Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

ANALYSIS OF NATIONAL LAW

National norms as regard to access of detained persons to the law and to court

Report on FRANCE

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European Prison Litigation Network

April 2019

EUROPEAN PRISON LITIGATION NETWORK

This report is part of the research project EUPRETRIALRIGHTS from the consortium of partners :

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CESDIP, Université de Saint Quentin en Yvelines/Ministère de la Justice
European Prison Litigation Network
University of Utrecht, Montaigne Centre for Rule of Law and Administration of Justice
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University of Florence, L'Altro diritto - Inter-university Centre
Bulgarian Helsinki Committee
Ghent University, Institute for International Research on Criminal Policy
General Council of Spanish Bars
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This project was funded by the European Union's Justice Programme (2014-2020).

1. INTRODUCTION

1.1. Regimes of detention applicable to pre-trial detainees

The 188 penitentiary facilities falling under the authority of the Ministry of Justice are classified into two broad categories: remand detention centers ("maisons d'arrêt") and institutions for the enforcement of prison penalties ("établissements pour peines"). There are currently 20,939 pre-trail detainees in France, who are distributed in 86 remand detention centers. These facilities accommodate individuals who have been remanded into custody (persons awaiting trial or whose conviction is not final), as well as convicted persons whose sentence or remaining sentence does not exceed two years. Pre-trial detainees are in principle incarcerated in the remanddetention center located in the jurisdiction of the court where criminal proceedings are initially investigated. Almost all French departments (administrative districts) include a remand detention center. The Code of Criminal Procedure (*Code de procédure pénale,* or CPP) provides[1] that the allocation of pre-trial detainees may be modified for reasons of prison overcrowding, the health of persons concerned, or security concerns on the part of local remand detention centers (see below). The house arrest regime is that of individual accommodation day and night. Unlike what is provided, in principle, for convicts (or some of them), pre-trail detainees cannot move freely within their units.

Within the detention regime that is applicable to defendants, administrative or judicial authorities may take restrictive measures. Those measures that are taken because of the needs of the criminal investigation are always taken by the judicial authority (investigating judge or public prosecutor). Measures which are relevant to the internal functioning of the penitentiary facility, particularly for reasons of internal security, are taken by the prison administration at a local, interregional or national (central) level. The primary measures restricting the rights of defendants are as follows:

1.2. Restrictive measures that may be taken against an incarcerated defendant, and situations that may violate his fundamental rights

1.2.1 Relation with the outside world

Article 30 of the Penitentiary Act of 26 November 2009, and the CPP[2], provide that an investigating judge may prohibit persons from engaging in written correspondence, either generally or with respect to one or more recipients expressly mentioned in the court's decision. To date, no appeal is available against the decision of the investigating judge. The OIP referred this issue to the Constitutional Council[3]. Letters subject to the judge's censorship may be seized by the judge when they are useful in the manifestation of the truth. Persons in charge of penitentiary facilities are required to notify detainees of a judge's decision to retain written correspondence, both received and forwarded, at the latest within three days[4]. Correspondence exchanged with lawyers is not subject to control[5].

[1] Article D.53 of the CPP
[2] Article R. 57-8-16 and Article R.57-8-17
[3] Ref.
[4] Article R. 57-8-19 of the CPP
[5] Article R. 57-6-6

The CPP defines[6] the conditions under which a person placed in pre-trial detention may receive visits. It provides that during an investigation, visit permits are issued by the investigating judge. When pre-trial detention exceeds one month, the examining judge may refuse to issue such a permit to a detainee's family member only by written decree, a decision that must be specially motivated by the requirements of the investigation. This decision may be challenged before the president of the investigating chamber of the Court of Appeal. The latter rules according to a written procedure, without a hearing.

The Penitentiary law of 24 November 2009[7] sets the conditions under which a detainee may be authorized to use a telephone. Telephone access for persons in pre-trial detention is subject to authorization by the judicial authority. The reasons for denying, withdrawing, or suspending access to a telephone consist of good order, security, the prevention of crime and the need for judicial information. The decision of the investigating judge may be appealed to the president of the investigating chamber of the Court of Appeal. The procedure is the same as for that of visits.

1.2.2 Isolation (solitary confinement) and security measures

An investigating judge, or a liberty and detention judge (who decides on placement in detention), may prescribe, by reasoned order, that a person placed in detention be subjected to solitary confinement in order to be separated from other detained persons, if this measure is indispensable to the requirements of an investigation, and for a duration which cannot exceed that of the detention warrant. The decision of the investigating judge may be appealed to the president of the investigating chamber of the Court of Appeal. The procedure is the same as that of visits. Isolation may also be imposed for security reasons by the prison administration. In this last case, the decision is made at three month intervals. It is subject to appeal to the administrative court. The Penitentiary Law provides that a prisoner may use in this case the interim procedure ("référé-liberté"), specifically dedicated to urgent emergency situations. But this procedure is governed by drastic conditions, which makes it very difficult to practice (see below). Anti-terrorism provisions have instituted a system of video surveillance inside cells in the event of an exceptional risk of escape or suicide of a person prosecuted in cases involving major criminal offences (murders, rapes, armed robberies…)[8].

Body searches can be carried out by decision of the penitentiary administration. In the past, they were systematic after family visits and transfers from outside the prison (hospital, courthouse ...). As a result of legal actions[9], body searches were only allowable, according to the provisions of the penitentiary act, if particular circumstances led to the suspicion of either a threat to safety or an attempt to escape. However, legislators have recently partially reversed the guarantees granted to prisoners in this respect, creating possibilities for indiscriminate body searches. It is not yet known how the courts, which originated the protective regime, will position themselves in this area, on the basis of Article 3 of the ECHR.

[6] Article 145-4
[7] Article 39
[8] Article 716-A of the CPP. The system has been very strongly criticized by the national institution of human rights (réf.). It seems that it is applied only to the author of the attacks of 13 November 2015.
[9] Réf.

1.2.3 Disciplinary measures

The disciplinary regime is the responsibility of the penitentiary administration. The Code of Criminal Procedure defines disciplinary offenses as well as corresponding penalties. Placement in a disciplinary cell or confinement in an ordinary individual cell may not exceed twenty days, but may be extended to thirty days for any act of physical violence against persons[10].

1.2.4 Allocation in penitentiary facility

Another measure that may have a significant impact on an individual's personal situation – in terms of family ties and the rights of the defense – is the security-related transfer. The Code of Criminal Procedure does not define the procedural regime of this measure. It is unclear whether the jurisdiction in this case belongs to the judicial judge or if it is simply a matter of consultation by the administration. No remedy is provided. The administrative courts have agreed to curb the constant movement of prisoners from one prison to another[11]. But this is a clandestine detention regime and it is often the case that many transfers are needed to prove the existence of its implementation.

1.2.5 Material conditions of detention and quality of medical care

French prisons are largely overcrowded. Detention conditions often run contrary to the provisions of Article 3 ECHR. Litigation is mainly handled in this area by the administrative courts. Compensatory remedies are sometimes effective (despite low levels of compensation), but not enough that they lead to measures to stop ill-treatment (see below). The conditions for judicial intervention (in the context of release applications) are far too restrictive to guarantee the protection of individuals. Consequently, the Strasbourg Court considers this remedy to be ineffective (see below).

Since 1994, healthcare for detained individuals has been provided by hospital services under the general health system. The insufficient quality of care, as well as delays in diagnoses, are the objects of recourse before the administrative tribunals under the conditions of the common right.

1.2.6 Release for health reasons

Release of a pre-trail detainee on medical grounds may be sought when a medical report establishes that "the person has a life-threatening condition or that his or her physical or mental health is incompatible with continued detention"[12].

[10] Article 726 of the CPP
[11] CE, Ass., 14 décembre 2007, Payet.
[12] Article 147 -1 of the CPP

1.3. Bodies entitled to receive formal complaints, and their effectivity (with regard to Article 13 ECHR)

1.3.1 General presentation of remedies

The French court system is divided into two types of courts, administrative courts and ordinary courts, both of which are concerned with prisoner means of redress.

Prison disputes are settled by the **administrative courts** in cases which pertain to the operation of public penitentiary services, i.e. those that concern the relationship between prisoners and the administration (usually prison or hospital services).

Ordinary administrative courts – including administrative courts, administrative courts of appeal, and, at the top of the ladder, the "Conseil d'Etat" (French Council of State, abbreviated to CE in this document) – are therefore those which are essentially in charge of protecting the rights of prisoners within the penitentiary establishment. They handle disputes concerning the material conditions of detention, disciplinary penalties handed down by the administration, matters involving difficulties of access to healthcare, transfers, etc. In the '00s, the formulation of penitentiary law broadly relied on these courts, with the penitentiary law of 24 November 2009 representing a summation of – as far as prisoner rights are concerned – a codification of principles and rights already recognised by the court.

For their part, **ordinary judiciary courts** are competent for disputes pertaining to "*the nature and limitations of a sentence handed down by an ordinary court, and whose implementation is subject to public prosecution*"[13] or acts that regard the conduct of legal proceedings or that are inseparable therefrom (eg, CE, 11 April 2011, no. 34621: withdrawal of a visiting permit by the investigating judge, on demand of the administration). Where convicts are concerned, ordinary courts act in prison-related matters mainly during sentence adjustment proceedings. A specific division of criminal court judges deals with such sentence reductions (in the first instance, depending on the case, a sentence enforcement judge or sentence enforcement court; in appeal, the Court of Appeal chamber for sentence enforcement; and in cassation – and only for monitoring the correct application of the law – the criminal chamber of the Court of Cassation).

As regards the prisoners, the Court of Cassation may take into consideration detention conditions in applications for release, where there are "*allegations of elements concerning the person in question that are sufficiently serious as to constitute a danger to such person's physical or mental health*" (Criminal Court, 29 February 2012, no. 11-88.441). The scope of this statement is unclear, for lack of positive application. Additionally, article 715 of the CPP indicates that the judges in charge of criminal cases "*may give all the orders necessary either for investigation or judgment, which will then be implemented in the prisons*". In this regard, the judge may take a decision to safeguard a prisoner's rights, such as a transfer to a less overcrowded prison. However, the court is not required to respond to applications, and any non-jurisdictional decisions it makes do not give rise to open debate; such decisions are entirely discretionary and not subject to review. This is therefore not a viable means of redress. Such provisions are in place to ensure the proper operation of the investigation, not to secure the protection of fundamental rights. Indeed, they have no role in the matter of prisoner rights, and the authorities do not

[13] "tribunal des conflits", 22 Feb. 1960, Dame Fargeaud d'Epied

claim as such before national and international courts. Lastly, it should be noted here that the law provides for the court to release a prisoner in the event of a life-threatening disease or in the case of a physical or mental state that is incompatible with prison life (article 147- 1 CPP).

Ultimately, sentence application courts only have limited competence, or residual competence, as regards the monitoring of the prison administration. Additionally, concerning prison matters, the Court of Cassation case law pays sparse attention to European law, in particular because of a limited assessment of the reasoning behind the decisions that are submitted to it. As regards principles, its case law is much less significant than that of the French Conseil d'Etat (CE).

A priority preliminary ruling on constitutionality ("question prioritaire de constitutionnalité" in French, or QPC) can be refereed to the Constitutional Council. This procedure enables an applicant to assert that a given legislative provision in a dispute adversely affects the rights and freedoms that are guaranteed by the French Constitution, and thus to obtain its repeal.

