la suite des recommandations du Professeur Terra remises au Garde des Sceaux le 12 décembre 2003, l'administration pénitentiaire a engagé une action immédiate de formation à l'intervention de crise de 2200 personnels pénitentiaires, ainsi que l'intégration de diverses préconisations relatives à l'aménagement des cellules, au renforcement de la pluridisciplinarité et à une amélioration des dispositifs de prise en charge de l'après suicide. Ce plan de formation a concerné près de 5000 agents pénitentiaires, qui à la fin 2005, ont bénéficié d'une formation au repérage du risque suicidaire. Par ailleurs, une réflexion est en cours en vue d'une éventuelle expérimentation portant sur la formation de codétenus à la prévention du suicide.

En outre, une étude est menée en partenariat avec les ministères de la Santé, de l'Intérieur et de la Défense pour évaluer la possibilité de constituer un document partagé qui aurait vocation à suivre la personne, de la garde à vue à l'écrou, afin de permettre une meilleure évaluation du potentiel suicidaire à chaque stade de la procédure et d'anticiper les actions à entreprendre. Par ailleurs, un dispositif de formation de codétenus à la prévention du suicide est expérimenté, avec le concours de la Croix Rouge, dans un établissement pénitentiaire.

Au centre pénitentiaire des Baumettes, le service pénitentiaire d'insertion et de probation (et non la direction de l'établissement) n'a pu réserver une suite favorable à la proposition des médecins *« d'augmenter le nombre des travailleurs sociaux qui interviennent dans le quartier des primo-arrivants* », en raison d'effectifs insuffisants, mais réfléchit actuellement à cet aménagement. Le détenu rencontre néanmoins systématiquement un travailleur social dès le lendemain matin de son arrivée à l'établissement.

- **Point 156**

Le taux d'irresponsabilité pénale pour troubles mentaux n'a pas connu une chute considérable comme l'indique le rapport; Au contraire, il est resté constant.

L'explication réside dans le fait que si le nombre de personnes pour lesquelles l'irresponsabilité pénale a diminué, le nombre de personnes mises en examen a lui même diminué, comme l'indique le rapport IGAS/ IGSJ de juin 2001 sur l'organisation des soins aux détenus.

Rappelons que les experts psychiatres se limitent à produire une expertise ; seul le juge prononce la décision judiciaire d'incarcération;

Dans le cadre de la fin de campagne budgétaire 2005, des crédits supplémentaires, à hauteur de 5,680 M€ ont été donnés aux agences régionales de l'hospitalisation afin de renforcer les UCSA. D'autres crédits ont été demandés pour 2006. En ce qui concerne la fin de vie, cf réponse au § 143

- **Point 159**

Dans les UCSA des établissements qui ne sont pas sièges d'un SMPR, des moyens sont spécifiquement destinés pour la prise en charge psychiatrique des personnes détenues (consultations et entretiens). Les soins psychiatriques sont assurés en règle générale par le secteur de psychiatrie générale (et le cas échéant le secteur de psychiatrie infantojuvénile) compétent pour la zone d'implantation de l'établissement pénitentiaire.

- **Point 160**

La mixité des activités thérapeutiques organisées par le SMPR de la maison d'arrêt de Strasbourg avait été interrompue à la suite d'un incident. Le directeur régional a autorisé la reprise de cette activité thérapeutique mixte à compter du 2 janvier 2006 après la signature d'une convention entre l'administration pénitentiaire et le SMPR définissant les conditions d'organisation et de surveillance de cette activité.

Compte tenu du faible nombre de femmes incarcérées, qui représentent moins de 4 % de la population pénale, seul le SMPR de Fleury-Mérogis dispose d'une antenne de 9 lits dédiée à l'accueil des femmes. Une étude menée durant l'année 2005 a montré que seulement 3 femmes, provenant d'établissements de la zone de compétence du SMPR de Lille, avaient été hospitalisées au SMPR de Fleury-Mérogis, confirmant ainsi la faiblesse du besoin. Les hospitalisations des hommes et des femmes dont l'état le nécessite ou qui ne donnent pas leur consentement, sont réalisés d'office dans l'établissement de santé, selon les modalités de l'article D 348 du code de procédure pénale. Par ailleurs, le dispositif d'hospitalisation des personnes détenues a été profondément modifié par la loi de programmation pour la justice du 9 septembre 2002 qui prévoit que désormais l'hospitalisation avec ou sans consentement d'une personne détenue atteinte de troubles mentaux sera réalisée dans un établissement de santé au sein d'une unité spécialement aménagée (UHSA). Ces unités hospitalières implantées au sein d'établissement de santé, seront mixtes et accueilleront les hommes et les femmes détenues, présentant des troubles mentaux et nécessitant une hospitalisation avec ou sans leur consentement, Il apparaît en effet que si les soins de type ambulatoire peuvent être assurés par les équipes

hospitalières au sein des établissements pénitentiaires, les hospitalisations à temps complet doivent être effectuées en milieu hospitalier afin qu'une présence soignante permanente, incompatible avec le règlement pénitentiaire, soit assurée.

- **Point 161**

Ce n'est pas le directeur de l'établissement pénitentiaire qui « demande » l'hospitalisation d'office d'un détenu, c'est le certificat médical qui est le fondement de la procédure, conformément aux dispositions de l'article D 398 du CPP, même si le plus souvent une lettre du directeur accompagne le certificat médical.

- **Point 162 et 163**

L'image de la réalité en ce qui concerne l'hospitalisation des détenus en établissement de santé accueillant des malades mentaux hospitalisés sans leur consentement est plus complexe que ce qui est décrit dans le rapport. En effet, si les détenus se retrouvent souvent au milieu d'autres patients en HO, avec les problèmes de surveillance que cela pose, ils peuvent aussi être systématiquement placés en chambre d'isolement, ce qui n'est pas une solution optimale d'un point de vue thérapeutique et humain.
En ce qui concerne le point 163, il s'agit de chambres d'isolement et non de chambres sécurisées.

- **Points 166 et 167 les unités hospitalières spécialement aménagées**

La loi n° 2002-1138 du 9 septembre 2002 d'orientation et de programmation pour la justice (LOPJ) a modifié, en son article 48, les conditions d'hospitalisation des personnes détenues atteintes de troubles mentaux en créant les unités hospitalières spécialement aménagées (UHSA) pour les accueillir en hospitalisation complète avec ou sans leur consentement. Cette création constitue une avancée considérable en matière d'hospitalisation psychiatrique en ce que :
- les malades détenus seront accueillis au sein de services disposant de moyens sanitaires adaptés,
- les hospitalisations auront lieu dans des unités hospitalières désormais sécurisées,
- il sera ainsi mis fin à l'hospitalisation complète en milieu pénitentiaire, les SMPR se recentrant sur les soins ambulatoires.

Un groupe de travail interministériel santé - justice a ensuite élaboré des propositions sur les questions suivantes :
- l'estimation des besoins en lits d'hospitalisation psychiatrique,
- la définition de la configuration du schéma national d'hospitalisation psychiatrique
- la définition des conditions de fonctionnement des UHSA

Les conclusions de ce groupe de travail ont fait l'objet d'un rapport en juillet 2003.

Le programme initial, annoncé dans le contexte du plan de santé mentale, comportait la création en plusieurs tranches de 19 UHSA pour une capacité totale de 700 lits. Ce chiffre a été retenu en prenant en compte les hypothèses d'augmentation de la population détenue (hypothèse 60.000 personnes détenues) en intégrant l'augmentation des recours à cette modalité de soins. La première tranche dont la réalisation était fixée en 2008 devait concerner la création de 4 ou 5 UHSA, soit quelque 300 lits. Le nombre de régions pénitentiaires susceptibles de bénéficier de l'implantation d'une UHSA lors de la première tranche était limité aux plus importantes d'entre elles (en termes de démographie), représentant environ 40% de la population carcérale : Nord- Pas-de-Calais, Ile-de-France et Provence-Alpes-Côte d'Azur.

A la suite de la survenue de plusieurs incidents graves provoqués par des patients détenus hospitalisés d'office, les ministres de la Santé et de la Justice ont annoncé, dès août 2005, l'accélération du programme en redéfinissant la première tranche qui se voit augmentée de 50% (soit 450 lits) et en déterminant les capacités et le calendrier de la seconde tranche (250 lits supplémentaires à l'horizon 2010).

Cette accélération du programme permettra d'assurer globalement une couverture de l'ensemble des régions ou interrégions pénitentiaires métropolitaines.

- **Point 168**

La création de chambres sécurisées, non spécifiques aux seules personnes détenues est actuellement à l'étude dans plusieurs établissements de santé dont celui de Lannemezan. Cette solution constitue une piste de réflexion intéressante durant la période transitoire au cours de laquelle l'ensemble des UHSA ne sera pas déployé. Toutefois aux termes mêmes de la loi de programmation pour la justice du 9 septembre 2002, les hospitalisations psychiatriques pour personnes détenues ont vocation a être assurées exclusivement au sein des UHSA. Ces dernières seront conçues selon un cahier des charges spécifique auquel ne répondront pas ces chambres sécurisées qui doivent par conséquent n'être considérées que comme une modalité transitoire. Elles garderont néanmoins leur utilité et leur pertinence pour l'hospitalisation des personnes non détenues violentes ou dangereuses.

III – L'action des forces de l'ordre

- **Points 169 à 183**

Comme il a été souligné ci-dessus, les autorités françaises sont très attentives au respect de la déontologie par les agents de la force de l'ordre et à un usage proportionné de la force, strictement nécessaire.

Les violences illégitimes sont sanctionnées avec rigueur. A cet égard, les agissements inacceptables qui se sont produits au Commissariat de Saint Denis ont fait immédiatement l'objet de mesures administratives sans préjudice des sanctions pénales qui pourront être prononcées. La situation constatée dans ce commissariat n'est cependant pas significative et ne saurait rendre compte de l'action menée de manière générale par les services de police qui accomplissent leurs missions, dans des conditions parfois très difficiles, avec rigueur et dans le respect des droits des personnes.

A cet égard, on précisera que les dépôts de plainte pour outrage et rébellion à agent par des policiers sont l'expression de la résistance et de la violence opposée de plus en plus fréquemment à des interpellations et ne sauraient s'analyser comme visant à « anticiper » le dépôt de plainte de la victime. De même, les condamnations prononcées à l'égard de policiers coupables de violences, ne sauraient être considérées comme étant de manière générale disproportionnées aux faits reprochés et les sursis qui peuvent être accordés par les juridictions pénales s'expliquent par le fait que, soumis simultanément à une sanction disciplinaire qui peut aller jusqu'à la radiation, les condamnés sont presque toujours des primo délinquants qui bénéficient des sursis habituels à cette catégorie.

La loi d'orientation et de programmation de la sécurité intérieure du 29 août 2002 fait des « règles de déontologie » un des grands axes de l'action de formation des policiers.

Cette formation initiale et continue concerne l'ensemble des corps de police et est centrée sur les « savoirs », les « savoir faire » et les « savoir être ». L'accent est aussi mis sur le développement des retours d'expériences, notamment pour la spécificité des interventions de nuit dans les quartiers difficiles et sur l'apprentissage des gestes techniques professionnels d'intervention.

De plus, sur la base notamment des recommandations de la Commission nationale de déontologie de la sécurité (CNDS), plusieurs instructions ont été prises depuis le début 2004 pour prévenir des défaillances et améliorer l'action policière (instructions sur l'utilisation de produits incapacitants, sur les brigades anti-criminalité, sur l'utilisation des menottes, sur la lutte contre le racisme et l'antisémitisme, sur les interventions de nuit...).

S’agissant de l’encadrement des forces de l’ordre, la réforme des corps et carrières est d’ores et déjà engagée et les statuts des trois corps actifs de la police nationale ont été refondus. Pour répondre aux difficultés dues au renouvellement démographique des effectifs et à l’insuffisance de l’encadrement, les qualifications des gradés et gardiens dans le nouveau corps d’encadrement et d’application de la police nationale et les mesures de fidélisation des fonctionnaires actifs ont pour objectif de faire progresser le taux d’encadrement.

