



**YOUR RIGHTS
IN PRISON**

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HANDBOOK
ADRESSED
TO FOREIGNERS

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VERSION
ANGLAISE

YOUR RIGHTS IN PRISON

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Update to come
on Cimade's website
www.lacimade.org

The right to contact his embassy

You can contact your embassy (consulate) at any time, from your arrival in prison, to ask for help.

How to get help?

The prison chief (or another member of the prison administration) informs you that you have the right to write to your diplomatic representative or consulate (embassy) of your country right upon your arrival in prison (after the initial entry paperwork) or the day after at the latest. You will be provided with the address.

The representative of your consulate (embassy) can come to visit you.

According to your nationality and the agreements between France and your country of origin:

- France has to inform your embassy (with your permission) of your presence in prison:
Cameroon, USA, Italy, Madagascar, Mali, Morocco, Mauritania, Senegal, Sweden, Tunisia
- France has an obligation to inform your embassy even without your permission:
Algeria, Bulgaria, China, Egypt, Hungary, Poland, UK, Kiribati (Gilbert's Island)

This list is not exhaustive thus, you need to check the agreements according to your nationality.

If you are recognized as a political refugee or if you are currently applying for political asylum, you have to inform a member of the prison administration because you don't have to get in touch with your consular representative.

- You have to inform the embassy yourself:
Germany, Albany, Austria, Belgium, Brazil, Cambodia, Colombia, Ivory Coast, Spain, Greece, Guinea-Bissau, Iran, Mexico, Mongolia, Pakistan, Sri-Lanka, Venezuela, etc.

The right to an interpreter

The interpreter is frequently another convict which can lead to confidentiality issues (regarding your health, the reason you are being imprisoned...). When going before a disciplinary committee, you can be accompanied by a person designated by prison chief who speaks your language if the prison chief can prove the impossibility to hire a professional interpreter.

Upon your arrival in prison, you need to be informed (in a language that you understand) of the rules and regulations, of your rights and responsibilities during detention, as well as the internal functioning of the prison.

Some documents are already translated in a foreign language, such as the Guide of New Arrivals. Do not hesitate to ask for it in your language.

You have the right to be accompanied by an interpreter every time you have to present yourself before the tribunal or an official hearing such as the COMEX (deportation commission).

The right to mail and to the telephone

Like all detainees, you have the right to write letters to people outside the prison and to telephone if you have been judged.

The letters and phone calls can be read and listened to by the prison administration. The letters must be legible and understandable, whatever the alphabet used (Roman characters, Cyrillic, Arab, Chinese, etc.) and must not contain any signs or characters carrying a meaning which would have been agreed between the writer and the recipient in order to set up a way of communication which would be understood by them only.

The visiting room meetings can be conducted in a foreign language if you don't speak in French but it is required that a prison officer must understand the language. In practice, the rule is more flexible, and you can be allowed to communicate in your own language.

The right to have a lawyer

If you cannot afford it, you can ask for free legal representation regarding all procedure matters. In order to do so, you need to write to the bureau d'aide juridictionnelle (Jurisdictional Help Office) of the nearest court of justice.

Do not hesitate to ask for advice at the prison's point d'accès au droit (Point of Access to Rights, PAD) or to your prison counselor (CPIP) to help you to fill in the application.

The right to see your case files

You can ask to consult all the documents regarding your case every time a decision is taken. More precisely, you can ask to consult all the non-judicial documents of your case held by the prison administration services.

You can also ask for a copy of your medical records, your criminal record, the documents regarding visitors authorizations, your disciplinary procedures files (once the decision is taken), a summary of closed incidents, propositions for your transfer. These documents can be claimed from the prison chief or directly from the court or prison administration services.

On the other hand, the documents regarding the judicial procedures are excluded from this right. In practice, access to these documents is complicated since you are not allowed to possess documents related to why you are imprisoned while imprisoned.

You can still ask to consult these documents by submitting a written request to the prison administration services. While consulting the documents, you can be accompanied by a person of your choice (among which a Cimade volunteer).

THE LEGAL PROCEDURES

Application to get a residence permit

The residence permit is necessary even in prison especially to claim social rights for yourself or your close family outside the prison, to undertake a professional training, and to prepare the coming-out of prison.

It is thus important to start the administrative process right from the time in prison.

Contact your prison counselor (CPIP) or the point d'aide au droit (PAD) before initiating any administrative procedure as there could be a specific procedure set between the prison and the prefecture.

The request must be precise and detailed, otherwise it might be ruled out as "groundless" and result in an expulsion procedure.

It can sometimes take much more than 4 months to process a request. Do not hesitate to ask your prison counselor about the status of your file.

If you are being incarcerated but are not the subject of an expulsion procedure, you can ask for a first residence permit or the extension of the permit if yours is soon to expire. Extension of a residence permit: you must start the administrative procedures at least 2 months before the expiration date of your permit.