However, eight years into the effectuation of the QPC, case law broadly indicates a lack of constitutional protection as regards the rights of prisoners. The Constitutional Council censures flagrant violations, especially from a procedural point of view (eg, in situations where there is a complete absence of a remedy), but refuses to confront issues involving prison policies, despite important constitutional issues (for example, the lack of labour safeguards in prison).

1.3.2 Existing studies or assessments of the effectiveness of the domestic remedies formulated in the judgments of the ECtHR

i. Influence of the ECtHR

This attention to the ECHR was first significant in the criminal law field. The law of 15 June 2000 – known as the "presumption of innocence law" – was the fruit of a broad consensus, and profoundly modified legal procedures with the aim of better respecting European requirements concerning a fair trial and provisional detention. The law's formulation stemmed directly from both the governmental project's explanatory statement and from subsequent parliamentary debates. The text established the grounds for the measure, with the objective of making it both exceptional and of maximum duration. Until the early 2000s, European law was able to function as a relatively consensual regulatory support in putting on the agenda reforms aimed at the reduction of prison overcrowding, which served as a sine qua non condition for the implementation prisoners' rights. However, the decline in the prison population that had begun in 1996 was halted abruptly at the beginning of the 2001 presidential campaign, which was itself marked by a particularly repressive vision of criminal law. This turning point as regards to national attitudes on criminal issues marks the limits of ECHR when it comes to soft power, and points to the importance of litigation in the development of French prison law for the last twenty years.

It is indeed through litigation proceedings that the possibility of challenging the decisions of investigating judges who have ordered restrictive measures of liberty (judicial isolation, limited visit and telephone permissions, and currently prohibitions on written correspondence) have been recognized.

ii. Position of the ECrtHR regarding the effectiveness of remedies

Redress using criminal law, as provided for by the French Criminal Code and in cases concerning **accommodation conditions that are contrary to human dignity**, is not available to prisoners (see *Canali v. France*, 25/04/13 no. 40119/09, § 39). The Court of Cassation has ruled, without providing any further explanation, that reported improper detention conditions "*do not enter into the provisions of article 225-14 of the French criminal code, and cannot therefore be classified as criminal*"[14]. Consequently, prisoners may only take release applications to ordinary courts[15], whose conditions of enforcement were set by the judicial chamber of the Supreme Court in a procedure that led to the finding of a breach by the ECHR in the *Yengo v. France* case. To rule on a release for reasons of material conditions of detention, the Court of Cassation demands that the applicant put forward "*distinctive [personal] elements that are sufficiently serious as to be a danger to the applicant's physical or mental health*"[16]. Conditions that are objectively contrary to human dignity[17] cannot justify release. Only where "*personal elements*" show that detention conditions represent a danger to the applicant's physical or mental safety can such detention conditions justify release. This stipulation was confirmed and specified a few months later, when the Court of Cassation approved an appeals court's dismissal of arguments made by a person in precautionary detention. The appeals court had noted that, according to a medical expert's report, the applicant's recent pneumonia could not be "*directly related to the detention conditions in Nuutania*"; that the applicant was under the kind of medical treatment habitually provided by the medical service for such cases; and that, in the absence of any other medical statement, the prisoner had no personal elements that were sufficiently serious as to adversely affect his physical or mental health[18]. It seems, therefore, that the aggravation of a prisoner's state of health must be attributable to detention conditions if they are to be taken into account by the judge. In the *Yengo v. France* case, the ECHR ruled that the appeal opened by the Court of Cassation was not an effective means of redress. Although the Court of Cassation had not ruled out that an application for release may constitute a means of redress to end a detention contrary to Article 3, it nonetheless set as a condition to this possibility the serious threat to the physical or mental health of the prisoner, which the conclusions reached by the General Controller had not been able to prove. Such difficulties encountered in bringing proof of personal suffering and, implicitly, the too-high threshold for triggering the judge's intervention (serious threat to the applicant's state of health), do not satisfy the requirements set by Article 13.

Regarding disciplinary sanctions, the compulsory redress mechanism which is employed within the prison hierarchy itself – before any court proceedings are permitted – has been ruled as contrary to Article 13 of the ECHR in three separate cases (*Payet v. France*, above, *Cogain*, no. 32010/07, 3/11/2011, *Plathey*, above). Nonetheless, it remains in force. The ECHR has recalled that the effectiveness of remedies requires that they prevent the enforcement of measures contrary to the Convention and whose consequences are potentially irreversible. Ordering the isolation of a prisoner for safety reasons (as opposed to disciplinary reasons) is considered as a punitive measure, and the court states that, "*considering the significant repercussions of a detention in a disciplinary cell, means of redress that enable the prisoner to contest both form and content of, and therefore the reasons for,*

[14] (Crim., 20 Jan. 2009, no. 08-82807)
[15] As provided for by articles 148 *et seq.* of the French code of criminal procedure
[16] (Crim., 29 Feb. 2012, no. 11-88.441)
[17] As was the case with a view to the recommendation of the Controller General (Official Journal of the French Republic, 6 Dec. 2011)
[18] (Crim., 3 Oct. 2012, no. 12-85.054)

the sanction before a judicial instance is essential". For its part, the French Conseil d'Etat deemed that the prison redress mechanism was compliant with the ECHR, since prisoners have the possibility of taking their case to the interim relief judge (who is responsible for urgent proceedings) without waiting for the decision of the interregional director (CE, 28/12/12, no. 357494).

1.3.3 Existing studies on the question of the effectiveness of remedies

There remain a number of obstacles, specific to prisoners, which hinder court action. They concern, for example, limitations inherent to the conditions of detention, the social and economic insecurity affecting a great majority of prisoners (poverty, illiteracy, etc.)[19], or the ambivalent relationship between prisoners and the law or the judicial institution itself.

Sociology of law in prison has notably insisted on the material limitations of access to and command of legal resources by subjects who are socially weak: eg, the impossibility of receiving updated internal prison rules, the lack of access to legal resources in prison libraries, the unfeasibility of purchasing a Code of Criminal Procedure at a reasonable price, etc. Along with this material unavailability of the law, there is "*the complexity of the rules system and [the fact that] the prison population, often hailing from disadvantaged neighbourhoods and with few or no qualifications, do not foster the precise knowledge of the rules, or their appropriation by a majority of people in prison*"[20]. According to data collated by the administration during its systematic survey of illiteracy in prisons, conducted in 2014 on 51,019 prisoners, 10% of the detainees assessed have very poor or no knowledge of the French language. 22% failed the reading test, 43.4% of the prisoners were found to have no professional qualifications.

Several studies[21] have also emphasized the practical threat of the law's penetration of social relations in prison, of which fragile balance is traditionally based on reciprocity and honour rather than reference to legal rules[22]. Resorting to the law often means turning one's back on traditional means of dispute resolution, as well as the secondary benefits that such informal and sub-legal relationships are likely to provide.

It is also important to highlight that taking a matter to court, and more broadly to any external inspection body, may be risky for prisoners, with the prison administration flagging as "litigious" the most active prisoners in this regard.

Lastly, prisoners often have a complex relationship with the judiciary and with the law. Above and beyond the material, cultural and organisational restrictions on the availability of law-related resources in detention, prisoners, who are often stigmatised as a result of their imprisonment and their social

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19 OIP *Les conditions de détention en France*, Paris, La Découverte, 2012.

20 C. Rostaing, "Processus de judiciarisation carcérale : le droit en prison, une ressource pour les acteurs ?", *Droit et société*, 2007, vol. 3, no. 67, p. 577-595.

21 A Chauvenet, C.Rostaing and F. Orlic, *La violence carcérale en question*, Paris, PUF 2008, 347 p ; G Salle et G Chantraine, "Le droit emprisonné ?", *Politix*, 23 October 2009, vol. 87, nº 3, p. 93-117 ; C de Galembert and C Rostaing, "Ce que les droits fondamentaux changent à la prison. Présentation du dossier", *Droit et société*, 24 July 2014, vol. 87, nº 2, p. 291-302; Y Bouagga, *Humaniser la peine ? : Enquête en maison d'arrêt*, Rennes, PU Rennes, 2015, 311 p.

22 A CHAUVENET, "Guerre et paix en prison", *Les cahiers de la sécurité intérieure*, vol. 31, no. 3, 1998, p. 91-109.

trajectory, put their dignity on the line when they call on the law to solve their problems. Resorting to the law appears as a "moral challenge" to overcome, or bear, with a two-fold humiliation: one which requires the prisoner to speak up to an official body, and another which requires the prisoner to affirm – despite the stigmatisation of imprisonment – that he or she is a holder of human rights that must be applied[23].

Persons with very long sentences, who are particularly subject to safety and disciplinary sanctions, are among those who have brought lawsuits in France, often doing so without outside counsel. Among convicted persons, the length of one's sentence correlates to an accumulation of institutional and legal skills, a reduction in the time-cost of the procedure (which is superimposed to that of incarceration), and an awareness of the limitations of local compromises with penitentiary authorities. The situation of long-term detainees is highlighted here to explain the importance of disputes concerning heightened security measures that are brought before an administrative judge – measures that affect such prisoners in particular.

As regards access to sentence reductions, Y. Bouaga has found that individuals with the most "legitimate" reasons are most likely to gain the confidence of judges, due to the reassuring social image they project. The social and economic context in which they find themselves bestows upon them attributes that constitute a guarantee, in the minds of the judges, of a very likely social reintegration and a lesser risk of repeat offence.

The impetus for, and the coordination of, disputes is very broadly led by the French section of the International Prison Observatory ("Observatoire international des prisons - Section française", or OIP-SF). Established in 1996, the organization took its first timid steps into the arena of prison disputes in the early 2000s, then approached the issue more resolutely and more extensively from 2003-2004[24]. A prominent member of the Conseil d'Etat, B. Genevois, has described the action of the OIP-SF as a "*French-style class action where a group makes certain categories of persons leave a no-go area. We believe it is a good thing*"[25]. The OIP-SF initiated some one hundred orders handed down by domestic courts, and a dozen judgments condemning France before the European Court for Human Rights. It is clear that the OIP-SF has worked hard in driving down the rate of internal order measures that are not open to appeal, by offering legal advice to applicants that, in most cases, has led to advances in case law on this issue from 2007 onwards. The association can thus act in support of a prisoner's procedure challenging a decision that affects him, contest *in abstracto* regulatory or legislative provisions in the criminal or penitentiary field, or act for the collective good of prisoners within a particular establishment (eg, systematic full-body search regimes or material detention conditions).

Additionally, the OIP-SF can launch contentious campaigns in the form of recurring cases which target one particular issue, as it has done these last two years against the practice in French prisons of systematic full-body searches of prisoners as they exit visiting rooms. In such cases, the OIP-SF relies on the skill and knowledge of an employed legal practitioner, assisted by a trainee lawyer conducting his or her final internship. Such dispute activity is informed by the relationships the association has with

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23 Corentin Durand, "Construire sa légitimité à énoncer le droit. Étude de doléances de prisonniers", *Droit et société*, 2014, vol. 87, n° 2, p. 329-348.

24 H. de SUREMAIN, 2014, Genèse de la naissance de la *guérilla juridique* de l'OIP-SF et premiers combat contentieux, *in* FERRAN N., SLAMA S (dir.), *Défendre en justice la cause des personnes détenues*, CNCDH op.cit.