III bis- La situation matérielle dans les Commissariats

(paragraphe 82 à 84)

La circulaire du Ministre de l'intérieur du 11 mars 2003 relative à « la dignité des personnes en garde à vue » a prescrit un certain nombre de mesures d'application immédiates. Des actions ont été menées dans le domaine de la logistique ainsi qu'en matière immobilière afin d'assurer dans tous les locaux de garde à vue de bonnes conditions d'hygiène et de propreté.

Les premières mesures prises pour l'amélioration des conditions matérielles des personnes placées en garde à vue ont été mises en place dès la fin 2003 et portent sur l'équipement des locaux en matelas sécurisés, la fourniture de fours à micro-ondes et la mise à disposition de plats chauds.

S'agissant des prescriptions retenues en matière immobilière, il a été décidé de mettre en œuvre un plan pluriannuel de mises aux normes des locaux de garde à vue existants. Ces prescriptions immobilières et techniques sont aujourd'hui pleinement intégrées lors de la construction ou la rénovation des immeubles de police.

La généralisation de ces équipements est en cours et le mouvement engagé se poursuit à un rythme soutenu. A cet égard, la situation constatée dans le local du Commissariat du XVIIIe arrondissement de Paris n'est pas significative et il doit y être remédié très rapidement. Simultanément, un groupe de travail interministériel veille à la mise aux normes des infrastructures et des équipements conformes aux prescriptions de CPT dans tous les programmes de construction et de rénovation des lieux de garde à vue. Celle-ci s'effectue à un rythme significatif et d'ici fin 2006, plus de 250 locaux de garde à vue auront été mis aux normes.

IV - La Situation des étrangers

1. Les zones d'attente et la demande d'asile à la frontière (§ 187 à 203 et 286 à 293)

Paragraphes 187 à 203 : La zone d'attente est un concept juridique clair. Le maintien en zone d'attente est d'application dans les cas et selon les modalités prévues à l'article L.221.1, son périmètre est défini par l'article L.221.2 et la loi française s'y applique intégralement.

Sur le plan juridique, un étranger qui se présente à la frontière est soit admis à entrer sur le territoire français, soit placé en zone d'attente, le temps nécessaire à son départ ou à l'examen de sa demande d'asile.

La durée de ce placement peut être variable, de quelques heures à plusieurs jours en fonction de la plus ou moins grande complexité de l'organisation du départ ou des nécessités de l'examen de la demande d'asile.

S'il s'agit d'une procédure de non admission courte (concernant notamment ceux dont le vol ou la nationalité a pu être rapidement identifié, qui ne demandent ni l'asile, ni le bénéfice du jour franc et pour lesquels un vol peut être trouvé rapidement), il n'est pas nécessaire de placer physiquement l'intéressé dans les locaux d'hébergement de la ZAPI 3, et celui-ci peut être maintenu pendant quelques heures dans la zone internationale de l'aéroport.

Pour autant, ces étrangers font systématiquement l'objet d'une décision de non admission et les garanties prévues par la législation en matière de non admission s'appliquent intégralement. Elles s'appliquent dans les mêmes conditions aux frontières maritimes.

A titre d'exemple : Le service de la police aux frontières de Marseille a pris 519 mesures de non-admission en 2005 dont 199 concernent des clandestins maritimes. 60 non-admis ont demandé à bénéficier du jour franc, (dont 20 clandestins maritimes) ce qui laisse légitimement penser que cette disposition est portée à la connaissance des non-admis. Par ailleurs, 41 mineurs, clandestins maritimes ont été non-admis et ont tous bénéficié de la prise en compte par l'administrateur ad hoc garant de leurs droits.

La loi du 26 novembre 2003 n'a pas supprimé le droit au bénéfice du jour franc avant le rapatriement mais s'est limitée à organiser les règles procédurales selon lesquelles est recueillie la volonté de l'étranger : l'intéressé est désormais informé par écrit, dans une langue qu'il comprend, de ce droit et appelé à indiquer s'il souhaite en bénéficier.

Les autorités veillent scrupuleusement au respect de ces dispositions, comme au respect de l'ensemble des autres garanties prévues en cas de non-admission et de maintien en zone d'attente sous le contrôle de la juridiction administrative, et il n'existe pas d'élément ou de motif permettant de considérer que les services de police inciteraient les étrangers à renoncer à leurs droits ou refuseraient d'enregistrer des demandes d'asile.

Le respect des droits accordés aux étrangers est contrôlé : par l'autorité judiciaire devant laquelle comparaît l'étranger en cas de prorogation du maintien, par le procureur de la République, par la délégation du HCR et les associations habilitées qui ont un droit d'accès en zone d'attente, enfin par la Commission nationale de contrôle des centres et locaux de rétention et des zones d'attente qui entrera en fonction très prochainement (cf. fiche générale de présentation).

Par ailleurs, il convient de souligner qu'en application de la loi du 30 juin 2000 relative aux référés devant les juridictions administratives, qui a profondément rénové le régime des mesures d'urgence susceptibles d'être ordonnées par le juge administratif, toute décision de refus d'entrée ou de refus d'asile à la frontière peut faire l'objet d'un « référé suspension » ou d'un « référé liberté » qui, s'il est prononcé par le juge administratif suspend ou interdit l'exécution de la mesure de refoulement. Cette procédure appliquée libéralement par le juge administratif a renforcé les garanties des personnes.

Enfin, il doit être précisé que l'examen des demandes d'asile à la frontière présentées en province ne se fait pas seulement sur la base d'un procès-verbal des déclarations du demandeur : dans ces cas l'OFPRA procède à une audition du demandeur par téléphone et chaque fois que nécessaire, un agent de cet office se rend sur place pour procéder à l'audition avant de donner son avis au ministère de l'intérieur.

En ce qui concerne les conditions matérielles d'hébergement : La zone d'attente d'Arenc, bien que située à l'intérieur du même bâtiment que le centre de rétention, connaît un fonctionnement totalement indépendant et séparé. De fait, aucune mixité n'intervient entre les hébergés des deux structures : restauration, visites, accès à l'air libre… Une amélioration des lieux, qui s'était déjà traduite en 2001 par le remplacement du mobilier et un complément télévisuel s'est poursuivi en 2005 par la réfection des peintures et l'installation de la climatisation.

Les étrangers placés en zone d'attente bénéficient de l'ensemble des droits et prestations ouverts aux retenus .

En ce qui concerne l'accès aux soins : Lorsqu'en dehors des heures de présence du médecin ou des infirmières (7 jours sur 7, de 8 heures à 20 heures) des soins s'avèrent nécessaires pour un étranger maintenu en zone d'attente, il est fait immédiatement appel au SAMU ou aux services d'urgence. Les officiers de garde de la PAF sont très attentifs à cette situation.

Il convient de souligner qu'en application d'une convention entre la croix rouge et le Ministère de l'intérieur, une assistance humanitaire est apportée par cet organisme. L'ANAFE (Collectif d'association) lié également par Convention, apporte une assistance juridique aux personnes maintenues en zone d'attente.

2) L’asile du droit commun et les demandeurs d’asile (§ 204 à 231)

Délai de 21 jours pour déposer une demande d’asile en français et exigence de la rédiger en français

Le délai de 3 semaines imparti pour déposer une demande d’asile est raisonnable au regard du respect des droits des demandeurs. Le formulaire ne vise à obtenir que des renseignements simples que le demandeur est en mesure de fournir spontanément. Il s’agit de son état civil personnel, de celui de ses parents et de ses éventuels frères et sœurs, conjoint et enfants. Il lui est également demandé un récit de son parcours pour arriver en France. Ce récit peut être succinct et tenir en quelques lignes de langage simple. Enfin, le demandeur doit indiquer ce qui motive ses craintes.

Afin de tenir compte de certaines critiques, l’OFPRA a modifié la présentation du formulaire de demande d’asile en liaison avec les associations qui aident les demandeurs d’asile dans leurs démarches. Le nouveau formulaire mentionne que la remise doit se faire sous 21 jours.

Par ailleurs, l’exigence de remplir le formulaire en français correspond à la norme puisque la langue de travail de l’administration française est le français. Il convient de souligner sur ce point que le formulaire ne constitue que le point de départ de la procédure. Le demandeur est ensuite, dans plus de 80% des cas, mis en mesure d’exprimer ses craintes oralement dans la langue de son choix. Les 20% restant correspondent à des dossiers très étayés sur lesquels l’OFPRA peut prendre une décision positive sans convoquer le demandeur ou, à l’inverse, des dossiers dans lesquels les craintes exprimées n’ont pas de lien avec le droit d’asile.

La rédaction des réponses dans une langue autre que le français ne se justifie pas dès lors que l’entretien oral constitue l’élément central de la procédure.

- **Formulation des demandes d’asile en rétention**

Le droit de demander l’asile est notifié dès son arrivée à la personne qui entre dans un centre de rétention. Elle dispose d’un délai de 5 jours pour rédiger sa demande en français. Il convient cependant de rappeler que, comme précédemment, le dossier écrit ne détermine pas, à lui seul, la réponse de l’OFPRA. La personne peut être auditionnée et faire valoir ses craintes dans les mêmes conditions que les autres demandeurs c’est à dire dans la langue de son choix avec l’aide d’un interprète.
Il convient de souligner que les personnes concernées étaient auparavant libres de leur mouvement sur le territoire français et qu’elles ont déjà eu toute latitude pour saisir l’OFPRA. L’expression de la demande d’asile en centre de rétention, pour légitime qu’elle soit, conduit donc à s’interroger sur les motivations des demandeurs.

- **Décentralisation de l'OFPRA**

Le Commissaire suggère la décentralisation de l'Office en province dans 4 ou 5 pôles régionaux permettant aux demandeurs d'asile d'être entendus par des officiers de protection à proximité de leur domicile et limiter ainsi les dépenses afférentes au transport. Il faut rappeler que le fonctionnement de l'OFPRA repose sur la spécialisation géographique de ses agents. Or, les agents travaillant dans les centres régionaux seront appelés à traiter de toutes les nationalités. Cette solution entraînerait donc une perte du rôle d'expertise de l'OFPRA, qui fait la valeur ajoutée de cet établissement, et engendrerait également des difficultés à maintenir l'unité de doctrine et la cohérence de décisions entre les différents pôles.

Par ailleurs, la décentralisation aurait pour conséquence une perte de flexibilité pour l'Office en terme d'adaptation aux fluctuations de la demande d'asile (fluctuations en terme de nationalités, de régions concernées…). Jusqu'à ce jour l'Office a fait preuve à plusieurs reprises de sa disponibilité et de sa réactivité pour résoudre une crise régionale (missions foraines d'instruction, visioconférences, traitement prioritaire de certains dossiers à la demande du préfet).

L'Office observe qu'à l'heure actuelle les demandeurs d'asile se voient octroyés les moyens nécessaires à leur déplacement sur le territoire soit par le biais d'une allocation d'attente soit par la prise en charge des billets par le centre d'hébergement. Le taux de non-présentation aux entretiens de l'Office 27% (chiffre pour les 11 premiers mois de 2005) ne peut s'expliquer uniquement par les difficultés liées aux frais de transport. Ainsi, les demandeurs d'asile de nationalité chinoise qui ont le taux de non-présentation le plus important (87%) résident à plus de 95% dans la région parisienne.

- **Problèmes d'interprétariat**

Le Commissaire constate une connaissance insuffisante par les interprètes de l'Office de la situation dans les pays d'origine. Les interprètes, alloués par l'office pour les entretiens, sont choisis en premier lieu pour leurs connaissances linguistiques au travers de conventions passées avec un certain nombre d'associations. Ces personnes ne sont présentes que pour la traduction des propos tenus par les demandeurs et n'interviennent à aucun autre stade de l'instruction du dossier. L'obligation d'avoir une culture spécifique à la demande d'asile incombe prioritairement, non pas à l'interprète, mais à l'officier de protection instructeur spécialisé dans une zone géographique. C'est à lui, le professionnel de la demande d'asile, que revient la responsabilité d'élucider et de dépasser les incompréhensions ponctuelles qui sont le lot habituel de tout entretien de demande d'asile.