In order to do so, you need to send a written request by mail with acknowledgement of receipt to the Prefecture of your former place of residence (before being incarcerated). If you did not have a home address prior to your incarceration, you can register the prison as your address by filing an application with the prison chief. In that case, you will have to write to the prefecture of the prison geographical area.

Your residence permit request must contain:

- Your surname(s), name(s) and nationality
- ID photos
- Proof address
- A copy of your former residence permit
- All documents related to your request and the reasons why you require it
- A valid passport (in some cases) and any civil status certificate

It can take up to 4 months to the prefecture to give you an answer. The absence of a reply means a rejection of your case and an expulsion procedure.

Challenging an expulsion procedure

Obligation to Leave the French Territory (OQTF)

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What is it?

Every adult of foreign nationality (except some people who are under the "protected category" – see below) can be expelled from the French territory if he/she is considered "a threat to the public order".

All the expulsion procedures means the withdrawal of the residence permit.

If you are European, you can still be expelled in some specific situations.

It is an administrative decision taken by a Prefect.

It is made of several decisions taken simultaneously which **all** need to be contested when appealing.

A destination country will be defined in the document. There are two types of Obligation to Leave the French Territory: the decision can give you or not a period to leave the French territory on your own.

The other decisions which can be taken with this measure are for example: interdiction to return to French territory, residence permit denied, a decision to be put in a retention center.

An Obligation to Leave the French Territory (OQTF) without grace period given (OQTFSDDV) could be given following a request for a permit of stay, or its renewal if the departmental administrative headquarters (prefecture) decide that the request is "clearly unfounded", or "fraudulent".

The unclear nature of this decision leaves us with a fear that the French administration utilize this reason often for refusing to allow a grace period to the person to leave France.

.....
Some are protected against an expulsion procedure (OQTF)

- 18 year-old adults; people who arrived in France before the age of 13; people living in France with a residence permit for over 10 years (except student visa/permit); people with a permit of stay for over 20 years; parents to a French minor: spouse for at least 3 years to a French citizen or foreign citizen living in France for at least 10 years; persons who have suffered an accident at work which has rendered them more than 20% handicapped; people who are sick; citizens from countries members of the European Union, countries

members of the European Economic Area or from the Swiss Confederation as well as their families members who have a permanent right to stay.

What to do against an Obligation to Leave the French Territory (OQTF)?

It is the prison's administrative services' duty to appeal for you (even outside opening hours, on weekends...)

You can appeal to the Administrative Court (TA). This appeal suspends the enacting of the repatriation measure. A decision from the Court will be needed before the French administration can take any action.

If you are being asked to leave the French territory with or without a grace period given, you have the right to ask to talk to a lawyer, to contact your embassy or any person of your choice as quickly as possible.

If you received an Obligation to Leave the French Territory without a grace period given (OQTFSDDV), you have exactly **48 hours** (including weekends and holidays) to appeal to the Administrative Court via fax from the moment you receive the Obligation to Leave the French Territory notification.

If the measure is an Obligation to Leave the French Territory with a grace period given, you have one month to have appeal to this measure. You have the right to be assisted by an interpreter if necessary. You will need to request it while appealing.

Interdiction to be on the French Territory (ITF)

What is it?

If you are condemned to an Interdiction to be on the French Territory, you will lose your residence permit and you can be expelled.

An Interdiction to be on the French Territory is a legal measure of expulsion. It can be a sentence added to the prison sentence which will be taken into account by the judge at the moment of judgment.

The Interdiction to be on the French Territory can be limited in time or permanent. The duration of the Interdiction to be on the French Territory is suspended during incarceration. It starts only when you are released from prison.

Not everybody can be sentenced with an Interdiction to be on the French Territory as there are **"protected categories"** against expulsion:

- People arrived in France before the age of 13; people with a residence permit for at least 20 years; people married for 4 years to a French citizen (if the marriage occurred before the facts); parents to a minor child with French nationality and themselves holder of a residence permit for 10 years; people with illness.

If you have committed an offense, you can still be protected if the judge approves of the following reason:

- Parents to a minor child with French nationality; people married for at least 3 years (the marriage has to be before the offense); people residing in France for at least 15 years (except student permits); people with a residence permit for at least 10 years (except student permits); people handicapped over 20% and having an income following a workplace accident.

You have to inform the authorities that you are protected against an Interdiction to be on the French Territory at the time of judgment and to show all the proofs. Do not hesitate to talk about it with your lawyer and your prison social counsellor if you are in provisional detention.

You cannot be protected if the reason why being incarcerated is among the following: attempt to destroy the fundamental interests of the State, terrorism acts, counterfeiting money, infractions connected to fighting groups.