25 B. GENEVOIS, 2009, Le Gisti : requérant d'habitude ? La vision du Conseil d'État, *in Défendre la cause des étrangers en justice*, Paris, Dalloz, "Etudes et Documents" coll., 65-79.

a number of prisoners, as well as the relatives of those prisoners, whose correspondence makes it possible to identify new situations likely to advance case law. Additionally, although the OIP-SF's dispute hub sometimes reacts to current affairs – for instance, when a supervisory authority publishes a report that opens the door to an administrative dispute – it aligns its activity to a list of strategic priorities which is defined by the national secretariat of the association, with the approval of the supervisory board. Thus, in 2015, several disputes pertaining to the obtainment of visiting permits were initiated as part of a strategic action plan in support of prisoners' relatives.

It should be noted here that the association *Ban public*, whose members include former prisoners, as well as certain major "generalist" associations like the *Ligue des droits de l'homme* and the *Syndicat des avocats de France*, are also regular purveyors of prison disputes.

Moreover, the OIP-SF launched the establishment of a network of lawyers specialised in penitentiary law. *Avocats pour la défense des droits des détenus* (A3D) is an association under French law and currently counts some 100 members.

Following in the footsteps of cause lawyers' individual commitments, the establishment of this association is testament to the new interest borne by young legal professionals in penitentiary matters. Although penitentiary law offers few financial prospects, the dynamism of its case law offers possibilities for activist involvement and reputational remuneration. As observed by one of the lawyers interviewed, young lawyers (in particular young women) are the ones currently taking on penitentiary matters. Still broadly left to its own devices, penitentiary law offers the prospect of activist reform, whereas other fields are slowly being congested by existing case law. Such case law prospects within the field of penitentiary law are also likely to offer a certain amount of visibility to these young professionals.

The emergence of a lawyer network covering the entire country represents an essential step, making it possible for professionals to group together penitentiary disputes. One lawyer interviewed, who works for an activist association, highlighted the difficulties encountered when trying to disseminate the news of favourable court decisions, with the aim of using such decisions to launch mass disputes. Indeed, associations do not have the resources necessary to duplicate case law wins, but they can make available statements of case templates and court solutions, so long as they are able to draw on a network of specialised lawyers to use them.

Lastly, one must highlight the essential role of prisoners taking their cases to court so that their rights may be respected. These individuals are sometimes pro-prisoner rights activists, and the most prolific are termed by the administration as "litigious". Although we can speak of "penitentiary legalisation"[26], this expression first referred to the circulation of a rights discourse in daily relations between prisoners and prison staff. Only rarely do prisoners update this discourse in their procedures, especially when such procedures may take several years. Studies focusing on the initiation of procedures by prisoners all point to the fear of formal or informal reprisals from the penitentiary administration.

[26] C Rostaing, "Processus de judiciarisation carcérale : le droit en prison, une ressource pour les acteurs ?", *Droit et société*, 1 March 2008, vol. 67, no. 3, p. 577-595.

2. LEGAL SUPPORT (I.E., ACCESS TO LEGAL INFORMATION (INFORMATION ON RIGHTS AND DUTIES))

2.1. Obligations as regard to legal support

According to the definition given in French law (the law of 10 July 1991), access to the law includes: 1° Access to general information about individuals' rights and obligations, and their orientation towards organizations responsible for the implementation of these rights; 2° Assistance in carrying out any process for the exercise of a right or the performance of a legal obligation, and assistance during non-judicial proceedings; 3° Consultation in legal matters; 4° Assistance in drafting and concluding legal acts.

The matter of access to legal information is considered very differently depending one's circumstances of confinement (i.e., whether an individual is in custody at a police or gendarmerie premises, or detained in a penitentiary establishment). As police custody is limited in principle to a few hours, or at most a few days, legal information needs are apprehended from the angle of the requirements of the criminal investigation, as well as the protection of the suspect against police pressure or ill-treatment in the context of the search for proof. The situation is very different in prisons, in which the defendant can be detained for months or even years, and can see his fundamental rights ignored in many ways. The needs of such a defendant in terms of access to the law are therefore more important, diverse and complex.

2.1.1 Police custody (premises under the authority of the Ministry of the Interior)

The requirements related to the notification of a person in custody's rights have been enshrined in law since 4 January 1993. The CPP thus determines the information communicated to a person implicated by law: Article 803-6 of the Code stipulates that the person concerned must be given a "*document setting out, in simple and accessible terms and in a language which he understands, the rights which he enjoys during the proceedings*" under the CPP. If such document is not available in a language understood by the person, the person shall be informed orally of the rights provided for in this article in a language that he understands. The information thus provided is mentioned in a report. A version of the document in a language that the suspect understands is then delivered without delay. From the beginning of the procedure, the police officer must relay to the suspect, in a language which he understands, a certain amount of information, including the possibility of being examined by a doctor; of informing a relative, an employer and, where appropriate, a consular authority about his custody; and of being assisted by a lawyer.

With regard to the medical examination, it must be requested by the person concerned during placement and during the extension. The public prosecutor and the police officer may at any time appoint a doctor to examine the person in custody. Members of the suspect's family have the right to ask for an exam. Keeping a person in police custody despite the doctor's findings on his state of health, which is incompatible with the measure, invalidates the measure (Crim 27 Oct. 2009, No. 09-82.505). Due diligence in order to carry out the medical examination must in principle be enacted within three hours.

The assistance of the lawyer in police custody was introduced in 1993[27]. The regime of this right has undergone significant changes, under the pressure of the ECHR case law. Initially, the law provided for a thirty-minute interview at the twentieth hour of police custody. The law of 15 June 2000 fixed this intervention at the beginning of the custodial procedure, providing for the possibility of a new interview after 24 hours, in the event of an extension of custody. Article 63-3-1 of the CPP provides that, from the beginning of police custody, a person concerned may ask to be assisted by a lawyer of his choice, appointed by one of his relatives or the chairman of the bar[28]. In addition to the initial thirty-minute interview, article 63-4-2, which was passed by a 2011 law, introduced the right for a person in custody to request that the lawyer attend his hearings and confrontations.

With regard to the conditions under which custody is maintained, Article 64 of the Code of Criminal Procedure requires the judicial police officer to draw up a police custody report. This article provides for the list of mentions that must appear in these minutes, and in the special custody record held in any police and gendarmerie premises that may receive a person in police custody. Among other things, the article requires the judicial police officer to record the length of hearings and that of any rest periods that separate hearings, as well as the hours at which the person in custody was able to eat[29] and, since 2011, full details about searches or internal investigations to wich he was subject.[30].

Beyond the notification of the rights and the indications that can be given by a lawyer, no other legal information measure is anticipated by the texts, the custodial measures being limited in time[31].

2.1.2 In facilities of the penitentiary administration (under the authority of the Ministry of Justice)

Article 23 of the Penitentiary Act provides that "*when admitted to a penitentiary facility, the detained person shall be informed orally, in a language understandable by him, and by the delivery of a reception booklet, of provisions relating to his detention regime, his rights and obligations, and the appeals and applications he may form. The rules applicable in the facility are also made known to him and are made available to him during the period of his detention.*" The Circular of 31 January 2014[32] provides that this obligation is satisfied by the simple delivery of a very short document, entitled "*Guide to the incoming detainee - I am in detention*".

Article 24 of the Penitentiary Act also provides that "*Every detained person must be able to know his rights and to this end benefit from a system of free legal consultations set up in each facility*". The secondary legislation specifies[33] that "*free legal consultations, called " legal-access points", are established in prisons by the departmental councils of legal access [CDAD] in coordination with the prison governor and the director of the prison services for insertion and probation"*. The CPP specifies

[27] Article 63-4 of the CPP, resulting from Law No. 93-2 of 4 Jan. 1993
[28] The law of 9 March 2004, however, delayed the intervention of the lawyer after the first 48 hours or 72 hours for certain organized crime offenses for fear that the lawyer might interfere with other acts of the investigation.
[29] Article 64, 2o of the CPP
[30] Article 64, 50 of the CPP
[31] 24 hours, renewable once if the sentence is at least one year's imprisonment. There are exceptions: for serious cases (drug trafficking ...), the measure can be extended to 72 hours; in the case of organized crime and terrorism, the total duration can be up to 96 hours. It can even reach 144 hours, in case of terrorist risks.
[32] JUSK1340044N
[33]Articles R57-6-22 and R57-6-23 of the CPP

that *"these consultations are intended to respond to any request for legal information from detained persons, with the exception of those relating to the criminal case for which the person is incarcerated, the execution of his sentence or [matters] for which a lawyer is already assigned"*. Also relevant in terms of legal access, the law also provides for standard internal house rules[34]. It fell to the legislature to put an end to the previous state of affairs, in which no updated versions of in-house rules were generally accessible to detainees or their lawyers, a situation that gave rise to totally arbitrary practices. These new house rules include a standardized body of regulations, which prison directors are charged with adapting to local constraints. The procedure for the adoption of local rules is regulated, which is meant to ensure that internal rules are not subject to constant changes[35].

This state of the law calls for two observations, one on the accessibility of the norms, the other on relays of law in prison. The first observation is that the generality of the terms used in the Penitentiary Act belies one of the political stakes of the reform as stated by the report that triggered the legislative process in the first place: namely, the limitation of the arbitrariness of the penitentiary administration. As far as access to the law is concerned, this objective should lead to a revision of the regulatory architecture. More specifically, the aim was to eliminate the myriad internal notes by which the prison administration itself defined the extent of prisoners' rights. On the one hand, in accordance with constitutional principles, the legislature alone had to restrict the exercise of fundamental rights in prison. On the other hand, prison law had to meet the requirements of clarity and predictability of the law, in accordance with the jurisprudence of the ECHR and the Constitutional Council. In reality, the Penitentiary Law was essentially limited to the declaration of very general principles. The rules defining the conditions of existence in prisons remain scattered among a large number of subordinate texts (circulars, memos) which are not often published, or are published after several years of delay.

The second observation is that the legislature has not defined the content and modalities of access to legal information in detention, nor has it clearly designated the actors in charge of this mission. The Penitentiary Act thus reaffirms, by its vagueness, the previous state of affairs, whereby prisoner access to rights is ensured primarily within the framework of the ordinary general law mechanisms, without the aid or anticipation of active, considered public policies in this area.

Provisions for access to the law in prisons have indeed appeared in the context of urban policy; that is to say, within a more general framework. To reinforce the territorial network of legal access points, and to better serve the inhabitants of lower-income neighborhoods, the Interministerial Committee of Cities (CIV) decided on 1 October 2001 to create 100 new points of access to the law, including, at that time, 10 in the penitentiary facilities[36]. The general approach (i.e., not specifically designed for the prison system) has allowed legal professionals to carry out the missions in question according to the legal aid principles established by the ordinary law. Previously, the question of access to the law was conceived as falling within the purview of social workers in the prison administration, according to a logic of access to social inclusion schemes.