L'office utilise les services de plus de cent interprètes en 80 langues. Ces interprètes sont gérés par un service de l'interprétariat qui obéit à des normes de déontologie précises et bénéficie pour le suivi de son travail des comptes rendus réguliers des officiers de protection.

- **Obtention du statut de réfugié et hébergement en CADA**

Le Commissaire s'inquiète des fortes inégalités pour l'accès au statut de réfugié car il semblerait qu'un demandeur d'asile hébergé en CADA ait cinq fois plus de chances de se voir attribuer la qualité de réfugié. Il est certain que l'accompagnement social dont bénéficient les demandeurs en CADA les aide considérablement dans leurs démarches administratives ainsi que pour la constitution de leur demande d'asile. Cependant, il semble exagéré d'en conclure à une inégalité de traitement devant l'Office. Dans la mesure où aujourd'hui l'Office convoque plus de 80% des demandeurs pour un entretien, le dossier écrit ne constitue pas l'élément central de la demande. L'entretien avec un officier de protection permet à tous les demandeurs de s'exprimer pleinement devant l'Office en vue de faire valoir leurs arguments et l'officier de protection est à même de faire la différence entre les demandeurs ayant bénéficié ou non d'une aide.

Par ailleurs, il convient d'observer que si les demandeurs d'asile hébergés en CADA font l'objet d'un taux d'acceptation plus important que la moyenne générale, la raison essentielle en est qu'ils sont originaires de pays pour lesquels les taux globaux d'admission sont les plus élevés (Russie, Bosnie, Rwanda), en revanche les principaux flux de demandeurs d'asile comme les Turcs, Chinois ou Moldaves qui observent un taux d'admission relativement faible, ne demandent pas à être hébergés en structure spécialisée. Enfin, l'admission en CADA résulte d'une commission de sélection qui effectue un premier tri au sein des demandeurs, sur la base d'un critère familial. En admettant prioritairement des familles, les CADA renforcent la concentration de certaines nationalités qui migrent en famille comme les Tchétchènes ou certaines populations roms de l'ex-Yougoslavie ; ceci entraîne statistiquement la multiplication des décisions d'accord.

- **La multiplication des procédures prioritaires**

Le Commissaire s'inquiète d'un recours de plus en plus fréquent aux procédures prioritaires et déplore la mise en pratique d'un système de l'asile à deux vitesses. La procédure d'examen prioritaire de certaines demandes d'asile vise à concilier l'exigence d'un examen individuel attentif des risques de persécutions ou de mauvais traitements en cas de retour et la nécessité de prévenir les dévoiements du droit d'asile à des fins étrangères à cette problématique.

Cette procédure n'est applicable que dans des cas limitativement énumérés par la loi , qui reposent sur des critères objectifs et extérieurs à la demande elle-même et qui interdisent à l'autorité administrative de se livrer à une appréciation sur le fond et les motifs de demande pour avoir recours à cette procédure.

L'ensemble des garanties applicables à l'examen de toute demande d'asile, bénéficient dans les mêmes conditions à ces demandes. En particulier, l'étranger est auditionné, si nécessaire, par un agent de l'office.

La seule exception est que le recours qui peut être intenté devant la Commission des recours des réfugiés, n'a pas, dans cette hypothèse, un caractère suspensif. Cependant on doit souligner que l'étranger en cause à la possibilité de former un recours devant la juridiction administrative contre la décision d'éloignement prise consécutivement, recours suspensif, s'il s'agit d'un arrêté de reconduite ou qui peut être accompagné d'un référé suspension ou d'un référé liberté dans les conditions prévues par la loi du 30 juin 2000, qui, s'il est prononcé par le juge, suspend l'exécution de la mesure.

Il est exact que le nombre de procédures prioritaires a augmenté de 31% entre 2004 et 2005, mais il faut mettre en parallèle l'augmentation des procédures prioritaires avec celle des demandes de réexamen. 56% des procédures prioritaires de l'année 2005 concernent des demandes de réexamen. Si une partie des procédures prioritaires est consécutive aux refus d'enregistrement ou à l'adoption d'une liste des pays d'origine sûrs, l'explication principale repose sur la multiplication des demandes de réexamen résultant d'une part de modification des compétences de l'Office par la loi et, d'autre part, du nombre élevé de décisions de rejet prises par l'OFPRA puis par la CRR à la suite de la résorption des demandes en instance.

Quant au taux de convocation pour les procédures prioritaires en rétention qui était de l'ordre de 33% en début d'année 2005, il était de 42% sur la moyenne des 9 premiers mois de l'année. Le taux de convocation pour les pays d'origine sûrs est de 70% depuis l'adoption de la liste le 30 juin 2005.

L'Office, malgré la multiplication des procédures prioritaires, s'efforce de respecter les délais qui lui sont impartis par la loi tout en poursuivant une instruction présentant les garanties d'un examen individuel des demandes d'asile qui lui sont soumises. Dés lors, comme le souhaite le Commissaire, les procédures prioritaires ne sont pas traitées par l'OFPRA comme une procédure d'exception.

- **Les divergences d'appréciation entre l'OFPRA et la CRR**

Le Commissaire évoque les difficultés liées aux divergences persistantes d'appréciation entre l'Office et la Commission, il cite à cet égard l'exemple de la Bosnie-Herzégovine. Effectivement le cas de la Bosnie-Herzégovine est significatif dans la mesure où la Commission a fixé une jurisprudence constante à l'issue des accords de Dayton-Paris de 1995. Or, l'observation statistique des décisions d'admission pour les demandeurs d'asile bosniens permet de conclure que cette jurisprudence a été scrupuleusement suivie par l'Office. De 2001 à décembre 2005, 2.423 demandeurs d'asile bosniens ont été reconnus réfugiés par l'OFPRA et 265 à la suite d'une décision d'annulation de la CRR. Si 90% des demandeurs ont été reconnus par l'Office, on ne peut affirmer comme le mentionne le rapport que « la CRR apparaît comme une voie normale d'obtention de l'asile dans certains cas comme celui de la Bosnie »

Des divergences d'appréciation peuvent exister entre l'Office et la Commission mais elles reposent essentiellement sur l'établissement des faits et non sur leur qualification juridique. Cette situation découle des compétences de la juridiction administrative qui est en l'espèce juge de plein contentieux.

- **Réduction du délai de recours**

Le délai imparti pour contester une décision de refus d'asile peut être réduit d'un mois a 15 jours sans dommage pour le requérant. Il s'agit en effet de contester une décision administrative à partir d'une histoire personnelle qui a déjà été explicitée. Le requérant doit produire un dossier simple sur la base d'éléments qu'il connaît intimement.

Pour être recevable, le recours doit contenir les nom, prénoms, état civil complet, profession et domicile du requérant et présenter les motifs de contestation de la décision de l'OFPRA.

Il doit être accompagné de l'original ou de la copie de la décision de refus de l'office ou, en cas de décision implicite de rejet, de la copie de la lettre avisant de l'enregistrement de la demande présentée à l'office.

Toutes pièces de nature à établir le bien-fondé de la demande peuvent être annexées au recours. Des pièces nouvelles peuvent être adressées à la CRR tant que l'instruction n'est pas close.

- **Recours aux ordonnances**
-

Au cours des neuf premiers mois de 2005, 17,25% des affaires jugées par la CRR l'ont été par voie d'ordonnance. Cependant la majorité de celles-ci correspondent à des dossiers incomplets ou parvenus hors délai. Les dispositions législatives nouvelles qui prévoient qu'une ordonnance peut régler les affaires dont la nature ne justifie pas l'intervention d'une formation collégiale ne représentent que 5,8% des rejets.

- **Autonomie financière de la CRR**

Le Commissaire déplore que le fait qu'une juridiction ait son budget à l'intérieur de l'administration qu'elle contrôle. Outre le fait que cette situation n'est pas unique en droit français, il convient de rappeler la jurisprudence constante de la Cour européenne des droits de l'homme selon laquelle le contentieux des réfugiés échappe au champ d'application de l'article 6 de la convention européenne des droits de l'homme.

Les autorités françaises qui sont néanmoins conscientes des limites du dispositif actuel et ont cherché à plusieurs reprises de favoriser une plus grande autonomie de la CRR. Elles se sont heurtés au refus du Conseil d'Etat.

- **Pays d'origine sûrs**

Le Commissaire s'inquiète du caractère sûr des pays retenus par le conseil d'administration de l'OFPRA pour l'application du droit d'asile. La France souligne que l'élaboration de la liste nationale des pays d'origine sûrs repose sur des études approfondies.

Les avis des directions géographiques du ministère des affaires étrangères et de nos ambassades ont été sollicités. Ont également été consultés les rapports des organisations internationales intergouvernementales (HCR) et non gouvernementales (Amnesty international, Human Right Watch, Reporters sans frontière) et d'autres gouvernements (rapport annuel du Département d'Etat américain, avis de nos partenaires européens reçus dans le cadre de la négociation d'une liste communautaire de pays d'origine sûrs).

Une mission a eu lieu en Bosnie-Herzégovine pour apprécier la situation des droits de l'homme et les conditions de retour des personnes dans les zones où elles sont minoritaires.

Il ne fait pas de doute que les pays choisis respectent les critères de la loi (pour mémoire : « un pays est considéré comme sûr s'il veille au respect des principes de liberté, de la démocratie et de l'état de droit, ainsi que des droits de l'homme et des libertés fondamentales »).

La violence de droit commun qui règne dans certains pays ne doit pas être confondue avec celle qui résulte de persécutions ou de violations des droits de l'homme.

Le fait que l'état de droit et la démocratie soient ancrés dans un pays et que les droits de l'homme y sont généralement respectés ne signifie pas que des violations de ces droits n'aient pas lieu ponctuellement puisque la loi ne suffit dans aucun pays pour empêcher ces violations. L'élément déterminant qui a été pleinement pris en compte, est la volonté des autorités de poursuivre les coupables.

➢ **Point 220 structures d'accueil**

Les capacités d'hébergement spécialisé sont complétées par un dispositif d'accueil d'urgence des demandeurs d'asile, en 2005, 1 500 places au niveau national et environ 16 000 mises en place par les services déconcentrés. L'hébergement en hôtel, bien que n'offrant pas un cadre adapté à la situation particulière des demandeurs d'asile, ne peut être réduit à la seule qualification d'insalubrité. La plupart des hôtels mobilisés sont des hôtels de type Formule 1 ou équivalent répondant aux normes de sécurité en vigueur. En milieu fortement urbanisé, l'offre est sans doute plus diversifiée mais la dangerosité ne peut être ainsi décrite comme une généralité. L'exemple cité par le rapporteur apparaît d'ailleurs inapproprié : l'hôtel Paris-Opéra non seulement ne relevait pas des établissements faisant l'objet d'un financement au titre de l'accueil des demandeurs d'asile mais avait subi un contrôle de sécurité quelques semaines auparavant. Cet incendie s'est de surcroît avéré d'origine criminelle.

Par ailleurs, il est précisé que les centres provisoires d'hébergement (CPH) offrent 1023 places à des réfugiés et non à des demandeurs d'asile.

- **Points 221 et 222**

Le terme de logement indiqué dans le rapport est inadapté s'agissant de l'accueil des demandeurs d'asile. La notion d'hébergement retenue au titre de leur prise en charge sociale répond en effet au caractère provisoire de leur situation et à la spécialisation des dispositifs assurant cet accueil.

Par ailleurs, l'accès à différentes catégories de droits sociaux est conditionné par la situation administrative du demandeur d'asile au regard du droit au séjour, conformément au code de l'entrée et du séjour des étrangers et du droit d'asile. Une couverture minimale est en tout état de cause assurée.

En matière de soins et d'assistance médicale, tout demandeur d'asile étranger en situation régulière sur le territoire national a accès à la couverture maladie universelle (CMU) s'il n'a pas de titre de séjour en cours de validité, il relève de l'aide médicale d'État (AME). Tout demandeur d'asile en cours de procédure a accès au régime général d'assurance maladie ou « protection de base ».

Le demandeur d'asile qui est hébergé dans un CADA et qui ne bénéficie donc pas de l'allocation d'insertion peut demander son affiliation au régime général d'assurance maladie sur critère de résidence stable et régulière, c'est-à-dire qu'il peut, sous condition de ressources, bénéficier de la couverture maladie universelle(CMU).

