

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

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Part I: National standards

1. Cells

- a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

Pre- and post-trial detention:

A [circular, dated 16 March 1988](#), determines the size of cells for all detention facilities and the capacity of these cells:

The size of an individual cell is less than 11m². It is important to note that [French law does not determine the minimum size of a cell](#).

The size of a cell for two detainees is 11 to 14m².

The size of a cell for three detainees is 14 to 19 m².

The size of a cell for four detainees is 19 to 24m².

The size of a cell for five to ten detainees is 24 to 54m².

The calculation requirements spelled out by the CJEU in its *Dorobantu* ruling are not observed as the circular does not provide that the area occupied by sanitary facilities should not be taken into account.

Police custody:

Concerning police custody cells, Circular NOR/INT/F/04/00093/C of 23 July 2004 stipulates that individual police custody cells should have a total surface area of 7m². The surface area of shared cells is between 12 and 16m².

- b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

Pre- and post-trial detention:

The Code of Criminal Procedure ([Article D350](#)) provides that pre-trial and post-trial detention premises, and in particular those intended for accommodation, must meet the requirements of hygiene, taking into account the climate, particularly as regards the volume of air, lighting, heating and ventilation. In any room where prisoners are accommodated, windows shall be large enough for them to read and work in natural light. The arrangement of these windows shall allow fresh air to enter. Artificial light shall be sufficient to enable prisoners to read or work without impairing their vision. Sanitary facilities shall be clean and decent. They shall be suitably distributed, and their number proportionate to the number of prisoners ([Article D349](#)). However, according to the [report of the Senate enquiry commission](#), 'in the cells, the toilets are separated by a simple partition, barely one metre high, for "security" reasons: the detainee must be able to be seen at all times by the surveillance staff through the viewing window.

¹ For the CEU's calculation requirements please see: CJEU, [C128/18-*Dorobantu*](#) [GC], Judgment of 15 October 2019, oper. part.

Therefore, "the detainee is obliged to go to the bathroom in front of others, with no privacy... The height of the toilet partition is not, however, one of the rules laid down by the code of criminal procedure.' The same report underlines that there is no shower in the cell, which obliges the detainees to go to 'shared showers'.

According to Article 12 of the [Standard rules of procedure for detention establishments](#), annexed to Decree No. 2013-368 on the Standard rules of procedure for detention establishments (hereinafter - Standard rules of procedure for detention establishments), applicable to all types of detention, each detainee must have an individual bed and appropriate bedding, properly maintained and renewed to ensure cleanliness.

The Standard rules of procedure for detention establishments contain a specific provision for establishments for sentenced prisoners, according to which the detainee is authorised to arrange his or her cell in a personal manner, but must not damage the existing fixed or movable installations ([Article 46](#)).

Police custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 stipulates that individual police custody cells must be equipped with a bench made of solid materials, with a minimum size of 185X61 cm (mattress size) and a minimum height of 35 cm. The shared custody cell must include a concrete bench. A mechanical ventilation system, a heating system and a lighting system shall be installed. Wherever possible, openings for natural light should be provided. However, for safety reasons, the maximum size of the glazed area should not exceed 1m². This glazed area must be protected by a system of sealed grilles.

c) [Video-surveillance of cells](#): Are there any national standards for video-surveillance of cells? If so, what do they require?

Pre- and post-trial detention:

Article 58-1 of [Penitentiary Law No. 2009-1436 of 24 November 2009](#) as amended by Order No. 2018-1125 of 12 December 2018 provides that the prison administration may implement personal data processing relating to video surveillance systems of detention cells within all types of penitentiary institutions.

The purpose of these processing operations is to monitor under video surveillance the detention cells in which persons are placed in custody, subject to a solitary confinement measure, whose escape or suicide could have a significant impact on public order, given the particular circumstances that led to their imprisonment and the impact of these circumstances on public opinion.

These treatments ensure safety within the institution in the event of a risk of escape and the safety of the person in the event of a risk of suicide.

Such treatment may only be applied to detention cells housing persons remanded in custody, subject to a criminal detention order. It can only be used in exceptional circumstances.

The detained person is informed of the draft decision to place him or her under video surveillance and they have the opportunity to make written and oral submissions in an adversarial procedure. The detainee may be assisted by a lawyer on this occasion.

In urgent cases, the Minister of Justice may decide to place the detainee under temporary video surveillance if this is the only way to prevent the escape or suicide of the person concerned. The temporary placement may not exceed five days. After this period, if no decision to place the detainee under video surveillance taken in the conditions described above, the video surveillance measure shall be terminated. The duration of the provisional placement shall be deducted from the total duration of the video surveillance measure.

The placement of the detainee under video surveillance is subject to a specially reasoned decision taken by the Minister of Justice for a renewable period of three months. This decision is notified to the detainee.

The written opinion of the doctor working in the institution may be sought at any time, in particular before any decision to renew the measure.

The video surveillance system allows real-time monitoring of the person concerned. A screen fixed in the cell guarantees the person's privacy while allowing the reproduction of opaque images. The location of the cameras is visible.

All video footage from the video surveillance of the cells concerned is recorded in these processes.

There is no transmission or sound recording.

The recorded images subject to these processing operations shall be kept on digital media for a period of one month.

If there are serious reasons to believe that the detainee is at risk of committing suicide or of escaping, the head of the institution or his or her representative may consult the video-surveillance data for a period of seven days from the recording. After this seven-day period, the data may only be viewed in the context of a judicial or administrative investigation.

At the end of the one-month period, data which have not been transmitted to the judicial authority or an administrative investigation shall be deleted.

The Penitentiary Law limits the categories of persons who, by reason of their duties or for the needs of the service, have access to personal data.

The right to object provided for in Article 56 of Law No. 78-17 of 6 January 1978 on information technology, files and freedoms does not apply to the above-mentioned processing. The rights of access and rectification provided for in Articles 49 and 50 of the aforementioned Law No. 78-17 of 6 January 1978 shall be exercised with the head of the prison administration establishment where the video surveillance processing is implemented.

A poster posted at the entrance to the cell equipped with a video surveillance system informs of the existence of the system and the procedures for accessing and correcting the data collected.

The processing is subject to logging of consultations, creations and updates. These logs are kept for a period of three months. The processing is subject to logging of extractions of recorded video sequences. This logging is kept for a period of one year.

Police custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 provides that the video surveillance system of the police custody cell must take into account the need to preserve the privacy of persons when they use the cell's toilet facilities. The camera's view must be adapted to preserve, if possible, the blind spot necessary for this constraint. Partial masking of the camera's rear-view image is also possible.

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

Pre- and post-trial detention:

[Article D349 of the Code of Criminal Procedure](#) provides that imprisonment must be carried out in satisfactory conditions of hygiene and sanitation, as regards the layout and maintenance of buildings, the operation of economic services and the organisation of work, as well as the application of the rules of individual cleanliness and the practice of physical exercise.

According to [Article 11 of the Standard rules of procedure for detention establishments](#), applicable to all types of detention facilities, every prisoner shall make his or her bed and maintain his or her cell or place in a constant state of cleanliness. To this end, the prison administration shall provide the necessary cleaning products and objects. The shared premises and areas for communal use shall be cleaned daily, as necessary, by the detainees in the general service.

The following are prohibited:

throwing rubbish or any other object through windows, into cell toilets and washbasins, in corridors, passageways and other premises;

obstructing ventilation, airing and heating vents;

degrading or soiling the cells and common areas.

According to [Article 10 of the Standard rules of procedure for detention establishments](#), clothing and underwear should be kept clean and in good condition. Underwear must be washed with sufficient frequency to ensure cleanliness. According to the report of the [Senate Inquiry Commission](#), personal laundry is 'the responsibility of the prisoner and their family'. Detainees 'without families' have to wash their clothes in the cell or in the shower, and then dry them in front of the bars. The current trend is to provide laundry facilities for prisoners.

[Article 12 of the Standard rules of procedure for detention establishments](#) specifies that each detainee shall be provided with an individual bed and appropriate bedding, which shall be properly maintained and changed to ensure cleanliness. Bedding used by a detainee may not be reused without first being cleaned or disinfected, as appropriate. According to the [report of the Senate Inquiry Committee](#), sheets are normally washed every two weeks by the prison administration. A new occupant should also be provided with clean sheets and blankets on arrival.

Policy custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 only provides that cleaning and disinfecting are provided for in police custody cells without further clarification. However, the Minister of Justice pointed out in the circular of [23 May 2011 on the application of](#)

[the provisions relating to police custody in Law No. 2011-392 of 14 April 2011 on police custody](#), that particular attention should be paid to the maintenance of cells, the presence of sanitary facilities, adequate heating and ventilation, the provision of clean blankets and the measures taken to ensure the safety of the person in police custody.

- e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

Different standards applicable to police custody and all types of detention, including pre- and post-trial are mentioned above.

Article 7 of the Standard rules of procedure for detention establishments expressly states that cells in the isolation ward shall be furnished in the same way as cells in ordinary detention.

- f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) - e), including their respective legal basis.

Pre- and post-trial detention:

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

In its judgment no. 1400 of 8 July 2020, the Court of Cassation drew the consequences of the condemnation that the European Court of Human Rights pronounced against France due to the undignified conditions of detention in several penitentiary centres and remand prisons and the absence of recourse before the French authorities allowing for an effective remedy (judgment of 30 January 2020, JMB v. France, application no. 9671/15 and 31 others). The Court of Cassation has stated that it is for the judge to verify allegations of unworthy conditions of detention made by a detainee, provided that they are credible, precise, current and personal. In cases where the verifications thus undertaken establish the reality of the alleged infringement of the principle of dignity of the detainee without it having been remedied since then, the judge must order the release of the person by imposing, if necessary, house arrest with electronic surveillance or judicial control. This constitutes a reversal of the case law.

On the other hand, in a judgment of 19 August 2020, the Court of Cassation considered that a request for release justified by the inability of the prison administration to implement the social distancing measures prescribed by the Government in the context of prison overcrowding and the dilapidation of French prisons should be rejected. It

found that the applicant had not demonstrated that his life was exposed to a real and imminent risk due to his conditions of detention in the context of the epidemic.

In its judgment of 15 December 2020, the Court of Cassation considered that the applicant had not been placed in conditions unworthy of detention justifying his release, as he had a personal floor area of 3.83 m², in a cell with a window, equipped to meet basic needs, whose sanitary space had mould on one wall and was only closed by a sheet following the removal of the doors by the occupants who used them for other purposes, that assigned to the workshops, he spent 6.5 hours a day outside his cell, had daily access to the exercise yard and to the library once a week and had effective access to medical care, and that the administration justified various and repeated measures to combat the presence of pests.

The Council of State in its Decision 412010 of 3 December 2018 considered that conditions of detention contrary to human dignity constitute a fault causing continuous moral damage that it is incumbent on the State to compensate.

In its Decision 428747 of 4 April 2019, the Council of State ruled that in order to deal with the failure of the public authority to act, the interim relief judge may prescribe all measures likely to put an end to it (in principle, provisional).

On 19 October 2020, the Council of State specified in its Decision 439372 that injunctions relating to structural measures and public policy choices cannot be issued by the interim relief judge.

Police custody:

With regard to police custody, in Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered 'that it is the responsibility of the judicial authorities and the relevant judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect for the dignity of the person; that it is also the responsibility of the relevant judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and punish acts that violate the dignity of the person in custody and to order compensation for the harm suffered'.

Constitutional Council explained in its Decision 2020-858/859QPC of 2 October 2020 that it is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered. It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- [Integrating respect for dignity and fundamental rights into the design and organisation of places of deprivation of liberty](#);

- When several persons share the same place, the fittings and equipment must allow for their privacy to be respected. It is essential that, outside the periods when professionals are carrying out surveillance operations, the interior of rooms, gaols or cells should be impervious to view. Persons deprived of their liberty must have the possibility of personalising their living space and be accommodated in a suitable living space and have the necessary facilities to satisfy their basic needs, with due respect for each person.

- The material conditions of reception, waiting or stay must always allow persons deprived of their liberty to sit, lie down, rest and eat in dignified conditions. Any person spending the night in a place of confinement must be able to rest in satisfactory conditions of hygiene, space and comfort.

- Places of deprivation of liberty shall guarantee individual accommodation. The principle of individual accommodation may be waived where the persons concerned express the wish to do so and where this appears to be in their best interests and circumstances. In this case, the premises shall have space proportionate to the number of persons accommodated.

The number of persons accommodated in a place of deprivation of liberty shall never exceed the number of persons that the place is able to accommodate in a dignified manner. The use of makeshift sleeping arrangements cannot guarantee respect for the dignity of persons deprived of their liberty and should be prohibited.

Every place of deprivation of liberty shall have a volume, natural and artificial lighting, heating and ventilation in accordance with the usual standards for living or working quarters and taking into account the actual conditions of confinement. Persons deprived of their liberty may only be housed in premises with windows that allow a direct view of wider spaces.

Persons deprived of their liberty shall be provided with a bed adapted to their physical characteristics and state of health, as well as regularly renewed bedding. The accommodation must be provided with furniture that allows the occupants to sit down, to sit at a table and to store their personal belongings. Persons deprived of their liberty should live in an environment that allows and encourages interaction with others on a daily basis.

- Places of deprivation of liberty shall be kept in a good state of repair, maintenance and hygiene. They shall be clean from the moment of admission of persons deprived of their liberty, including when they are only temporarily accommodated there. They shall at all times have the means to report a problem of upkeep or maintenance which must be followed up. No person should be kept in a facility that does not comply with these recommendations. If the maintenance of the premises is not undertaken by the person in charge of the place concerned, the latter should provide the necessary hygiene and cleaning products. Particular attention should be paid to waste management: the number of bins and their capacity should be adapted to the number of persons accommodated and they should be collected at least daily.

- Respect for the right to privacy prohibits the use of permanent surveillance measures, including the constant use of video surveillance in cells, rooms and sanitary facilities.

- The Controller general of detention facilities noted that during the health crisis, some establishments continued to experience overcrowding, even with mattresses on the floor, making it impossible to observe barrier measures in the cells.

2. Sanitary conditions

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

Pre- and post-trial detention:

The Code of Criminal Procedure ([Article D 351](#)) provides that sanitary facilities must be suitably distributed in all types of detention facilities and their number proportionate to the number of prisoners.

[Toilets are part of the fixtures of a cell](#); therefore, each cell contains a toilet. In this regard, the Controller general of detention facilities has stated that '[the most frequent breach of privacy mentioned by detainees relates to the use of the toilets in the cell](#)'.

In the best of cases, the toilets are separated from rest of the cell only by a partition or a door with a height of approximately one metre, and which therefore does not go up to the ceiling. Therefore, when the cell is shared the detainee has to use the toilet in the immediate vicinity of fellow detainees and in the same single space which is also used for sleeping and eating. [The justification for this breach of the privacy of detainees is related to security](#): the detainee must be able to be observed in all parts of the cell by guards through the peephole in the door.

Police custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 stipulates that police custody cells must be equipped with a 'Turkish-style toilet [a hole in the ground for squatting] and a hand-washer. These facilities must be located at the back of the cell, opposite the side of the window. Some form of concealment of this equipment must be provided so that the privacy of individuals is respected.

- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

Pre- and post-trial detention:

According to [Article 12 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention establishments, each detainee must be able to have access to a shower at least three times per week. In addition, as far as possible, the detainee must be able to shower after a sports, work or vocational training activity.

In older establishments, due to the layout of the premises, the showers are generally shared. Each shower is partitioned. However, the partition between each shower can sometimes be insufficient. [Therefore, privacy is not necessarily guaranteed. This can lead certain detainees to forgo taking a shower.](#)

[In more recent establishments, it is recommended that each cell has a shower.](#)

[According to the Ministry of Justice](#), 'The actions undertaken in older establishments to partition off the sanitary spaces in the cells present technical difficulties of space on

certain sites. All new buildings are now equipped with an in-cell shower and include a washbasin outside the shower-sanitary area'.

Police custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 stipulates that police custody cells must be equipped with a wash-basin.

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

Pre- and post-trial detention:

The Code of Criminal Procedure ([Article D 351](#)) provides that sanitary facilities in all types of detention facilities must be clean and decent.

According to [Article 11 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention facilities, every prisoner shall maintain his or her cell or place of detention in a constant state of cleanliness. To this end, the prison administration shall provide the necessary cleaning products and related items. The shared premises and areas for communal use shall be cleaned daily, as necessary, by the detainees in the general service.

Police custody:

The Minister of Justice recalled in the [circular of 23 May 2011 on the application of the provisions relating to police custody of the law No. 2011-392 of 14 April 2011 on police custody](#), that particular attention should be paid to the maintenance of cells and the presence of sanitary facilities.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

Please see the standards applicable to all types of detention and to police custody above.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) - d), including their respective legal basis.

Pre- and post-trial detention:

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant them a hearing if they have sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge an appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

In its Decision 428747 of 4 April 2019, the Council of State ruled that in order to deal with the failure of the public authority to act, the interim relief judge may prescribe all measures likely to put an end to it (in principle, provisional).

On 19 October 2020, the Council of State specified in its Decision 439372 that injunctions relating to structural measures and public policy choices cannot be issued by the interim relief judge.

The Constitutional Council explained in its Decision 2020-858/859QPC of 2 October 2020 that it is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered. It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.

Police custody:

With regard to police custody, in Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered "that it is the responsibility of the judicial authorities and the competent judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect for the dignity of the person; that it is also the responsibility of the competent judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and punish acts that violate the dignity of the person in custody and to order compensation for the damage suffered.

- f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- Detainees shall have easy, permanent and independent access to a separate toilet and a drinking water point, day and night. The use of substitutes (urinal, sanitary bucket) is not acceptable. They must have access to a shower when going to bed and waking up.
- Detained persons shall have access to a toilet at all times, in conditions that preserve their dignity and privacy. Basic hygiene products adapted to their age, gender and state of health must be offered to them. Persons deprived of their liberty may have access to a shower, particularly before a hearing or an interview, or after a night out, provided they have the necessary toiletries.
- The privacy of persons held in places of deprivation of liberty should be preserved, particularly in sanitary facilities or shower rooms. Sanitary facilities should be separated from the rest of the room by a real partition and not be visible to staff; if showers are communal, they should consist of individual closed cubicles.

In his report '[The fundamental rights of persons deprived of their liberty in a health crisis](#)' the Controller general of detention facilities notes that there has never been a general provision of masks for detainees, and they have been forbidden to obtain them by other means or to wear them. Nor was the availability of masks in canteens envisaged. Very few establishments have made bottles of hydro-alcoholic gel available to all in convenient places, particularly in the corridors.

3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- Outdoors (within the boundary of the prison)?
 - Indoors in the common area?

Pre- and post-trial detention:

[All detainees must be able to walk in the open air for at least an hour each day.](#)

In certain circumstances, in particular under a disciplinary action, the detainee may have certain rights withdrawn. However, it is consistently recalled that they maintain their right to a one-hour walk in the open air. Therefore, a detainee placed in solitary confinement as a security/safety or protection measure cannot take part in group activities or walks; they must, nevertheless, have a one-hour walk in the open air ([Article R.57-7-62 of the Code of criminal procedure](#)). The same applies to a detainee who, as a sanction, is confined to their cell ([Article R.57-7-40 of the Code of criminal procedure](#)) or a disciplinary cell ([Article R.57-7-45 of the Code of criminal procedure](#)).