The indeterminacy of the terms of the penitentiary law entails a double uncertainty. In the first place, if the central role of CDADs is provided for in the prison guidelines, the actors directly in charge of carrying out these missions are not designated. The CDADs have to deal with voluntary structures in their

[34] Article 86 of the Penitentiary Law
[35] Decree n ° 2013-368 of 30 April 2013 relating to the standard internal rules of penitentiary facilities
[36]see the Circular Interior / Justice relating to the judicial policy of the city of 12 April 2002, NOR: JUSJ0290001C

constituencies. This results in extremely varied arrangements. According to the Defender of Rights (a constitutional authority responsible for ensuring the protection of rights and freedoms, and for promoting equality) "*the typology of the interveners, the nature of their interventions, the actual existence or not of points of access to the law [PAD] illustrate the unequal access of prisoners to the knowledge of their rights. This inequality of access to the public service could be understood as a possible discrimination under the criterion relating to the place of residence*"[37]. Secondly, the lack of mention of information about prisoner rights in relation to the prison administration undermines the actors' understanding of what legal assistance covers. In particular, the prison administration often promotes an interpretation of the texts which excludes from the scope of legal assistance missions relating to life in the prison and conflicts with the prison administration itself, even if, from a strict legal point of view, there is no reason to exclude this dimension from the law-access mission. This is the case, for example, for a legal information guide published by the penitentiary administration which states, as regard to the points of access to the law, that [their] *"role is not to inform you or assist you with questions [about] penitentiary law (administrative procedure and planning measure of your sentence). These questions are the responsibility of the Prison Insertion and Probation Service (SPIP).*"[38]

2.2. Legal support to non-native speakers

With regard to police custody, the Code of Criminal Procedure (CPP) provides that a person so detained is informed at the beginning of the procedure of his rights by means of a document in a language that he understands. In addition, the Code provides that the person concerned is entitled to the assistance of an interpreter from the beginning of his custody, for interrogations and preparatory interviews with the lawyer. As stated in the CPP[39], this right also applies to persons with speech or hearing impairments.

The principle is that of a systematic verification of the person's mastery of the French when there is a doubt about his degree of understanding. This rule requires the authority in charge of the interview, and in particular the police investigators, to control by any appropriate means the suspect's understanding of the French language, even with regard to a person who has not indicated that he or she neither spoke nor understood it (Article D.594-1 of the CPP). All the diligences performed by the investigator to verify the sufficient comprehension of the French language must be recorded in the minutes of the hearing. Under section D. 594-2, the person can make comments on the absence of an interpreter or the quality of interpretation. If the choice of the interpreter or the quality of interpretation is disputed, the authority in charge of the file may, at his or her discretion, appoint another.

As regards detention in penitentiary institutions, the obligations imposed by the texts on the prison administration are quite narrow in scope. They are limited to the distribution of a booklet explaining briefly the primary rights and obligations of the prisoner (see above). With regard to life in detention, the Code of Criminal Procedure provides that *"the use of an interpreter has no purpose except in case of absolute necessity, if the prisoner does not speak or understand the French language and there is no person on site who can translate"*[40]. As far as measures relating to the prison administration are concerned, the assistance of an interpreter is provided only in the context of disciplinary proceedings or

[37] Opinion No. 14-02 of 21 May 2014
[38] Rights and duties of the detained person, Ministry of Justice, 2009
[39] Article D. 594-5
[40] Article D.506 of the CPP

in that of placement in solitary confinement as a precautionary measure. Concerning the former, the Code of Criminal Procedure provides that *"[if] the detained person does not understand the French language, is unable to speak in that language or is physically incapable of communicating, his explanations are presented, as far as possible, through an interpreter designated by the Prison Governor"*[41]. The Council of State has specified that under these provisions, *"it is incumbent upon the prison administration to do all the necessary diligence to ensure that the detained person has the assistance of an interpreter; that, except in the case where it would be physically impossible to find one, the detained person is entitled to such assistance"*[42]. In the matter of isolation, the CPP provides that *"[if] the detained person does not understand the French language, the information is presented through an interpreter designated by the Prison Governor. The same is true for his observations, if he is unable to speak French."*[43]

With regard to measures concerning life in detention which fall within the competence of the judicial authority responsible for criminal proceedings (isolation for judicial reasons, refusal or withdrawal of visiting permits or telephone authorizations, interception of correspondence, etc.), the code of criminal procedure provides for the intervention of the interpreter "*prior to the possible filing of an appeal against a jurisdictional decision*" (Article D.594-3). A foreign prisoner who is considering appealing an unfavorable measure could therefore seek the assistance of an interpreter. However, the question of whether the decision of the investigating judge in these matters is of a jurisdictional nature is doubtful. In any case, the texts (Article D.594-6 of the CPP) do not provide for the translation of the judge's decision, nor do they state that the foreigner must be informed in a language which he understands of the possibility of making an appeal or using an interpreter, which largely deprives this right of its scope anyway.

Regarding the choice of interpreters by the judicial judge, the former are designated on the lists of judicial experts approved by the courts of appeal or the Court of Cassation, or on the list of interpreters provided for by the code of the entry and residence of foreigners. However, "in case of necessity", a person (of full age) who does not appear on any of these lists can be designated as an interpreter or translator, since the person who acts in this capacity is not chosen by the investigators, the magistrates or the clerks in charge of the file, nor by parties or witnesses to it. In all cases, interpreters are subject to professional secrecy[44].

2.3. Actors providing legal information

As mentioned above, legal assistance missions are held in detention under "access points to the law" (PAD). There are 155 such PADs in prison. They are free and permanent places of reception for the public. Their mission is to provide local legal information about rights via individual legal consultations. PADs are typically based in an essentially urban environment, and their services can be either general or specialized. Those organized in penitentiary establishments (such as PADs in psychiatric hospitals,

[41] Article R.57-7-25 of the CPP
[42] CE, 11 June 2012, OIP, no. 347146
[43] Article R. 57-7-64 of the CPP
[44] Article D.594-16 of the Code of Criminal Procedure

devoted to juveniles, etc.) fall under the latter category. They are led by legal professionals, including lawyers from the bar, and lawyers from the voluntary sector.

The law regulates the conditions under which legal aid missions are carried out[45]. A person may not provide legal advice if he or she does not hold a license in law or, failing that, if he or she does not have appropriate legal competence resulting from the exercise of a regulated profession. Any person authorized by law to give legal advice, in a customary and remunerated manner, must be covered by insurance guaranteeing the financial consequences of any professional liability that they may incur as a result of these activities. The person must honor the principle of professional secrecy[46] and refrain from intervening if he or she has a direct or indirect interest in the object of the service provided. The obligations of professional secrecy are also applicable to any person who, as usual and free of charge, gives legal advice[47].

The PADs belong to the departmental councils of access to the law (CDAD). These councils are mandated by law "*to identify the needs, to define a local policy, to draw up and disseminate the inventory of all the actions carried out*". They include representatives of the State, local authorities, bar associations, notary chambers, etc., as well an association working in the specific field of legal access. CDADs are chaired by the president of the judicial lower court ('Tribunal de grande instance"), and are constituted as a public interest group (GIP), a legal category that allows co-financing by other *ex-officio* or associate members (local authorities, legal professionals, associations, etc.). CDAD activity in support of grants, as well as actions benefiting associations that make up for the lack of equivalent CDAD structures in overseas communities, are calculated according to the number of PADs the councils operate. This number varies according to the departments (population, structures of access to the law, financial participation of partners, etc.). CDAD fees are paid by the courts of appeal, in light of each council's program of action as approved by its board of directors. Professionals staffers who provide information and legal advice can receive from the CDAD an hourly fee, which may not exceed three times the reference value unit for legal aid (i.e., 96 euros maximum)[48]. A convention defines the operating conditions of the PAD and in particular its financing.

Within the framework of the missions of the PAD in prison, various actors intervene:
- legal professionals, mainly lawyers from the bar, to provide legal advice;
- legal experts to provide legal information, whether they are CDAD jurists, associative jurists or clerks;
- publicly funded writer to help with writing.

In principle, prisoners are not referred directly to a legal professional; they are first received by the legal expert of the CDAD. They get a consultation for complex issues or those giving rise to legal proceedings (eg divorce).

All these actors intervene in different ways:
- By providing weekly information to incoming prisoners on the existence of the prison PAD and on the scope of its missions (for example at the stopover in Angers);
-By organizing informational meetings for small groups of detainees on various legal issues related to family law, labor law, foreigners' law, over-indebtedness, legal aid, execution or citizenship (for example at the prison center

[45] Law No. 71-1130 of 31 December 1971, Reforming Certain Judicial and Legal Professions, Articles 54 and 55.
[46] in accordance with the provisions of articles 226-13 and 226-14 of the penal code.
[47] Article 55 of the Law No. 71-1130 of 31 December 1971.
[48] Decree No. 2000-4 of 4 January 2000 fixing the remuneration for legal consultations on access to the law

of Metz, the penitentiary center of Longuenesse). In 2016, 212 collective information sessions were provided in prisons;
- By holding individual office hours. In some PADs, there are no fixed operating hours; the interveners move at the request of the prisoners.

Thus, the PADs in prison received 26,353 inmates during 10,817 operating hours in 2016, while in 2015, 20,409 people were received during 8,589 operating hours.
Source: extract from the CDAD activity report for the year 2016, Ministry of Justice

2.4. Practical arrangements

The 1971 Law on Legal Professions provides that these missions are subject to professional secrecy. As a result, the penitentiary administration is legally obliged to ensure the confidentiality of consultations. Article D.232 of the Code of Criminal Procedure provides that when *"they have to converse with the detainees, [persons with authority or duty in the penitentiary] may do so outside normal visiting days and times and in the absence of any staff member; measures may take place in the cells when this procedure does not present any inconvenience".* The administration must make available to professionals a room adapted to the confidentiality needs of their interviews with detainees.

The persons in charge of legal access operations enter the penitentiary establishments under authorization of the administration (the prison governor, or the interregional director if they practice in several prisons)[49]. Such persons must prove their identity when entering the prison, and submit to applicable control measures (passage under the security portal, x-ray control of personal belongings)[50].

The schedule of the consultations is not defined by the texts. However, the provisions of the CPP entail a high degree of regularity, as prisoners must be able to access required legal information in a timely manner[51].

A steering committee is required for each PAD to monitor the proper functioning of the system. Composed of representatives of the CDAD and the prison administration, as well as all partners involved (including the bar association, other associated groups, and local authorities), the committee must meet at least once a year. As the Ministry of Justice explains, "*on this point, the practice still varies according to the PAD. In some PADs, steering committee meetings are actually planned and occur once or twice a year. In other PADs, steering committee meetings are not planned or, if they are planned, do not occur regularly.*"[52]

2.5. Legal information tools

As mentioned, the Penitentiary Law provides[53] that prisoners who arrive in the penitentiary facility are given an introductory booklet. The standard internal rules[54], which detainees must be able to access at

[49] Article D.277 of the CPP
[50] Article D.278 of the CPP
[51] Article R57-6-21 of the CPP
[52] Annual CDADs activity report for 2016
[53] Article 23
[54] Decree n ° 2013-368 of 30 April 2013 relating to the standard internal rules of penitentiary facilities

any time, contain a summary of information about remedies, and do not as such allow applications to be lodged. Detainees do not, in principle, have access to the internet. They are not allowed to possess network-ready computer equipment[55]. As recently conferred by the Comptroller General of Prisons, at present, only the experimental use of cyber-nodes, within a limited number of institutions, allows internet access[56]. In addition, in accordance with internal guidelines from the penitentiary administration[57], some centers have started to experiment with granting filtered Internet access to detainees serving short sentences.

2.6. Reporting on legal information

A National Council for Legal Aid, established by Article 65 of the 1991 Law, is responsible for collecting all quantitative and qualitative information on the functioning of legal aid and assistance with access to the law, and for proposing to public authorities all measures to improve it. The council is consulted on draft laws and decrees on legal aid. It is supposed to publish an annual report; though in practice, this publication occurs irregularly. The Department of Justice publishes a report of annual CDAD activity[58]. CDADs are individually required to prepare and publish an annual report as well[59].