Il ne peut bénéficier d'une dispense totale d'avance des frais que s'il est admis à une protection complémentaire telle que la CMU complémentaire (CMU-C), ou s'il a accès à l'Aide médicale d'État (AME).

Il existe également des solutions d'urgence :

- pour les demandeurs d'asile qui ne bénéficient pas encore du régime général d'assurance maladie;
- pour les demandeurs d'asile déboutés.

S'agissant de l'inégalité des chances liée à un accompagnement social différencié dans ou hors CADA, il peut être souligné que le paramètre CADA ne peut être pris en compte "mutatis mutandis". En effet, les personnes accueillies en CADA le sont sur la base d'une présélection. En outre, il doit être mentionné les dispositifs d'accompagnement hors CADA financés par l'État : les plates-formes, dont l'une évoquée par le rapporteur, mais aussi de nombreuses associations qui bénéficient de subventions publiques. L'hétérogénéité de cet ensemble ne peut être niée.

- **Point 224 liste des pays d'origine sûrs**

L'adoption de la liste des pays d'origine sûrs, intervenue conformément au cadre législatif national et au cadre européen, ne fait toutefois pas obstacle à l'examen de demandes d'asile émanant des ressortissants de ces pays. Les conséquences sociales évoquées par le rapporteur ne sont que le prolongement du statut de ces personnes au regard du droit au séjour, le refus de délivrance d'un titre de séjour n'étant d'ailleurs pas automatique. En tout état de cause, des dispositifs sociaux de droit commun au titre de l'urgence prennent le relais (hébergement d'urgence, AME, réseau associatif notamment subventionné par l'État).

- **Point 230 et 231 les déboutés du droit d'asile et l'accès à l'Aide Médicale d'Etat**

Le projet de rapport du Commissaire aux droits de l'homme s'inquiète de l'impact des réformes intervenues récemment sur l'accès aux soins des étrangers en situation irrégulière.

L'aide médicale de l'Etat est une couverture individuelle des frais de santé offerte à tout étranger résidant depuis plus de trois mois sur le territoire français, bien qu'il ne soit pas autorisé à y séjourner, dès lors que le niveau de ses ressources n'excède pas 587 € / mois pour une personne seule (le plafond de ressources est supérieur pour les familles). Les soins dispensés aux bénéficiaires de l'AME en ville ou à l'hôpital sont gratuits, les professionnels de santé étant payés directement par l'assurance maladie à laquelle la gestion du dispositif a été confiée.

Les réformes entrées en vigueur à ce jour sont :
- depuis le 1er janvier 2004 (article 97 de la loi de finances rectificative pour 2003), l'instauration d'une condition de durée de résidence de trois mois sur le territoire français et la suppression de l'admission immédiate à l'AME, ainsi que la création d'un financement pour les soins urgents dont l'absence mettrait en jeu le pronostic vital ou pourrait conduire à une altération grave et durable de l'état de santé de la personne ou d'un enfant à naître qui sont dispensés par les établissements de santé aux personnes non bénéficiaires de l'AME,
- depuis le 30 juillet 2005 (deux décrets du 28 juillet 2005), la mise en place de vérifications concernant les conditions légales devant être remplies pour l'ouverture du droit à l'AME.

Ces réformes ont suscité inquiétudes et affirmations souvent en grand décalage avec la réalité. C'est pourquoi le Gouvernement estime nécessaire de rappeler les objectifs poursuivis par les réformes opérées et de souligner plusieurs faits qui démontrent que les étrangers en situation irrégulière ne sont pas privés d'accès aux soins.

L'accès immédiat à une couverture individuelle des frais de santé pouvait encourager des entrées irrégulières en France. C'est pourquoi le Parlement a instauré une condition de résidence de trois mois. Cette condition existe déjà pour l'accès à l'assurance maladie, à raison de la résidence en France, pour les ressortissants nationaux et les étrangers en

situation régulière. Elle ne s'applique pas aux demandeurs d'asile, qui sont affiliés à la sécurité sociale (dans le cadre de la couverture maladie universelle – CMU) sans condition de résidence de trois mois, ni aux personnes déboutées du droit d'asile, qui bénéficient du maintien durant un an de la couverture maladie universelle. Les étrangers qui ont, dans ce délai de trois mois, un besoin de soins urgents dont l'absence mettrait en jeu le pronostic vital ou pourrait conduire à une altération grave et durable de leur état de santé sont pris en charge par les hôpitaux. Ces derniers ont une obligation de soins indépendamment de la solvabilité du patient ou de sa possession d'une couverture santé. Comme le Commissaire le souligne, une circulaire de mars 2005 est venue accroître les protections accordées aux personnes par ce dispositif.

Par ailleurs, l'AME est une prestation sociale qui apparaît beaucoup moins contrôlée que les autres. Cette situation est de nature à favoriser des ouvertures de droits non prévues par la législation ainsi que des fraudes. Pour rationaliser la procédure, les décrets du 28 juillet 2005 ont établi la liste des documents permettant aux demandeurs de justifier qu'ils remplissent les conditions posées par la loi pour le droit à l'AME. La réforme n'a donc pas modifié les conditions légales d'accès à l'AME, mais a simplement pris des dispositions pour garantir le respect de ces conditions.. Le Conseil d'Etat, juridiction administrative suprême, a d'ailleurs rejeté un recours en référé formé par plusieurs associations contre ces décrets. Les règles posées l'ont en outre été en tenant compte des spécificités de la population concernée : selon la situation de chacun, plusieurs types de documents peuvent être produits, et un seul suffit à établir que la condition est remplie. Surtout, la liste des documents est ouverte (non limitative).

L'admission immédiate à l'AME conduisait, chaque fois que le demandeur avait besoin de soins, à ouvrir le droit à l'AME sans que soient vérifiées les conditions légales d'admission. Cette procédure a été supprimée, mais les personnes ne sont pas pour autant privées de soins. Une circulaire du 27 septembre 2005[45] a rappelé aux professionnels de santé l'obligation de soins qui leur incombe. Si les conditions s'avèrent remplies, l'AME est ouverte rétroactivement à la date de la demande, et même à la date des soins si ceux-ci ont débuté avant la demande.

Le montant des soins consommés par les bénéficiaires de l'AME s'est considérablement accru depuis 2000. L'assurance maladie a ainsi remboursé 365 millions d'euros de frais entre octobre 2004 et octobre 2005. Le maintien de l'AME, dans un souci d'humanité et de santé publique, implique une rigueur de gestion. Les réformes menées par le Gouvernement ne se sont pas traduites par une diminution du nombre de bénéficiaires, lequel n'a jamais été aussi important : 175 000 personnes couvertes.

Il convient enfin de mentionner plusieurs éléments inexacts figurant dans le rapport :

- aucun décret n'a été publié en 2004 ;
- la condition de résidence s'applique à tous, et non seulement aux enfants et adolescents ;

[45] Circulaire DGAS/DSS/DHOS no 2005-407 du 27 septembre 2005 relative à l'aide médicale de l'Etat (http://www.sante.gouv.fr/adm/dagpb/bo/2005/05-10/a0100023.htm)

- la condition de résidence pour l'AME n'est pas levée en cas d'urgence mettant en jeu le pronostic vital. Dans ce cas, la personne est prise en charge par le dispositif des soins urgents ;
- le Comité des ministres a pris officiellement note de la circulaire du 16 mars 2005 relative à la prise en charge des soins urgents, et des dispositions assurant la couverture inditionnelle des enfants qu'elle contient.

3. <u>Les Centres et locaux de rétention et l'éloignement</u> : (paragraphes 25, 232 à 263)

Paragraphe 232 à 243 : Le maintien en centres de rétention est le principe général et conformément à l'article 6 du décret du 30 mai 2003, la durée du placement en local de rétention ne peut excéder 48 heures sauf deux exceptions prévues par le même texte (absence de CRA dans le ressort du tribunal administratif ou de la Cour d'appel compétente). Le juge des libertés et de la détention peut contrôler le respect de ces dispositions et sanctionner un dépassement illégal.

Que l'étranger soit maintenu en centre ou en local de rétention, il bénéficie des mêmes garanties juridiques.

A cet égard, il sera souligné que l'étranger est informé dès son placement en rétention de l'ensemble de ses droits (article 551.2), qui lui sont rappelés en cas de prolongation par le juge judiciaire qui vérifie à cette occasion que l'intéressé a été lors de son placement « pleinement informé de ses doits et en mesure de les faire valoir » (article L.552.2).De même l'étranger est informé par le responsable du lieu de rétention de toutes les prévisions de déplacement le concernant : audience, présentation au consulat, conditions du départ et un formulaire des droits en rétention est mis à disposition en plusieurs langues (article L.553.5).

La CIMADE et l'ANAEM apportent également leurs concours aux étrangers pour l'exercice de leurs droits.

Par ailleurs, depuis plusieurs années, un important effort d'amélioration des conditions matérielles de la rétention est mené et se trouve renforcé par le décret du 30 mai 2005 relatif à la rétention et aux zones d'attente qui impose des normes exigeantes en matière de surface minimum par personne, d'infrastructures sanitaires, d'espace à l'air libre et de détente et fixe désormais à 140 places la capacité maximale d'hébergement des centres.

Entre 2004 et 2005, 76, 5 millions d'euros ont ainsi été consacrés au programme immobilier des CRA.

Le CRA de Marseille-Arenc qui a fait l'objet de plusieurs rénovations au cours des années récentes (peinture, climatisation, sanitaires ….) va être définitivement remplacé en avril 2006 par un nouveau centre, ainsi qu'il l'a été indiqué lors de la visite du Commissaire aux droits de l'homme[46].

[46] Le prix des cigarettes du distributeur d'Arenc s'explique par la marge que répercute la Société privée en contrepartie des coûts induits par le distributeur. Les retenus ont la possibilité de ne pas recourir au distributeur et de solliciter l'achat de cigarette auprès de l'ANAEM.

De même, le centre de rétention du dépôt de la Préfecture de Police, dont les autorités sont très conscientes des graves insuffisances, va être prochainement fermé comme il l'a été indiqué lors de la visite et remplacé par un centre situé sur le site de Vincennes qui ouvrira avant la fin du premier semestre 2006.

Paragraphes 244 à 248 : Afin de prévenir les demandes d'asile dilatoires présentées à la fin de la période de rétention dans le seul but de faire échec à l'exécution d'une mesure d'éloignement, la loi du 26 novembre 2003 a prévu qu'une demande d'asile en rétention devait être formulée dans les cinq jours de l'admission en centre de rétention. Cette disposition qui n'a pas soulevé d'objection du Conseil constitutionnel s'est accompagnée de l'obligation d'indiquer à l'étranger dès son placement son droit à demander l'asile.

Il est exact que conformément à la réglementation, la demande d'asile doit être rédigée en français. Ces dispositions ne font cependant pas obstacle à ce que l'administration facilite les recherches d'un interprète, notamment par la diffusion des coordonnées des greffes des tribunaux qui disposent de listes d'interprètes. De même, l'association présente dans les CRA dispose très souvent de listes d'interprètes bénévoles qui peuvent assurer cette prestation.

Les demandes d'asile présentées en rétention sont certes examinées dans des délais rapides, compatibles avec la durée de la rétention mais avec le même soin et les mêmes garanties que toutes les autres demandes, à l'exception du caractère suspensif du recours devant la Commission des recours. S'il apparaît nécessaire à l'OFPRA d'entendre le demandeur d'asile, celui-ci est convoqué à l'office pour y être auditionné.

Il convient de souligner que les demandes d'asile présentées en rétention le sont dans la plupart des cas par des étrangers qui, au moment de leur interpellation, se trouvaient souvent en France depuis plusieurs mois ou plusieurs années et s'étaient abstenus de présenter une demande d'asile ou ont déjà fait l'objet d'un refus. Le taux de rejet, mentionné dans le rapport n'a pas d'autre explication que le contenu même des demandes.