In practice, the [Controller general of detention facilities has noted that](#), due to prison overcrowding, detention establishments apply only the one hour daily walk minimum requirement. As such, in the prisons of Nanterre, Baumettes, Villepinte and Fleury-Mérogis, daily walks in the open air are alternated between the morning and afternoon, therefore a detainee who has a walk on Monday morning must wait until Tuesday afternoon for the next walk. Moreover, in certain establishments, equipment such as benches is insufficient taking into consideration number of detainees walking at the same time.

The rules relating to movement within detention establishments vary according to the type of establishment:

- In detention centres and prisons (*maisons d'arrêt and maisons centrales*), detainees are locked up in the cell at night. They can only move freely out of the cell during the day. Leaving the cell during the day must be justified by access to the walk in the open air, an activity, an appointment or a convocation. When moving around out of the cell, the detainee must be able to prove their identity and reason for leaving the cell ([Articles 42 and 47 of the Standard rules of procedure for detention establishments](#)).
- In detention centres, the regime is a little more flexible since the detention centre is mainly oriented to the social rehabilitation of the detainee. As such, the detainee is locked up in their cell at night. The detainee is accompanied by a supervisor for their movements during the day. Nevertheless, arrangements are

possible depending on the personality, health, the behaviour and the dangerous nature of the detainee:

- The times for opening cell doors may be extended
- The detainee can move freely in their accommodation unit during the period when cell doors are open
- Access to the activity room may be without supervision
- Access to showers may be easier ([Article 48 of the Standard rules of procedure for detention establishments](#)).

- In detention centres for detainees on lesser sentences which receive detainees whose sentence is less than two years, and when the detainee is subject of a day parole or work release measure, there may also be more flexibility for movement. As such, the detainee may be in possession of a key or key-card to their cell and may move freely within the establishment ([Article 49 of the Standard rules of procedure for detention establishments](#)).

In accordance with [Article 4 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, during the day, detained persons may be brought together for work, physical and sports activities, education, vocational training or religious, cultural or leisure activities. The period during which a prisoner is confined to a cell at night shall not exceed twelve hours.

[Article 15](#) specifies that the daily and weekly working hours shall not exceed those of the type of activity in question in the community. The hours shall include time for rest, meals, walks and educational and leisure activities.

Police custody:

Not applicable.

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

Pre- and post-trial detention:

According to [Article D459-2 of the Code of Criminal Procedure](#), subject to architectural constraints, the establishment must be equipped with outdoor and indoor sports facilities, which are compliant and multi-purpose, allowing the organisation of sports sessions and meetings. As far as possible, the location of the sports grounds shall be different from that of the exercise yards.

Police custody:

Not applicable.

c) Is there a national standard for time spent in cells? If so, what does it require?

Pre- and post-trial detention:

According to [Article 4 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, during the day, prisoners may be assembled for work, physical and sports activities, education, vocational training or religious, cultural

or leisure activities. The period during which a prisoner is confined to a cell at night shall not exceed twelve hours.

Police custody:

Not applicable.

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

Pre- and post-trial detention:

[Article 707 of the Code of Criminal Procedure](#) sets out a principle according to which 'the system for the execution of deprivation of liberty sentences aims at preparing the rehabilitation and reintegration of the offender in order to enable them to responsibly, and be respectful of the rules and the interests of society and to avoid re-offending'.

The implementation of the requirement set out in Article 707 of the Code of criminal procedure supposes that activities are offered in detention.

Therefore, for any detainee (either convicted or before conviction in criminal procedure) activities are offered. These activities are mentioned in [Articles 15 to 20 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, annexed to the decree of 20 April 2013. The activities offered are as follows: work, vocational training, teaching, social and cultural, physical and sporting activities.

Doing activities is in addition an obligation for convicted detainees. The [Penitentiary Law of 24 November 2009](#) requires convicted prisoners to carry out an activity proposed by the head of the establishment and the Director of the Prison and Probation Service. According to [Article R.57-9-1 of the Code of criminal procedure](#), the activity offered consists of a work, vocational training, educational, cultural, social or sporting activities. Nevertheless, more specifically for work and vocational training activities in detention, the obligation for the Prison authorities to offer this vocational activity is an obligation of means and not of results. That is to say, the Prison authorities are held to make every effort to offer work and training, but that they are not at fault if they are unable to offer such an activity ([Articles 717-3](#) and [D.432-2](#) of Code of criminal procedure). The fact that it is impossible for the prison authorities to offer an activity may be due to a lack of resources (financial or human), the layout of the buildings (for example certain vocational activities, such as furniture making, require a large room; the same applies to certain training activities), the non-conformity of the room intended for the activity with health and/or safety regulations, or the lack of a company interested in having prisoners work within the framework of an agreement with the prison authorities.

Police custody:

Not applicable.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

The rules as regards moving around may be more flexible depending on the type of detention establishment as specified in section 3. a). Time out of cell provisions are not applicable to policy custody.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) - e), including their respective legal basis.

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge an appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

In its Decision 428747 of 4 April 2019, the Council of State ruled that in order to deal with the failure of the public authority to act, the interim relief judge may prescribe all measures likely to put an end to it (in principle, provisional).

On 19 October 2020, the Council of State specified in its Decision 439372 that injunctions relating to structural measures and public policy choices cannot be issued by the interim relief judge.

The Constitutional Council explained in its Decision 2020-858/859QPC of 2 October 2020 that it is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered. It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- The authorities in charge of places of deprivation of liberty must take into account the enrolment of persons in any kind of educational programme in order to ensure continuity.
- All persons deprived of their liberty should have daily access to the open air, to get fresh air, to walk, to relax, to enjoy a natural environment or to engage in physical activity. Outdoor spaces should provide a view of the sky, shelter from the weather, seating and sanitary facilities. They should also have space and facilities for physical exercise.

- Persons deprived of their liberty should be offered a range of therapeutic, educational, recreational, sporting, artistic and cultural activities, the number and diversity of which should increase with the duration of the detention measure. These activities should be adapted to a variety of profiles according to physical abilities, state of health, interests, culture and language spoken. Anyone who wishes to do so should be able to take advantage of them.

The [Controller general of detention facilities](#) noted that all activities except for certain sports and general service work stations were suspended during the health crisis. He stressed that this interruption could only be temporary and that it was regrettable that the prison administration had not encouraged alternative practices.

4. Solitary confinement

a) What are the national standards regarding solitary confinement?

There are two types of solitary confinement for **pre-trial and post-trial detention**:

- Solitary confinement on a preventive basis, known as isolation, for reasons related to the safety or the protection of the detainee ([Article R.57-7-62 of the Code of criminal procedure](#)). Solitary confinement may be upon the order of the prison authorities ([Articles R.57-7-64 et seq. of Code of criminal procedure](#)) or at the request of the detainee ([Articles R.57-7-70 et seq. Code of criminal procedure](#)). The decision to use solitary confinement must take into account the personality of the detainee, their dangerous nature, vulnerability and health ([Article R.57-7-73 of the Code of criminal procedure](#)). The prison authorities can end a solitary confinement measure at any time ([Article R.57-7-76 of the Code of criminal procedure](#)). Within the framework of solitary confinement, the detainee keeps certain rights (information, visits, correspondence, culture, etc.) but, of course, cannot take part in group activities. The only possible exception for a group activity are those which may be organized by the head of the establishment for several detainees placed in solitary confinement ([Article R.57-7-62 of the Code of criminal procedure](#)). The doctor examines detainees placed in solitary confinement at least twice per week ([Article R.57-7-63 of the Code of criminal procedure](#)). Solitary confinement shall not be extended beyond two years unless, as an exception, solitary confinement is the only way to ensure the safety of the persons or the institution.
- Solitary confinement as a sanction. This form of solitary confinement can be done in the cell of the detainee ([Article R.57-7-38 of the Code of criminal procedure](#)) or in a disciplinary cell ([Article R.57-7-43 of the Code of criminal procedure](#)). Confinement in the cell or placement in a disciplinary cell are sanctions in response to behaviour by the detainee which contravenes the rules of the detention establishment. Confinement consists of placing the detainee in their cell on their own ([Article R.57-7-38 of the Code of criminal procedure](#)). The duration of confinement varies depending on the seriousness of the behaviour; it cannot exceed 30 days ([Article R.57-7-41 of the Code of criminal procedure](#)). Placement in a disciplinary cell consists of placing the detainee in a cell set up for this purpose in which the person is alone ([Article R.57-7-43 of the Code of criminal procedure](#)). The duration of confinement varies depending on the seriousness of the behaviour; it cannot exceed 30 days ([Article R.57-7-47 of the Code of criminal procedure](#)).

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

The list of detainees in solitary confinement (pre-trial and post-trial detention) shall be communicated daily to the team of the outpatient clinic of the institution. The doctor shall examine each detainee on the spot at least twice a week and as often as he or she considers necessary. The doctor shall, whenever he or she considers it necessary in view of the health of the detainee, give an opinion on the appropriateness of ending the isolation and forward it to the head of the institution ([Article R.57-7-63 of the Code of criminal procedure](#)).

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

These modes of solitary confinement apply to all detainees in pre-trial and post-trial detention.

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

Solitary confinement as a sanction:

In accordance with [Article R57-7-32 of the Code of Criminal Procedure](#), a detainee who intends to contest the penalty handed down to him/her by the disciplinary committee must, within fifteen days of the day on which he/she is notified of the decision, refer it to the inter-regional director of prison services prior to any legal appeal. The inter-regional director shall have a period of one month from the receipt of the appeal to respond with a reasoned decision. Failure to respond within this time limit shall be deemed to be a rejection decision.

Solitary confinement on a preventive basis:

Where a decision on initial involuntary segregation or an extension by decision of the administration is being considered, the detained person may prepare his or her observations, which shall be attached to the record of the proceedings. If the detained person makes oral observations, they shall be recorded in writing and signed by him or her. The head of the institution, after having obtained the written opinion of the doctor working in the institution prior to his/her proposal for an extension, shall send the record of the proceedings, together with his/her observations, to the inter-regional director of prison services when the decision falls within the competence of the latter or the Minister of Justice ([Article R57-7-64 of the Code of criminal procedure](#)).

According to Article [R 57-7-76 of the Code of Criminal Procedure](#), the solitary confinement measure may be terminated at any time by the authority that issued the measure or extended it, on their own initiative or at the request of the detainee.

Any decision to place or extend a person in solitary confinement shall be communicated without delay by the head of the prison to the enforcement judge in the case of a convicted person or to the magistrate in charge of the case file in the case of an accused person. Where solitary confinement is extended beyond one year, the head of the institution shall, prior to the decision, seek the opinion of the enforcement judge in the case of a convicted person, or of the magistrate responsible for the case file in the case of an accused person. The detained person may send the enforcement judge or the magistrate in charge of the case file any observations concerning the decision taken against him or her ([Article R57-7-78 of the Code of Criminal Procedure](#)).

The Council of State in its Decision 426772 of 7 June 2019 considered that the administrative judge of summary proceedings can order the suspension of execution of the decision to place in solitary confinement and decisions extending such placement.

However, particular circumstances justifying the ordering of a suspension to safeguard a fundamental freedom in the very short term should be established by the applicant (Council of State, Decision 435785 of 20 November 2020).

The Court of Cassation considered in its decision of 16 September 2020 that the person who is subject to a seclusion measure has an effective remedy, before the administrative interim relief judge, to contest it and request that it be ended.

Constitutional Council explained in its Decision 2020-858/859QPC of 2 October 2020 that it is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered. It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.

The Constitutional Council also sanctioned legislator for the absence of a judicial remedy against decisions to keep people in isolation or restraint in psychiatric hospitals (Decision 2020-844 QPC of 19 June 2020).

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The [recommendations](#) made by the Controller general of detention facilities are as follows:

- The measures of seclusion or isolation within a place of confinement entail a risk of serious harm to the physical or psychological integrity of the persons concerned. Therefore, the sole purpose of these measures can be the protection of the persons present in the institution or of the person who has been segregated. In the event that the protection of a person suffering from mental disorders justifies his or her removal from the institution, this may not exceed the time necessary to organise his or her medical care. Dismissal for disciplinary purposes should be prohibited, unless there is a legal provision that must be interpreted restrictively.

- Any measure of seclusion, including a medical decision, shall be subject to appeal to a competent authority, under conditions and within a time-limit that ensure respect for the rights of the defence and the principles of a fair trial. It must be an effective remedy, capable of putting an end to an unjustified measure, depriving it of legal effect and, where appropriate, ordering compensation.

The seclusion measures should be implemented in premises suitable for their purpose and in accommodation and care conditions that comply with chapter 4 of these recommendations. If, for any reason, the secluded person is not in a condition to care for him/herself or his/her immediate environment, it is the responsibility of the administration to put in place arrangements to remedy this.

This measure should never prevent the person concerned from having contact with his or her relatives. The seclusion measure must allow meetings with other persons deprived of their liberty, their carers or third parties as often as possible.

The measure of segregation shall not systematically deprive persons deprived of their liberty of the benefit of educational, therapeutic, recreational, artistic or cultural activities. No measure of segregation of juveniles shall result in the disruption of their access to education.

Access to health care shall be possible at any time in the place of confinement, in the medical service of the place of confinement or in hospital, at the request of the patient or as required by his or her state of health. A medical examination shall be carried out at the beginning of a seclusion measure. Health care staff shall ensure that there is no disruption in access to care or in the organisation of its continuity. Medical advice that a person's health condition is incompatible with the seclusion measure shall result in its immediate lifting. Health care staff should reassess the health status of segregated persons at regular intervals, appropriate to their personal circumstances and the terms of the measure. Caregivers should always have access to the seclusion area in order to know the conditions of accommodation of their patients. If they have not been able to observe these conditions, it is their responsibility to enquire about them in order to take them into account and to recommend to the authority in charge of the place concerned any changes in care that they consider necessary. Consultations and examinations should be conducted in a manner that respects the privacy of the patient. Carers and their patients should see and talk to each other without being seen or heard by non-medical staff. Medical examinations in disciplinary rooms should not be conducted through grilles.

-The exclusion must end as soon as the original reasons for it have disappeared.

5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons, including emergency care? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?

Pre- and post-trial detention:

The [law relating to public health and social protection of 18 January 1994](#) requires the setting up within each prison establishment of an outpatient consultation and care unit. This hospital unit is attached to a health facility, in accordance with [Article 46 of the Penitentiary Law of 24 November 2009](#), according to which health care for detainees is provided by health facilities in accordance with the Public Health Code.

According to [Article R.57-8-1 of the Code of criminal procedure](#), medical units in all detention facilities carry out:

- a medical examination at the request of the detainee, prison staff or a third party acting in the interest of the detainee;
- a systematic examination of detainees who are entering prison;
- a visit of detainees placed in a disciplinary cell or confinement;
- an examination of a detainee who requests a certificate not to work for medical reasons;
- a medical examination of a detainee who requests a change to the mode of detention; meaning a move to another part of the prison or change to detention due to a medical problem.

According to [Article D.348-1 of the Code of criminal procedure](#), 'the general inspectorate for social affairs and the services of the regional health agencies shall ensure the measures necessary to maintain the health and hygiene of prisoners in detention establishments. These services supervise inside detention establishments the implementation of the laws and rules relating to public health, and carry out all checks necessary for their role'.

[Article 46 of the Penitentiary Law](#) provides that a protocol signed by the director general of the regional health agency, the inter-regional director of prison services, the head of the prison and the director of the health establishment concerned shall define the conditions under which health professionals called upon to intervene in **emergencies** in prisons shall be provided with access to emergency care under conditions equivalent to those enjoyed by the general population.

[The roadmap "Health for people in custody 2019 - 2022"](#) has been signed by the Ministry of Justice and the Ministry of Solidarity and Health. It provides for 28 actions aimed at gaining a better understanding of the state of health and determining the health needs of people placed under justice; developing the promotion of their health throughout their journey; continuing to improve detection and screening; improving their access to care; organising the continuity of care on release from detention and the lifting of legal measures; and encouraging the cooperation of the actors involved in implementing the health strategy.

Police custody:

Any person placed in police custody may, at their request, be examined by a doctor appointed by the public prosecutor or the judicial police officer. In the event of an extension, they may request to be examined a second time. The doctor shall decide whether the person is fit to remain in police custody and shall make any useful observations.

At any time, the public prosecutor or the judicial police officer may on their own initiative appoint a doctor to examine the person in custody. In the absence of a request from the detainee, the public prosecutor or the judicial police officer, a medical examination is automatic if a member of the detainee's family so requests; the doctor is appointed by the public prosecutor or the judicial police officer. The doctor shall examine the person in custody without delay.

At each additional extension of the police custody, the person must be examined by a doctor appointed by the public prosecutor, the investigating judge or the judicial police officer. The doctor decides on the compatibility of the extension with the state of health (Articles 63-3 and 706-88 of the Code of Criminal Procedure).

b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

Pre- and post-trial detention:

[Article 46 of the Penitentiary Law](#) provides that health care for all detainees is provided by health care establishments under the conditions set out in the Public Health Code. The quality and continuity of care are guaranteed to prisoners under conditions equivalent to those enjoyed by the general population.

Staff working in the medical units in detention facilities are authorised to do this ([Article D.386 of the Code of criminal procedure](#)). People who are not authorised cannot work

in detention facilities. [Nevertheless, the head of a detention establishment can issue access authorizations](#), for example:

- hospital staff working temporarily, in particular to replace authorised hospital staff
- hospital staff who work periodically upon the request of the person in charge of the medical unit
- a specialized healthcare professional whose role is specific (chiroprapist, optician etc)
- staff providing care for persons in the event of loss of independence.

If the health of the detainee justifies such, they may be hospitalized in a health establishment ([Article D 391 of the Code of Criminal Procedure](#)). In this case, the prison head shall notify the director of the health establishment for them to take the necessary measures to receive the detainee by providing care in premises suitable for the custody of the detainee ([Article D.394 of the Code of Criminal Procedure](#)). A hospitalized detainee is regarded as continuing to carry out their sentence or provisional detention ([Article D.395 of the Code of criminal procedure](#)). The safety measures taken within the framework of hospitalization must maintain confidentiality of the care provided ([Article D.397 of the Code of criminal procedure](#)).

- c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainee? If so, what do they require?

Pre- and post-trial detention:

According to [Article 3 of the Standard rules of procedure for detention establishments](#), applicable to all types of detention facilities, on arrival, the detainee is given a medical examination as soon as possible. The right to medical confidentiality of the detained person as well as the secrecy of the medical consultation are guaranteed ([Article 13](#)).

Police custody:

[Article 63-3 of the Code of Criminal Procedure](#) provides that any person placed in police custody may, at their request, be examined by a doctor appointed by the public prosecutor or the judicial police officer. In the event of an extension, they may request to be examined a second time. The doctor shall decide whether the person is fit to remain in police custody and shall make any useful observations. Except in the event of insurmountable circumstances, the steps to be taken by the investigators pursuant to this paragraph must be taken within three hours of the time when the person made the request. Unless the doctor decides otherwise, the medical examination must be carried out out of sight or hearing of others in order to ensure respect for dignity and confidentiality.

At any time, the public prosecutor or the judicial police officer may on their own initiative appoint a doctor to examine the person in custody. In the absence of a request from the detainee, the public prosecutor or the judicial police officer, a medical examination is automatic if a member of the detainee's family so requests; the doctor is appointed by the public prosecutor or the judicial police officer. The doctor shall examine the person in custody without delay.

- d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

There are specific measures for the provision of specialized care (without distinguishing the type of detention facility)

- for vulnerable people.
- for elderly detainees. [For elderly detainees with a long-term illness, staff providing care may be authorized to assist in the event of a loss of independence \(assistance toileting, dressing etc\).](#)

Within the framework of the prevention of certain diseases, detailed attention must be paid to screening, particularly after the age of 50, of sensory deficiencies which may have an important impact on independence and quality of [life](#).