In addition, agreements between the prison administration and other actors involved in the PADs prescribe specific objectives, which are defined according to their general purpose and expected results, and subject to regular evaluation.

3. LEGAL AID (I.E., LEGAL COSTS AND LEGAL REPRESENTATION FEES)

3.1. Fees and status of legal representation (mandatory vs. optional)

3.1.1 Legal representation

A detained person may petition – without being assisted by a lawyer – the president of the investigating chamber of the Court of Appeal to obtain the reversal of restrictive measures decided by an investigating judge (see introduction).

Similarly, a detained person can ask the Administrative Court to annul the decisions made by the prison administration, without being represented by a lawyer[60]. Representation by a lawyer is, however, mandatory before the Administrative Court of Appeal, and in the context of indemnity proceedings. The intervention of a lawyer specialized in cassation (i.e., a special counsel with the sole right to work with the supreme courts) is obligatory[61] before the Council of State (the supreme administrative court)[62].

[55] Réf.
[56] http://www.cglpl.fr/wp-content/uploads/2017/04/Enqu%C3%AAte-DAP-synth%C3%A8se-informatique.pdf
[57] Instruction of 26 March 2011
[58] As to 2016, see http://www.justice.gouv.fr/publications-10047/autres-rapports-dactivite-10287/rapport-national-dactivite-des-cdad-en-2016-31372.html
[59] Ref.
[60] Decree No. 2003-543 of 24 June 2003 on Administrative Courts of Appeal (CAA)
[61] except as regards urgent summary proceedings to protect a person's liberty
[62] Article R. 432-1 of the Code of Administrative Justice

3.1.2 Judicial fees

To cover the legal aid costs resulting from the extension of the rights of persons in custody, a stamp duty accompanied the filing of civil and administrative proceedings for three years ("CPAJ" instituted in 2011, abolished as of 2014).

A fee to plead is due for each pleading or representation of the party(s) at all trial hearings, including interlocutory hearings, before both the courts of the judiciary and the courts of the administrative order[63]. This fee partially finances the basic pension plan for lawyers.

Previously, when a lawyer was designated as legal aid or was assigned by the bar association, the court fees were the responsibility of the State; however, this measure was repealed in 2011[64]. Since January 1 of that year, all litigants, even if they are beneficiaries of the legal aid, are indebted for this right. The amount of the fee corresponding to a litigant's right to plead is set at 13 euros[65].

3.2. Legal aid scheme

3.2.1 Organization and financing of the legal aid system in France

i. General legal framework of legal aid

Legal aid is part of a national policy with a judicial and social purpose: to facilitate access to justice and the rights of physicallyconstrained persons. It is organized by Law No. 91-647 of 10 July 1991 on legal aid, which provides (Article 67) that the State grants funding for legal aid, assistance for the intervention of lawyers in non-jurisdictional proceedings, and mediation assistance. The legal aid budget is thus dedicated to the remuneration of legal professionals intervening in support of low-income persons in the context of civil, criminal or administrative proceedings brought before the courts (referred to as legal aid "in the strict sense"), as well as in various non-jurisdictional situations (assistance of a person in police custody or heard freely, assistance of a person presented to the public prosecutor, intervention in mediation or penal composition, assistance of prisoners in disciplinary proceedings or isolation). Except as provided by law (eg, minors), approval for legal aid is subject to a means test. Leagal aid entitles the beneficiary to the State's advance of all or part of the costs relating to the services of legal assistants who will be engaged in proceedings, whether they are lawyers, judicial officers, or experts mandated by the courts. Applications for legal aid are processed by the Legal Aid Offices (*Bureaux d'aide juridictionelle,* or BAJ) present in each judicial district court ("Tribunal de Grande Instance").

ii. The actors of legal aid

Apart from the fact that the state is the basic actor with respect to the financing of legal aid, its key position ensures at the central level both the impetus and follow-up of relevant policies. A department of the Ministry of Justice (Access to Law and Justice and Victim Services) has a triple function of design, management and control of policy in this regard.

[63] Article L.723-3 of the Social Security Code
[64] by Article 74 of Law No. 2010 -1657 of 29 December 2010
[65] Article R723-26-3 of the Social Security Code

The processing of applications for legal aid is assured, within the courts, by the offices of legal aid (BAJ). The BAJs review their cases, communicate their decisions, and carry out all due diligence in cases of withdrawal from legal aid when a beneficiary has attained better financial circumstances, or when aid was granted based on inaccurate declarations or documents. Court registries issue attorneys with end-of-mission certificates, which are required to obtain payment.

Bar associations are also directly involved in the process. In the first place, they must ensure that the beneficiaries of legal aid are effectively defended. Indeed, lawyers – representing a "liberal and independent profession"[66] – are expected to participate in the legal aid scheme, within the framework of the public service mission entrusted to the bars. The remuneration thus paid to such participants from public funds is inherently less than that to which they would otherwise be entitled. A lawyer can participate in the legal aid program by taking one of three different approaches: by accepting a direct solicitation from a future beneficiary of legal aid, by registering voluntarily in a collective organization established for this purpose by his or her bar association, or by being appointed *ex officio* (so-called "assignment") by the chairman of the bar.

Additionally, the bar associations serve to distribute payment to lawyers affiliated with the Legal Aid program (using endowments received from the Ministry of Justice); the CARPAs (funds managing barristers' pecuniary settlements) ensure at the level of each bar the payment of all compensations owed to lawyers for their activity within the legal aid program.

3.2.2 Financing of legal aid and budgetary aspects

Article 67 of the 1991 law on legal assistance designates the State as the basic actor with respect to legal aid. From a budgetary point of view, within the Justice mission, legal aid fulfills a basic function: "*Access to law and justice*". Each bar association receives from the State a global annual allocation, as a "contributory part to the legal aid missions performed by lawyers of the bar".

The forecast expenditure for this action in 2018 is € 478.9 million, financed by € 395.9 million from budget appropriations (+ € 31.7 million compared to the BIA of 2017) and € 83 million from extra-budgetary resources (tax revenues) allocated to the National Bar Council (stability compared to 2017).

The expenditure of the legal aid action concerns:

(A) legal aid *stricto sensu* (including mediation assistance), which is used to pay for: - lawyers via the CARPA, - other legal auxiliaries (notaries, bailiffs).

(B) the aid to pay lawyers who intervene: - during police custody, free hearings and detention hearings, - during depositions before the public prosecutor or in matters of mediation and penal composition; - in the area of assistance to prisoners.

(In the finance law, the aid to pay lawyers who intervene in assistance of prisoners amounts to an expense of € 4.6 million, a forecast of stable expenditure compared to the 2017 finance

[66] according to article 1 of the law n ° 71-1130 of December 31, 1971 which governs it

law. Legal aid takes charge of the intervention of the lawyer during disciplinary or isolation proceedings held by the Penitentiary Administration.)

(C) the endowments paid to bar associations by conventional means, of which contractualization is currently based on two mechanisms: - the contracts concluded with about forty bars having made commitments of objectives accompanied by evaluation procedures aimed at ensuring a quality defense of the beneficiaries of the legal aid, - the subsidies paid to about sixty bars for the material organization of assistance to persons in police custody.

The increase in the budget of legal aid is related to the significant social mobilization of lawyers over the last ten years. A double movement was noted to re-evaluate the basic value unit, which went from 26,5 euros to 32 euros[67], and to raise the income limits with respect to eligibility for legal aid.
The reform paths developed by the government are in the direction of a complete democratization of the legal aid system. To wit, the government is considering the development of a legal protection insurance program, the creation of dedicated lawyers' structures, and the establishment of a legal internship, comparable to what exists for medical students in hospitals. The finance inspectorate has been entrusted with a mission on these topics[68]. The Senate has recently taken a position in favor of a systematic recovery of legal aid in case of failure of the procedure on the merits.

As pointed out by the Inspectorate of Finance, which generally advocates for greater fiscal discipline, "*for the taxpayer, legal aid is an apparently relative burden: 5% of the Justice budget, which itself represents only 2% the general budget of the State.*"[69]

It should be noted that the general budget of the judicial services (Ministry of Justice) bears the cost of registry positions allocated to the BAJ (about 600 civil servants, representing a € 30 million cost), which does not appear in the budget for legal aid.

3.3. Emergence of a right to legal aid in penal facilities

3.3.1 Conditions in which the right to legal aid has been recognized

The question of the applicability of legal aid to prison litigation is closely related, historically, to that of lawyers' access to internal prison commissions (disciplinary commissions and preparatory administrative proceedings to placement in solitary confinement, mainly). In the early 2000s, prison law was faltering. The annual number of appeals to the courts was limited to a few. When the Parliament adopted a regulatory law (12 April 2000) – without the government realizing its consequences – that had the effect of authorizing the presence of lawyers in disciplinary committees, this assistance was outside the scope of legal aid. The lack of support through legal aid program for the intervention of lawyers in the disciplinary committees was challenged at the time. In particular, the Paris Bar challenged, without success, the texts of the prison administration defending this state of the law[70]. Finally, the Finance Act of December 28, 2001 (Article 151) inserted into the 1991 Act a new Article 64-3, providing

[67] Finance Law for 2017
[68] « Autant de justice, mais moins de juges et plus d'avocats » – Anne Portmann – Dalloz actualités, 23 octobre 2017
[69] Ref
[70] CE 20 March 2002, Paris Bar Association, No. 226803

for the principle of compensation for lawyers who assist detainees before the Disciplinary Committee. To understand this implementation of the legal aid system in prison litigation, it is necessary to interpret the process in two ways: 1) bearing in mind the universalist, characteristically French approach of the legal aid mechanism, and 2) understanding the strong pressure exerted on the government at the turn of the 2000s to defend the rights of detainees.

3.3.2 Explanation 1: the universalist approach factor

The mechanism of legal aid has long been established and has reached its present form in three stages: the law of 22 January 1851, law no. 72-11 of 3 January 1972, and law no. 91-647 of 10 July 1991. The right of access to justice for the poorest was instituted in France by the law of 1851, which introduced the principle of "judicial assistance" ("l'assistance judiciaire"). Conceived as a humanitarian duty towards the poor, judicial assistance was replaced in 1972 by "legal aid", granted under means conditions. While lawyers provided free legal aid assistance, the 1972 Act provided for remuneration in their favor.

Law No 91-647 of 10 July 1991 on legal aid, which entered into force on 1 January 1992, replaced legal aid with "jurisdictional aid" and introduced the principles of access to the law, including consultation support, as well as assistance in non-judicial proceedings. On the procedural level, the legislation remained faithful to the principle defined in 1851, of entrusting to specialized bodies the care of granting (or denying) legal aid.

Such developments resulted in a double consequence from the point of view of access to the judge. On the one hand, the intervention of the lawyer was perceived, according to the logic of the system, as falling within the realm of legal aid with respect to vocation. On the other hand, legal aid offices did not exercise substantive control over the merits of the judicial proceedings envisaged. This is why remedies with no prospect of success, given the very restrictive case law of the administrative courts at that time, were nevertheless able to be filed. As a result of this system, lawyers were able to get involved in the cause of the defence of prisoners' rights, largely thanks to the operational support of the principal NGO in the penitentiary field, the Observatoire International des Prisons (OIP-SF) [71].