Paragraphes 249 à 253 : L'efficacité d'une politique de maîtrise des flux migratoires et de lutte contre l'immigration irrégulière implique l'exécution effective des mesures d'éloignement. C'est pourquoi a été mise en place au ministère de l'intérieur une politique de pilotage par objectifs de cette mission. Elle ne peut en aucune manière être assimilée à une politique de quota qui stigmatiserait une catégorie particulière de la population et conduirait à des abus. Cette action est menée dans le respect des lois, des exigences d'éthique et des droits des personnes, comme le rappellent régulièrement les instructions ministérielles. Elle est de surcroît sous le contrôle de l'autorité judiciaire et de la juridiction administrative.

Conformément à la loi, le maintien en rétention ne s'effectue que pour le temps strictement nécessaire à l'organisation du départ. Les chefs de centres veillent au respect de cette prescription et les étrangers ne sont pas maintenus en rétention s'il apparaît que l'éloignement ne peut être réalisé au terme prévu. Le juge des libertés contrôle le respect de cette disposition et peut prononcer le cas échéant la remise en liberté.

De même, comme les instructions le rappellent régulièrement, la présentation d'une demande d'asile en rétention suspend immédiatement les démarches aux fins de délivrance des laisser passer consulaires.

Il est exact que les enfants mineurs ne peuvent, en vertu de la loi, faire l'objet à titre personnel, d'une mesure d'éloignement et par conséquent d'un placement en rétention. Il n'existe en revanche pas d'obstacle juridique à ce qu'ils accompagnent leurs parents, si ces derniers sont en situation irrégulière et font l'objet d'une mesure d'éloignement. L'intérêt supérieur des enfants, au sens de la Convention relative aux droits de l'enfant, implique de manière générale, qu'ils ne soient pas séparés de leurs parents.

Les autorités françaises veillent à ce que le maintien en rétention de familles s'effectue dans des conditions d'humanité et recourent, à défaut, à l'assignation à résidence. Prenant en compte ces situations particulières , le décret du 30 mai 2003 prévoit que désormais certains centres de rétention seront spécialement dédiés et équipés pour les familles.

Une circulaire du Ministre de l'intérieur a rappelé qu'il convenait, dans un souci d'humanité, d'éviter toute démarche des services de police dans les enceintes scolaires ou leurs abords visant à accompagner les enfants auprès de leurs parents faisant l'objet d'une mesure d'éloignement. De même, il a été enjoint de ne pas mettre à exécution avant la fin de l'année scolaire, l'éloignement des familles dont un enfant au moins est scolarisé depuis plusieurs mois.

Paragraphes 259 à 263 : Les autorités françaises sont très attentives à l'usage de la contrainte proportionnée lors de l'exécution des mesures d'éloignement. De nouvelles instructions ont été données à cet égard le 17 juin 2003 qui prescrivent un recrutement et une formation adaptée et précisent les gestes techniques professionnels en intervention autorisés, conformes aux exigences médicales.

Un médecin est systématiquement saisi par la D.P.A.F dès que la force a dû être utilisée, à l'occasion par exemple d'un refus d'embarquement. Si le certificat médical fait apparaître que l'usage de la force n'a pas été strictement nécessaire, la D.P.A.F donne systématiquement pour instruction de diligenter une enquête et en réfère au Parquet.

Depuis novembre 2002, la France a participé à vingt vols communautaires organisés par un Etat membre de l'Union européenne et a organisé dix vols communautaires ou groupés à destinations de pays tiers. L'organisation et l'exécution de ces mesures d'éloignement obéissent aux mêmes principes déontologiques et aux mêmes règles de sécurité précisées notamment dans l'instruction précitée.

Aucun incident relatif à des actes de violences commis lors des renvois groupés n'a été porté à la connaissance de la D.C.P.A.F.

Il convient de souligner que la mise en œuvre de ces vols communautaires ou groupés s'effectue dans le respect des directives de l'Union européenne et qu'à bord de chaque vol affrété spécialement, un médecin et in interprète sont présents tout au long de la mission. De plus la Croix rouge française est régulièrement avisée, par courrier, de la mise en œuvre de tels vols et invitée à y associer un représentant.

Cette pratique ne peut être assimilée à une expulsion collective prohibée par le protocole à la CEDH et toute personne éloignée fait l'objet d'un examen individuel de situation, sous le contrôle du juge administratif et/ou judiciaire.

V. La situation particulière des mineurs

1. Les mineurs en difficulté

- **Point 267**

Seuls les mineurs de plus de 13 ans peuvent faire l'objet d'un placement en détention provisoire, et uniquement dans l'hypothèse où cette mesure paraît indispensable ou s'il est impossible de prendre toute autre disposition et à condition que les obligations du contrôle judiciaire soient insuffisantes.

Les mineurs de 13 à 16 ans ne peuvent être placés en détention provisoire que s'ils encourent une peine criminelle ou si les obligations du contrôle judiciaire ont été violées.

Les mineurs de 16 à 18 ans peuvent l'être dès lors qu'ils encourent une peine criminelle ou correctionnelle égale ou supérieure à 3 ans d'emprisonnement ou s'ils se sont volontairement soustraits aux obligations du contrôle judiciaire.

- **Point 279**

La procédure de comparution immédiate telle que prévue à l'article 395 du code de procédure pénale n'est pas applicable aux mineurs. Seule la procédure de jugement à délai rapproché prévue par l'article 14-2 de l'ordonnance du 2 février 1945 peut être appliquée aux mineurs de 16 à 18 ans qui encourent une peine d'emprisonnement supérieure ou égale à trois ans en cas de flagrance, ou égale à cinq ans dans les autres cas.

- **Point 280**

La loi d'orientation et de programmation pour la justice du 9 septembre 2002 prescrit, dans son article 18, que soit *« garanti l'isolement complet des mineurs de 13 à 16 ans placés en détention provisoire d'avec les détenus majeurs ».*

Pour les autres mineurs détenus, la loi dispose que prévenus et condamnés sont incarcérés dans un quartier pour mineurs ou dans un établissement spécialisé pour mineurs. Les programmes immobiliers en cours permettront le respect de ces dispositions légales. Actuellement, la séparation des mineurs et des majeurs est respectée en matière d'hébergement, le principe de l'encellulement individuel étant appliqué à tout mineur.
Des exceptions peuvent être apportées au principe de séparation des mineurs et des majeurs, notamment en application de l'article 37-3 de la Convention de New York sur les droits de l'enfant : « *En particulier, tout enfant privé de liberté sera séparé des adultes, à moins que l'on estime préférable de ne pas le faire dans l'intérêt supérieur de l'enfant* ».

Par ailleurs, la présence de jeunes majeurs de 18 à 21 ans au sein des quartiers des mineurs a pu être admise en application de la circulaire du 26 octobre 2001 relative aux établissements habilités à l'accueil des mineurs, dans les seuls cas suivants :

- au sein des quartiers des mineurs à petit effectif situés dans les zones les moins urbanisées, pour éviter l'isolement complet de quelques mineurs;
- de façon exceptionnelle, au sein des quartiers des mineurs, s'agissant des mineurs qui deviennent majeurs au cours de leur détention ;
- sous réserve de l'absence de mineurs de 13 à 16 ans en détention provisoire au sein du quartier pour mineurs et du respect de l'isolement de nuit.

Cette cohabitation s'effectue, sous la responsabilité du chef d'établissement, avec les seuls jeunes majeurs dont la personnalité n'apparaît en aucune façon susceptible de mettre en danger les mineurs et concerne principalement des jeunes gens ayant atteint l'âge de la majorité en détention ou présentant un profil et une maturité très proches de ceux des mineurs.

Par ailleurs, les mineurs de seize à dix-huit ans peuvent, sans contradiction avec les textes en vigueur, partager des activités avec des adultes. En matière d'enseignement, cette mixité doit se réaliser dans les conditions décrites par la circulaire conjointe Education nationale – Justice du 10 juin 1998 relative aux modalités de scolarisation : « *Si une prise en charge pédagogique spécifique est indispensable pour les détenus mineurs, elle n'interdit pas leur participation à des cours pour adultes, en particulier lorsqu'un jeune a un projet précis ou lorsque les effectifs sont trop faibles pour constituer un groupe d'enseignement pour les seuls mineurs* ».

En ce qui concerne le quartier pour mineurs de la maison d'arrêt de Strasbourg, il est inexact d'affirmer que les mineurs puissent entrer en contact avec les adultes. La cour de promenade des mineurs est séparée du terrain de sport par une zone neutre de 30 mètres. Les mineurs ne peuvent donc pas communiquer avec les adultes lorsqu'ils sont en cour de promenade. L'hébergement des mineurs (2ème et 3ème étages du bâtiment C) a été choisi en fonction de son éloignement du quartier adultes. Quelques détenus classés au service général et sélectionnés pour exécuter des travaux sur le domaine pénitentiaire se trouvent au 4ème étage.

- **Points 281 et 282**

La loi du 9 septembre 2002 d'orientation et de programmation pour la justice a prévu l'intervention continue des éducateurs de la protection judiciaire de la jeunesse (PJJ) auprès de l'ensemble des mineurs incarcérés. Dans ce contexte, ce sont deux éducateurs de la PJJ qui interviennent ou interviendront dans les quartiers des mineurs à petit effectif de 8 à 12 places, trois éducateurs dans les quartiers des mineurs de 18 à 25 places et six éducateurs ainsi qu'un chef de service éducatif dans les « doubles quartiers des mineurs » (deux fois 20 places).
Une note d'orientation du 14 janvier 2005, précise les modalités de l'intervention continue des éducateurs de la PJJ auprès des mineurs incarcérés. Cette réforme est en cours de généralisation et les concernera tous à compter de septembre 2006.

- **Point 283**

Les jeunes filles mineures détenues, du fait de leur faible nombre, sont incarcérées actuellement dans les quartiers pour femmes et bénéficient systématiquement - sauf motif médical, notamment risque suicidaire - de l'isolement de nuit. Les futurs établissements pénitentiaires pour mineurs permettront de remédier à cette situation puisqu'une unité de vie sera réservée aux mineures. Pour les jeunes filles, la taille du secteur d'hébergement sera de 4 places par établissement pour mineurs (EPM).

- **Point 284**

Les EPM dont la construction est prévue par la loi n°2002-1138 du 9 septembre 2002 d'orientation et de programmation pour la justice sont conçus exclusivement pour les mineurs au regard de leurs besoins spécifiques. Les travaux ont débuté depuis l'automne 2005 en vue d'une livraison des premiers EPM en 2007**.**

Il est prévu la création de 7 EPM de 60 places, chacun à proximité des plus grandes agglomérations. Ces établissements pénitentiaires spécialisés pour mineurs seront autonomes et placés sous la responsabilité de l'administration pénitentiaire, avec le concours de la protection judiciaire de la jeunesse. Les mineurs détenus bénéficieront d'offre d'activités et d'encadrement renforcés. Les locaux d'hébergement permettront des temps de vie collective au moment des repas et en soirée, tout en respectant le principe de l'isolement de nuit par l'hébergement en cellule individuelle.

La dimension éducative des EPM s'exprimera tout au long du séjour en détention. Cette dimension éducative forte prendra forme à travers l'organisation d'un accompagnement permanent du mineur par des adultes (en particulier, un binôme surveillant et éducateurs), un suivi éducatif individualisé apportant une réponse aux difficultés en temps réel, un rythme d'activités très dense (7h par jour 7 jours sur 7), un temps d'encellulement très réduit (de 21h à 7h), le développement sensible de la scolarité et de la formation professionnelle (potentiel de 20h par semaine sur une année scolaire de 41 semaines), la pratique sportive ou dépense physique intensive (potentiel de 20h par semaine), le développement accru des liens avec l'extérieur (familles, professionnels de l'insertion...) et l'intervention permanente des professionnels compétents, médecins, psychiatres, psychologues, conseillers d'orientation ou enseignants.

La capacité des 7 établissements pénitentiaires pour mineurs (420 places dont 28 pour les jeunes filles), ne permettra cependant pas de couvrir l'ensemble des besoins en terme de places de détention pour mineurs. En conséquence, certains quartiers mineurs, pour lesquels un vaste programme de rénovation et de mise aux normes a été lancé, seront maintenus, les autres étant réaffectés à l'accueil des majeurs.