- for detainees with a disability. For detainees with a disability, the [Penitentiary law of 2009 provides in Article 50](#), that 'any detainee with a disability has the right to designate a helper of their choice. The prison authorities may oppose the choice of helper with a specifically grounded decision'. [Article R57-8-6 of the Code of Criminal Procedure](#) specifies that detainees who are permanently prevented, due to functional limitations of the upper limbs linked to a physical disability, from carrying out themselves acts related to care prescribed by a doctor may designate a carer, including another detainee, to enable them to carry out these acts, during the periods of absence of the care professionals. The head of the institution may object to the appointment of a carer, in particular for reasons relating to the safety of persons or the maintenance of order within the institution.

As regards consumption of addictive products (alcohol, tobacco, drugs):

The [Penitentiary law of 24 November 2009](#) establishes for detainees a right to an assessment as regards mind altering products, alcohol and tobacco. [This assessment is carried out upon the entry of the detainee by the detention facility medical unit, and follow-up is ensured throughout detention.](#)

In particular, as part of the overall care of persons with a dependence on a legal or illegal product, the general psychiatry sectors and the prison psychiatry sectors, in collaboration with the outpatient consultation and care units, promote and coordinate the work of teams from specialised care structures, particularly addiction care and prevention centres, within the prison ([Article D385 of the Code of Criminal Procedure](#)).

[Detainees who regularly use drugs or abuse alcohol can be the subject of a care injunction](#) (provided for in [Article 132-45 of the Criminal code](#)). The convicting court or the judge for the application of sentences can order the person convicted to fulfil several obligations, among which are a therapeutic injunction when it appears that the convict is a drug user, or habitually consumes excessive amounts of alcohol. As such, the person concerned has to meet a health professional to provide support and prevent addiction, or receive adapted socio-psychological support.

[A medical consultation upon departure is compulsory. This is done by a general practitioner from the medical unit. It may be supplemented by a consultation for addiction.](#)

As regards psychiatry:

In the event of a psychiatric disorder, the detainee can be hospitalized, possibly without their consent ([Article D.398 of the Code of criminal procedure](#)).

This hospitalization may be 24 hours a day within a public hospital. This hospitalization may also consist of day hospitalization and custody at night; within this framework, the hospitalization is carried out within the health unit in the detention facility. As such, the medical team from the health unit includes [staff specialized in psychiatry](#) and the detention establishment has an area dedicated to psychiatry ([Article D 372 of the Code of Criminal Procedure](#)).

In detention facilities, the psychiatry area must meet the mental health needs of detainees. Each prison psychiatry sector is attached to an institution providing care to detainees (in accordance with Article L.6111-1-2 of the Public Health Code) and placed under the authority of a psychiatrist, a hospital practitioner, assisted by a multidisciplinary team ([Article D.372 of the Code of Criminal Procedure](#)).

[A medical consultation upon departure is compulsory. This is done by a general practitioner from the medical unit. It may be supplemented by a psychiatry consultation.](#)

Furthermore, persons sentenced to socio-judicial monitoring, for whatever reason, as well as persons sentenced for the murder of a minor under the age of fifteen preceded or accompanied by rape, torture or acts of barbarism or for any of the offences referred to in Articles 222-23 to 222-32 and 227-25 to 227-27 of the Criminal Code, shall serve their sentence in penal establishments where appropriate medical and psychological monitoring can be provided ([Article R57-8-3 of the Code of Criminal Procedure](#)). The head of the institution shall report such persons to the psychiatrist working in the institution. He shall also make available to him/her a summary of the penal situation as well as the psychological or psychiatric reports kept in the detainee's personal file ([Article R57-8-4 of the Code of Criminal Procedure](#)). Prior to their release, these persons undergo a psychiatric examination in order to prepare, if necessary, appropriate aftercare ([Article R57-8-5 of the Code of Criminal Procedure](#)).

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

Pre- and post-trial detention:

Except in cases where they are outside a prison establishment, prisoners may not be examined or treated by a doctor of their choice, unless a decision is taken by the inter-regional director of prison services with territorial jurisdiction. In such cases, they shall bear the costs incurred by them as a result of such care ([Article D365 of the Code of Criminal Procedure](#)).

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

The rules relating to care in detention are common to the various detention regimes. They are distinguished from police custody above.

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) - f), including their respective legal basis.

Pre- and post-trial detention:

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

Police custody:

A person in police custody has the right to submit observations to the public prosecutor or, where applicable, to the liberty and custody judge, when this magistrate decides on the possible extension of police custody, with a view to ending this measure. If the person is not brought before the magistrate, they may make their observations known verbally in a report of the hearing, which is communicated to the magistrate before the magistrate rules on the extension of the measure ([Article 63-3 of the Code of Criminal Procedure](#)).

In Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered that '[i]t is the responsibility of the judicial authorities and the relevant judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect for the dignity of the person; that it is also the responsibility of the relevant judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and sanction conduct that violates the dignity of the person in custody and to order compensation for the damages suffered'.

Regarding the COVID 19 situation, the Council of State considered in its Decision 444741 of 8 October 2020 that it does not appear, in the light of the investigation, that

- the lack of provision of protective masks for detainees in enclosed and shared premises that do not involve contact with persons outside the establishment (also taking into account the security constraints to which the operation of penitentiary establishments is subject);

- the absence of protective masks for detainees in the exercise yards other than those reserved for new arrivals;

- the absence of systematic screening of all detainees at the Toulouse-Seysses penitentiary

would reveal, at the date of the present order, a failure to act that constitutes a serious and manifestly unlawful interference with fundamental freedoms.

Constitutional Council explained in its Decision 2020-858/859QPC of 2 October 2020 that it is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered. It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- Framework protocols between places of deprivation of liberty, health establishments and regional health agencies must be signed in order to clearly identify access to permanent care. When a medical problem is brought to the attention of a staff member on duty during the night, he or she must systematically contact a doctor or his or her superiors. In non-hospital establishments, any person who is ill must be able to communicate directly with the regulating medical service. Night escort services should be organised in such a way as to allow a person to be accompanied to hospital without delay and without restriction. The emergency services must also be able to intervene quickly and optimally in any place of deprivation of liberty.

- It is essential to improve the detection of mental illnesses among prisoners, by directing it towards the search for appropriate care and the definition of a care policy.

- the Controller General of detention facilities calls for 'a review of the provisions relating to criminal responsibility in situations of abolition or impairment of judgement in order to enable the judge to better understand the mental health of defendants.

- the Controller General of detention facilities recommends that 'prison supervisory staff should be systematically provided with basic training in the detection and management of mental disorder in the prison population'.

- the Controller General of detention facilities recommends 'encouraging the development of secure hospital facilities instead of the creation of medical prisons, in order to ensure that mentally disordered prisoners receive appropriate care, including long-term care'.

-A medical examination should be systematically offered at the beginning of the measure. It should be possible at any time, on request or in an emergency, within the place of deprivation of liberty, in a medical or hospital setting. If they are undergoing treatment or receiving special health care, persons deprived of their liberty must be able to continue it.

-Particular attention must be paid to the specific needs of people with disabilities or dependencies in order to provide them with appropriate accommodation and care. The premises must be adapted and allow access to all the facilities of their personal living space as well as to communal spaces. People with disabilities or dependency needs must be given specific assistance, particularly in terms of hygiene and the maintenance of their premises and linen.

-When their condition so requires, all persons deprived of their liberty must have access to a health care provider at all times and without delay, including on the advice of a third party, at night, at weekends or on public holidays, either on the spot, by direct contact, or in hospital. Access to care includes somatic and psychiatric care, including specialised and paramedical care. To this end, the intervention of specialists in places of deprivation of liberty must be sought. Failing this, persons deprived of their liberty must be able to leave the establishment to receive the care they need as soon as possible. Arrangements for remote consultations may be put in place. Care may not be postponed or cancelled solely because of security or organisational constraints.

-During the health crisis, the containment sector was created in prisons, as well as a fourteen-day lockdown for newly incarcerated persons to check whether or not they had the virus. Medical consultations were in most cases limited to emergencies, monitoring of detainees with chronic diseases or those identified as fragile and vulnerable.

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

Juvenile detainees are separated from adults.

Pre- and post-trial detention:

With regard to pre-trial detention, according to [Article 11 of the Order of 2 February 1945 relative to juvenile crime](#), it is specified that the minor is detained in a special section of the detention facility (*maison d'arrêt*) or in a specialised detention centre for juveniles. Detained juveniles are, as far as possible, kept in isolation at night. Juveniles between the ages of 13 and 16 may only be detained in facilities that guarantee complete isolation from adult detainees and the presence of educators in detention.

With regard to the carrying out of the sentence, [Article 20-2 of the Order of 2 February 1945](#) states that imprisonment is suffered by minors either in a special quarter of a penitentiary establishment or in a specialised penitentiary establishment for minors.

In the case of detainees who have just reached the age of majority, [Article R.57-9-11 of the Code of Criminal Procedure](#) states that 'in exceptional cases, a detainee who reaches the age of majority in detention may be kept in a juvenile area or a specialized juvenile detention facility. They should not have any contact with detainees under the age of sixteen. They cannot be held in such an establishment when over the age of eighteen years and six months'.

Finally, it seems interesting to note that there is a special regime for young adults, that is to say detainees under the age of 21. According to [Article D.521-1 of the Code of](#)

[criminal procedure](#), an adult detainee under 21 years old is placed in solitary confinement at night. Nevertheless, these detainees may be placed in a shared cell with detainees of their age for medical reasons or because of their personality.

Police custody:

Circular NOR/INT/F/04/00093/C of 23 July 2004 provides for police custody cells for minors. The use of this cell is similar to that of conventional police cells, except that it is intended for minors. The Circular stresses that the location of this or these premises should be as far away as possible from the individual and shared police custody cells in order to avoid any physical or visual contact. It is imperative that these cells be located close to the warden and the head of the station so that the police officers in charge of the procedure can exercise continuous surveillance of minors.

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

The rules specific to the juveniles apply to detainees under 18.

It should be noted that the above-mentioned attenuation stipulates that, in exceptional cases, a detainee who has reached the age of majority may remain in the area reserved for juveniles or in the specialized establishment for the first 6 months following reaching the age of majority ([Article R.57-9-11 of the Code of Criminal Procedure](#)).

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

The rules for separating juveniles and adults apply to all detention regimes and to policy custody.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) - c), including their respective legal basis.

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

The judge for children checks the conditions for the detention of minors. On this occasion, he or she shall inform the relevant authorities of any observations he or she may make in order to follow up on them ([Article D 177 of the Code of Criminal Procedure](#)).

In Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered 'that it is the responsibility of the judicial authorities and the relevant judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect for the dignity of the person; that it is also the responsibility of the relevant judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and sanction conduct that violates the dignity of the person in police custody and to order compensation for the damages suffered.'

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- The care of children in a place of confinement must always have an educational objective. It must be adapted to their needs and implemented by specially trained staff.
- Except where it is in the best interests of the child, accommodation for minors deprived of their liberty should always be individual.

The Controller general of detention facilities also formulated several recommendations in its report '[Fundamental rights of detained minors](#)'.

7. Special measures in place to protect detainees from violence

- a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? Do guards receive special training? Do detainees have access to a complaints mechanism?)

Pre- and post-trial detention:

[Article 44 of the Penitentiary law of 2009](#) states the principle of responsibility of the Prison authorities in connection with violence suffered by a detainee within all types of the detention establishments. As such, Article 44 sets out that 'the prison authorities must ensure each for detainee effective protection of their physical well-being in all communal and individual areas'.

[Article 12 of the Penitentiary Law](#) specifies that prison staff shall ensure that the physical integrity of persons deprived of their liberty is respected. They must use force, limiting it to what is strictly necessary, only in cases of self-defence, attempted escape or resistance by violence or physical inertia to orders given. In these cases, as well as in those provided for in Article [L. 435-1](#) of the Internal Security Code, they may use a firearm if absolutely necessary and in a strictly proportionate manner.

As such, tackling violence in detention consists mainly of monitoring by the Prison authorities and of *ex-post* sanctions.

It should however be noted that there exists in detention inter-phone or emergency button devices which can be employed in the event of violent acts. In France, the implementation of this system began in 2007 and the Controller general of detention facilities [recommends](#) developing the devices and maintaining existing ones in good working orders.

According to the report of the [Senate Inquiry Commission, violence against prisoners by prison guards is an exceptional case](#); 260 penalties were imposed on 26,000 people. Several heads of prisons have been suspended and managers have been demoted.

[The training booklet for prison guards states that violence is a serious disciplinary offence.](#)

Police custody:

With regard to police custody, [Article 63-5 of the Code of Criminal Procedure](#) provides that police custody must be carried out in conditions that ensure respect for the dignity of the person.

- b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

Pre- and post-trial detention:

[Article 44 of the Penitentiary law of 2009](#) states the principle of responsibility of the Prison authorities in connection with violence suffered by a detainee within any detention establishment (pre-trial or post-trial). As such, Article 44 sets out that 'the prison authorities must ensure for each detainee effective protection of their physical well-being in all communal and individual areas. Even in the absence of liability, the State is held to make good the damage resulting from the death of a detainee caused by violence committed in a detention establishment by another detainee. Any detainee who is a victim of an act of violence committed by one or more fellow detainees shall be the subject of a special monitoring and detention regime. They primarily benefit from an individual cell. When a detainee has committed suicide, the prison administration shall immediately inform their family or friends of the circumstances in which the death occurred and facilitate, at their request, the subsequent steps that they may take.

Violence in detention against another detainee is likely to be the subject of disciplinary action. According to [Article R.57-7-1-2 of the Code of Criminal Procedure](#), a detainee committing or attempting to commit physical violence against a detainee constitutes a disciplinary breach of the 1st degree. Beyond disciplinary action, the perpetrator of acts of violence can be the subject of criminal prosecution.

There exists in detention inter-phone or emergency button devices which can be employed in the event of violent acts. In France, the implementation of this system began in 2007 and the Controller general of detention facilities [recommends](#) developing the devices and maintaining existing ones in good working orders.

[Prison overcrowding and the lack of warders make the monitoring and the protection of vulnerable people difficult. As an illustration of this, certain detainees fear for their safety and may forgo going for a walk.](#)

Police custody:

With regard to police custody, [Article 63-5 of the Code of Criminal Procedure](#) provides that police custody must be carried out in conditions that ensure respect for the dignity of the person.

- c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

Pre- and post-trial detention:

There do not exist provisions specific to LGBTI detainees. They are in fact treated as being part of a broader category of vulnerable people. Indeed, LGBTI detainees may constitute a population likely to be more at risk of violence in detention than other detainees.

The Prison authorities have the possibility of preventing such violence towards vulnerable detainees, in particular by taking into consideration their personality and/or their situation (though this is not specific to LGBTI detainees) within the framework of being able to assign individual cells.

Firstly, upon arrival in detention, the person follows an arrival programme. This makes it possible to carry out certain formalities and to assess the situation of the new detainee. Reception of new detainees is carried out in a special area of the detention establishment. Individual cells are used unless the new detainee appears to be a suicide risk. The new detainee is met by the head of the establishment or by a director of prison services, an officer, a major or a first supervisor and the probation staff. The new detainee also has a medical examination. The presence of the detainee in the arrival area cannot exceed three weeks ([Articles 2 and 3 of the Standard rules of procedure for detention establishments](#)). This arrival period for the new detainee constitutes a form of observation period by the prison authorities. This observation period will make it possible for the head of the establishment to determine the provision of a cell for the new detainee.

Both at the time of arrival and during detention, it is the head of the establishment who decides on the provision of a cell for detainees; they may delegate this to a penitentiary major or a first supervisor, placed under their authority ([Article R.57-6-24 of the Code of Criminal Procedure](#)). The personality and the situation of the detainee are factors to be taken into account for the determination of their cell type. The detainee may ultimately make a request for a change of cell.

On assigning individual cells, [Article 44 of the Penitentiary law of 2009](#): 'Any detainee who is a victim of an act of violence committed by one or more fellow detainees shall be the subject of a special monitoring and detention regime. They primarily benefit from an individual cell.

Moreover, during detention, it is possible, as a safety or protection measure, to operate a system of isolation of a detainee upon their request or upon a decision of the Prison authorities ([Article R.57-7-62 of the Code of criminal procedure](#)). The opinion of the doctor in the detention establishment must be sought ([Articles R.57-7-64, R. 57-7-70 and R.57-7-73 of the Code of Criminal Procedure](#)).

Finally, it is possible to underline that, being frequently the subject of stigmatisation, and in particular to avoid violence against them, certain recommendations are made in connection with detainees presenting gender dysphoria. Thus, it is important to assign cells to transsexuals in the best of their interests: individually, placement in a detention

area for the care of vulnerable persons, placement in solitary confinement; while taking into account the imperatives of prison management. Moreover, throughout the course of care, protection of the physical and mental well-being of the person should be [ensured](#).

Police custody:

With regard to police custody, [Article 63-5 of the Code of Criminal Procedure](#) provides that police custody must be carried out in conditions that ensure respect for the dignity of the person.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

The rules applicable to all detention regimes and to police custody are distinguished above. It is possible, nevertheless, to quote a provision specific to prison (*Maison d'arrêt*). According to [Article 38 of the Standard rules of procedure for detention establishments](#), for some prisons (*Maisons d'arrêt*), 'if a detainee wishes to be paced in an individual cell but the internal distribution and number of detainees do not allow for this, they may submit to the head of the establishment a request to be transferred to the nearest prison (*Maisons d'arrêt*) allowing for such a placement'.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) - d), including their respective legal basis.

Pre- and post-trial detention:

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

Police custody:

A person in police custody has the right to present observations to the public prosecutor or, where applicable, to the liberty and custody judge, when this magistrate decides on the possible extension of police custody, with a view to ending this measure. If the person is not brought before the magistrate, he or she may make his or her observations known verbally in a report, which is communicated to the magistrate before they decide on the extension of the measure ([Article 63-3 of the Code of Criminal Procedure](#)).

In Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered "that it is the responsibility of the judicial authorities and the relevant judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect

for the dignity of the person; that it is also the responsibility of the relevant judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and sanction conduct that violates the dignity of the person in police custody and to order compensation for the damages suffered.'

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). For ease of reference a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- The procedures for responding to emergency calls and opening rooms or cells at night must allow for a rapid and systematic response. Violence can be reduced by involving people deprived of their liberty in their care; by training professionals; by providing dignified accommodation.
- The response to a violent act should be primarily an attempt at de-escalation. The use of force should only be a last resort when negotiation, persuasion and dissuasion have failed. It must follow a precise protocol, be justified, recorded in the person's file, written down in a register that can be consulted by the supervisory authorities, and be the subject of rapid information to the family and friends.
- It is the responsibility of the authorities in charge of places of detention to ensure the protection of the persons entrusted to them against all forms of violence. In this respect, it is their responsibility not to harm the physical or psychological integrity of the persons in custody, nor to allow it to be harmed. It is their responsibility to take all appropriate measures to prevent violence and to put an end to it, without the risk of resorting to it themselves. If the use of force proves necessary, it must be proportionate and controlled, that is to say, exclusive of all violence.

8. Women in detention

- a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

[Women prisoners are subject to the same regulations as men. Only pregnant women and mothers imprisoned with their children benefit from a specific detention regime "adapted" to their situation.](#)

[Women in late pregnancy and those with children are assigned to specific wards, called "nursery wards" or "mother-and-child wards".](#)

[Women are supervised by female staff only, and only male staff may be part of the management. The head of the institution must give permission for male staff to have access to the women's ward or institution.](#)

- b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

Pre- and post-trial detention:

Men and women are incarcerated in separate institutions or in separate quarters of the same institution. In the latter case, all arrangements shall be made to ensure that there can be no communication between them, with the exception of mixed activities organised on the basis of Article 28 of the Prison Law ([Article 1 of the Standard rules of procedure for detention establishments](#)).