What to do against an Interdiction to be on the French Territory (ITF)?

You can be condemned to heavier sentences in appeal.

If you are condemned to an Interdiction to be on the French Territory (ITF) in addition to the prison sentence, you can appeal against this condemnation within 10 days. This appeal will concern all sentences: the prison sentence and the complementary sentence of Interdiction to be on the French Territory.

These conditions are also valid at the moment of hearing. If you are released from prison before the public hearing, it is necessary to request to be put on house arrest.

Besides making an appeal, you can also choose to appeal only the Interdiction to be on the French Territory by doing a request. You can send this request to the public prosecutor of the tribunal which condemned you at any time after the 10 days deadline to make an appeal.

The public prosecutor must wait 6 months before transmitting your request to the tribunal if you were condemned to a prison sentence of 6 months or more.

If you were sentenced to a prison sentence of less than 6 months, the prosecutor will transmit the request without any delay.

In order to do this request, it is necessary that you be in prison, overseas, or assigned to house arrest (see below later).

Expulsion order (AE)

What is this?

The expulsion order is a decision taken by the prefecture (APE) or by the Ministry of the Interior (AME).

It can be pronounced at any moment without any link to a previous condemnation or Interdiction to be on the French Territory. It can be taken against someone who represents a threat for the public order or the State.

Not everybody can be sentenced with an expulsion order for there are **“protected categories”** which are:

- People arrived in France before the age of 13; people with a residence permit for at least 20 years; people married for 4 years to a French citizen (if the marriage occurred before the facts); parents to a minor child with French nationality and themselves holder of a residence permit for 10 years; people with illness.

If the measure is considered necessary to protect for the security of the state or the security of the public, the protection will not apply to the followed categories:

- Parents to a minor child with French nationality; people married for at least 3 years (the marriage has to be before the offense); people with a residence permit for at least 10 years (except student permits); people handicapped over 20% and having an income following a workplace accident; people with illness; european citizens with a residence for 10 years; people who have been condemned to a prison sentence of 5 years at least.

You cannot be protected if the reason why being incarcerated is among the following: attempt to destroy the fundamental interests of the state; terrorism acts; counterfeiting money; infractions connected to fighting groups; incitation to discrimination, hatred or violence against a specific individual or group.

You will have to ask for an "extraction from prison" to be able to attend this hearing.

In some prisons, the hearing is held by video-conference.

The verdict of the commission might not be given to you in writing but orally.

Before deciding on an expulsion order, the authorities have to summon the Commission of Expulsion (COMEX). You will be summoned to this commission through a bulletin of notification in which you can explain the reasons why you should not be expelled. This bulletin is also a call-up to the hearing.

At the hearing, you have the right to be accompanied by a lawyer, an interpreter, and any other person of your choice (an association, a friend, a member of family, etc.). It will be a public hearing. The commission of expulsion will give an official opinion either for or against an expulsion order.

The prefecture or Ministry of the Interior are not obliged to take into account the opinion of the commission of expulsion. Following the result of the hearing, they can still issue an expulsion order.

Who to do against an expulsion order?

You could have recourse at the Administrative Court (TA) within 2 months after the notification of the order. 3 copies of the request must be sent by mail with acknowledgement receipt. This recourse does not suspend the effects of the expulsion order.

The request of appeal must contain your surname, name, your civil status and all reasons why you contest the expulsion.

If the 2 months period is over, you can still ask for an abrogation of the order directly to the entity which took the initial decision to expulse you. In order to do this request, it is necessary that you be in prison, overseas, or assigned to house arrest.

You will then have to send a letter with acknowledgment of receipt with all your arguments and proofs to either the prefecture of the Ministry of the Interior.

Finally, a reexamination of your situation is planned every 5 years. If your family situation changed, it is for example the right time to contest again the expulsion order.

Request to be put under house arrest

What is this?

When you are under a repatriation or expulsion measure, you can be assigned to be put under house arrest by the prefecture or the Ministry of the Interior. This can be requested at any time. It can be paired with other measures.

Being under house arrest regularizes your stay in France until the moment the repatriation measure is executed or cancelled. If you are under house arrest, the measure of repatriation or expulsion is temporarily suspended and allows you to be given a Temporary Authorization to Stay in France (APS), and in some cases, an authorization to work (which needs to be asked for formally).

You are required to stay in a certain area (a department, a city) and to have an actual residence there. It is a measure of control and you must present yourself if summoned by the police of the prefecture.

The house arrest can be decided for various reasons: impossibility for you to return to your original country, serious health problem with requires a health care follow-up in France, "exceptional" circumstances (i.e., reduction of sentence, crisis or war in your native country...).

How to make this request?

According to the repatriation measure, you must make the request at:

- ITF, AME: Ministry of the Interior.
- OQTF, APE: prefecture.