- **Point 285**

Conscient de devoir développer des places d'accueil pour la prise en charge des mineurs placés en semi-liberté, la direction de l'administration pénitentiaire a élaboré un cahier des charges afin de permettre l'accueil des mineurs en centres de semi-liberté (CSL). La

mise en place d'un cadre de référence spécifique est, en effet, un préalable nécessaire à toute habilitation et permet d'adapter les conditions d'accueil des mineurs et d'assurer un encadrement adapté à ces derniers. Dans le respect de ces principes, le CSL de Maxéville au sein de la direction régionale des services pénitentiaires de Strasbourg a été le premier centre de semi-liberté à recevoir en novembre 2005 une habilitation à l'accueil des mineurs. Par ailleurs, la possibilité d'accueil en EPM de mineurs semi-libres au sein d'une unité de vie spécifique est également envisagée.

2. Mineurs étrangers

Paragraphes 286 à 293 : la situation des mineurs isolés sollicitant leur admission à la frontière soulève des questions graves et délicates. S'agissant de personnes vulnérables, il convient d'entourer le traitement de leur situation de toutes les garanties. Simultanément les autorités doivent être vigilantes car ces enfants peuvent être exposés à devenir des victimes de réseaux de travail forcé ou de prostitution, ce qui rend nécessaire des investigations parfois approfondies pour vérifier notamment le lien de parenté avec la personne rejointe.

Il est exact que la loi ne distingue pas, en ce qui concerne le régime de l'admission, les majeurs des mineurs mais il ne saurait être envisagé pour le seul motif qu'il s'agit de mineurs, de conférer un droit automatique à l'entrée et au séjour en France qui mettrait en échec les procédures de droit commun du regroupement familial et exposerait ces enfants à de grandes difficultés ou à des risques graves.

Cependant, on ne saurait soutenir que des pratiques inacceptables auraient régulièrement cours en zone d'attente, privant ces mineurs de leurs droits et conduisant à leur renvoi sans précaution aucune.

En l'état actuel des connaissances scientifiques et jusqu'à ce que soient trouvées de nouvelles techniques qui seraient considérées comme plus fiables, l'observation clinique pubère et les tests osseux, sont les seuls éléments sur lesquels peuvent se fonder l'administration et l'autorité judiciaire pour appréhender l'âge.

En complément de l'ensemble des garanties prévues par la législation en matière d'entrée et de maintien en zone d'attente, un certain nombre de dispositions spécifiques sont d'application lorsqu'il s'agit de mineurs isolés, qu'ils sollicitent ou non l'asile :

- le délai d'un jour franc est accordé systématiquement, même s'il n'est pas demandé par le mineur (contrairement à ce qui est mentionné au § 290).

- le procureur de la République est avisé dès l'entrée du mineur en zone d'attente aux fins de désigner sans délai un administrateur ad hoc chargé de représenter et d'assister les mineurs tout au long des procédures le concernant. Conformément à la réglementation, cet administrateur ad hoc doit présenter des garanties d'indépendance et de compétence et avoir un intérêt pour les questions de l'enfance. les candidatures sont instruites par le procureur de la République qui s'entoure de plusieurs avis (loi du 4 mars 2002 et décret du 2 septembre 2003).

- Sur le plan de l'hébergement, les mineurs font également l'objet d'un traitement particulier : les mineurs de moins de treize ans sont hébergés dans un hôtel distinct de la ZAPI, dans des chambres réservées et sous la surveillance d'une nurse. Les mineurs de plus de treize ans peuvent être logés dans la structure d'hébergement de la zone d'attente. Il est alors veillé à une stricte séparation entre les mineurs isolés et les majeurs et une attention particulière leur est apportée. Les mineurs accompagnés d'un membre de leur famille restent en ZAPI 3, sous la protection de l'adulte accompagnant, bénéficiant comme les mineurs isolés également du concours des associations humanitaires et de la surveillance des fonctionnaires de la PAF.

- si le mineur isolé est admis en France, il est dès sa sortie, pris en charge sous le contrôle de l'autorité judiciaire (Parquet et juge des enfants) par des structures d'accueil spécifiques, qui assurent son suivi et sa protection (lieu d'accueil et d'orientation (LAO) ou foyer).

- Si un réacheminement est envisagé, celui-ci ne peut avoir lieu vers le pays d'origine qu'après que des précautions ont été prises pour s'assurer qu'un membre de la famille prenne en charge le mineur à son retour.

➢ **Point 298**

L'accord bilatéral signé le 4 octobre 2002 entre la France et la Roumanie a créé un mécanisme conventionnel spécifique : le groupe de liaison opérationnel. Composé de professionnels de la justice, de la police et du secteur éducatif, le groupe de liaison opérationnel a pour mission de centraliser et partager l'information relative à la situation des mineurs concernés, permettre leur identification, obtenir des informations sur le mineur et sa famille dans le pays d'origine (enquête sociale), préparer leur retour en Roumanie lorsque cela est possible. Par ailleurs, il est prévu que les autorités roumaines compétentes en matière de protection de l'enfance s'engagent à mettre en œuvre des mesures de suivi pour le mineur et sa famille après son retour.

Par ailleurs, dans le cadre des programmes AGIS, financés en partie par la commission européenne, la direction de la protection judiciaire de la jeunesse est pilote de la mise en œuvre d'une étude concernant 5 pays (France, Italie, Espagne, Roumanie, Maroc). Celle-ci a pour objet notamment de rechercher des informations visant à mieux identifier l'origine, l'âge, les circonstances et les modalités de circulation de ces mineurs d'un pays à l'autre, d'analyser les particularités juridiques et sociales des pays de destination qui font que ces mineurs peuvent tenter d'y séjourner et d'y être pris en charge. Les résultats de cette étude devraient être disponibles dans le courant du premier trimestre 2006.

VI – Les problèmes de racisme, d'antisémitisme, de xénophobie et de lutte contre les discriminations

1. Lutte contre toutes les formes de racisme

- **Points 303 à 305**

Les données indiquées dans le rapport ne coïncident pas avec les statistiques dont dispose le ministère de la Justice. Alors que ces statistiques sont habituellement fondées sur les données du casier judiciaire national et se rapportent donc à des condamnations, le souci de renforcer la lutte contre le racisme, la xénophobie et l'antisémitisme a amené le ministère de la justice à créer un outil statistique, alimenté « en temps réel » par les parquets, destiné à répertorier les infractions constatées. Inauguré en 2004, cet outil n'a d'abord été mis en place que pour les infractions de nature antisémite. En 2005, il a été élargi à l'ensemble des infractions de nature raciste et anti-religieuse.

Or, pour les onze premiers mois de l'année 2005, les faits de nature antisémite ne représentent « que » 14 % du nombre total de ces infractions. De même, le rapport fait état *« d'une évolution de la nature des actes racistes : les violences contre les personnes et les biens se sont aggravées, le nombre de lieux de culte juifs et musulmans profanés ont augmenté »*. Cette affirmation mérite pourtant d'être nuancée par les statistiques du ministère de la justice relatives aux onze premiers mois de l'année 2005. Selon ces chiffres, les atteintes aux personnes représentent 8,4 % du total des infractions de nature raciste, antisémite ou anti-religieuse et les atteintes contre les biens 10,9 %. Au contraire, les infractions d'injures et de diffamations – dont on peut affirmer, sans en méconnaître le caractère répréhensible, qu'elles présentent une gravité moindre que les atteintes aux personnes – constituent 62,6 % du total des infractions.

- **Point 321**

Il est inexact qu'au cours de l'année 2004, *« seuls 85 actes racistes ont fait l'objet de poursuites pénales »*. Selon les statistiques du ministère de la justice, au cours de cette même année 2004, il a été prononcé 303 condamnations pour des infractions de nature raciste. S'agissant de condamnations prononcées et non de faits constatés, ce chiffre se rapporte pour partie à des faits commis en 2004 et pour partie à des faits commis antérieurement.
Pour les seules infractions antisémites commises en 2004, sur 106 affaires « poursuivables » – ce qui suppose l'identification d'un auteur et la parfaite caractérisation d'une infraction – 88 affaires ont donné lieu à des poursuites, soit un taux de réponse pénale de 92 %. Parmi elles, 74 affaires ont été renvoyées devant une juridiction de jugement (soit un taux de poursuites de 69,8 %), les 14 autres affaires ayant donné lieu à une procédure dite de « 3ème voie » (médiation, rappel à la loi).

- **Points 322 à 324**

Concernant l'importance qu'il convient d'accorder aux responsables religieux dans la lutte contre toutes les formes de racisme et de discrimination, le ministère de la Justice a institué des magistrats référents. En effet, par une dépêche du 18 novembre 2003, le Garde des Sceaux a demandé à chaque procureur général de désigner au sein de son parquet général un magistrat référent chargé de veiller à la cohérence des politiques pénales locales en matière de racisme, d'antisémitisme et de discrimination et de nouer des contacts réguliers avec le milieu associatif (associations de lutte contre le racisme, représentants des cultes etc.…).

- **Point 325**

Il faudrait mentionner que la loi du 3 février 2003 dite « loi Lellouche » a créé une circonstance aggravante lorsqu'un crime ou un délit est commis à raison de « l'appartenance
réelle ou supposée de la victime à une ethnie, une nation, une race ou une religion déterminée». La loi n°2003-339 du 18 mars 2003 a créé une nouvelle circonstance aggravante pour les infractions liées à l'orientation sexuelle de la victime. La loi du 9 mars 2004 dite « loi Perben II » a élargi le champ d'application de ces circonstances aggravantes.

- **Point 353**

Un guide de l'action publique sur la lutte contre les violences au sein du couple a été élaboré par le Conseil national d'aide aux victimes. Ce guide, paru en septembre 2004, a pour objet d'harmoniser les pratiques innovantes des parquets en matière de lutte contre les violences au sein du couple et à permettre une prévisibilité et une lisibilité de la réponse pénale apportée à ce type de contentieux. Il est consultable sur le site Internet du ministère de la Justice.

- **Point 364**

Il convient aussi de relever les changements législatifs introduits par la loi du 18 juin 2003 en ce qui concerne les situations « d'esclavage moderne ». En effet, les articles 225-13 et 225-14 du code pénal ont été modifiés et répriment désormais l'obtention de fourniture de services non rétribués auprès d'une personne vulnérable ou en état de dépendance et d'autre part la soumission d'une personne vulnérable ou en état de dépendance à des conditions de travail ou d'hébergement incompatibles avec la dignité humaine. Ces modifications législatives sont postérieures à l'arrêt Siliadin de la Cour européenne des droits de l'homme cité dans le rapport. Avant la loi du 18 juin 2003, ces deux infractions n'étaient caractérisées qu'à la condition que la personne poursuivie ait abusée de la vulnérabilité de la victime. La preuve de l'abus étant souvent difficile à apporter, elle n'est plus exigée. En outre les pénalités ont été aggravées.

2. Lutte contre les discriminations à l'égard des femmes, notamment des femmes immigrées

➢ **Point 314 et suivants**

Consciente de ces difficultés et soucieuse d'améliorer les conditions de travail à temps partiel des salariés, notamment des femmes employées à temps partiel dit contraint, la ministre en charge de la parité a engagé une réflexion avec les partenaires sociaux (en particulier avec les fédérations professionnelles des secteurs les plus concernés : commerce et grande distribution ; sécurité ; hôtellerie-restauration). Il s'agit d'encourager la négociation sur le temps partiel et de promouvoir les meilleures pratiques, en matière d'organisation du travail, d'amplitudes des horaires, d'évolution professionnelle et de formation, de modes de garde des enfants et de transports.

Par ailleurs, le projet de loi sur **l'égalité salariale** actuellement débattu au Parlement et qui sera vraisemblablement adopté en janvier 2006, étend le champ des négociations collectives obligatoires sur l'égalité professionnelle aux thèmes des conditions de travail et d'emploi des salariés à temps partiel. Ces négociations obligatoires sont annuelles pour les entreprises et triennales pour les branches professionnelles.