[Two prisons are specifically reserved for them: the Rennes penitentiary centre and the Versailles prison. 59 establishments have specific separate quarters in men's prisons \(including 3 establishments for minors and 4 semi-liberty centres\).](#)

[It is possible, by way of derogation and subject to the maintenance of good order and the safety of the establishments, for activities to be organised in a mixed manner.](#)

- c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

Pre- and post-trial detention:

[Article 47 of the Penitentiary Law](#) provides that health care adapted to their needs must be provided to women prisoners, whether they are housed in a women's unit or in a dedicated facility. [There are no national standards for hygiene products for female detainees.](#)

- d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

Pre- and post-trial detention:

The Code of Criminal Procedure provides that all measures must be taken to ensure that pregnant prisoners receive appropriate medical care and that their delivery is carried out in the hospital service appropriate to their state of health ([Article D400](#)).

According to [Article 52 of the Penitentiary Law](#), all deliveries and gynaecological examinations must be unrestricted and conducted without the presence of prison staff, in order to guarantee the right to respect for the dignity of women in prison.

The procedures for the medical care of pregnant prisoners are determined in agreement with the Ministry of Health. According to the interministerial circular of 30 October 2012 and its leaflet on the care of pregnant women and children, when a pregnancy is revealed during detention, the woman should be supported in her choice (continuation of the pregnancy or recourse to voluntary termination of the pregnancy). During their pregnancy, pregnant women are provided with information adapted to their situation, specific support (early prenatal interview and seven birth preparation sessions) and compulsory prenatal medical monitoring adapted to the level of maternal and/or foetal risk. These procedures are carried out by a gynaecology-obstetrics team (doctor or midwife) in collaboration with the doctors in the health unit. The early prenatal interview, carried out as early as possible in the pregnancy, makes it possible to identify certain vulnerable situations that may require specialised referral at the beginning of the

pregnancy (psychological interview, addiction consultation). The procedures for emergency prenatal hospitalisation (including day hospitalisation) must be planned. The delivery must take place in a maternity hospital of a level appropriate to the possible risks diagnosed, either for the mother or for the foetus (with a neonatal or neonatal intensive care unit adjoining an adult intensive care unit). The mother's follow-up is ensured by the health care team of the health unit in connection with the obstetrics and gynaecology department. The woman must be accompanied in her choice to breastfeed or not. Physiotherapy sessions (pelvic and abdominal) can be offered. A postnatal consultation should be organised (no later than eight weeks after delivery) with consideration of postpartum contraception.

The health care team of the health unit is not responsible for the health care of these children, except in the event of an emergency, when it may have to intervene while waiting for the requested intervention. As the child is not detained, the mother is free to choose the doctor who treats her child. The doctor must have access to the institution. The mother must be able to attend the consultation.

Independently of the mother's freedom to choose her child's doctor, each prison concerned organises a care system that provides for:

- the regular intervention of one or more town doctors, whose services are offered to mothers;
- a center of pediatric emergencies;
- medical monitoring by the maternal and child protection service within the framework of an agreement with the penitentiary facility;
- the intervention of the infant and juvenile psychiatry sector.

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

Pre- and post-trial detention:

The Code of Criminal Procedure provides for appropriate conditions of detention for pregnant prisoners and prisoners who have kept their children with them ([Article D400-1](#)). Specially equipped premises are reserved for mothers who have kept their child with them.

In the case of remand prisoners, they may only be transferred to a facility with such premises with the agreement of the magistrate hearing the case ([Article D401 of the Code of Criminal Procedure](#)).

According to the inter-ministerial circular of 30 October 2012 and its leaflet on the care of pregnant women and children, all the establishments concerned must endeavour to improve their facilities and bring them into line with the following minimum reception conditions:

- hot water in the cells ;
- the cell should be arranged to allow the separation of the mother's space from that of the child (the television should be outside the child's space);
- location of the cells allowing the doors to be opened during the day;
- the area of the individual cell should be at least 15 m² ;
- the existence of an activity room where meals can be prepared;

<ul style="list-style-type: none"> - access to an outside yard when not in the presence of other prisoners. These establishments must also have the necessary equipment to receive a child: bed, bath, bottle warmer, etc.
<p>f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).</p>
<p>See section 8. e) for a specific provision regarding pre-trial detention.</p>
<p>g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) - f), including their respective legal basis.</p>
<p>In accordance with Article 34 of the Standard rules of procedure for detention establishments applicable to all detention types, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.</p> <p>Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.</p> <p>A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.</p>
<p>h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). For ease of reference a list of links can be found via the OPCAT Database.</p>
<p>The recommendations made by the Controller general of detention facilities are as follows:</p> <ul style="list-style-type: none"> - Deliveries must take place outside the place of deprivation of liberty. With the exception of a third party freely chosen by the mother in accordance with the rules of common law, no non-medical personnel may be present. The use of coercion must be prohibited. If a child is born in a place of deprivation of liberty, the nature of the institution must not appear on the child's civil status records. -The accommodation of infants with their detained mothers requires specific arrangements and supervision rules to ensure the protection of the child's physical and psychological integrity and respect for his or her well-being'.

9. Nutrition

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

Pre- and post-trial detention:

In accordance with [Article 9 of the Standard rules of procedure for detention establishments](#) applicable to all detention types, every prisoner shall be provided with a varied, well-prepared and well-presented diet, in accordance with the rules of dietetics and hygiene as regards both quality and quantity, taking into account his or her age, state of health, the nature of his or her work and, as far as possible, his or her philosophical or religious convictions. A prisoner who is ill shall be given the diet prescribed by a doctor.

b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

Pre- and post-trial detention:

In accordance with [Article 9 of the Standard rules of procedure for detention establishments](#) applicable to all detention types, the diet consists of three feedings per day. The two main meals are at least six hours apart.

Police custody:

[The Minister of the Interior notes](#) that a person in police custody must be given a hot meal in the hour before or after 12 noon and 7 p.m., unless there are special circumstances that must be mentioned in the procedure and in the custody register.

c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?

Pre- and post-trial detention:

Every prisoner shall be provided with a varied, well-prepared and well-presented diet, in accordance with the rules of dietetics and hygiene as regards both quality and quantity, taking into account his or her age, state of health, the nature of his or her work and, as far as possible, his or her philosophical or religious convictions. A prisoner who is ill shall be given the diet prescribed by a doctor ([Article 9 of the Standard rules of procedure for detention establishments](#)).

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc).

Pre- and post-trial detention:

There are no differences with regard to the standards when it comes to the various regimes in detention facilities.

Police custody:

Concerning police custody, according to the [circular of 23 May 2011 on the application of the provisions relating to police custody of law n° 2011-392 of 14 April 2011 on police custody](#), particular attention must be paid to the provision of a meal.

[The Minister of the Interior notes](#) that a person in police custody must be given a hot meal in the hour before or after 12 noon and 7 p.m., unless there are special circumstances that must be mentioned in the procedure and in the custody register.

- e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) - d), including their respective legal basis.

In accordance with [Article 34 of the Standard rules of procedure for detention establishments](#) applicable to all types of detention, any detainee may submit requests or complaints to the head of the institution, who shall grant him a hearing if he has sufficient cause.

Every detained person may ask to be heard by the magistrates and officials responsible for inspecting or visiting the establishment, without the presence of any member of the prison staff.

A detainee who is aggrieved by an administrative decision may lodge a hierarchical appeal with the inter-regional director or the Minister of Justice, depending on whether the decision was made by the head of the institution or the inter-regional director. This appeal does not have suspensive effect.

In Decision No. 2010-14/22 QPC of 30 July 2010, the Constitutional Council considered "that it is the responsibility of the judicial authorities and the relevant judicial police authorities to ensure that police custody is, in all circumstances, carried out with respect for the dignity of the person ; that it is also the responsibility of the relevant judicial authorities, within the framework of the powers granted to them by the Code of Criminal Procedure and, where appropriate, on the basis of the criminal offences provided for this purpose, to prevent and sanction conduct that violates the dignity of the person in police custody and to order compensation for the damages suffered.'

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language). For ease of reference a list of links can be found via the [OPCAT Database](#).

The recommendations made by the Controller general of detention facilities are as follows:

- Persons deprived of their liberty must be able to feed themselves at night; food and suitable equipment (kettles, hotplates, ovens or microwaves) must be available to them'.
- Persons deprived of liberty must be provided with a varied diet, taking into account their age, health, physical condition, religion and culture. Three meals a day shall be offered at regular intervals and at the customary times. Arrangements should be made to feed people who are absent from the institution at the usual mealtime. Food should be prepared and served hygienically in accordance with health

standards and nutritional recommendations. It should be provided in sufficient quantity and at an appropriate temperature.

- Persons deprived of their liberty must have access to drinking water at all times, without limitation of quantity and in conditions that preserve their dignity.

Part II: National jurisprudence

France, Cour de cassation, Case number 1400 (20-81.739),
ECLI:FR:CCAS:2020:CR01400, 8 July 2020

Thematic area	<i>Cells, sanitary conditions</i>
Decision date	8 July 2020
Reference details	France, Court of cassation (<i>Cour de cassation</i>), Decision n 1400, 8 July 2020, available at: www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/1400_8_45093.html
Key facts of the case	<p>On 29 November 2019, Mr. A. X. was indicted and placed in pre-trial detention by order of the liberty and custody judge of the Rennes judicial court at the Ploemeur penitentiary centre. By order of 28 January 2020, the liberty and custody judge rejected a request for release submitted by the person concerned. In his application, he denounced his detention conditions as constituting inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights, due to prison overcrowding, the lack of privacy and the resulting insecurity, and the alarming material conditions of detention. The decision of the liberty and custody judge was confirmed on appeal.</p>
Main reasoning/argumentation	<p>According to the recommendations of the European Court of Human Rights, the French State must adopt general measures to guarantee detainees conditions of detention in conformity with Article 3 of the Convention, to establish a preventive and effective remedy, combined with a compensation remedy, to redress the situation of which the detainees are victims and to prevent the continuation of an alleged violation.</p> <p>It is up to the national judge, who is responsible for applying the Convention, to take account of the ECHR judgment of 30 January 2020 (<i>JMB v. France</i>, application no. 9671/15 and 31 others) without waiting for a possible amendment of the legislative or regulatory texts.</p> <p>The judge has the obligation to guarantee to the person placed in undignified conditions of detention a preventive and effective remedy to prevent the continuation of the violation of Article 3 of the Convention. As the guardian of individual liberty, it is incumbent on them to ensure that pre-trial detention is, in all circumstances, carried out in conditions respecting the dignity of the person and to ensure that such deprivation of liberty is free from inhuman and degrading treatment. As a result, when the applicant's description of his personal conditions of detention is sufficiently credible, precise and current, so that it constitutes prima facie evidence of their undignified nature, it is then up to the investigating chamber, in the event that the public prosecutor's office has not previously had these allegations verified, and apart from its power to order the release of the person concerned, to carry out additional verifications in order to assess their reality. Once these checks have been carried out, if the investigating chamber finds that the principle of dignity has been violated and has not been</p>

	remedied in the meantime, it must order the person's release, subjecting him or her, where appropriate, to house arrest with electronic surveillance or to judicial supervision.
Key issues (concepts, interpretations) clarified by the case	Conditions of detention that infringe on the principle of dignity of the detainee may justify release.
Results (sanctions) and key consequences or implications of the case	<p>This judgment constitutes a reversal of the case law.</p> <p>Until now, the Court of Cassation has established the principle that a possible infringement of the dignity of the person due to the conditions of detention, if it is likely to engage the responsibility of the public authorities due to the poor functioning of the public service, cannot constitute a legal obstacle to the placement and maintenance in pre-trial detention (Crim., 18 September 2019, appeal n°19-83.950).</p> <p>According to Article 147-1 of the Code of Criminal Procedure, in all cases and at all stages of the proceedings, except where there is a serious risk of the offence being repeated, the release of a person placed in pre-trial detention may be ordered, either ex officio or at the request of the person concerned, when a medical assessment establishes that the person is suffering from a life-threatening condition or that his or her physical or mental health is incompatible with continued detention.</p> <p>In this judgment, the Court of Cassation drew the consequences of the condemnation that the European Court of Human Rights pronounced against France for the undignified conditions of detention in several penitentiary centres and prisons and the absence of recourse before the French authorities to remedy them effectively (judgment of 30 January 2020, JMB v. France, application no. 9671/15 and 31 others). The Court of Cassation has stated that it is for the judicial judge to verify allegations of unworthy conditions of detention made by a detainee, provided that they are credible, precise, current and personal. In cases where the verifications thus undertaken establish the reality of the alleged infringement of the principle of dignity of the detainee without it having been remedied since then the judge must order the release of the person by imposing, if necessary, house arrest with electronic surveillance or judicial supervision.</p> <p>Therefore, the investigating chamber wrongly ruled that a possible infringement of the person's dignity due to the conditions of detention could not constitute a legal obstacle to placing or keeping him in pre-trial detention. However, the judgment did not incur censure since the allegations made by Mr X. only referred to the general conditions of detention in the prison in which he was being held, without giving any details of his personal situation, and in particular the surface area and number of occupants of the cell, its interior layout or the number of hours of daily occupation.</p>
Key quotation in original language and translated into English with reference details	<p>16. Cependant, le 30 janvier 2020, la Cour européenne des droits de l'homme a condamné la France dans son arrêt JMB et autres, pour des conditions de détention contraires à l'article 3 de la Convention européenne des droits de l'homme, dans diverses prisons françaises (req. n° 9671/15 et 31 autres).</p> <p>17. Elle a également prononcé une condamnation sur la base de l'article 13 de la Convention.</p>

18. Après avoir constaté qu'il n'existait aucun recours préventif en matière judiciaire, la Cour européenne des droits de l'homme a estimé notamment que, si la saisine du juge administratif, en l'occurrence du juge du référé-liberté, avait permis la mise en oeuvre de mesures visant à remédier aux atteintes les plus graves auxquelles sont exposées les personnes détenues dans certains établissements pénitentiaires, le pouvoir d'injonction conféré à ce juge ne lui permet pas de mettre réellement fin à des conditions de détention contraires à la Convention.

19. Sur le fondement de l'article 46 de la Convention, elle a émis diverses recommandations, l'Etat français devant adopter des mesures générales aux fins de garantir aux détenus des conditions de détention conformes à l'article 3 de la Convention, d'établir un recours préventif et effectif, combiné avec le recours indemnitaire, permettant de redresser la situation dont les détenus sont victimes et d'empêcher la continuation d'une violation alléguée.

20. Les recommandations générales que contient cette décision s'adressent, par leur nature même, au Gouvernement et au Parlement. Cependant, il appartient au juge national, chargé d'appliquer la Convention, de tenir compte de ladite décision sans attendre une éventuelle modification des textes législatifs ou réglementaires.

21. A ce titre, le juge judiciaire a l'obligation de garantir à la personne placée dans des conditions indignes de détention un recours préventif et effectif permettant d'empêcher la continuation de la violation de l'article 3 de la Convention.

22. En tant que gardien de la liberté individuelle, il lui incombe de veiller à ce que la détention provisoire soit, en toutes circonstances, mise en oeuvre dans des conditions respectant la dignité des personnes et de s'assurer que cette privation de liberté est exempte de tout traitement inhumain et dégradant.

23. Il résulte de ce qui précède que, lorsque la description faite par le demandeur de ses conditions personnelles de détention est suffisamment crédible, précise et actuelle, de sorte qu'elle constitue un commencement de preuve de leur caractère indigne, il appartient alors à la chambre de l'instruction, dans le cas où le ministère public n'aurait pas préalablement fait vérifier ces allégations, et en dehors du pouvoir qu'elle détient d'ordonner la mise en liberté de l'intéressé, de faire procéder à des vérifications complémentaires afin d'en apprécier la réalité.

24. Après que ces vérifications ont été effectuées, dans le cas où la chambre de l'instruction constate une atteinte au principe de dignité à laquelle il n'a pas entre-temps été remédié, elle doit ordonner la mise en liberté de la personne, en l'astreignant, le cas échéant, à une assignation à résidence avec surveillance électronique ou à un contrôle judiciaire. »

« 29. Pour les raisons précisées aux paragraphes 16 à 24, c'est à tort que la chambre de l'instruction a jugé qu'une éventuelle atteinte à la dignité de la personne en raison des conditions de détention ne saurait constituer un obstacle légal au placement ou au maintien en détention provisoire.

30. L'arrêt n'encourt néanmoins pas la censure dès lors que les allégations formulées par M. X... ne faisaient état que des conditions générales de détention au sein de la maison d'arrêt dans laquelle il

est détenu, sans précisions sur sa situation personnelle, et notamment sur la superficie et le nombre des occupants de la cellule, son agencement intérieur et le nombre d'heures journalières d'occupation.

31. Le moyen doit, en conséquence, être rejeté. »

'16. However, on 30 January 2020, the European Court of Human Rights condemned France in its judgment *JMB et al. for detention conditions contrary to Article 3 of the European Convention on Human Rights in various French prisons* (req. n° 9671/15 and 31 others).

17. It also handed down a conviction under Article 13 of the Convention.

18. After noting that there was no preventive judicial remedy, the European Court of Human Rights considered, in particular, that although the referral to the administrative judge, in this case the judge for interim release, had made it possible to implement measures aimed at remedying the most serious violations to which detainees in certain prisons are exposed, the power of injunction conferred on this judge does not allow him to put an effective end to conditions of detention that are contrary to the Convention.

19. On the basis of Article 46 of the Convention, it made various recommendations that the French State should adopt general measures to ensure that the conditions of detention of detainees are in conformity with Article 3 of the Convention, to establish a preventive and effective remedy, combined with the compensation remedy, to redress the situation of the detainees and to prevent the continuation of an alleged violation.

20. The general recommendations contained in this decision are, by their very nature, addressed to the Government and Parliament. However, it is for the national courts, which are responsible for applying the Convention, to take account of the decision without waiting for any amendment of the laws or regulations.

21. In this respect, the court has the obligation to guarantee to the person placed in undignified conditions of detention a preventive and effective remedy to prevent the continuation of the violation of Article 3 of the Convention.

22. As the guardian of individual liberty, it is incumbent upon him or her to ensure that pre-trial detention is, in all circumstances, carried out in conditions that respect the dignity of the individual and to ensure that such deprivation of liberty is free from inhuman and degrading treatment.

23. It follows from the above that, where the applicant's description of his personal conditions of detention is sufficiently credible, precise and current, so that it constitutes prima facie evidence of their undignified nature, it is then for the investigating chamber, in the event that the public prosecutor's office has not previously had these allegations verified, and apart from its power to order the release of the person concerned, to carry out additional checks in order to assess the reality of these allegations.