3.3.3 Explanation 2: the scandal of the conditions of detention in 1999-2001

The speed with which the granting of legal aid was recognized by the legislature is also explained, beyond the preponderance of the universalist logic, by the judicio-political context of the time.

In June 1999, following a campaign by OIP-SF, Guy Canivet, the highest-ranking judicial magistrate in France, was commissioned by the government to issue a report on the independent control of prisons[72]. Setting the terms of the debate for the ten following years, Cavinet's report recommended a system of public penitentiary control, combining local voluntary delegates and professional controllers. Above all, it established as a precondition of such public involvement the complete reshaping of the applicable regulatory framework, breaking from the system which had, thus far, favored the broad discretionary power of prison personnel and the hands-off doctrine upheld by administrative courts. Further, it demanded the legal definition of a legal status of "detained citizen", which specified what restrictions on fundamental rights were to be allowed. To provide grounds for this demand, the report referred widely

[71] N. Ferran and S. Slama, Défendre en justice la cause des détenus, La Documentation française, 2013
[72] Canivet, 2000

to European law, while at the same time jurisprudential dynamics for a category of protection for prisoners had not yet been initiated by the Court of Strasbourg. Moreover, it made European jurisprudence relative to the "quality of the law" – implying accessibility and predictability of standards – a strategic argument. Canivet was also extremely critical of the position of the courts, which at the time essentially refused to control the measures of the prison administration. His report was equally reproachful with regard to the low interest on the part of judicial judges in the general conditions of prisons. Two parliamentary inquiry reports followed[73]. Although members of the Senate paid little attention to the rights of prisoners, those of the National Assembly backed many recommendations by Canivet, putting them on the legislative agenda[74].

3.4. Perimeter of the legal aid regarding prison litigation

3.4.1 Perimeter of the legal aid regarding prison litigation

Legal aid is applicable to all court proceedings before administrative courts. A number of penitentiary decisions cannot be challenged before the administrative court, being considered as internal measures (eg, transfer to an institution of the same category, refusal to grant work, cell changes…). Judicial review can only be considered if the decision involves a fundamental right (in practice, if the matter at hand can be regarded as an interference with a right guaranteed by the ECHR). There may therefore be a problem with unfounded grievances, as unfoundedness is a ground for refusing legal aid. Nevertheless, at this stage, the problem of the denial of legal aid with respect to judicial review has not been raised to any notable extent. Decisions on appeals regarding refusals of legal aid are not published. It is therefore difficult to know whether the refusal of legal aid constitutes an additional obstacle to the judge in the case of an actual breach of a fundamental right, beyond a system of rebuttable presumption that is difficult for the litigants and even for the practitioners to understand - judges and lawyers alike. The most obvious problem in this area is that the hierarchical recourse that must be presented against disciplinary sanctions before any referral to the administrative court is not covered by legal aid.
In the area of criminal law, as regards to the procedures for contesting the decisions of the investigating judge[75] on the legal restrictions of the accused before the investigating chamber of the Court of Appeal, two points must be mentioned: first, the indeterminate nature of these decisions (jurisdictional or non-jurisdictional) may create difficulties before the legal aid office; second, some of these decisions are not subject to appeal. (This is the case with respect to the prohibition to correspond, as well as those decisions relating to facility transfers. The latter represents an aspect which is of particular importance in the context of policies to combat radicalization, and which are being felt at all levels of prison and penitentiary institutions at the present time[76].)

3.4.2 Scope of legal aid granted for criminal proceedings in terms of dealing with prisoners' rights issues

[73] Mermaz and Floch, 2000; Hyest and Cabanel, 2000
[74] . A draft law had been prepared on this basis, but because of the upcoming Presidential election in 2002, which was dominated by the issue of insecurity, the government backtracked. During the preparatory work for the prison law of 24 November 2009 all reference to the Canivet Report were jettisoned (see Bérard and Chantraine, 2013)
[75] or of the prosecutor when there is no ongoing judicial investigation phase
[76] Ref CNCDH

In criminal matters, where the judgment is preceded by an investigation conducted by an investigating judge, legal aid covers, in the form of a lump sum, all the acts performed by a lawyer in defense of the interests of his client. Certain pleadings or procedural actions are subject to additional remuneration (first appearances before the judge, hearings on the extension of pre-trial detention, etc.). The texts also provide for the assumption of legal aid for appeals against jurisdictional orders of an investigating judge. Thus, proceedings before the investigating chamber (on appeal from the investigating judge's decisions) give rise to an additional fee (5 UV = 140 euros).

In the case of police custody, the payment is made under "aid to lawyer assistance" (and not “legal aid” in the strict sense) and varies according to a number of circumstances.

The contribution of the State to the remuneration of lawyers appointed *ex officio* during custody:

-61 euros, excluding taxes, for consultation at the beginning of the custody or during the extension of custodial measures;
-300 euros, excluding taxes, for consultation at the beginning of the custody and assistance of the person in custody during the hearings, cross-interrogations (“confrontations”), reconstitutions of the offense, and identification sessions of the suspects;
-150 euros, excluding axes, for consultation at the beginning of the extension of custodial measures, and assistance of the person in custody during the hearings, confrontations, reconstitutions of the offense and identification sessions of the suspects during this extension;

When a lawyer makes several interventions in a 24-hour period, the total amount of the contribution due is determined on the basis of the remuneration mentioned in the previous paragraphs, according to the nature of the intervention, within a limit of € 1,200 before taxes.
These scales are applicable to the remuneration of lawyers appointed *ex officio* intervening during customs custody or assisting a person apprehended in execution of a European arrest warrant or an application for extradition.

3.5. Scope of the compensation

Before the administrative courts, the remuneration for legal aid is presented as a lump sum, and thus covers the entirety of the procedural work performed. This amount is increased only in the event that an expert examination is ordered by the judge, with or without a visit to the crime scene (+9 UV/+5 UV), or when a trip to the scene is ordered by the court (+5 UV)[77].

In disciplinary matters, the remuneration (88 euros) relates to the presence of the lawyer at the disciplinary hearing. In the case of penitentiary isolation, the remuneration (88 euros) relates to the presence of the lawyer in the interview portion of the preparatory procedure[78].

As has been indicated, in criminal matters, the law provides for an overall remuneration for the assistance of a client in the context of an investigation (investigative phase conducted by an investigating judge). Added to this is the special remuneration for a number of acts, such as

[77] Decree No. 91-1266 of 19 December 1991 implementing Law No. 91-647 of 10 July 1991 on legal aid
[78] Ibid.

appearances before a judge, or hearings on pre-trial detention. There is no remuneration provided for acts performed by a lawyer before an investigating judge, or before the investigation chamber of the Court of Appeal, concerning the conditions of detention.

3.6. Eligibility to legal aid

3.6.1 Conditions relating to the person

The following may be eligible for legal aid[79]: nationals of the Member States of the European Union; foreigners (outside the EU) habitually and regularly residing in France. (Residence conditions may be exceptionally excluded when the applicant's situation "appears particularly worthy of interest in view of the subject of the dispute or the foreseeable costs of the proceedings".)

It seems in practice that the detention situation is assimilated to a regular stay in the territory.[80]

3.6.2 Resource conditions

A circular of the Ministry of Justice of 15 January 2018 sets the resource ceilings for admission to legal aid:
-€ 1,017 for full legal aid;
-€ 1,525 for partial legal aid. The State contribution is 55% if the resources are greater than € 1,018 and less than € 1,202, and 25% if resources are € 1,202 or over, up to 1,525 €.

These ceilings are increased by € 183.06 for the first two dependents and € 115.63 for the third dependent. The office must take into account the resources of all kinds to which the plaintiff has direct or indirect access or free disposal. It takes into account the external elements of the applicant's lifestyle, the existence of property (movable or immovable), and even non-productive income. Property whose sale or pledging would entail a serious disturbance to the plaintiff is not taken into account[81]. Such properties (movable or immovable) are excluded from the assessment of resources[82]. The same is true of a number of social benefits.

In addition, legal aid is subsidiary to legal insurance contracts[83]. However, these contracts rarely cover disputes that benefit from legal aid (family litigation, criminal litigation), so the principle of subsidiarity is rarely implemented[84].

3.6.3 Conditions relating to the admissibility and merits of the action

According to Article 7 of the 1991 Law, the action must not be manifestly inadmissible or unfounded, except in cases where, *inter alia,* assistance is sought by the defendant, the indicted party, the accused,

[79] 1991 Law, Arts 2 and 3
[80] Ref.
[81] L. 10 July 1991, Article 5
[82] Decree of 19 December 1991, Article 2
[83] Article 2 of the 1991 Act
[84] Rapport du Sénat sur la loi de finances de 2018

or the convicted. Decisions of admission or refusal to legal aid are independent of the merits of the case: the legal aid offices are not bound by the qualification given to the case by the application. The absence on the part of the applicant of any indication of the legal qualification does not preclude admission to legal aid[85]. In addition, in the matter of cassation, legal aid is refused to the applicant if no serious means of cassation can be raised[86].

Anyone admitted to legal aid can automatically maintain the benefit to defend himself in case of exercise of a remedy by his opponent in the same case[87]. On the other hand, it will be necessary to formulate a new request in case of exercise by the beneficiary of a remedy to which he is the applicant.

3.7. Choice of the lawyer

The beneficiary of legal aid is entitled to the assistance of a lawyer, whom he can choose. In the absence of such a choice or in the event of refusal by the chosen lawyer, a lawyer is appointed by the chairman of the bar[88]. The court must postpone its judgment until the appointment of a lawyer[89].

The president of the bar association at the Council of State and the Court of Cassation may refuse to appoint a lawyer *ex officio* when the proposed appeal is "manifestly without a reasonable prospect of success". This decision may be challenged before the Council of State (recourse dispensed from the Ministry of Law) who will then examine whether or not the appeal has any chance of success[90].

3.8. Application for legal aid

The formalities required to obtain legal aid are specified by Decree No. 91-1266 of 19 December 1991 (as amended) implementing the law on legal aid.

3.8.1 General provisions

Applicants for assistance file their case with the Legal Aid Office. Legal aid may be requested before or during proceedings.

Legal aid is requested by form[91]. It can be requested by the appointed lawyer in place of the beneficiary. The 1991 decree sets out the documents that must be attached to the application[92]. An applicant who receives the solidarity allowance for the elderly, or the active solidarity income[93], is exempted from justifying the insufficiency of his resources[94]. In practice, detained persons can generally claim legal aid

[85] Decree no. 91-1266, 19 Dec. 1991, article 49
[86] Law of 10 July 1991, Article 7
[87] L. n ° 91-647, 10 July 1991, art 8
[88] (L. n ° 91-647, July 10, 1991, article 25, paragraph 3.)
[89] CE, 24 March 1982, Katchetoff: Lebon, 718)
[90] CE, Sect., 22 Apr. 2005, No. 257406, Magerand)
[91] Form CERFA 12467 * 01 also available online on the website of the Ministry of Justice, www.justice.gouv.fr
[92] Dec. 19 Dec. 1991, Article 34
[93] The beneficiaries of the RSA before incarceration continue to receive benefits during the two months following initial detention.
[94] Article 4 of the 1991 Law

without taking a means test, by providing a "certificate of attendance" from the penitentiary facility, which is delivered by the prison registry[95]. The request is made through a file that is completed throughout the proceedings, and most often held by the lawyer who filed with the jurisdiction concerned[96]. The complete dematerialization of legal aid announced by the government[97] risks calling into question these practices, and significantly complicating detainee access to their laywers.