Ce texte poursuit quatre objectifs :

- Le premier objectif est de supprimer en 5 ans les **écarts de rémunération** entre les femmes et les hommes, en s'appuyant sur la négociation dans les branches professionnelles et les entreprises

Dans les branches professionnelles, un objectif de suppression des écarts d'ici 2010 devra être fixé lors des négociations obligatoires. Dans le cas où aucune négociation n'aurait démarré dans le délai d'un an suivant la publication de la loi, une organisation syndicale représentative pourra demander son ouverture immédiate. A défaut d'accord, la commission mixte paritaire sera réunie à l'initiative du ministre chargé du travail. En outre, la convention collective de branche qui ne comportera pas de disposition relative à la suppression de ces écarts, ne pourra pas être étendue à d'autres secteurs. Dans les entreprises, les négociations devront être également engagées. Les accords sur les salaires effectifs ne pourront être déposés auprès des services compétents que s'ils sont accompagnés d'un procès verbal d'engagement des négociations sur l'égalité salariale. Une conférence nationale sur l'égalité salariale dressera un bilan d'étape de l'application de la loi.
Le gouvernement présentera alors, si besoin est, un projet de loi instituant une contribution financière, assise sur la masse salariale, pour les entreprises n'ayant pas ouvert de négociations en la matière.

- Le deuxième objectif vise à concilier **emploi et parentalité**

- le congé de maternité ou d'adoption, souvent à l'origine de retards dans la progression de la rémunération et de la promotion dans l'entreprise, fait l'objet de l'article 1er de la loi. Cette disposition vise à neutraliser les incidences financières du congé. La ou le salarié(e) pourra prétendre au versement des augmentations générales versées par

l'entreprise lors de son absence mais aussi à la moyenne des augmentations individuelles qui ont été versées aux salariés de la même catégorie professionnelle ;
- une majoration d'au moins 10 % de l'allocation de formation sera versée au (à la) salarié(e) qui engagera des frais supplémentaires de garde d'enfants pour suivre une formation hors temps de travail.

- Le troisième objectif concerne **l'accès des femmes aux instances délibératives et juridictionnelles** : il s'agit de garantir une représentation plus équilibrée des femmes et des hommes dans les conseils d'administration des entreprises publiques. Le projet de loi reprend en outre, pour les prochaines élections prud'homales, le mécanisme qui avait permis aux femmes élues de progresser significativement lors du dernier renouvellement des conseils de prud'hommes.

- Le quatrième objectif porte sur **l'accès des jeunes filles à l'apprentissage et à la formation professionnelle**

55,6 % des femmes immigrées sont aujourd'hui actives sur le marché du travail (64,2% pour les femmes non immigrées). Pour autant, les femmes de l'immigration pâtissent encore aujourd'hui d'une double discrimination, du fait de leur sexe et de leur origine, ainsi que le relève le Commissaire aux Droits de l'Homme. Pour combattre cette double discrimination et améliorer l'insertion professionnelle des femmes de l'immigration, les orientations suivantes sont développées :

1) Le décloisonnement des métiers : cela implique un travail de sensibilisation des employeurs. Ainsi peuvent être mentionnés, à titres d'exemple, les partenariats noués avec les entreprises de travail temporaire ADECCO et ADIA qui visent à favoriser l'accès au marché du travail, dans des secteurs porteurs d'emploi, aux femmes des quartiers de la politique de la ville (parmi lesquelles les femmes immigrées sont nombreuses).

2) Le développement du parrainage des jeunes femmes vers l'emploi : il s'agit de permettre aux jeunes d'accéder à un emploi stable et de s'y maintenir, en les faisant accompagner par des parrains bénévoles, en activité ou retraités, qui ont la confiance des employeurs et qui font partager aux jeunes parrainés leur expérience, leurs relations et leur connaissance du monde de l'entreprise.

D'autres formules doivent être inventées pour permettre aux femmes et aux hommes issus de l'immigration de progresser au cours de leur carrière professionnelle au sein des services aux personnes ou au sein de la fonction publique hospitalière. Ainsi, de véritables parcours promotionnels sont désormais possibles en utilisant des contrats aidés par les pouvoirs publics (par exemple, les contrats d'avenir et contrats d'accès à l'emploi récemment mis en place par le gouvernement) pour intégrer des jeunes dans des emplois du secteur sanitaire, les maintenir dans l'emploi, s'ils montrent des compétences et enfin, leur permettre d'accéder à un emploi qualifié grâce à la validation des acquis de l'expérience.

3) La promotion de la création d'entreprises *:* les femmes immigrées se tournent de plus en plus vers la création d'activités ou d'entreprises, pour laquelle elles sont très motivées. La ministre en charge de la parité souhaite développer l'entrepreneuriat féminin. Il y a là, sous réserve d'un accompagnement spécifique, place pour les femmes de l'immigration.

Par ailleurs depuis 2001, le ministère chargé de la parité met en œuvre, avec plusieurs partenaires institutionnels[47] , un projet dénommé ESPERE (« Engagement du Service Public de l'Emploi pour Restaurer l'Egalité ») en vue de sensibiliser et de former les agents du service public de l'emploi à la lutte contre les discriminations raciales et contre la double discrimination, à raison du sexe et de la race ou de l'origine ethnique, au regard de l'accès à l'emploi. Ce projet s'inscrit dans le cadre du programme européen EQUAL.

Il vise d'une part, à intégrer la prévention des discriminations directes et indirectes (y compris la double discrimination) dans les missions du service public de l'emploi (SPE) et d'autre part, à organiser autour de cet objectif, des coopérations inter institutionnelles entre les différentes composantes du SPE. Parmi les principales actions réalisées, il convient de citer :

- l'expérimentation de formation-actions axées sur les discriminations dans six sites pilotes ;
- la sensibilisation des responsables hiérarchiques.
- l'élaboration d'une offre de formation et d'accompagnement sur la prévention des discriminations raciales et fondées sur la race ou l'origine ethnique et le sexe, conçue par les partenaires d'ESPERE

A ce jour, plus de 400 personnes ont bénéficié de formation sur sites.

Des outils ont été réalisés en 2005, parmi lesquels un mémento comportant les différents positionnements à tenir vis à vis des plaignants et des argumentaires pour les agents qui accueillent le public

Enfin, une charte d'engagement éthique en matière de lutte contre les discriminations, d'égalité des chances et de promotion de la diversité, a été signée par le ministre chargé de l'emploi, la ministre en charge de la parité, le directeur général de l'Agence nationale pour l'emploi, la présidente du conseil national des missions locales pour l'emploi des jeunes et le directeur général de l'Association nationale pour la formation professionnelle des adultes. Cette charte comporte des modalités de suivi et des indicateurs de progrès.

Il convient par ailleurs de signaler qu'un projet de loi global sur l'égalité des chances sera présenté au cours du mois de janvier 2006.

[47] Délégation générale à l'emploi et à la formation professionnelle, Direction de la population et des migrations du ministère des affaires sociales, Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations, Association nationale pour la formation professionnelle des adultes, Agence nationale pour l'emploi, missions locales pour l'emploi des jeunes

Quant à la **parité politique**, il convient de préciser que la loi du 6 juin 2000 a été complétée par la loi du 11 avril 2003, aux termes de laquelle :

pour les élections régionales [48], « au sein de chaque section, la liste est composée alternativement d'un candidat de chaque sexe » ;

pour les élections européennes, qui sont organisées dans le cadre de huit circonscriptions électorales, « la liste (des candidats par circonscription) est composée alternativement d'un candidat de chaque sexe ».

De fait, à la suite des élections de 2004, avec une proportion de 47,6% de femmes (contre seulement 27,5% en 1998), les conseils régionaux sont aujourd'hui les assemblées représentatives les plus féminisées de France. La proportion moyenne de vice-présidentes est de 37,3% (20% en 1998) ; mais une seule femme préside une région.

Bien que les précédentes élections européennes aient eu lieu avant l'entrée en vigueur de la loi sur la parité, la proportion de femmes parmi les sortants était relativement importante (40,2%) car en 1999, sans y être obligés, les grands partis avaient présenté des listes à peu près paritaires. En 2004, parmi les représentants de la France, la proportion de femmes (43,6%) a légèrement augmenté alors que, sur l'ensemble des membres du Parlement européen, cette proportion a diminué, passant de 31 à 30,3%.

Ainsi, la parité n'a progressé que là où les candidatures étaient soumises à des conditions vraiment contraignantes, c'est-à-dire dans les instances élues au scrutin proportionnel de liste. Toutefois, les effets indirects de la révision constitutionnelle et des lois prises pour son application ne sont pas négligeables :

- les femmes disposent désormais, au sein des partis politiques, d'un pouvoir de négociation tel qu'il sera de plus en plus difficile de les reléguer dans des rôles de figuration ;
- la loi du 6 juin 2000 a changé le regard que les citoyens et les media portent sur les instances politiques. ;
- les femmes prennent progressivement conscience de leurs potentialités et s'impliquent davantage dans la vie politique.

[48] Le principe de la circonscription régionale, prévue dans le cadre de la réforme de 1999, est conservé, mais il est institué des sections départementales. Chaque liste est donc composée d'autant de sections qu'il y a de départements dans la région.

VII. Les Gens du Voyage et les Roms

- **Points 329 à 350**

L'action en direction des gens du voyage en situation de pauvreté et de précarité s'inscrit comme pour tout citoyen français en situation analogue dans le cadre de la loi d'orientation du 29 juillet 1998 relative à la prévention de la pauvreté et à la lutte contre les exclusions. Ce cadrage général de lutte contre les exclusions est venu compléter un dispositif de 1990 spécifique aux gens du voyage intitulé « action socio-éducative » en faveur des gens du voyage.

La loi n° 2000-614 du 5 juillet 2000 relative à l'accueil et à l'habitat des gens du voyage a confirmé le principe de la participation des communes à l'accueil des gens du voyage et fait obligation de mise à disposition d'une ou plusieurs aires d'accueil. L'ensemble de ces dispositions sont définies et précisées dans un schéma départemental.

Un récent rapport du Conseil général des Ponts et chaussées a toutefois confirmé les difficultés de la mise en œuvre de cette loi.

L'intégration de la population des gens du voyage (300 000 personnes selon les estimations les plus fréquemment citées) reste délicate.

L'arrivée ces dernières années de tziganes originaires de l'Est de l'Europe et leur installation sur divers sites de la région parisienne et de la région lyonnaise dans des conditions généralement déplorables ont été de nature à raviver aux yeux de la population sédentaire les plus vieux clichés concernant les nomades.

Il est nécessaire de développer une stratégie d'action sociale qui soit basée sur leur adhésion et la mise en œuvre de voies spécifiques d'accès au droit commun.

Comme l'avaient souligné les rapports des Préfets DELAMON puis MERRHEIM, les questions à régler sont de nature interministérielle.

La mise en œuvre de mesures susceptibles à la fois d'améliorer la situation des Gens du voyage et de réduire les tensions avec le reste de la population sédentaire française nécessite à la fois un engagement de l'Etat, l'intervention des collectivités locales, et une participation des gens du voyage eux même.

La plupart des mesures à engager appellent recherches, études, mise au point et concertation avec toutes les parties intéressées.

La reprise des travaux de la Commission nationale consultative des gens du voyage devrait permettre de réaliser des avancées significatives.

VIII – Les Groupes vulnérables

1. Les personnes handicapées mentales et l'hospitalisation sous la contrainte

(points 366 à 373)

Le cadre juridique actuel en matière d'hospitalisations sous contrainte est fixé par la loi n°90-527 du 27 juin 1990 relative aux droits et à la protection des personnes hospitalisées en raison de troubles mentaux et à leurs conditions d'hospitalisation.

Cette loi a consacré, pour la première fois, l'hospitalisation libre. Avec ce texte, l'hospitalisation sans consentement est devenue l'exception et lorsqu'elle est prononcée, elle est accompagnée de garanties reconnues à la personne hospitalisée dont la dignité doit, en toutes circonstances, être respectée, la réinsertion recherchée et les restrictions à la liberté individuelle limitées à celles strictement nécessitées par l'état de santé et la mise en œuvre du traitement.

L'intervention de l'autorité administrative dans cette matière se justifie par le danger que peut présenter pour la sécurité publique, la personne atteinte de troubles mentaux et par la nécessité d'intervenir rapidement. Le régime français s'efforce de concilier d'une part, l'exigence de protection de la personne atteinte de troubles mentaux contre l'éventuel arbitraire, d'autre part l'ordre public. Les solutions adoptées s'efforcent ainsi de faire place aux trois autorités concernées : médicale, administrative et judiciaire.