24. The court may also order that the person be released from custody if it finds that the principle of dignity has been violated and that the

	<p>person has not been remedied in the meantime, or that the person be placed under house arrest with electronic surveillance or under judicial supervision, as appropriate. »</p> <p>29. For the reasons set out in paragraphs 16 to 24, the Investigating Chamber was wrong to hold that a possible violation of the dignity of the person due to the conditions of detention could not constitute a legal obstacle to the placement or maintenance of pre-trial detention.</p> <p>30. However, the judgment did not incur censure insofar as the allegations made by Mr X... referred only to the general conditions of detention in the prison in which he was being held, without giving any details of his personal situation, and in particular the surface area and number of occupants of the cell, its interior layout and the number of hours of daily occupancy.</p> <p>31. The appeal must therefore be rejected.'</p>
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France, Cour de cassation, Case number 1659 (20-82.171),
ECLI:FR:CCAS:2020:CR01659, 19 August 2020

Thematic area	<i>Cells, sanitary conditions</i>
Decision date	19 August 2020
Reference details	France, Court of cassation (<i>Cour de cassation</i>), Decision n 1659, 19 August 2020, available at: www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/1659_19_45203.html
Key facts of the case	On 19 March 2020, Mr A. X. applied to the investigating judge for release, arguing that his continued detention on remand, in the context of the French health crisis linked to the Covid-19 virus epidemic, in a prison with a prison overcrowding rate of 124.6 %, involving a high degree of cramping and where it is not possible to benefit from or respect the social distancing measures and barrier gestures imposed by the authorities, exposed him to a very high health risk infringing his right to life and dignity as constituting inhuman and degrading treatment in violation of Articles 2 and 3 of the European Convention on Human Rights. This request was rejected by order of the liberty and custody judge on 24 March 2020, confirmed on appeal.
Main reasoning/argumentation	The Court of Cassation considered that the argument based on the violation of Article 3 of the ECHR was unfounded, as since the applicant had not provided the judges with sufficiently credible, precise and current information on his personal conditions of detention in the prison where he was being held to constitute prima facie evidence of their undignified nature, the Investigating Chamber was not obliged to have the conditions of detention of the person concerned verified before confirming the rejection of his request for release. Furthermore, the person concerned had not previously alleged that his life had been exposed to a real and imminent risk due to his personal conditions of detention in the context of the Covid-19 epidemic in order to justify the violation of Article 2 ECHR.

Key issues (concepts, interpretations) clarified by the case	In the absence of a demonstration that the detainee's life was exposed to a real and imminent risk due to his conditions of detention in the context of the epidemic, his release is not justified.
Results (sanctions) and key consequences or implications of the case	The Court of Cassation rejected the appeal.
Key quotation in original language and translated into English with reference details	<p>8. D'une part, le moyen pris de la violation de l'article 3 de la Convention européenne des droits de l'homme est infondé, dès lors que, faute pour le demandeur d'avoir fait état devant les juges de ses conditions personnelles de détention au sein de la maison d'arrêt où il était détenu, de façon suffisamment crédible, précise et actuelle pour constituer un commencement de preuve de leur caractère indigne, la chambre de l'instruction n'était pas tenue de faire vérifier les conditions de détention de l'intéressé avant de confirmer le rejet de sa demande de mise en liberté.</p> <p>9. D'autre part, l'argumentation développée par le requérant au visa de l'article 2 de la Convention européenne des droits de l'homme ne saurait prospérer, l'intéressé n'ayant pas préalablement allégué que sa vie a été exposée à un risque réel et imminent en raison de conditions personnelles de détention dans le contexte de l'épidémie de Covid-19.</p> <p>8. On the one hand, the plea alleging a violation of Article 3 of the European Convention on Human Rights is unfounded, since, in the absence of the applicant's having stated before the judges his personal conditions of detention in the prison where he was held, in a sufficiently credible, precise and up-to-date manner to constitute prima facie evidence of their undignified nature, the investigating chamber was not required to have the conditions of his detention verified before confirming the rejection of his request for release.</p> <p>9. Secondly, the applicant's argument under Article 2 of the European Convention on Human Rights could not succeed, as he had not previously alleged that his life had been exposed to a real and imminent risk owing to the personal conditions of detention in the context of the Covid-19 epidemic.</p>

France, Cour de cassation, Case number 3105 (20-85.461),
ECLI:FR:CCAS:2020:CR03105, 15 December 2020

Thematic area	<i>Cells, sanitary conditions</i>
Decision date	15 December 2020
Reference details	France, Court of cassation (<i>Cour de cassation</i>), Decision 3105, 15 December 2020, available at: www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/3105_15_46164.html

<p>Key facts of the case</p>	<p>On 24 January 2019, Mr X. was remanded in custody and this measure was extended twice. The order of 8 July 2020 by which the liberty and custody judge ordered a new extension of pre-trial detention was challenged on the basis of the unworthy conditions of detention (the cell with a surface area of 13.30m², i.e. 11.5m² excluding sanitary facilities, intended to accommodate two people, in reality accommodates three people; mould is present in the sanitary facilities, the doors of which are missing; the detainees use a sheet to ensure their privacy; Mr. X. cannot use his access to a walk in view of the character of other detainees)</p>
<p>Main reasoning/argumentation</p>	<p>Where personal space is between 3 and 4 m², the spatial factor remains a significant consideration and other aspects of the conditions of detention are relevant to the assessment of compliance with Article 3. Where a detainee has more than 4 m² of personal space, the spatial factor is not in itself an issue and other aspects of his or her material conditions of detention remain relevant to the assessment of the adequacy of his or her conditions of detention under Article 3.</p> <p>The Court of Cassation noted that Mr X. occupies a cell designed for two people, occupied most of the time by three people, in which he has an individual space of over 3 m², in this case 3.83 m². The cell has a window, its equipment allows for the basic needs of daily life to be met, only one wall of the sanitary area has mould, the other walls are not damaged, if the swing doors normally closing this space are used for other purposes by the detainees, respect for privacy is ensured by the presence of a sheet used as a curtain, about which the person concerned has never complained, he is assigned to the workshops, he spends 6.5 hours a day outside his cell during the week, he also has access for one hour a day to the exercise yard and the library on Saturday mornings, even if he does not appear to go there, he has effective access to medical care, and the administration justifies the implementation of various and repeated measures to remedy the presence of pests resulting in particular from the throwing of rubbish.</p> <p>The Court of Cassation confirmed that these conditions of detention of Mr. X. cannot be considered unworthy and justify his release.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The assessment of the undignified nature of the conditions of detention in the event of prison overcrowding depends on a set of factors that must be considered as a whole.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The appeal was rejected.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>11. Pour confirmer l’ordonnance du juge des libertés et de la détention prolongeant la détention provisoire en écartant le moyen pris de conditions indignes de détention, l’arrêt attaqué énonce, au vu d’un rapport du chef d’établissement du centre pénitentiaire de Seysses du 27 août 2020, transmis suite à l’arrêt avant dire droit de la chambre de l’instruction en date du 4 août 2020 ayant ordonné des vérifications sur les conditions de détention de M. X..., que celui-ci occupe une cellule prévue pour deux personnes, occupée la plupart du temps par trois personnes, dans laquelle il dispose d’un espace individuel de plus de 3 m², en l’occurrence 3,83 m².</p> <p>12. Les juges ajoutent que la cellule dispose d’une fenêtre, que son équipement permet de satisfaire aux besoins essentiels de la vie quotidienne, que seul un mur de la partie sanitaire présente des moisissures, les autres murs n’étant pas dégradés, que si les portes</p>

	<p>battantes fermant normalement cet espace sont utilisées à d'autres fins par les détenus, le respect de l'intimité est assuré par la présence d'un drap utilisé comme rideau, ce dont l'intéressé ne s'est jamais plaint, qu'il est affecté aux ateliers, passe 6 heures 30 par jour hors de sa cellule en semaine, qu'il a en outre accès une heure par jour à la cour de promenade et à la bibliothèque le samedi matin, même s'il ne paraît pas s'y rendre, qu'il bénéficie d'un accès effectif aux soins et que l'administration justifie de la mise en place de mesures variées et réitérées pour remédier à la présence de nuisibles résultant notamment du jet de détrit.</p> <p>13. Ils en concluent que les conditions de détention de M. X. ne peuvent être considérées comme indignes et justifier sa mise en liberté.</p> <p>11. In order to confirm the order of the liberty and custody judge extending the pre-trial detention by dismissing the plea of unworthy conditions of detention, the judgment under appeal states, in the light of a report by the head of the Seysses penitentiary centre dated 27 August 2020, transmitted following the judgment before the court of first instance dated 4 August 2020 ordering checks on the conditions of Mr X.'s detention, that he occupies a cell designed for two people, occupied most of the time by three people, in which he has an individual space of more than 3 m², in this case 3.83 m².</p> <p>12. The judges added that the cell has a window, that its equipment allows for the basic needs of daily life to be met, that only one wall of the sanitary area has mould, the other walls not being damaged, that although the swing doors normally closing this space are used for other purposes by the detainees, respect for privacy is ensured by the presence of a sheet used as a curtain, about which the prisoner never complained, that he is assigned to the workshops, spends 6.5 hours a day outside his cell during the week, that he also has access to the exercise yard and the library on Saturday mornings for one hour a day, even though he does not appear to go there, that he has effective access to medical care, and that the administration can justify the implementation of various and repeated measures to remedy the presence of pests resulting in particular from the throwing of rubbish.</p> <p>13. They concluded that the conditions of Mr X's detention could not be considered undignified and justify his release.</p>
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France, Council of State (*Conseil d'Etat*), Case number 412010, ECLI:FR:CESEC:2018:412010.20181203, 3 December 2018

Thematic area	Cells. Sanitary conditions. Remedies
Decision date	3 December 2018
Reference details	France, Council of State (<i>Conseil d'Etat</i>), Decision N412010, 3 December 2018, available at: www.legifrance.gouv.fr/ceta/id/CETATEXT000037683080
Key facts of the case	Mr A. was incarcerated in the Rémire-Montjoly prison from 24 May 2011 to 6 August 2013. On 4 May 2016, he applied to the interim relief judge of the administrative court of French Guiana for a provisional payment of 9,100 euros to compensate him for the damages he considered he had suffered as a result of detention conditions that violated human dignity. He is appealing to the Supreme Court against the order of 30 March 2017 by which the interim relief judge rejected his request.

<p>Main reasoning/argumentation</p>	<p>Detention for more than nineteen months in shared cells that are undersized for the number of occupants, devoid of sufficient natural light, deprived of a ventilation system adapted to the climate of French Guyana and in conditions of privacy and hygiene that are notably insufficient characterise conditions of detention that are an affront to human dignity, constituting a fault that in itself causes moral damage that it is incumbent on the State to compensate.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The Council of State specified, in an innovative way, the conditions for calculating damages. While it considers that the four-year statute of limitations applies for the period that remains compensable, it takes into account the "continuous and evolving nature" of the damages. The compensation claim due "must be attached, insofar as it relates to it, to each of the years during which" the damages "were suffered".</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Council of State ordered the State to pay EUR 1,000 for the period of detention from 1 January to 31 May 2012, EUR 3,600 for the period from 1 June 2012 to 31 May 2013, and EUR 900 for the period from 1 June 2013 to 6 August 2013, i.e. EUR 5,500 in total.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>3. ...Seules des conditions de détention qui porteraient atteinte à la dignité humaine, appréciées à l'aune de ces critères et des dispositions précitées du code de procédure pénale, révèlent l'existence d'une faute de nature à engager la responsabilité de la puissance publique. Une telle atteinte, si elle est caractérisée, est de nature à engendrer, par elle-même, un préjudice moral pour la personne qui en est la victime qu'il incombe à l'Etat de réparer. A conditions de détention constantes, le seul écoulement du temps aggrave l'intensité du préjudice subi.</p> <p>5. Le préjudice moral subi par un détenu à raison de conditions de détention attentatoires à la dignité humaine revêt un caractère continu et évolutif. Par ailleurs, rien ne fait obstacle à ce que ce préjudice soit mesuré dès qu'il a été subi. Il s'ensuit que la créance indemnitaire qui résulte de ce préjudice doit être rattachée, dans la mesure où il s'y rapporte, à chacune des années au cours desquelles il a été subi. M. A...ayant saisi le tribunal administratif de la Guyane par une demande de référé provision enregistrée au greffe de la juridiction le 4 mai 2016, le juge des référés n'a donc pas commis d'erreur de droit en accueillant l'exception de prescription quadriennale opposée en défense par le garde des sceaux, ministre de la justice, s'agissant de la créance dont le requérant se prévalait sur l'Etat du fait de ses conditions de détention au centre pénitentiaire de Rémire-Montjoly pour la période allant du 24 mai au 31 décembre 2011.</p> <p>7. Il ressort des pièces du dossier soumis au juge des référés que M. A...a été détenu, pendant la période litigieuse, au sein de la maison d'arrêt du centre pénitentiaire de Rémire-Montjoly qui connaissait alors une forte surpopulation carcérale. Il a occupé, pendant cette période, plusieurs cellules collectives d'environ 12 m² qui, prévues pour deux personnes, accueillait trois détenus. Ces cellules ne comportaient qu'une fenêtre grillagée et située dans un coin de la pièce, cette ouverture étant insuffisante pour apporter une lumière naturelle dans l'ensemble de la cellule comme pour assurer la</p>

ventilation nécessaire au climat chaud et humide qui prévaut tout au long de l'année en Guyane. Ces mêmes cellules, dans lesquelles les détenus pouvaient être amenés à prendre leurs repas, étaient dotées de toilettes dont les modalités de cloisonnement interdisaient toute forme d'intimité et induisaient des risques en matière d'hygiène. En jugeant, au vu de l'ensemble de ces éléments que les conditions de détention de M. A... ne caractérisaient pas, dans les circonstances de l'espèce, une atteinte à la dignité humaine pour en déduire que l'obligation invoquée n'était pas non sérieusement contestable, le juge des référés du tribunal administratif de la Guyane a inexactement qualifié les faits soumis à son examen.

10. Il résulte de l'instruction que M. A...a été détenu, pendant plus de dix-neuf mois, dans des cellules collectives sous-dimensionnées pour le nombre d'occupants, dépourvues d'un apport de lumière naturelle suffisant, privées d'un système d'aération adapté au climat de la Guyane et dans des conditions d'intimité et d'hygiène notablement insuffisantes. Les effets cumulés de ces éléments, dont il ne résulte pas de l'instruction qu'ils seraient liés aux exigences qu'implique le maintien de la sécurité et du bon ordre, constituent, eu égard à leur nature et à leur durée, une épreuve qui excède les conséquences inhérentes à la détention. Ils caractérisent, par suite, des conditions de détention attentatoires à la dignité humaine constitutives d'une faute engendrant, par elle-même, un préjudice moral qu'il incombe à l'Etat de réparer. Il suit de là que l'obligation dont se prévaut M. A... à l'encontre de l'Etat, au titre de la période allant du 1er janvier 2012 au 6 août 2013, n'est pas sérieusement contestable.

3...Only conditions of detention that violate human dignity, assessed in the light of these criteria and the above-mentioned provisions of the Code of Criminal Procedure, reveal the existence of a fault that may engage the responsibility of the public authorities. Such an infringement, if it is characterised, is likely to cause, by itself, moral prejudice for the person who is the victim, which it is the State's responsibility to repair. Under constant conditions of detention, the mere passage of time increases the intensity of the harm suffered.

5. The moral prejudice suffered by a prisoner as a result of conditions of detention that violate human dignity is continuous and evolving. Moreover, there is nothing to prevent this harm from being measured as soon as it has been suffered. It follows that the claim for compensation arising from this loss must be attached, insofar as it relates to it, to each of the years during which it was suffered. Mr A...having referred the matter to the Administrative Court of French Guiana by a request for interim relief registered at the court registry on 4 May 2016, the interim relief judge therefore did not err in law in allowing the objection of the four-year statute of limitations raised by the Minister of Justice in his defence, with regard to the claim that the applicant was making against the State because of his detention conditions at the Rémire-Montjoly prison for the period from 24 May to 31 December 2011.

7. It is clear from the documents in the file submitted to the interim relief judge that Mr. A. was detained, during the period in question, in the Rémire-Montjoly prison, which was heavily overcrowded at the time. During this period, he occupied

	<p>several collective cells of approximately 12 m², which were designed for two people and accommodated three prisoners. These cells had only one window, which was grilled and located in a corner of the room, as this opening was insufficient to provide natural light throughout the cell and to ensure the ventilation necessary for the hot and humid climate that prevails throughout the year in French Guyana. These same cells, in which the detainees could be led to take their meals, were equipped with toilets whose partitioning methods prohibited any form of privacy and led to hygiene risks. In judging, in view of all these elements, that the conditions of detention of Mr. A... did not characterise, in the circumstances of the case, an infringement of human dignity, in order to deduce that the obligation invoked was not seriously contestable, the interim relief judge of the administrative court of French Guyana incorrectly qualified the facts submitted to his examination.</p> <p>10. It is clear from the investigation that Mr A. was detained, for more than nineteen months, in collective cells that were undersized for the number of occupants, lacked sufficient natural light, were deprived of a ventilation system adapted to the climate of French Guyana, and in conditions of privacy and hygiene that were significantly inadequate. The cumulative effects of these elements, which the investigation does not show to be linked to the requirements of maintaining security and good order, constitute, in view of their nature and duration, an ordeal that exceeds the consequences inherent in detention. They therefore constitute conditions of detention which are contrary to human dignity and constitute a fault which in itself causes moral damage which the State must make good. It follows that the obligation which Mr A... invokes against the State in respect of the period from 1 January 2012 to 6 August 2013 is not seriously disputable.</p>
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France, Council of State (*Conseil d'Etat, Juge des référés*), Case number 428747, ECLI:FR:CEORD:2019:428747.20190404, 4 April 2019

Thematic area	<i>Cells. Sanitary conditions. Time out of cell. Remedies</i>
Decision date	4 April 2019
Reference details	France, Council of State (<i>Conseil d'Etat</i>), Decision N428747, 4 April 2019, available at: www.legifrance.gouv.fr/ceta/id/CETATEXT000038366686
Key facts of the case	The French Section of the International Prison Observatory asked the interim relief judge of the administrative court of French Guiana to order all measures he deems useful in order to put an end to the serious and manifestly illegal infringements of the fundamental freedoms of the persons detained in the penitentiary centre of French Guiana and to pronounce various injunctions against the State. By order No. 1900211 of 23 February 2019, the interim relief judge of the administrative court of French Guiana ordered the prison administration, as soon as possible:- to guarantee effective access to indoor sanitary facilities in a satisfactory state of cleanliness for detainees who do not wish to use the outdoor showers,

	<p>- to prohibit full searches in the showers and to set up premises for this purpose,</p> <p>- to equip the cells of detention centre no. 4 with intercoms,- to take, as soon as possible, all measures likely to improve the material conditions of accommodation in the disciplinary and solitary confinement quarters and to undertake the renovation of the walking yards in these quarters;</p> <p>-send the French section of the International Prison Observatory and the Controller General of Places of Deprivation of Liberty an updated report on the measures taken.</p> <p>The Minister of Justice asked the interim relief judge of the Council of State to annul this order.</p>
<p>Main reasoning/argumentation</p>	<p>The Council of State considered that the injunction to ensure that prisoners who wish to have access to indoor showers in a satisfactory state of cleanliness is justified but does not guarantee respect for the dignity of detainees. It is therefore up to the administration to specifically dedicate a room for this activity, pending the possible construction of new facilities for this purpose. The absence of a partition separating the toilet from the rest of the cell in each cell is particularly detrimental to the dignity of the detainees. It is up to the administration to remedy this situation as soon as possible.</p> <p>Furthermore, the Council of State noted that the defect in the intercoms had already been repaired, the problem of water cuts had been resolved, rodent control operations were carried out monthly, the frequency of insect control operations had been doubled and the administration has concluded a public contract for the renovation of the neighbourhoods, including the repair of their courtyards.</p> <p>However, it is not the role of the interim relief judge ruling on the basis of Article L. 521-2 of the Code of Administrative Justice, when he or she has issued injunctions against the administration, to also impose an obligation to provide information.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The case was an opportunity for the Council of State to extend its power of injunction. It recalled that "in view of the vulnerability of the detainees and their situation of complete dependence on the administration, it is up to the latter (...) to take the appropriate measures to protect their lives and to avoid any inhuman or degrading treatment". In order to deal with the failure of the public authority to act, the interim relief judge may prescribe all measures likely to put an end to it. While "these measures must in principle be provisional in nature", this is not the case "when no such measure is likely to safeguard the effective exercise of the fundamental freedom that has been infringed". Furthermore, "having regard to his office", the interim relief judge "may also, where appropriate, decide to determine in a subsequent decision taken at short notice the additional measures which are necessary and which can also be implemented very quickly. In all cases, the intervention of the interim relief judge (...) is subject to the</p>