The documents to be attached to the application for legal aid (in the absence of an exemption by the Legal Aid Office, in consideration of the situation of detention) are:

- A certificate from the applicant's insurer or employer, upon declaration of a legal protection contract, specifying associated coverage (or lack thereof) and, if such coverage is provided, the amount of the guarantee ceilings and reimbursements of covered expenses, emoluments and fees;

- A copy of the applicant's latest tax notice;

- A declaration of resources, or – if the applicant receives an additional allowance from the National Solidarity Fund or the minimum income for insertion – any document justifying the benefit. The same applies to an asylum seeker benefiting from a temporary waiting allowance;

- If applicable, a copy of the decision against which the plaintiff intends to appeal;

- Proof of nationality declared by the production of any appropriate document;

- Proof of residence, subject to admission to legal aid on an exceptional basis;

- If applicable, the justification of the applicant's familial situation (national identity card or passport);

- If applicable, a letter of acceptance from the chosen lawyer, regarding the legal aid designation.

The assigned or appointed lawyer can also petition the legal aid office in place of the person he is assisting or has assisted[98]. In such a case, the assigned or appointed lawyer shall provide information on the economic and family situation of his client, as well as all other information and documents that he has given or has had given to him and, where applicable, a copy of the procedural documents relating to this situation. In the absence of such indications and documents, the lawyer shall provide a certificate, drawn up at his request by the registry, relating to the statements made at the hearing by the defendant on his economic and family situation.

The purpose of an applicant's claim or transaction must be indicated with a summary of the reasons of the dispute; and, where applicable, the court petitioned (or to be petitioned) of the case. However, the omission by the applicant of any indication of the legal characterization of the facts which are the subject of the proceedings, or of any mention of the competent court, does not preclude admission to legal aid[99]. The applicant may, in his application, indicate the name and address of the lawyer he has chosen and who has agreed to assist him with the legal aid. In this case, a letter of acceptance from the lawyer must

[95] Le Guide du prisonnier, OIP/Ed la Découverte, 2012
[96] Ibid.
[97] The dematerialization of legal aid is one of the four major IT applications projects under the Government's digital transformation program. The new legal aid management software package – the "SIAJ" project or "computerized monitoring of legal affairs" – is part of the overall framework involving the dematerialization of legal proceedings, and should eventually allow litigants to make their requests on-line.
[98] Article 37 of the 1991 Decree
[99] Dec. 19 Dec. 1991, Article 49

be attached[100]. The applicant will have to specify, if necessary, the amount of the fees which he has already paid to the auxiliary of justice.

The performance indicator included in the 2018 Budget Law calls for reducing to less than 10% the percentage of legal aid offices in which the average time taken to process legal aid applications exceeds 60 days. The average processing time in 2016 was 39 days.

3.8.2 Disciplinary and Isolation Procedure

In cases of disciplinary or isolation measures, the detainee shall request the assistance of a lawyer from the penitentiary clerk of the facility who, without delay, shall forward the application to the chosen advocate or, as the case may be, to the chairman of the bar in order to appoint a lawyer.

The clerk shall attach to this transmission a document giving the detained person's surname, first names, and date of birth, and, if applicable, the name of the chosen lawyer. Information, as the case may be, about the reason for the disciplinary proceedings and the date of examination of the file by the Disciplinary Committee is to be included as well; or, in matters of isolation, information about the subject of the contested measure and the date of examination of the file.

3.9. Evaluation and granting of applications for legal aid

3.9.1 The Legal Aid Office

The law of 10 July 1991 on legal aid provides that admission to legal aid, which may be requested before or during proceedings, shall be decided by a Legal Aid Office established at the seat of each court of law (the judiciary court of first instance).

The offices may be, where appropriate, organized into sections. A general section, responsible for examining applications for cases brought before the courts of first instance of the judiciary, exists in all locations. Three specialized sections may be added, if there is a court of appeal, an administrative tribunal or an administrative court of appeal in the district concerned[101].

Each office or section is chaired, as the case may be, by a judge of the judiciary court of first instance, the Court of Appeal, the Court of Cassation or the Council of State, appointed by the presidents of these courts. The chief clerk of these courts serves as the vice-president of the corresponding office or section[102]. When the bureau has sections, it is chaired by the president of the section "General"[103].

Each office or section includes, in addition to the president, two civil servants (tax services, social services), two legal assistants (a lawyer and a bailiff, appointed by their professional bodies), as well as a representative of the clients (designated by the CDAD). The persons concerned are appointed for a renewable period of three years. They are subject to professional secrecy rules.

[100] Dec. 19 Dec. 1991, 75
[101] L. of July 10, 1991, art. 19 Dec. 1991, article 6
[102] (L. of July 10, 1991, article 16)
[103] (Dec. 19 Dec. 1991, Article 7)

3.9.2 Processing

The office to which a person applies has the obligation to verify that his/her submitted file is complete. It may ask the applicant to produce any document – including original copies, if required – or any information, before the expiry of the application period. The office will handle the consequences of any lack of required materials within the given time. More generally, in order to verify that the applicant fulfills the required conditions, the office may "collect any information and have any hearings carried out", including that or those pertaining to the applicant himself. This power of inquiry is not specified by the texts; however, the office can turn to the state services and organizations which manage the applicant's social benefits, which a may in turn communicate to the office the materials requested by it[104]. When the application is filed in the course of proceedings, the office notifies the petitioned court .

The president of the office, branch, or division has the sole power to dismiss claims for an action that is manifestly inadmissible or unfounded, as well as to refuse applications from a person whose resources clearly exceed the admission limit[105]. In all other cases, the decisions are taken by the bureau or section, by a majority of votes of the president and members present[106]. In the matter of cassation, decisions are taken after examination of a report on the existence, or lack thereof, of a means of serious cassation[107].The office may decide either admission to full legal aid, admission to partial legal aid, rejection of the application for legal aid, or admission to provisional legal aid. In the event of rejection, the decision must specify the amount of resources available and the corrective measures taken, as well as the reasons for the rejection. The decision is notified to the applicant. Such notification must indicate the manner in which the person concerned can either appeal the decision rendered or request a new deliberation.

3.9.3 Provisional legal aid

Examination of applications by the sections of the competent Legal Aid Offices for administrative tribunals usually takes several weeks. The average processing time in 2016 was 39 days. The performance indicator included in the 2018 Budget Law calls for reducing to less than 10% the percentage of legal aid offices in which the average time taken to process legal aid applications exceeds 60 days.

Two flexibilities are provided for by law: First, the Vice-President of the Legal Aid Office can rule alone on applications that clearly do not present any serious difficulty[108]. Second, in cases of emergency, provisional admission to legal aid may be pronounced either by the president of the Legal Aid Office or the competent section of the office, or by the competent court or its president[109]. Provisional admission may also be granted "where the proceedings jeopardize the essential conditions of life of the person

[104] (L. of July 10, 1991, article 21)
[105] (22 of the law of 10 July 1991)
[106] at least two for all the offices or sections, and at least three for the offices established near the Court of Cassation and the Council of State.)
[107]Dec. 19 Dec. 1991, Article 47, paragraph 2.
[108] art. 20 of the 1991 law
[109] Ibid.

concerned, particularly in the case of forced execution involving the seizure of property or expulsion". It is requested "without requirement of form to the president of the office or section or the president of the court seized"[110]. The decision on provisional admission is immediately notified to the person concerned and is without appeal[111]. Provisional admission or refusal does not divest the legal aid office – which must in any case decide, within normal deadlines – of its responsibilities. The decision refusing legal aid after provisional admission produces the effects of a withdrawal decision[112].

3.9.4 Remedies

The refusal of legal aid may be contested within fifteen days from the notification of the decision to the person concerned[113]. The interruptive effect of the request for legal aid is maintained during this period. The appeal is made by simple declaration, delivered or sent by registered letter with acknowledgment of receipt, to the Legal Aid Office that issued the contested decision. It must contain, on penalty of rejection, a statement of the fact of appeal and the reasons on which it is based[114].

Appeals are referred to the first president of the Court of Appeal (or, when relevant, to the first president of the Court of Cassation for the decisions of the Legal Aid Offices within its jurisdiction). When an appeal is referred, the file is sent to the competent authority to rule on it. The applicant for legal aid is informed of the lodging of the appeal when he is not the author, and he may submit written observations. The decision ruling on the appeal is itself not subject to appeal[115]. An unjustified rejection of an application for legal aid may constitute a serious fault involving the responsibility of the State[116].

The bill of orientation and programming for the recovery of justice adopted by the Senate on October 24, 2017 provides for the effective filter (currently provided by Article 7 of the Law of July 10, 1991), which states that legal aid is granted to the person whose action does not appear manifestly inadmissible or unfounded. Previously, this mechanism was almost never applied in practice.

1) The draft bill would thus make it compulsory to consult a lawyer before submitting an application for legal aid, except in certain cases (actions for which the defendant is a defendant or, in criminal matters, applications for provisional admission to legal aid due to urgency).

2) The draft bill would also tighten the scrutiny of applicants' resources by making it compulsory for the Legal Aid Offices to consult the services or social organizations competent to assess the applicants' resources.

3) The draft bill aims to improve the rate of recovery of costs advanced by the State by entrusting such recovery to the Treasury. This concerns the recovery of sums paid to beneficiaries of legal aid, following decisions of aid withdrawal; or the recovery of sums from parties who lose, or are condemned to the cost of, their trials, since such parties are not beneficiaries of legal aid. Indeed, in practice, the withdrawal of legal aid is only rarely ordered – in

[110] Article 62 of the decree of 19 Dec. 1991
[111] Article 63 of the Decree
[112] Article 65 of the Decree
[113] Article 56 paragraph 1 of Decree No. 91-1266
[114] Dec. 19 Dec. 1991, Article 59
[115] L. of July 10, 1991, Article 23 ; Cass. Civ.2, Oct. 19, 2017, No. 16-24.686
[116] Civ 1, 14 Dec. 2004, No. 03-10.271

approximately 0.1% of the annual number of admissions - and, when it is, the sums are only recovered in 3 or 4% of cases[117].

3.10. Remuneration of legal aid lawyers

The amount and the terms of payment for lawyers must be fixed by the bar itself. The law encourages the bar associations to adjust the amount so that AJ's missions have the best quality-to-price ratio, from the points of view of the client, the lawyer and the taxpayer. The contribution of the State to the remuneration of certain missions may be increased by a maximum of 20% for the bars which have entered into commitments of objectives (which include certain procedures for the enforcement of sentences).

3.10.1 Amount of remuneration

The amount of the unit of value is fixed at 32 euros for missions involving legal aid[118]. For lawyers, the contribution results from the product of a unit of value multiplied by a coefficient that differs according to the nature of the procedure.

Before an administrative court, a lawyer presenting a case on the merits is paid 640 euros (20 UV). An urgent procedure before the administrative judge is worth 256 euros (8 UV). For criminal proceedings and further details, see *supra*, Section 2.4.

The 1991 Decree provides that the contributory portion paid by the State to a lawyer who is chosen or appointed to assist several persons in a proceeding based on the same facts, and claiming similar objects, is reduced[119].

It should be noted that the social security contributions of the lawyer (as an individual entrepreneur or member of a law firm), before tax, must be deducted from these remunerations, which significantly reduces net income received.