- Lors du placement en hospitalisation d'office, le préfet indique les motifs de sa décision qui doit nécessairement être accompagnée d'un certificat médical circonstancié. Le juge judiciaire est compétent pour vérifier que les motifs invoqués justifient l'atteinte à la liberté individuelle que constitue l'hospitalisation.
- En cours d'internement, le contrôle est également triple, puisque le médecin doit indiquer les changement intervenus dans l'état du malade, éléments dont le préfet doit être tenu informé. En outre le préfet ainsi que le président du tribunal de grande instance et le maire de la commune doivent obligatoirement visiter au moins une fois par semestre les établissements accueillant des malades atteints de troubles mentaux, cette obligation pesant également sur le procureur de la république à raison d'une visite au moins par trimestre.

L'exercice des contrôles est facilité par la commission départementale des hospitalisations psychiatriques, où siègent notamment deux psychiatres, un magistrat, et des représentants d'associations de défense des malades mentaux.

Cette commission est investie de pouvoirs importants à l'égard des personnes hospitalisées sans leur consentement, tels que visites sur place, examen de la situation des malades hospitalisés, proposition au président du tribunal de grande instance d'ordonner la sortie immédiate de l'établissement.

- En ce qui concerne la sortie de l'établissement, elle a lieu sur décision du préfet après avis du médecin, ou sur décision du tribunal de grande instance saisi sur requête de l'intéressé, d'un proche ou du procureur, en cas d'hospitalisation injustifiée.

A l'aune de ces éléments, l'intervention de l'autorité judiciaire dans le dispositif français d'hospitalisation sous contrainte ne saurait être réductible au seul contrôle a posteriori, la législation française manifestant par ailleurs clairement la volonté de traiter la personne hospitalisée d'abord comme un malade nécessitant des soins, avec les garanties et recours qui doivent continuer à être les siens en tant que malade. Cette approche vise à concilier le nécessaire respect des libertés individuelles avec les impératifs de préservation de l'ordre public.

La recommandation Rec. (2004)10 du 22 septembre 2004 du comité des ministres du Conseil de l'Europe relative à la protection des droits de l'homme et de la dignité des personnes atteintes de troubles mentaux n'oblige d'ailleurs pas à recourir au juge pour prendre les mesures d'hospitalisation psychiatrique sans consentement, précisant que « la décision de soumettre une personne à un placement involontaire devrait être prise par un tribunal *ou une autre instance compétente » (article 20).* Le rapport explicatif ajoute, à ce sujet, que « le principe sous-jacent veut qu'une décision indépendante soit prise par une partie indépendante de la personne ou de l'instance proposant la mesure », ce qui est le cas en France pour les décisions d'hospitalisation d'office ou sur demande d'un tiers.

Il y a lieu de souligner que le plan "psychiatrie et santé mentale" prévoit notamment:

- de rédiger et diffuser une brochure à destination des personnes hospitalisées dans ce cadre précisant le régime juridique et récapitulant leurs droits
- de rédiger et diffuser des protocoles de soins en psychiatrie sur des pratiques mettant en jeu les libertés individuelles (protocole de contention psychique en psychiatrie)
- d'élargir les compétences des commissions départementales des hospitalisations psychiatriques.

Il convient de noter que l'utilisation de l'expression « personnes handicapées mentales » p. 100 et « handicapés mentaux » p. 108 n'est pas satisfaisante. Il faut parler de « malades mentaux » ou de « handicapés psychiques ». Le handicap psychique a en effet été reconnu par la loi du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées.

Contrairement aux personnes handicapées mentales, les personnes handicapées psychiques ne souffrent pas de déficiences permanentes d'intelligence, mais de troubles cognitifs se traduisant par des déficiences comportementales.

Par ailleurs, le paragraphe 370 du rapport omet, s'agissant de la procédure d'urgence d'hospitalisation d'office de faire référence à l'exigence posée par la loi française d'un avis médical préalable , qui constitue une garantie fondamentale (article L.3213-2 du code de la santé publique).

A cet avis s'ajoute le certificat médical sur lequel le préfet doit s'appuyer pour, le cas échéant, confirmer la mesure d'hospitalisation dans un délai maximal de 48 h, selon la procédure de droit commun prévue à l'article L.3213-1 du CSP. Ce certificat médical circonstancié, doit en outre être confirmé dans les 24 h suivant l'admission par un deuxième certificat médical établi par un psychiatre de l'établissement.

2. Traite des êtres humains

1. Dans son rapport, le Commissaire aux Droits de l'Homme recommande d'« assurer une protection aux victimes de réseaux qui collaborent avec les services de police ; assurer le renouvellement des titres provisoires de séjour des victimes qui collaborent ; intensifier l'aide à la réinsertion» ;

Conformément aux articles 42 et 43 de la loi du 18 mars 2003 pour la sécurité intérieure, des initiatives ont été prises, afin de permettre l'hébergement dans des conditions sécurisantes des personnes souhaitant sortir de la prostitution ou ayant échappé aux réseaux de traite et de proxénétisme. Des solutions diversifiées ont été mises en place au niveau local et un dispositif national est soutenu pour permettre aux personnes qui se trouveraient en danger en restant sur place, de pouvoir accéder en toute discrétion à un hébergement dans une autre localité. La sécurisation des personnes est assurée par la banalisation des places d'accueil, leur dissémination sur le territoire, la non divulgation du lieu d'hébergement de la personne accueillie et l'assurance d'un encadrement social adapté.

Pour celles qui veulent retourner dans leur pays d'origine et qui le peuvent sans risque de représailles ou de rejet familial, un accompagnement est mis en place et une aide est apportée, en application d'accords bilatéraux avec la Bulgarie et avec la Roumanie.

Des coopérations sont développées, entre des associations françaises et des organisations non gouvernementales des pays d'origine des personnes prostituées, afin d'améliorer la qualité du travail accompli en France auprès de ces personnes.

Ainsi, plusieurs projets ont été menés avec l'appui de l'Union européenne, tel le projet Copyrights mené par l'association "A.L.C" de Nice, en lien avec des associations spécialisées de cinq autres pays (Italie, Bulgarie, Roumanie, Slovaquie et Portugal).

Par ailleurs, le service des droits des femmes et de l'égalité et la direction générale de l'action sociale du ministère des affaires sociale ont commandé à l'organisme Métanoya une étude sur les évolutions nécessaires des interventions sociales en direction de personnes prostituées ou en situation de risque.

Enfin, les victimes de la traite peuvent bénéficier des dispositions du code de procédure pénale sur la protection des témoins, qui permettent de recueillir leurs déclarations sans que leur identité n'apparaisse.

2. La loi du 18 mars 2003 sur la sécurité intérieure, enfin, a introduit de nouvelles dispositions qui ont permis des avancées significatives en matière de lutte contre la traite des êtres humains et le proxénétisme.

Selon les informations portées à la connaissance de l'office central pour la répression de la traite des êtres humains (O.C.R.T.E.H.), au cours de l'année 2005, une quarantaine de réseaux ont été démantelé. Il est à noter que 749 personnes ont été mises en cause pour proxénétisme sur le territoire national contre 717 en 2004.

Ces données sont sensiblement supérieures aux tendances observées au cours des années précédentes et témoignent de l'implication des services contre cette forme de délinquance.

L'O.C.R.E.T.H., qui contribue au démantèlement de nombreux réseaux de proxénétisme, a piloté des réunions concernant le suivi de la L.S.I. et plus particulièrement l'évolution de la situation de la prostitution en France. En outre, cet office, a participé à des actions majeures dans le domaine de la traite des humains en partenariat avec diverses organisations et une association de défense des victimes.

3. <u>Lutte contre les violences faites aux femmes</u>

- **<u>Point 351 et suivants</u>**

L'Assemblée nationale a adopté à l'unanimité en première lecture le 15 décembre 2005, une proposition de loi sénatoriale (adoptée en première lecture à l'unanimité par le Sénat le 29 mars 2005) visant à renforcer la prévention et la répression des violences au sein du couple ou commises contre des mineurs. Ce texte contient des dispositions de nature à répondre à des préoccupations et recommandations formulées dans le rapport du Commissaire aux Droits de l'Homme.

La proposition de loi susmentionnée prévoit notamment :

- l'instauration, dans la partie générale du code pénal, de la circonstance aggravante de la qualité de conjoint, de concubin ou de pacsé ;
- l'extension de cette circonstance aggravante aux ex-conjoints, ex-concubins ou aux personnes ayant été pacsées avec la victime ;
- l'extension de cette circonstance aggravante aux cas de meurtres, de viols ou d'agressions sexuelles ;
- l'extension aux couples non mariés de l'interdiction du domicile conjugal à l'auteur de violences quand ce couple a en commun un enfant mineur ;

Ce même texte prévoit également:

- l'alignement de l'âge légal du mariage pour les filles sur celui des garçons, soit 18 ans;

- l'allongement de six mois à deux ans du délai de demande de nullité du mariage pour vice de consentement en cas de cohabitation des époux;

- la possibilité pour le procureur, et non plus seulement pour l'un des deux époux, d'attaquer un mariage en cas de doute sur le consentement;

- la possibilité d'annuler un mariage en cas d'intimidation de la part des parents sur l'un des deux époux (sans violence de leur part),

- des modifications des formalités relatives au mariage.

➢ **Point 361 les mutilations sexuelles**

La proposition de loi précitée prévoit précisément la possibilité, par dérogation, de réprimer ces pratiques lorsqu'elles sont commises à l'étranger sur une victime mineure étrangère résidant habituellement en France.

En outre, elle instaure :
- l'allongement du délai de prescription, en matière d'action publique, à vingt ans à compter de la majorité;
- la permission de lever le secret professionnel en cas de mutilations sexuelles sur mineur.

Par ailleurs, le rapport estime que « *les mesures annoncées dans le plan global de lutte contre les violences faites aux femmes tardent à se concrétiser »* et que « *les associations qui viennent en aide aux femmes se plaignent de la réduction des financements publics qui mettent en péril leurs actions. Elles soulèvent également les difficultés d'accès au logement, en particulier au logement social, pour ces femmes dans un contexte global de pénurie ».*
Le soutien financier accordé au secteur associatif spécialisé a, quant à lui, été augmenté de près de 20% en 2005.

S'agissant de la mise en œuvre du plan global de lutte contre les violences faites aux femmes, il convient de préciser qu'elle s'est notamment traduite :

- par la désignation, dans tous les départements, de référents « violences-hébergement », à même de connaître en temps réel toutes les places disponibles. Les femmes victimes de violences figurent désormais parmi les publics prioritaires des centres d'hébergement et de réinsertion sociale ;

- par des réunions des commissions départementales d'action contre les violences faites aux femmes, qui ont permis la mobilisation des acteurs locaux ; dix-neuf d'entre elles ont signé des protocoles départementaux de lutte et de prévention contre les violences envers les femmes. Cette signature sera étendue à l'ensemble des départements d'ici 2006.

Enfin, le Commissaire au Droits de l'Homme recommande de " *veiller à une meilleure sensibilisation des acteurs, policiers et magistrats, qui sont le plus directement confrontés aux violences domestiques."*

Il convient de rappeler qu'une campagne nationale de communication sous le slogan «Stop violence - Agir, c'est le dire» et des formations initiales et continues ont été menées en 2004. Elles ont renforcé la sensibilisation du grand public et des professionnels.

En outre, la ministre déléguée à la cohésion sociale et à la parité a fait de l'intervention en direction des professionnels un des axes de sa politique de prévention et de lutte contre les violences faites aux femmes.

Cette orientation politique se traduit notamment par l'amélioration de la coordination des différents professionnels de santé concernés par la prise en charge des femmes victimes de violences, avec la création de réseaux d'accueil dans trois sites hospitaliers dès janvier 2006 à titre expérimental.

Par ailleurs, une brochure réalisée en 2005 en partenariat entre les ministères sera diffusée en 2006 à l'ensemble des professionnels concernés afin de les aider dans leur accompagnement des femmes victimes de violences.