	<p>finding that the situation in dispute allows the necessary safeguard measures to be taken usefully and very quickly".</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Council of State annulled the contested order insofar as it enjoined the prison administration to equip the cells of detention centre no. 4 with intercoms; to take all measures likely to improve the material conditions of accommodation in the disciplinary and isolation quarters; to undertake the renovation of the walking yards of these quarters, and to communicate to the applicant association and to the Controller General of places of deprivation of liberty reports on the measures it was enjoined to take.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>2. Aux termes de l'article L. 521-2 du code de justice administrative : " Saisi d'une demande en ce sens justifiée par l'urgence, le juge des référés peut ordonner toutes mesures nécessaires à la sauvegarde d'une liberté fondamentale à laquelle une personne morale de droit public ou un organisme de droit privé chargé de la gestion d'un service public aurait porté, dans l'exercice d'un de ses pouvoirs, une atteinte grave et manifestement illégale. Le juge des référés se prononce dans un délai de quarante-huit heures ". Aux termes de l'article 22 de la loi du 24 novembre 2009 : " L'administration pénitentiaire garantit à toute personne détenue le respect de sa dignité et de ses droits. "</p> <p>3. Eu égard à la vulnérabilité des détenus et à leur situation d'entière dépendance vis à vis de l'administration, il appartient à celle-ci, et notamment aux directeurs des établissements pénitentiaires, en leur qualité de chefs de service, de prendre les mesures propres à protéger leur vie ainsi qu'à leur éviter tout traitement inhumain ou dégradant afin de garantir le respect effectif des exigences découlant des principes rappelés notamment par les articles 2 et 3 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Le droit au respect de la vie ainsi que le droit de ne pas être soumis à des traitements inhumains ou dégradants constituent des libertés fondamentales au sens des dispositions de l'article L. 521-2 du code de justice administrative. Lorsque la carence de l'autorité publique crée un danger caractérisé et imminent pour la vie des personnes ou les expose à être soumises, de manière caractérisée, à un traitement inhumain ou dégradant, portant ainsi une atteinte grave et manifestement illégale à ces libertés fondamentales, et lorsque la situation permet de prendre utilement des mesures de sauvegarde dans un délai de quarante-huit heures, le juge des référés peut, au titre de la procédure particulière prévue par l'article L. 521-2 précité, prescrire toutes les mesures de nature à faire cesser la situation résultant de cette carence.</p> <p>4. Il résulte de la combinaison des dispositions des articles L. 511-1, L. 521-2 et L. 521-4 du code de justice administrative qu'il appartient au juge des référés, lorsqu'il est saisi sur le fondement de l'article L. 521-2 précité et qu'il constate une atteinte grave et manifestement illégale portée par une personne morale de droit public à une liberté fondamentale, de prendre les mesures qui sont de nature à faire disparaître les effets de cette atteinte. Ces mesures doivent en principe</p>

présenter un caractère provisoire, sauf lorsqu'aucune mesure de cette nature n'est susceptible de sauvegarder l'exercice effectif de la liberté fondamentale à laquelle il est porté atteinte. Le juge des référés peut, sur le fondement de l'article L. 521-2 du code de justice administrative, ordonner à l'autorité compétente de prendre, à titre provisoire, une mesure d'organisation des services placés sous son autorité lorsqu'une telle mesure est nécessaire à la sauvegarde d'une liberté fondamentale. Toutefois, le juge des référés ne peut, au titre de la procédure particulière prévue par l'article L. 521-2 précité, qu'ordonner les mesures d'urgence qui lui apparaissent de nature à sauvegarder, dans un délai de quarante-huit heures, la liberté fondamentale à laquelle il est porté une atteinte grave et manifestement illégale. Eu égard à son office, il peut également, le cas échéant, décider de déterminer dans une décision ultérieure prise à brève échéance les mesures complémentaires qui s'imposent et qui peuvent également être très rapidement mises en oeuvre. Dans tous les cas, l'intervention du juge des référés dans les conditions d'urgence particulière prévues par l'article L. 521-2 précité est subordonnée au constat que la situation litigieuse permette de prendre utilement et à très bref délai les mesures de sauvegarde nécessaires.

6. Il résulte de ce qui est indiqué au 4. ci-dessus qu'il ne relève pas de l'office du juge des référés statuant sur le fondement de l'article L. 521-2 du code de justice administrative, lorsqu'il a prononcé des injonctions à l'égard de l'administration, de mettre également à sa charge une telle obligation d'information. La garde des sceaux, ministre de la justice est donc fondée à soutenir que c'est à tort que, par l'ordonnance attaquée, le juge des référés a enjoint à l'administration de communiquer à l'association requérante et au Contrôleur général des lieux de privation de liberté des rapports sur les mesures qu'il lui est enjoint de prendre par l'ordonnance attaquée ainsi que sur les mesures qu'elle a prises unilatéralement.

2. Under the terms of Article L. 521-2 of the Code of Administrative Justice: "Upon receipt of a request in this regard justified by the urgency of the matter, the interim relief judge may order all measures necessary to safeguard a fundamental freedom which a legal person under public law or a body under private law responsible for the management of a public service would have infringed, in the exercise of one of its powers, in a serious and manifestly illegal way. The interim relief judge shall decide within forty-eight hours. Under the terms of Article 22 of the law of 24 November 2009: "The prison administration guarantees all detainees respect for their dignity and their rights. "

3. In view of the vulnerability of prisoners and their total dependence on the administration, it is up to the latter, and in particular the directors of prisons, in their capacity as heads of department, to take the appropriate measures to protect their lives and to avoid any inhuman or degrading treatment in order to guarantee effective compliance with the requirements arising from the principles recalled in particular by Articles 2 and 3 of the European Convention for the Protection of Human

Rights and Fundamental Freedoms. The right to respect for life and the right not to be subjected to inhuman or degrading treatment constitute fundamental freedoms within the meaning of the provisions of Article L. 521-2 of the Administrative Justice Code. When the failure of the public authority to act creates a clear and imminent danger for the life of persons or exposes them to be subjected, in a clear manner, to inhuman or degrading treatment, thus seriously and clearly illegally infringing these fundamental freedoms, and when the situation allows for useful safeguard measures to be taken within forty-eight hours, the interim relief judge may, under the special procedure provided for in the aforementioned Article L. 521-2, prescribe all measures likely to put an end to the situation resulting from this failure.

4. It follows from the combination of the provisions of Articles L. 511-1, L. 521-2 and L. 521-4 of the Code of Administrative Justice that it is up to the interim relief judge, when he or she is seized on the basis of the aforementioned Article L. 521-2 and finds a serious and manifestly unlawful infringement of a fundamental freedom by a legal person governed by public law, to take measures likely to eliminate the effects of this infringement. These measures must in principle be provisional, except where no such measure is likely to safeguard the effective exercise of the fundamental freedom being infringed. The judge of summary proceedings may, on the basis of Article L. 521-2 of the Code of Administrative Justice, order the competent authority to take, on a provisional basis, a measure of organisation of the services placed under its authority when such a measure is necessary to safeguard a fundamental freedom. However, the interim relief judge may only order, under the special procedure provided for by the aforementioned Article L. 521-2, emergency measures which appear to him to be likely to safeguard, within a period of forty-eight hours, the fundamental freedom which is being seriously and manifestly infringed. In the light of its office, it may also, if necessary, decide to determine in a subsequent decision taken at short notice the additional measures that are necessary and that can also be implemented very quickly. In all cases, the intervention of the interim relief judge under the conditions of particular urgency provided for by the aforementioned Article L. 521-2 is subject to the finding that the situation in dispute allows the necessary safeguard measures to be taken usefully and very quickly.

6. It follows from what is indicated in 4. above that it is not the role of the interim relief judge ruling on the basis of Article L. 521-2 of the Code of Administrative Justice, when he has issued injunctions against the administration, to also impose such an obligation to provide information. The Minister of Justice is therefore entitled to maintain that it is wrongly that, by the contested order, the interim relief judge enjoined the administration to communicate to the applicant association and to the Controller General of Places of Deprivation of Liberty reports on the measures it was enjoined to take by the contested order as well as on the measures it had taken unilaterally.

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France, Council of State (*Conseil d'Etat*), Case number 426772, ECLI:FR:CECHR:2019:426772.20190607, 7 June 2019

Thematic area	<i>Solitary confinement</i>
Decision date	7 June 2019
Reference details	France, Council of State (<i>Conseil d'Etat</i>), Decision N426772, 7 June 2019, available at: www.legifrance.gouv.fr/ceta/id/CETATEXT000038566455/
Key facts of the case	Ms B. asked the interim relief judge of the Amiens administrative court to suspend the execution of the decision of 25 October 2018 by which the Lille inter-regional director of prison services extended the solitary confinement measure. By order no. 1803373 of 4 December 2018, the interim relief judge of the Amiens administrative court rejected this request. Ms B. asked the Council of State to annul this order.
Main reasoning/argumentation	The decision to place a detainee in solitary confinement, as well as decisions that may extend such placement, in principle, unless the prison administration asserts particular circumstances, seriously and immediately affects the situation of the detainee, such as to create an emergency situation justifying that the administrative judge of summary proceedings, seized on the basis of Article L. 521-1 of the Code of Administrative Justice, can order the suspension of their execution.
Key issues (concepts, interpretations) clarified by the case	The Council of State now accepts the admissibility of a summary appeal against a decision to place a prisoner in solitary confinement as well as its extension.
Results (sanctions) and key consequences or implications of the case	In this case, the Council of State considered that the appeal in cassation lodged by Ms B. on 2 January 2019 against the order issued on 4 December 2018 by the interim relief judge had lost its purpose, as the placement in isolation ceased to have effect on 26 January 2019.
Key quotation in original language and translated into English with reference details	4. Eu égard à son objet et à ses effets sur les conditions de détention, la décision plaçant d'office à l'isolement une personne détenue ainsi que les décisions prolongeant éventuellement un tel placement, prises sur le fondement de l'article 726-1 du code de procédure pénale, portent en principe, sauf à ce que l'administration pénitentiaire fasse valoir des circonstances particulières, une atteinte grave et immédiate à la situation de la personne détenue, de nature à créer une situation d'urgence justifiant que le juge administratif des référés, saisi sur le fondement de l'article L. 521-1 du code de justice administrative, puisse ordonner la suspension de leur exécution s'il estime remplie l'autre condition posée par cet article.

	<p>4. Having regard to its purpose and its effects on the conditions of detention, the decision to place a detainee in solitary confinement and any decisions to extend such confinement, taken on the basis of Article 726-1 of the Code of Criminal Procedure, in principle, unless the prison administration asserts particular circumstances, seriously and immediately affect the situation of the detainee, such as to create an emergency situation justifying the interim relief judge, seized on the basis of Article L. 521-1 of the Code of Administrative Justice, to order the suspension of their execution if he considers that the other condition laid down by that Article is met.</p>
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France, Council of State (*Conseil d'Etat*), Case number 439372, ECLI:FR:CECHR:2020:439372.20201019, 19 October 2020

Thematic area	<i>Cells. Sanitary conditions. Access to healthcare. Remedies</i>
Decision date	19 October 2020
Reference details	<p>France, Council of State (<i>Conseil d'Etat</i>), Decision N439372, 19 October 2020, available at:</p> <p>www.legifrance.gouv.fr/ceta/id/CETATEXT000042444903</p>
Key facts of the case	<p>At the request of the French Section of the International Prison Observatory, the interim relief judge of the Administrative Court of New Caledonia ordered the prison administration to take a number of measures to put an end to the serious and manifestly illegal infringements of the fundamental freedoms of detainees.</p> <p>The Minister of Justice challenged this order, No. 2000048 of 19 February 2020.</p>
Main reasoning/argumentation	<p>Injunctions relating to structural measures and public policy choices cannot be issued by the interim relief judge, as they are not likely to be implemented and take effect in the short term, and therefore are not among the emergency measures that the situation allows to be usefully taken within the framework of his or her powers (such as, for example, putting an end to the housing of detainees in containers and the over-occupation of cells in a definitive and unconditional manner; improvements needed to remedy the cramped conditions of the walking yards; complete equipment of walking yards, etc.).</p> <p>On the other hand, if a measure is likely to be implemented in the very short term (the installation of shelters in certain exercise yards; the separation of the sanitary area from the rest of the space; any measure likely to improve the brightness of the cells; the replacement of defective windows), it can be ordered.</p>

Key issues (concepts, interpretations) clarified by the case	<p>The Council of State distinguishes between measures that it can order in the context of the the interim relief judge to remedy the violation of Art. 3 of the ECHR and those that it cannot or will not order.</p>
Results (sanctions) and key consequences or implications of the case	<p>The prison administration is enjoined, as soon as possible, to:</p> <ul style="list-style-type: none"> - install shelters in the prison's exercise yards, which lack them; - ensure the separation of sanitary annexes in all cells where more than one person is detained; - take any measure likely to improve the brightness of the cells; - replace defective windows
Key quotation in original language and translated into English with reference details	<p>6. Il résulte de la combinaison des dispositions des articles L. 511-1, L. 521-2 et L. 521-4 du code de justice administrative qu'il appartient au juge des référés, lorsqu'il est saisi sur le fondement de l'article L. 521-2 précité et qu'il constate une atteinte grave et manifestement illégale portée par une personne morale de droit public à une liberté fondamentale, de prendre les mesures qui sont de nature à faire disparaître les effets de cette atteinte. Ces mesures doivent en principe présenter un caractère provisoire, sauf lorsqu'aucune mesure de cette nature n'est susceptible de sauvegarder l'exercice effectif de la liberté fondamentale à laquelle il est porté atteinte. Le juge des référés peut, sur le fondement de l'article L. 521-2 du code de justice administrative, ordonner à l'autorité compétente de prendre, à titre provisoire, une mesure d'organisation des services placés sous son autorité lorsqu'une telle mesure est nécessaire à la sauvegarde d'une liberté fondamentale. Toutefois, le juge des référés ne peut, au titre de la procédure particulière prévue par l'article L. 521-2 précité, qu'ordonner les mesures d'urgence qui lui apparaissent de nature à sauvegarder, dans un délai de quarante-huit heures, la liberté fondamentale à laquelle il est porté une atteinte grave et manifestement illégale. Eu égard à son office, il peut également, le cas échéant, décider de déterminer dans une décision ultérieure prise à brève échéance les mesures complémentaires qui s'imposent et qui peuvent également être très rapidement mises en oeuvre. Dans tous les cas, l'intervention du juge des référés dans les conditions d'urgence particulière prévues par l'article L. 521-2 précité est subordonnée au constat que la situation litigieuse permette de prendre utilement et à très bref délai les mesures de sauvegarde nécessaires. Compte tenu du cadre temporel dans lequel se prononce le juge des référés saisi sur le fondement de l'article L. 521-2, les mesures qu'il peut ordonner doivent s'apprécier en tenant compte des moyens dont dispose l'autorité administrative compétente et des mesures qu'elle a déjà prises.</p> <p>11. Les limitations de l'office du juge des référés, saisi sur le fondement de l'article L. 521-2 du code de justice administrative... découlent des dispositions législatives qui ont créé cette voie de recours et sont justifiées par les conditions particulières dans lesquelles ce juge doit statuer en urgence. Au demeurant, il résulte des termes mêmes de l'arrêt de la Cour européenne des droits de l'homme que sa saisine a permis la mise en oeuvre de mesures visant à remédier aux atteintes les plus graves auxquelles sont exposées les personnes détenues dans des établissements pénitentiaires, mais que la cessation de conditions de détention contraires aux</p>

exigences de l'article 3 de la convention est subordonnée à l'adoption de mesures structurelles à même de répondre à la vétusté et à la surpopulation du parc carcéral français. En outre, s'il n'appartient qu'au législateur de tirer les conséquences de l'arrêt de la Cour s'agissant de l'absence de voie de recours préventive pour mettre fin aux conditions indignes de détention résultant de carences structurelles, il découle des obligations qui pèsent sur l'administration, précisées au point 5, qu'en parallèle de la procédure prévue à l'article L. 521-2 du code de justice administrative, qui permet d'ores et déjà de remédier aux atteintes les plus graves aux libertés fondamentales des personnes détenues, le juge de l'excès de pouvoir peut, lorsqu'il est saisi à cet effet, enjoindre à l'administration pénitentiaire de remédier à des atteintes structurelles aux droits fondamentaux des prisonniers en lui fixant, le cas échéant, des obligations de moyens ou de résultats. Il lui appartient alors de statuer dans des délais adaptés aux circonstances de l'espèce.

16. Eu égard à leur objet, les injonctions ...qui portent sur des mesures d'ordre structurel, et au surplus sur des choix de politique publique, insusceptibles d'être mis en oeuvre, et dès lors de porter effet, à très bref délai, ne sont pas au nombre des mesures d'urgence que la situation permet de prendre utilement dans le cadre des pouvoirs que le juge des référés tient de l'article L. 521-2 du code de justice administrative...

21. ...les mesures que peut prononcer le juge des référés du Conseil d'Etat statuant sur le fondement de l'article L. 521-2 du code de justice administrative doivent s'apprécier en tenant compte des moyens dont dispose l'autorité administrative compétente...

22. ... la SFOIP demande qu'il soit mis fin sans délai à l'hébergement de personnes détenues sur des matelas posés à même le sol. Il ressort des pièces du dossier que la densité carcérale est de 107 % au sein du centre pénitentiaire de Nouméa. Au sein du centre de détention fermé, les cellules de 9 m² et celles de 11 m² peuvent être occupées par deux personnes tandis qu'au sein de la maison d'arrêt, certaines cellules de 11 m² sont occupées par trois personnes, avec la pose de deux ou trois matelas au sol. Les conditions de détention dans les cellules pour lesquelles un espace individuel d'au moins 3 m² au moins est garanti aux personnes détenues ne peuvent pas être regardées comme contraires aux stipulations de l'article 3 de la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales pour ce seul motif. En outre et en tout état de cause, les mesures que peut ordonner le juge des référés doivent s'apprécier en tenant compte des moyens dont dispose l'autorité administrative compétente et des mesures qu'elle a, dans ce cadre, déjà prises. Or, l'administration pénitentiaire ne dispose d'aucun pouvoir de décision en matière de mises sous écrou, lesquelles relèvent exclusivement de l'autorité judiciaire. Une maison d'arrêt est ainsi tenue d'accueillir, quel que soit l'espace disponible dont elle dispose, la totalité des personnes mises sous écrou.