Scale of legal aid
Examples of coefficients applied to the UV according to the type of procedure:
- divorce by mutual consent: 27;
- court of first instance and commercial court, proceedings on the merits: 26;
- judicial procedure for release and supervision of psychiatric care measures: 6;
- criminal proceedings before an investigating judge: 50;
- correctional instruction with pre-trial detention: 20;
- proceedings to obtain convict’s consent for placement under electronic surveillance: 2.

[117] Rapport n° 33 (2017-2018) de MM. Jacques Bigot et François-Noël Buffet, fait au nom de la commission des lois, sur la proposition de loi organique pour le redressement de la justice, et sur la proposition de loi d'orientation et de programmation pour le redressement de la justice, p 54 et s.
[118] Article 135 of the law n ° 2016-1917 of the 29 December 2016.
[119] by 30% for the second case, by 40% for the third case, by 50% for the fourth case and by 60% for the following case. The scope of the reduction of the contributory part of the State, in case of "series of cases", extends to the case where the lawyer is appointed or chosen in the same instance or in several instances, since the conclusions produced (in demand or in defense) lead the judge to decide the same issues. The High Administrative Court considers that the lawyer carries out one and the same mission with regard to all the parties. The reduction of the State share therefore applies in administrative matters, in such a case, even in the context of separate instances, since they are based on the same facts (CE 18 Jan. 2017, no. 398 918).

Increases are possible, for example in the case of expert testimony, or by personal request of the judge; and they can be accumulated, within the limit of 16 UV. For instance, the increase when an adversarial debate or preliminary hearing of a convict in the presence of his lawyer takes place within a penitentiary establishment amounts to 1 UV.).

Source: Article 90 of Decree No. 91-1266 of 19 December 1991 implementing Law No. 91-647 of 10 July 1991 on legal aid

In the case of partial aid, the remuneration of the lawyer paid by the State decreases relative to the resources of the beneficiary of the aid; it is supplemented by fees freely negotiated between the lawyer and the beneficiary of the partial aid.

3.10.2 Process of payment

The sums due to the lawyer are settled on production of a certificate of mission's end, issued by the registry at the moment of the judge's decision, and ensuring both the completion of the mission and the application of the pay scales specified by legal guidelines. The lawyer may be remunerated by the beneficiary of the aid, or he may waive such remuneration and recover the compensation awarded to him by the court against the party liable for costs.

The Law of 10 July 1991 entrusted to the bar associations the management of funds paid by the State to compensate lawyers performing legal aid missions or missions relating to other types of intervention. The state allocates to each bar an annual endowment representing the participation of its members. This endowment is paid to the CARPA (Lawyers' Compensation Fund) located nearest the bar, which settles the fees due to the lawyers of the beneficiaries of the legal aid.

3.11. Support to non-native speakers

Prison standards do not provide for specific assistance to non-native speakers in applying for legal aid. Interested parties should contact the PAD.

3.12. Exemption of costs for the legal aid beneficiary

As a consequence of the granting of legal aid, the State assumes the responsibility of expenses which would otherwise fall to the beneficiary if he did not benefit from it[120]. These expenses include all costs relating to the proceedings, pleas or acts for which legal aid has been granted. The beneficiary is exempt from the payment, advance or deposit of these fees. The costs occasioned by the measures of inquiry are, if need be, advanced by the State[121].

It follows from Law No. 91-647 of 10 July 1991 and Article R. 761-1 of the Code of Administrative Justice that, when a losing party benefits from full legal aid, the costs of expert appraisal are assumed by the State[122].

[120] L. n ° 91 -647, July 10, 1991, article 24
[121] L. n ° 91-647, July 10, 1991, article 40
[122] CE, 30 Dec. 2016, No. 387354

3.13. Financial consequences of the failure of the proceedings for the legal aid beneficiary

The beneficiary of legal aid who loses a procedure is not exposed to pecuniary consequences, in the sense that the beneficiary is exempted from paying back to the public treasury the sums to which the State was exposed for the legal aid.

3.14. Options in the event that the legal aid beneficiary is not satisfied with his counsel

The beneficiary of legal aid may at any time reclaim his file and entrust the defense of his interests to another lawyer. The lawyer discharged in such a case may agree to share the payment of legal aid with his colleague, or otherwise solicit the payment of fees normally due at the discretion of the President[123].

The lawyer retains his independence in all circumstances and remains free from the defense strategy or related arguments, and may cease his intervention in case of disagreement with the client.

According to the general rule, disputes are decided by the chairman of the bar association, who can petition its disciplinary body.

4. ORGANIZATION OF BARS AND LAWYERS' ACTION IN DETENTION

4.1. Regulations of bars' involvement in legal support to detainees

The intervention of lawyers in detention involves two competing principles. First, the legal profession is liberal and independent. It is organized freely through its representative bodies (in particular the National Bar Council, or CNB). On the other hand, lawyers are "officers at the courts", and the Bar participates in a public service mission. Bar associations are required to provide legal assistance to anyone who requests it.

The conditions of the intervention of lawyers are, consequently, ensured at the level of each bar, according to the rules of procedure by which it operates. Volunteer lawyers provide, on a daily basis, legal duties in the context of criminal proceedings, duties which often include assistance missions in disciplinary proceedings.

4.2. Lawyers specialized in detention/penitentiary law

There are no special statutory qualifications for lawyers specialized in detention/penitentiary law (unlike criminal law specialization, for instance). There is no mandatory continuous training in prison law for criminal lawyers. Every lawyer registered with a bar association is required to complete a 20-hour

[123] Ref, Law 1971

continuous education requirement per calendar year, or 40 hours per two consecutive years. The lawyer is responsible for following up on his continuing education. He must declare to his bar association, before January 31 of each year, the conditions under which he has fulfilled his obligation for the past year, providing all the attendance certificates submitted by the training facilities. The lawyer is free to choose the topics of his continuing education (except during the first two years of practice, during which training courses in ethics are mandatory).

4.3. Practical arrangements for carrying out legal assistance missions

According to the Penitentiary Law of 24 November 2009, "detainees communicate freely with their lawyers". Visits from the lawyer to the accused or convicted person should in principle be unrestricted by virtue of the right to prepare one's defense. Neither a prohibition of communication decided by the investigating judge nor any disciplinary sanction or other measure shall prevent an accused person or a convicted person from communicating with his lawyer, in person or in writing. On presentation of a "license to communicate" indicating his credentials, the chosen or appointed lawyer meets the detainee in a special room in which the conversation cannot be listened to or controlled. The authority competent to issue the communication permit varies according to the prisoner's criminal status or the procedure for which the lawyer intervenes: It is the judge in charge of the investigation of the case if the detainee is in pre-trial detention or the prosecutor when the case is already sent to the court for trial. The lawyer's visits can take place every day at the times fixed by the rules of procedure "after the president's opinion", except in "exceptional circumstances" (for example, serious incidents affecting the operation of the establishment)[124].

5. ROLE OF NGOS, LEGAL CLINICS AND NATIONAL PRISON MONITORING BODIES

5.1. Capacity for these organisations to intervene in prison and to provide legal advice

5.1.1 NGOs

Jurists of associations holding a law degree are allowed to provide legal advice, according to the 1971 Law on Legal professionals.

Apart from the persons accredited to intervene within the framework of the PAD, such organizations are not authorized to access the penitentiary facilities on a regular basis. The lawyers of these organizations can only meet with the accused persons on the basis of an authorization issued individually by the judicial authority (investigating judge or prosecutor, as the case may be). If such authorization is granted, the visit takes place in ordinary conditions; that is to say, the correspondence is not confidential. Similarly, the correspondence is not subject to a special regime, and is subject to review by the judicial and penitentiary authorities[125].

5.1.2 Defender of Rights

[124] Article 25 of the Penitentiary Law of 24 November 2009; Articles R.57-6-5, R.57-6-6, R.56-6-13, R.57-7-45 and D.56 of the CPP; circulars of 27 March 2012 on the relations of detainees with their defense counsel and JUSE0340055C of 9 May 2003.
[125] Ref.

Provided for by the French Constitution and established in 2011, the Defender of Rights ("Défenseur des Droits", or DDD) oversees the protection of rights and freedoms by the various administrations of the government. The Defender of Rights is appointed by the French President of the Republic for a six-year term, after consideration of the opinions of the competent parliamentary commissions. The term is non-renewable and non-revocable. The Defender can act *ex officio* or upon request of any person, either to solve a dispute with an administration (mediation) or to denounce human rights abuses, and with particular attention paid to matters of "security ethics" (bullying by prison personnel, unjustified full body searches or cell changes, stolen or destroyed possessions, disproportionate use of force, etc.). As well as providing recommendations as to claims submitted, the Defender can lead "any communication and information action that it deems necessary", conduct research and publish reports on specific topics, and formulate recommendations. The Defender's power of injunction ostensibly gives its decisions a certain amount of compulsory force, but the fact is that it does not use this power indicates that such injunctions are not regarded as a means of redress according to the definition of the ECHR.

The office of the Defender of Rights is organised into three main sections: child rights, discrimination, and "security ethics". Each section has its own college, comprising volunteer members appointed for their knowledge or experience. Members can be consulted by the Defender on any new issue or case with a "specific scope" (for instance, in terms of security ethics, matters that have led to death or serious injury).

For its mediation activity, the Defender of Rights relies on volunteer delegates who can, in particular, "*investigate claims and assist in solving identified difficulties*". The law provides for one or more delegates to be appointed for each penitentiary establishment. In larger establishments, the delegates are present at one or more times during the week. In other establishments, prisoners can ask for an appointment, either by contacting the prison administration or the Defender of Rights directly. As of 1 June 2015, the office of the DDD numbered 250 paid officers and 397 local volunteer delegates.

The delegates are competent in cases of dispute with administrations external to the prison (if, for example, a prisoner considers that a decision of the penitentiary administration infringes on his or her fundamental rights, if a prisoner alleges discrimination, or if a prisoner faces difficulties in maintaining contact with his or her children.) Delegates can refer detainees to appropriate resources outside their facilities, mediate with administrations concerned, or convey defendants' allegations to central services in the case of a breach of ethics by a penitentiary. However, the Defender of Rights does not intervene to assist in the referral to the court in the context of such disputes[126].

The office of the DDD is therefore not strictly speaking a relay for the legal recourse of detainees, within the meaning of this project.

5.2. Dissemination of legal documents

On the authorization of the director of the penitentiary administration, associations can deliver books containing legal information, such as the *Prisoner's Guide*, to prison libraries. Associations can also send individual books to prisoners who requests them[127].

5.3. Legal action in court

[126] Ref.
[127] Réf.

The domestic courts recognize NGOs whose purpose is to defend the fundamental rights of detainees. The courts recognize that such NGOs have a quality and an interest in acting in support of proceedings brought by a detained person against a decision against the detainee[128], or challenging *in abstracto* the regulatory provisions[129] or legislative provisions[130] intervening in the penal or penitentiary field. The same is true for cases where NGOs act in the collective interest of prisoners within a penitentiary establishment (for example, to request the cessation of the practice of systematic integral searches at the end of prisoner visitation procedures)[131].

[128] Eg CE, 14. Dec 2007, Payet, n ° 306432
[129] eg EC, 17 Dec. 2008, OIP-SF, No. 293786
[130] Conseil Constit., n ° 2010-9 QPC 02 July 2010
[131] CE, June 6, 2013, OIP-SF , No. 368816