The letter (sent with acknowledgement of receipt) must contain your surname, name, your civil status and all reasons why you should be under house arrest.

What to do when the request to be put under house arrest is refused?

The French administration has up to 2 months to reply to your request. After this period, consider that your request is denied. This decision could be contested before an Administrative Court within 2 months but this will not prevent you from being expelled.

After this 2 months period of time, you can make a new request to be put under house arrest at any moment.

Sentence adjustment

The adjustment of sentences are usually linked to work. You will then have to request for a residence permit with the authorization to work or ask to be put under house arrest with an authorization to work if you are condemned to a measure of repatriation to be sent back to your home country.

The adjustment of sentences can be requested by everyone in prison, even if you are a foreigner, provided you have a project of rehabilitation (return to work, to studies, family, etc.)

If you have a residence permit

You can request for any form of adjustment of sentence according to your criminal situation, your project and your condemnation.

If you are subject to an expulsion order

The law provides that **Parole with Expulsion (LCE)** be possible if you have been condemned to an Interdiction to be on the French Territory or any measure of expulsion.

You can ask for a suspension of sentence if you wish to go back to your country.

Parole in France (LC) is only possible if you have an Interdiction to be on the French Territory as a complementary sentence. The Interdiction to be on the French Territory (ITF) will be suspended during parole and will be automatically cancelled at the end of suspension of sentence if everything goes well during parole time.

Another type of parole (parole in order to return to your country) is conceivable if you don't have a measure of expulsion. However, it will be necessary to you to have a valid passport and to take care financially of the transport towards your country.

The other types of suspension of sentence (semi-liberty, etc.): the law provides that these adjustment of sentences be possible when you are condemned to an Interdiction to be on the French Territory and that you desire to make a request

You will have to make a request to remove the Interdiction to be on the French Territory and also a request to be put under house arrest made to the Ministry of the Interior in order to have the right to a temporary residence permit and the authorization to work if you have work priorities.

But the law does not stipulate that you cannot obtain these adjustment of sentences if you are condemned to another measure of repatriation, or expulsion order or if you do not have a residence permit.

You are in any case under the responsibility of the prison administration and do not have the right to leave the French territory. You have to respect the obligations until the moment of the suspension of sentence.

The ten year long Interdiction to be on the French Territory is also suspended if you are submitted to it as the complementary sentence to a suspended sentence.

**The request of transfer:
to finish one's sentence in one's country of origin**

The waiting time for a reply can be very long for this request, sometimes up to one year. Moreover, your home country is not obliged to accept your request.

The fines to which you might have been condemned can play against you request.

You can ask to finish your punishment in a prison in your country. This request can only be made by those who already have an official and final judgment.

How?
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You need to write to all the diplomatic authorities or embassies of your country or present your demand to the chief of prison. The chief of prison must inform your embassy and assist the consulate officials in their coming to visit you. Your demand will be transmitted to the French Ministry of Justice which will contact the Ministry of Justice in your country.

GLOSSARY

AME

Ministerial Expulsion Order

APE

Prefectural Expulsion Order

APS

Provisional Autorisation of Stay

COMEX

Commission for Expulsion

CPIP

Prison Counselor

ITF

Interdiction from French Territory

OQTF

Obligation to Leave the French Territory

OQTFSDDV

Obligation to Leave the French Territory without grace period given

SPIP

Prison Probation Counselor

TA

Administrative Court

CONTACTS DETAILS

Diverse associations are present in day-to-day prison life to hear your needs, to provide access to social, cultural, even clothing help, and to provide a link with your family outside prison.

There are also chaplains of various religions to provide spiritual guidance.

Ask the prison authorities which associations and chaplains are present in the establishment you are being held in.

La Cimade

The volunteers are present in some prisons to help you understand your rights and exercise them. You can ask to meet us by asking the prison administration.

You can also write to: Commission prison (défense des personnes étrangères détenues) 64 rue Clisson, 75013 Paris Tel.: 01 44 18 60 50 www.lacimade.org commission.prison@lacimade.org

The Point of Access to Rights (PAD). ask the prison authorities for the openings hours.

The Controller of the Places of Privation of Freedom:

Monsieur le contrôleur général des lieux de privation de liberté BP 10301, 75921 Paris cedex 19

L'ANVP (The National Association of Prison Visitors)

1 bis rue du Paradis, 75010 Paris Tel.: 01 55 33 51 25 Fax: 09 55 23 09 38 www.anvp.org/ accueil@anvp.org

The individuals appointed for the defense of human rights

are present in the prisons to help you in case of dispute with the prison administration. You can write to them by an internal written request.

Phone number of the ARAPEJ: 0800 870 745 or directly from prison through the number No 110 (free). You can receive useful information regarding your rights.