Sur le suivi des personnes détenues au centre pénitentiaire de Nouméa par un médecin addictologue:

31. ... il appartient à l'administration pénitentiaire d'accomplir

	<p>toutes diligences en vue de faciliter l'accès aux soins des personnes détenues et de mettre en oeuvre les pouvoirs dont elle dispose pour assurer à celles qui en ont besoin la qualité et la continuité des soins garanties par l'article 46 de la loi pénitentiaire.</p> <p>6. It follows from the combination of the provisions of Articles L. 511-1, L. 521-2 and L. 521-4 of the Code of Administrative Justice that it is up to the interim relief judge, when he or she is seized on the basis of the aforementioned Article L. 521-2 and finds a serious and manifestly unlawful infringement of a fundamental freedom by a legal person governed by public law, to take measures likely to remove the effects of this infringement. These measures must in principle be provisional, except where no such measure is likely to safeguard the effective exercise of the fundamental freedom being infringed. The judge of summary proceedings may, on the basis of Article L. 521-2 of the Code of Administrative Justice, order the competent authority to take, on a provisional basis, a measure of organisation of the services placed under its authority when such a measure is necessary to safeguard a fundamental freedom. However, the interim relief judge may only order, under the special procedure provided for by the aforementioned Article L. 521-2, emergency measures which appear to him to be likely to safeguard, within a period of forty-eight hours, the fundamental freedom which is being seriously and manifestly infringed. In the light of its office, it may also, if necessary, decide to determine in a subsequent decision taken at short notice the additional measures that are necessary and that can also be implemented very quickly. In all cases, the intervention of the interim relief judge under the conditions of particular urgency provided for by the aforementioned Article L. 521-2 is subject to the finding that the situation at issue allows the necessary safeguard measures to be taken usefully and very quickly. Taking into account the time frame in which the interim relief judge, seized on the basis of Article L. 521-2, makes his decision, the measures he may order must be assessed taking into account the means available to the competent administrative authority and the measures it has already taken.</p> <p>11. The limitations on the role of the interim relief judge, seized on the basis of Article L. 521-2 of the Code of Administrative Justice ... derive from the legislative provisions that created this remedy and are justified by the specific conditions in which this judge must rule in an emergency. Moreover, it follows from the very terms of the judgment of the European Court of Human Rights that its referral has made it possible to implement measures aimed at remedying the most serious violations to which persons held in prisons are exposed, but that the cessation of conditions of detention contrary to the requirements of article 3 of the Convention is subject to the adoption of structural measures capable of responding to the dilapidation and overcrowding of the French prison system. Moreover, while it is for the legislature to draw the consequences of the Court's judgment as regards the absence of a preventive remedy to put an end to the undignified conditions of detention resulting from structural shortcomings, it follows from the obligations incumbent on the administration, as set out in paragraph 5, that in parallel with the procedure provided for in Article L. 521-2 of the Administrative Justice Code, which already allows for the most serious violations of the fundamental freedoms of detainees to be remedied, the</p>
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	<p>judge in charge of overstepping his or her authority may, when a case is referred to him or her for this purpose, order the prison administration to remedy structural violations of the fundamental rights of prisoners by setting obligations of means or results, where applicable. It is then up to the court to decide within a timeframe appropriate to the circumstances of the case.</p> <p>16. Having regard to their purpose, injunctions ...which concern measures of a structural nature, and moreover choices of public policy, which cannot be implemented, and therefore cannot take effect, in a very short time, are not among the emergency measures which the situation allows to be taken usefully within the framework of the powers which the judge for interim measures has under Article L. 521-2 of the Code of Administrative Justice...</p> <p>21. ...the measures that can be pronounced by the judge of the Council of State ruling on the basis of Article L. 521-2 of the Code of Administrative Justice must be assessed taking into account the means available to the competent administrative authority...</p> <p>22 ... the SFOIP requests that the accommodation of detainees on mattresses placed on the floor be stopped without delay. It appears from the documents in the file that the prison density is 107% in the Noumea penitentiary centre. In the closed detention centre, the 9 m² and 11 m² cells can be occupied by two people, while in the remand centre, some 11 m² cells are occupied by three people, with two or three mattresses on the floor. The conditions of detention in cells where detainees are guaranteed an individual space of at least 3 m² cannot be regarded as contrary to the provisions of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms for this reason alone. Furthermore, and in any event, the measures that the interim relief judge may order must be assessed taking into account the means available to the competent administrative authority and the measures it has already taken in this context. However, the prison administration has no power to decide on committals, which are the exclusive responsibility of the judicial authority. A prison is thus obliged to accommodate all the persons placed under arrest, regardless of the space available.</p> <p>On the follow-up of detainees in the Noumea penitentiary centre by an addictologist:</p> <p>31 ... it is the responsibility of the prison administration to take all necessary steps to facilitate access to health care for prisoners and to use its powers to ensure that those who need it receive the quality and continuity of care guaranteed by Article 46 of the Penitentiary law.</p>
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France, Council of State (*Conseil d'Etat, Juge des référés*), Case number 444741, ECLI:FR:CEORD:2020:444741.20201008, 8 October 2020

Thematic area	Covid19 measures
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Decision date	8 October 2020
Reference details	France, Council of State (<i>Conseil d'Etat</i>), Decision N444741, 8 October 2020, available at: www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-10-08/444741
Key facts of the case	At the request of the prisoners, the interim relief judge of the Toulouse administrative court ordered the head of the Toulouse-Seysses penitentiary centre, by order no. 2004355 of 4 September 2020, to organise a screening campaign for the virus within his establishment and to make masks available to the prisoners in all the enclosed and shared premises, i.e. waiting areas, work and activity stations, video-conference rooms, particularly during hearings, and, when there is a doubt as to the possibility of organising or ensuring respect for the physical distance of prisoners in the walking areas. The Minister of Justice asked the interim relief judge of the Council of State to annul this order.
Main reasoning/argumentation	<p>The Council of State considered that it does not appear, in the light of the investigation, that</p> <ul style="list-style-type: none"> -the lack of provision of protective masks for detainees in enclosed and shared premises that do not involve contact with persons outside the establishment (also taking into account the security constraints to which the operation of penitentiary establishments is subject); - the absence of protective masks for detainees in the exercise yards other than those reserved for new arrivals; - the absence of systematic screening of all detainees at the Toulouse-Seysses penitentiary <p>would reveal, at the date of the present order, a failure to act that constitutes a serious and manifestly unlawful interference with fundamental freedoms.</p>
Key issues (concepts, interpretations) clarified by the case	For the Council of State, given the state of the data and the measures already taken by the prison, there was nothing to characterise the administration's failure to take the measures requested.
Results (sanctions) and key consequences or implications of the case	The Council of State has annulled an order of the Administrative Court of Toulouse which ordered the prison administration to provide prisoners with masks both in the walking areas and in the closed areas, but also to test for the virus.
Key quotation in original language and translated into English with reference details	7. ...Les personnes détenues arrivant dans l'établissement font l'objet, depuis le 20 mai 2020, d'un dépistage systématique deux jours après leur arrivée, puis au neuvième jour de leur détention, et sont placées à l'isolement dans une zone spécifique de l'établissement. Elles ne sont affectées en détention qu'à l'issue d'une période de sept jours à compter de la réception d'un résultat négatif au test virologique RT-PCR. D'autres mesures ont été prises afin de renforcer la sécurité sanitaire, telles que la ventilation et le nettoyage régulier des

locaux ou la fourniture de gel hydro-alcoolique, ainsi que la répartition des détenus dans des groupes préconstitués réduits et constants, afin de limiter les interactions entre eux. Dans cette logique, est prévue, depuis le mois de mai 2020, la mise à disposition des personnes détenues de masques " grand public " à usage unique à chaque occasion de contact avec des personnes extérieures au centre pénitentiaire, elles-mêmes également soumises à l'obligation de port du masque. En revanche, de tels masques ne sont pas mis à disposition pour les activités sans contact avec l'extérieur.

11. Compte tenu des mesures mises en oeuvre par l'administration pénitentiaire pour assurer la protection des personnes détenues et des personnels contre un risque de contamination extérieure, notamment de celles mentionnées au point 7, de la situation au sein du centre pénitentiaire de Toulouse, qui ne présente aucun cas avéré ou suspecté de détenu infecté par le virus à la date de la présente ordonnance et qui n'est pas placé en zone d'alerte maximale, et, enfin, des contraintes en termes de sécurité auxquelles est assujéti le fonctionnement des établissements pénitentiaires, il n'apparaît pas, en l'état de l'instruction, que l'absence de mise à disposition des personnes détenues de masques de protection dans les locaux clos et partagés n'impliquant aucun contact avec des personnes extérieures à l'établissement révélerait, à la date de la présente ordonnance, une carence portant, de manière caractérisée, une atteinte grave et manifestement illégale aux libertés fondamentales invoquées.

13. Il résulte de l'instruction ...que les capacités des cours de promenade, à supposer même que tous les détenus y soient présents chaque jour, permettent d'organiser des tours de promenade avec des effectifs permettant un ratio d'au moins 10 m² par détenu.

14. ...elle est mise en place, à compter du 6 octobre, afin de renforcer l'" anneau sanitaire ", une obligation du port du masque pour tous les nouveaux arrivants dès la sortie de cellule, quel que soit le motif, y compris en cour de promenade.

15. Compte tenu de ces éléments et pour les motifs mentionnés au point 11, il n'apparaît pas, en l'état de l'instruction, que l'absence de mise à disposition des personnes détenues de masques de protection dans les cours de promenade autres que celles réservées aux nouveaux arrivants révélerait, à la date de la présente ordonnance, une carence portant, de manière caractérisée, une atteinte grave et manifestement illégale aux libertés fondamentales invoquées.

17. Il résulte de l'instruction que toute personne détenue manifestant des symptômes susceptibles d'être liés au virus SARS-CoV-2 est appelée à se signaler immédiatement au personnel pénitentiaire, puis est isolée en cellule individuelle dans l'une des zones de l'établissement réservée au confinement sanitaire, immédiatement testée et maintenue en observation sous surveillance médicale jusqu'au résultat du test. Si le test est négatif, la période de confinement peut néanmoins se poursuivre sous surveillance médicale. Si le test est positif, le détenu concerné fait l'objet d'une évaluation

	<p>médicale pour déterminer le mode de prise en charge. Il fait ensuite l'objet de trois tests successifs sur une période de seize jours et son isolement est prolongé tant que le résultat ne redevient pas négatif. Une procédure de traçage des cas contacts est immédiatement mise en oeuvre. A l'issue de l'enquête de traçage, et en fonction de ses résultats, une campagne de dépistage est organisée en lien avec la préfecture et l'Agence régionale de santé. Les deux diagnostics de personnes contaminées survenus depuis le début de l'épidémie ont ainsi donné lieu à deux campagnes de dépistage qui ont concerné au total 179 personnes.</p> <p>18. ...le dépistage général de l'ensemble des détenus et des personnels d'un établissement pénitentiaire n'est estimé pertinent que dans la seule hypothèse où au moins trois personnes se révèlent contaminées, ce qui n'est pas le cas à l'heure actuelle. La dégradation de la situation sanitaire dans le département de la Haute-Garonne n'implique pas nécessairement par elle-même, à ce stade, un dépistage massif des personnes détenues. Les requérants, s'ils soutiennent que l'"anneau sanitaire" mis en place ne serait pas hermétique, ne font pas état d'autres éléments avérés qui rendraient indispensable un tel dépistage. Dans ces conditions, il n'apparaît pas, en l'état de l'instruction et à la date de la présente ordonnance, que l'absence de dépistage systématique de l'ensemble des personnes détenues au centre pénitentiaire Toulouse-Seysses révélerait une carence portant, de manière caractérisée, une atteinte grave et manifestement illégale aux libertés fondamentales invoquées.</p> <p>7...Detainees arriving in the establishment are, since 20 May 2020, systematically screened two days after their arrival, and then on the ninth day of their detention, and are placed in isolation in a specific area of the establishment. They are only assigned to detention after a period of seven days from the receipt of a negative RT-PCR virological test result. Other measures have been taken to reinforce sanitary safety, such as ventilation and regular cleaning of the premises or the supply of hydro-alcoholic gel, as well as the distribution of detainees in small and constant pre-constituted groups, in order to limit interactions between them. In line with this, since May 2020, detainees have been provided with single-use "general public" masks whenever they come into contact with people outside the prison, who are themselves also required to wear masks. However, such masks are not made available for activities without contact with the outside world.</p> <p>11. Taking into account the measures implemented by the prison administration to ensure the protection of detainees and staff against the risk of external contamination, in particular those mentioned in point 7, the situation within the Toulouse prison, which has no known or suspected case of a detainee infected by the virus at the date of the present order and which is not placed in a maximum alert zone, and, finally the constraints in terms of security to which the operation of prisons is subject, it does not appear, in the light of the investigation, that the failure to provide detainees with protective masks in enclosed and shared premises that do not involve any contact with persons outside the establishment would, at the date of the present order, reveal a failure that</p>
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	<p>would constitute a serious and manifestly unlawful infringement of the fundamental freedoms invoked.</p> <p>13. It follows from the investigation ...that the capacity of the exercise yards, even supposing that all the prisoners are present there each day, makes it possible to organise exercise rounds with a staffing ratio of at least 10 m2 per prisoner.</p> <p>14. ...from 6 October, in order to reinforce the "health ring", a mask must be worn by all new arrivals as soon as they leave their cells, whatever the reason, including in the exercise yard.</p> <p>15. In view of these elements and for the reasons mentioned in point 11, it does not appear, as the investigation stands, that the failure to provide detainees with protective masks in the exercise yards, other than those reserved for new arrivals, would reveal, as of the date of the present order, a failure that would seriously and manifestly infringe the fundamental freedoms invoked.</p> <p>17. According to the instruction, any detainee showing symptoms likely to be linked to the SARS-CoV-2 virus is asked to report immediately to the prison staff, and is then isolated in an individual cell in one of the institution's sanitary confinement areas, immediately tested and kept under observation under medical supervision until the result of the test. If the test is negative, the period of confinement may nevertheless continue under medical supervision. If the test is positive, the detainee concerned undergoes a medical assessment to determine the mode of management. The prisoner is then tested three times over a period of 16 days and the period of isolation is extended until the test result comes back negative. A contact tracing procedure is immediately implemented. At the end of the tracing investigation, and depending on the results, a screening campaign was organised in conjunction with the prefecture and the Regional Health Agency. The two diagnoses of contaminated people made since the beginning of the epidemic have thus led to two screening campaigns involving a total of 179 people.</p> <p>18..general screening of all prisoners and staff in a prison is only considered relevant in the event that at least three people are found to be contaminated, which is not the case at present. The deterioration of the health situation in the department of Haute-Garonne does not necessarily imply, at this stage, a massive screening of detainees. Although the applicants maintain that the "health ring" set up is not airtight, they do not mention any other proven elements that would make such screening essential. In these circumstances, it does not appear, in the light of the investigation and as of the date of this order, that the absence of systematic screening of all detainees at the Toulouse-Seysses prison would reveal a failure that would constitute a serious and manifestly unlawful infringement of the fundamental freedoms invoked.</p>
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France, Council of State (*Conseil d'Etat, Juge des référés*), Case number 435785, ECLI:FR:CEORD:2019:435785.20191120, 20 November 2020

Thematic area	<i>Solitary confinement. Remedies</i>
Decision date	20 November 2020
Reference details	France, Council of State (<i>Conseil d'Etat</i>), Decision N435785, 20 November 2020, available at: www.legifrance.gouv.fr/ceta/id/CETATEXT000039442329
Key facts of the case	Mr. A. who has been in pre-trial detention since 5 April 2017 at the Grasse prison, asked the interim relief judge of the Nice administrative court, ruling on the basis of Article L. 521-2 of the Administrative Justice Code, to order the State to suspend the execution of the decision of 4 October 2019 by which the director of the Grasse prison extended the solitary confinement to which he had been subjected since 18 July 2019 and to take all necessary measures to safeguard his right not to be subjected to inhuman or degrading treatment and to respect for his private and family life. By order no. 1904959 of 18 October 2019, the interim relief judge of the Nice administrative court rejected his request. Mr A. asked the interim relief judge of the Council of State, ruling on the basis of Article L. 521-2 of the Administrative Justice Code, to annul the order of 18 October 2019.
Main reasoning/argumentation	<p>The Council of State explained that an applicant who applies to the interim relief judge on the basis of the provisions of Article L. 521-2 must justify particular circumstances characterising the need for him or her to benefit, in the very short term, from a measure of the kind that can be ordered on the basis of this article.</p> <p>In this case, Mr. A. did not establish the existence of particular circumstances justifying the ordering of a measure to safeguard a fundamental freedom at very short notice.</p> <p>The investigation showed that the person concerned, placed in solitary confinement, was visited twice a week by the prison doctor, who did not consider his conditions of detention to be incompatible with his state of health. The appellant did not produce any tangible evidence in support of his allegations that would demonstrate the existence of a worrying medical situation. His solitary confinement does not prevent him from receiving visits in the visiting room, nor from continuing to enjoy the promenade and cultural or sporting activities.</p> <p>As the condition of urgency was not met, there is no need to rule on the alleged existence of a serious and manifestly unlawful interference with a fundamental freedom.</p>
Key issues (concepts, interpretations) clarified by the case	The Council of State clarifies the distinct conditions for the use of the interim relief judge and suspension orders judge to challenge individual decisions taken with regard to detainees. It specified that "the applicant who refers to the interim relief judge on the basis of the provisions" of Art. L. 521-2 of the

	Administrative Justice Code "must justify particular circumstances characterising the need for him to benefit very quickly from a measure of the nature of those that can be ordered on the basis of this article".
Results (sanctions) and key consequences or implications of the case	The application was rejected.
Key quotation in original language and translated into English with reference details	<p>7. Pour justifier de l'urgence qu'il y aurait à suspendre à très bref délai, sur le fondement de l'article L. 521-2 du code de justice administrative, l'exécution de la décision du 4 octobre 2019 qui a prolongé le placement à l'isolement dont il fait l'objet depuis le 18 juillet 2019, M. A... soutient que les conditions de son placement à l'isolement, ainsi que la durée de celui-ci, affectent gravement son état de santé physique et psychique et provoquent chez lui des vellétés suicidaires. Toutefois, il résulte de l'instruction que l'intéressé, d'une part, reçoit deux fois par semaine la visite du médecin de la maison d'arrêt qui, à aucun moment, n'a jugé incompatible ses conditions de détention avec son état de santé et, d'autre part, ne produit en appel aucun élément tangible, à l'appui de ses allégations, qui démontrerait l'existence d'une situation médicale préoccupante. Par ailleurs, sa mise à l'isolement, qui est conforme aux dispositions de l'article R. 57-7-62 du code de procédure pénale, ne l'empêche, ni de recevoir des visites au parloir, ni de continuer à bénéficier de la promenade et d'activités culturelles ou sportives. Par suite, M. A... n'établit pas l'existence de circonstances particulières justifiant qu'il soit ordonné à très bref délai, sur le fondement de l'article L. 521-2 du code de justice administrative, une mesure de sauvegarde d'une liberté fondamentale.</p> <p>8. Il résulte de ce qui précède que M. A... n'est pas fondé à soutenir que c'est à tort que le juge des référés du tribunal administratif de Nice, dont l'ordonnance est suffisamment motivée et qui en a signé la minute en application de l'article R. 742-5 du code de justice administrative, a considéré que la condition d'urgence n'était pas remplie. Dès lors, et sans qu'il soit besoin de se prononcer sur l'existence alléguée d'une atteinte grave et manifestement illégale à une liberté fondamentale, il y a lieu de rejeter la requête, y compris les conclusions présentées au titre des dispositions de l'article L. 761-1 du code de justice administrative.</p> <p>7. In order to justify the urgency of suspending very quickly, on the basis of Article L. 521-2 of the Code of Administrative Justice, the execution of the decision of 4 October 2019 which extended the solitary confinement to which he has been subjected since 18 July 2019, Mr A... maintains that the conditions of his solitary confinement, as well as the duration of the latter, are seriously affecting his physical and mental health and are provoking suicidal tendencies in him. However, the investigation showed that the prisoner was visited twice a week by the prison doctor, who at no time deemed his detention conditions incompatible with his state of health, and that he did not produce any tangible evidence in support of his allegations that would demonstrate the existence of a worrying medical situation. Moreover, his solitary confinement, which complies with the provisions of Article R. 57-7-62 of the Code of Criminal Procedure, does not prevent him from receiving visits in the visiting room, nor from continuing to enjoy the</p>

	<p>promenade and cultural or sporting activities. Consequently, Mr. A... did not establish the existence of particular circumstances justifying that a measure to safeguard a fundamental freedom be ordered very quickly, on the basis of article L. 521-2 of the Code of Administrative Justice.</p> <p>8. It follows from the foregoing that Mr A... is not entitled to maintain that it was wrongly that the interim relief judge of the Nice Administrative Court, whose order is sufficiently reasoned and who signed the minutes pursuant to Article R. 742-5 of the Administrative Justice Code, considered that the condition of urgency was not met. Consequently, and without the need to rule on the alleged existence of a serious and manifestly illegal infringement of a fundamental freedom, the application must be rejected, including the conclusions presented under the provisions of Article L. 761-1 of the Administrative Justice Code</p>
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France, Constitutional Council (Conseil Constitutionnel), Case number 2020-858/859 QPC, 2 October 2020

Thematic area	Remedies
Decision date	2 October 2020
Reference details	France, Constitutional Council (<i>Conseil Constitutionnel</i>), Decision N2020-858/859 QPC, 2 October 2020, available at: www.conseil-constitutionnel.fr/decision/2020/2020858_859QPC.htm
Key facts of the case	<p>The Constitutional Council has been seized by the Court of Cassation of two priority questions of constitutionality relating to the second paragraph of Article 144-1 of the Code of Criminal Procedure.</p> <p>According to the applicants before the Court of Cassation, by failing to require the court to put an end to conditions of pre-trial detention that were contrary to human dignity, the legislature had disregarded the scope of its competence to an extent that affected the principle of safeguarding human dignity, the principle of prohibiting inhuman and degrading treatment, individual freedom, the right to an effective judicial remedy and the right to respect for private life. The applicants also claimed, on the same grounds, that the same constitutional requirements had been disregarded.</p>
Main reasoning/argumentation	<p>It is the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of a person in pre-trial detention and to order compensation for the damage suffered.</p> <p>It is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of appealing to a judge to end conditions of detention that are contrary to human dignity.</p>

	<p>However, no recourse to the judicial judge provided for by existing legislation allows the accused to obtain an end to the violations of his dignity resulting from the conditions of his pre-trial detention.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The Constitutional Council recalled that the constitutionality of a law is assessed independently of the interpretation in conformity with the ECHR that may be given to it by ordinary judges. The Constitutional Council invites the judges called upon to refer a QPC to it to first pay attention to the Constitution.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Council declared the second paragraph of Article 144-1 of the Code of Criminal Procedure, in its wording resulting from Law No. 2000-516 of 15 June 2000 strengthening the protection of the presumption of innocence and the rights of victims, contrary to the Constitution and repealed it as of 1 March 2021, as immediate repeal would entail manifestly excessive consequences.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>9. ...le juge appelé à se prononcer sur le caractère sérieux d'une question prioritaire de constitutionnalité ne peut, pour réfuter ce caractère sérieux, se fonder sur l'interprétation de la disposition législative contestée qu'impose sa conformité aux engagements internationaux de la France, que cette interprétation soit formée simultanément à la décision qu'il rend ou l'ait été auparavant. Il n'appartient pas non plus au Conseil constitutionnel saisi d'une telle question prioritaire de constitutionnalité de tenir compte de cette interprétation pour conclure à la conformité aux droits et libertés que la Constitution garantit.</p> <p>10. En revanche, ces mêmes exigences ne s'opposent nullement à ce que soit contestée, dans le cadre d'une question prioritaire de constitutionnalité, la portée effective qu'une telle interprétation confère à une disposition législative, si l'inconstitutionnalité alléguée procède bien de cette interprétation.</p> <p>11. Dès lors, en l'espèce, contrairement à ce que soutient le Premier ministre, il y a lieu pour le Conseil constitutionnel de se prononcer sur les dispositions contestées indépendamment de l'interprétation opérée par la Cour de cassation dans ses arrêts nos 1399 et 1400 du 8 juillet 2020 mentionnés ci-dessus, pour les rendre compatibles avec les exigences découlant de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales.</p> <p>14. ...il appartient aux autorités judiciaires ainsi qu'aux autorités administratives de veiller à ce que la privation de liberté des personnes placées en détention provisoire soit, en toutes circonstances, mise en œuvre dans le respect de la dignité de la personne. Il appartient, en outre, aux autorités et juridictions compétentes de prévenir et de réprimer les agissements portant atteinte à la dignité de la personne placée en détention provisoire et d'ordonner la réparation des préjudices subis. Enfin, il incombe au législateur de garantir aux personnes placées en détention provisoire la possibilité de</p>

	<p>saisir le juge de conditions de détention contraires à la dignité de la personne humaine, afin qu'il y soit mis fin.</p> <p>15. En premier lieu, si une personne placée en détention provisoire et exposée à des conditions de détention contraires à la dignité de la personne humaine peut saisir le juge administratif en référé, sur le fondement des articles L. 521-2 ou L. 521-3 du code de justice administrative, les mesures que ce juge est susceptible de prononcer dans ce cadre, qui peuvent dépendre de la possibilité pour l'administration de les mettre en œuvre utilement et à très bref délai, ne garantissent pas, en toutes circonstances, qu'il soit mis fin à la détention indigne.</p> <p>16. En second lieu, d'une part, si, en vertu de l'article 148 du code de procédure pénale, la personne placée en détention provisoire peut à tout moment former une demande de mise en liberté, le juge n'est tenu d'y donner suite que dans les cas prévus au second alinéa de l'article 144-1 du même code. Or, il s'agit du cas où la détention provisoire excède une durée raisonnable, au regard de la gravité des faits reprochés et de la complexité des investigations nécessaires à la manifestation de la vérité, et du cas où la détention n'est plus justifiée par l'une des causes énumérées à l'article 144 du même code, qui relèvent toutes des exigences propres à la sauvegarde de l'ordre public ou à la recherche des auteurs d'infractions. D'autre part, si l'article 147-1 du même code autorise le juge à ordonner la mise en liberté d'une personne placée en détention provisoire, ce n'est que dans la situation où une expertise médicale établit que cette personne est atteinte d'une pathologie engageant le pronostic vital ou que son état de santé physique ou mentale est incompatible avec le maintien en détention. Dès lors, aucun recours devant le juge judiciaire ne permet au justiciable d'obtenir qu'il soit mis fin aux atteintes à sa dignité résultant des conditions de sa détention provisoire.</p> <p>9...the judge called upon to rule on the serious nature of a priority question of constitutionality cannot, in order to refute this serious nature, base himself on the interpretation of the contested legislative provision that is required by its conformity with France's international commitments, whether this interpretation is formed simultaneously with the decision that he renders or has been formed previously. Nor is it up to the Constitutional Council to which such a priority question of constitutionality is referred to take account of this interpretation in order to conclude that the provision is in conformity with the rights and freedoms guaranteed by the Constitution.</p> <p>10. On the other hand, these same requirements in no way preclude a challenge, in the context of a priority question of constitutionality, to the effective scope that such an interpretation confers on a legislative provision, if the alleged unconstitutionality does indeed stem from this interpretation.</p> <p>11. Consequently, in the present case, contrary to what the Prime Minister maintains, it is appropriate for the Constitutional Council to rule on the contested provisions independently of the interpretation given by the Court of Cassation in its above-mentioned rulings Nos. 1399 and 1400 of 8 July 2020, in order to make them compatible with the requirements arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms.</p>
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	<p>14. ...it shall be the duty of the judicial and administrative authorities to ensure that the deprivation of liberty of persons remanded in custody (<i>detention provisoire</i>) is, in all circumstances, carried out with respect for the dignity of the person. It is also the responsibility of the competent authorities and courts to prevent and punish conduct that violates the dignity of persons held custody and to order compensation for the damage suffered. Finally, it is the legislator's responsibility to guarantee that persons held in pre-trial detention have the possibility of bringing conditions of detention contrary to human dignity before a judge, so that they can be brought to an end.</p> <p>15. Firstly, if a person placed in pre-trial detention and exposed to conditions of detention contrary to human dignity can refer the matter to the administrative judge in summary proceedings, on the basis of Articles L. 521-2 or L. 521-3 of the Code of Administrative Justice, the measures that this judge is likely to pronounce in this context, which may depend on the possibility for the administration to implement them usefully and very quickly, do not guarantee, in all circumstances, that the undignified detention will be ended.</p> <p>16. Secondly, although, under Article 148 of the Code of Criminal Procedure, a person placed in pre-trial detention may at any time make an application for release, the judge is only obliged to act on it in the cases provided for in the second paragraph of Article 144-1 of the Code. This is the case where pre-trial detention exceeds a reasonable length of time, given the seriousness of the alleged offences and the complexity of the investigations required to establish the truth, and where detention is no longer justified by one of the reasons listed in article 144 of the same code, all of which are related to the need to protect public order or to find the perpetrators of offences. On the other hand, although Article 147-1 of the same Code authorises the judge to order the release of a person placed in pre-trial detention, it is only in the situation where a medical assessment establishes that this person is suffering from a life-threatening pathology or that his or her physical or mental health is incompatible with continued detention. Consequently, no recourse to the judicial judge allows the accused to obtain an end to the violation of his dignity resulting from the conditions of his pre-trial detention</p>
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France, Constitutional Council (*Conseil Constitutionnel*), Case number 2020-844 QPC, 19 June 2020

Thematic area	<i>Solitary confinement. Remedies</i>
Decision date	19 June 2020
Reference details	France, Constitutional Council (<i>Conseil Constitutionnel</i>), Decision N2020-844 QPC, 19 June 2020, available at: www.conseil-constitutionnel.fr/decision/2020/2020844QPC.htm
Key facts of the case	The applicant maintained that the provisions of Article L. 3222-5-1 of the Public Health Code, as interpreted by the Court of Cassation, infringed the individual freedom protected by Article 66 of the Constitution in that they did not provide for systematic judicial review of the seclusion and restraint measures implemented in psychiatric care establishments, nor

	<p>did they provide for any means of appeal in favour of the person who was subject to them.</p>
<p>Main reasoning/argumentation</p>	<p>Pursuant to the first paragraph of Article L. 3222-5-1 of the Public Health Code, the placement in isolation or under restraint of a person under psychiatric care without consent can only be decided by a psychiatrist for a limited period of time when such measures constitute the only means of preventing immediate or imminent harm to the person or others. However, the legislator has not set this limit or provided for the conditions under which, beyond a certain duration, the continuation of these measures is subject to judicial review. It follows that no legislative provision subjects the maintenance of seclusion or restraint to a judicial jurisdiction in conditions that meet the requirements of Article 66 of the Constitution, according to which</p> <p>"No one may be arbitrarily detained. The judicial authority, as the guardian of individual freedom, shall ensure that this principle is respected under the conditions laid down by law.</p>
<p>Key issues (concepts, interpretations) clarified by the case</p>	<p>The legislator has been sanctioned by the Constitutional Council for the absence of a judicial remedy against decisions to keep people in isolation or restraint in psychiatric hospitals.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Council declared Article L. 3222-5-1 of the Public Health Code unconstitutional and repealed it as of 31 December 2020, as immediate repeal would lead to manifestly excessive consequences.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>8. ... la liberté individuelle ne peut être tenue pour sauvegardée que si le juge intervient dans le plus court délai possible. Or, si le législateur a prévu que le recours à l'isolement et à la contention ne peut être décidé par un psychiatre que pour une durée limitée, il n'a pas fixé cette limite ni prévu les conditions dans lesquelles au-delà d'une certaine durée, le maintien de ces mesures est soumis au contrôle du juge judiciaire. Il s'ensuit qu'aucune disposition législative ne soumet le maintien à l'isolement ou sous contention à une juridiction judiciaire dans des conditions répondant aux exigences de l'article 66 de la Constitution.</p> <p>8..Individual freedom can only be considered to be safeguarded if the judge intervenes within the shortest possible time. Although the legislator has provided that the use of seclusion and restraint can only be decided by a psychiatrist for a limited period of time, he has not set this limit or laid down the conditions under which, beyond a certain duration, the maintenance of these measures is subject to judicial review. It follows that there is no legislative provision that makes the maintenance of seclusion or restraint subject to judicial review in conditions that meet the requirements of Article 66 of the Constitution.</p>

France, Constitutional Council (*Conseil Constitutionnel*), Case number 2021-898 QPC, 16 April 2021

Thematic area	Remedies
Decision date	16 April 2021
Reference details	France, Constitutional Council (<i>Conseil Constitutionnel</i>), Decision N2021-898 QPC, 16 April 2021, available at: www.conseil-constitutionnel.fr/decision/2021/2021898QPC.htm
Key facts of the case	<p>The Constitutional Council was seized of a priority question of constitutionality raised by the association Section française de l'observatoire national des prisons, which concerns paragraph III of Article 707 of the Code of Criminal Procedure. The association considered that, by failing to require the judge to put an end to conditions of detention contrary to human dignity to which convicted persons would be exposed, the legislator had disregarded the scope of its competence to an extent that affected the principle of safeguarding human dignity, the principle of prohibiting inhuman and degrading treatment and the right to an effective judicial remedy. It denounced the disregard by the referred provisions of the same constitutional requirements.</p>
Main reasoning/argumentation	<p>A convicted person incarcerated in execution of a custodial sentence and exposed to conditions of detention contrary to human dignity may refer the matter to the administrative judge in summary proceedings, on the basis of Articles L521-2 or L521-3 of the Code of Administrative Justice. However, the measures that the judge is able to pronounce do not guarantee that the undignified detention will end.</p> <p>Article 707(3) of the Code of Criminal Procedure provides that a convicted person who is detained may have his or her sentence adjusted, taking into account the material conditions of detention and the occupancy rate of the prison. However, neither this nor any other provision allows a convicted person to obtain an adjustment of the sentence solely on the grounds that he or she is being held in undignified conditions, or to apply to the court to have this situation remedied by another measure.</p> <p>Consequently, and independently of the liability actions that may be brought because of unworthy detention conditions, the contested provisions fail to meet constitutional requirements.</p>
Key issues (concepts, interpretations) clarified by the case	<p>The Constitutional Council has extended to convicted prisoners the solution it adopted on 2 October 2020 for pre-trial detention. The Council considers that neither the current summary proceedings before the administrative judge, nor those allowing convicted persons to request adjustments to their sentence offer sufficient guarantees. It therefore declared the provisions of the Code of Criminal Procedure submitted to it to be contrary to the Constitution. However, this declaration is limited in scope: the contested provisions were no longer in</p>

	<p>force on the date of the decision. In order to respond to all of the above-mentioned decisions, the legislator had in fact created a few days earlier a new remedy for the benefit of all detainees. Without prejudice to existing appeals for interim relief, Act No. 2021-403 of 8 April 2021 thus allows persons placed in pre-trial detention to appeal to the liberty and custody judge and convicted prisoners to appeal to the sentence enforcement judge, if they consider that their detention conditions are unworthy.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The Constitutional Council declared paragraph III of Article 707 of the Code of Criminal Procedure, in its wording resulting from Law No. 2019-222 of 23 March 2019 on programming 2018-2022 and reform for justice, contrary to the Constitution. But as the provisions declared contrary to the Constitution, in their contested wording, are no longer in force, it was decided that the measures taken in application of the provisions declared contrary to the Constitution cannot be challenged on the basis of this unconstitutionality.</p>
<p>Key quotation in original language and translated into English with reference details</p>	<p>12. Il s'en déduit qu'il appartient aux autorités judiciaires ainsi qu'aux autorités administratives de veiller à ce que la privation de liberté des personnes condamnées soit, en toutes circonstances, mise en œuvre dans le respect de la dignité de la personne. Il appartient, en outre, aux autorités et juridictions compétentes de prévenir et de réprimer les agissements portant atteinte à la dignité de la personne condamnée détenue et d'ordonner la réparation des préjudices subis. Enfin, il incombe au législateur de garantir aux personnes condamnées la possibilité de saisir le juge de conditions de détention contraires à la dignité de la personne humaine, afin qu'il y soit mis fin. Dans le choix des modalités retenues pour assurer cette protection, il peut toutefois tenir compte des exigences liées à l'exécution de la peine.</p> <p>13. En premier lieu, si une personne condamnée incarcérée en exécution d'une peine privative de liberté et exposée à des conditions de détention contraires à la dignité de la personne humaine peut saisir le juge administratif en référé, sur le fondement des articles L. 521-2 ou L. 521-3 du code de justice administrative, les mesures que ce juge est susceptible de prononcer dans ce cadre, qui peuvent dépendre de la possibilité pour l'administration de les mettre en œuvre utilement et à très bref délai, ne garantissent pas, en toutes circonstances, qu'il soit mis fin à la détention indigne.</p> <p>14. En second lieu, le paragraphe III de l'article 707 du code de procédure pénale prévoit que la personne condamnée détenue peut bénéficier d'un aménagement de sa peine en tenant compte des conditions matérielles de détention et du taux d'occupation de l'établissement pénitentiaire. Toutefois, ni cette disposition ni aucune autre ne permet à une personne condamnée d'obtenir un aménagement de peine au seul motif qu'elle est détenue dans des conditions indignes ou de saisir le juge judiciaire pour qu'il soit mis fin à cette situation par une autre mesure.</p> <p>15. Par conséquent, et indépendamment des actions en responsabilité susceptibles d'être engagées à raison de</p>

conditions de détention indignes, les dispositions contestées méconnaissent les exigences constitutionnelles précitées. Sans qu'il soit besoin de se prononcer sur les autres griefs, elles doivent donc être déclarées contraires à la Constitution.

12. It follows that it is the responsibility of the judicial and administrative authorities to ensure that the deprivation of liberty of sentenced persons is, in all circumstances, carried out with respect for the dignity of the person. It is also the responsibility of the competent authorities and courts to prevent and punish acts that violate the dignity of the convicted person in detention and to order compensation for the damage suffered. Finally, it is the legislator's responsibility to guarantee that convicted persons can appeal to a judge to put an end to conditions of detention that are contrary to human dignity. In the choice of methods used to ensure this protection, however, the legislator may take into account the requirements of the enforcement of the sentence.

13. Firstly, if a convicted person imprisoned in execution of a custodial sentence and exposed to conditions of detention contrary to human dignity can refer the matter to the administrative judge in summary proceedings, on the basis of Articles L. 521-2 or L. 521-3 of the Code of Administrative Justice, the measures that this judge is likely to pronounce in this context, which may depend on the possibility for the administration to implement them usefully and very quickly, do not guarantee, in all circumstances, that the undignified detention will be ended.

14. Secondly, paragraph III of Article 707 of the Code of Criminal Procedure provides that a convicted person who is detained may have his or her sentence adjusted, taking into account the material conditions of detention and the occupancy rate of the prison. However, neither this nor any other provision allows a convicted person to obtain an adjustment of the sentence solely on the grounds that he or she is being held in undignified conditions or to apply to the judicial judge for an end to this situation by another measure.

15. Consequently, and independently of the liability actions that may be brought on account of unworthy conditions of detention, the contested provisions fail to meet the aforementioned constitutional requirements. Without the need to rule on the other complaints, they must therefore be declared contrary to the Constitution.