

A COMPARATIVE STUDY OF PRISON LABOUR IN FRANCE, GERMANY AND ENGLAND

Evelyn SHEA gives an account of the results of her doctoral dissertation in comparative criminal law (Université Robert Schuman, Strasbourg) on the challenges of prison labour in France, Germany and England. The study is part of research on prison regimes conducted by the *Laboratoire Européen Associé (CESDIP/Max-Planck Institute for International and Comparative Criminal Law, Guyancourt/Freiburg-im-Breisgau, France/Allemagne)*.

For centuries, prison labour was considered the backbone of Western prison regimes: indispensable for maintaining order and discipline, a good source of revenue, and the best means of improving the professional future of inmates.

Today, this central role of work is less taken for granted. Several French commissions¹ have voiced the concern that, in its present form, prison labour alleviates at best some of the hardship of imprisonment and facilitates the control of the inmate population but is no longer able to fulfil its main goal: to increase the employability of inmates and thus reduce recidivism. Four factors are held responsible:

1. A shortage of work-and training places
2. A disproportionate number of unskilled and mindnumbing jobs.
3. Unacceptably low pay levels.

The absence of a sizable number of rights and protections linked to a work contract. The commissions were equally worried about the decreasing economic viability of prison industries, blamed on inefficient organisation and management, compounded by the effects of globalisation and the many restrictions imposed on workshops by security requirements.

Are these criticisms justified? If yes, is this only a French problem or is it shared by other European countries? In order to answer these questions, we carried out field research during 2002 in nine prisons in France, Germany (Bavaria and Hesse) and England and Wales.

Research method

The results presented are part of a doctoral dissertation in comparative criminal law (University Robert Schuman, Strasbourg) on the role of prison labour in France, Germany and England. The research comprised two parts: the first, of a theoretical nature, compares the legal framework of work in prison; the second, empirical, examines the actual implementation of work in three long-term establishments in each of the three countries. To give as precise a picture as possible, several research tools have been used: a questionnaire handed out to roughly 20% of the

work force; semi-structured interviews in each prison with five working inmates and five who were without employment; informal discussions with personnel in daily contact with work or training and, finally, repeated visits to workshops and other work places. We have thus been able to give an account of prison labour in each of the nine prisons. The analysis of the questionnaires and interviews provided a better insight into the position of inmates, and the data collected allowed to see more clearly key-aspects of labour and training organisation in the light of the implementation of national laws and policies.

Results

The shortcomings pointed out by the various French commissions have been largely confirmed by our own findings, not only for France, but also for Germany and England. The actual number of jobs or training possibilities is insufficient to provide a place for every inmate² who applies. According to official statistics, only 46,5% of inmates in France, 53,6% in Germany³, and less than 45% in England have a job or are in full-time professional training.

The paid activity rate indicates the proportion of inmates employed in workshops, in a domestic capacity or in full-time training. For reasons of comparison the rate does not include full-time students who receive a stipend in England and Germany but not in France.

The **rate of unsatisfied job requests** is the latest indicator in prison labour statistics. It tries to give a more accurate picture of the unemployment rate by subtracting from the total number of inmates without a paid activity all those who are not actively looking for a job: the sick, the retired, the unemployable or, in France, those who openly refuse to work. The rate is calculated by dividing the number of unmet requests by the total number of requests (met and unmet).

With 61 %, the average paid activity rate of our nine research prisons was well above the national average. This was not unexpected as work is easier to organize, and is given a higher priority in long-term institution.

Table 1: Rates (in %) of paid activities and of unmet job requests : 2002

Prisons	France 1 high security prison, industrial area	France 2 medium security prison, outlying region	France 3 high security prison, urban setting	Germany 1 medium security prison, outlying region	Germany 2 high and medium security, industrial area	Germany 3 high security prison, urban setting	England 1 medium security prison, urban setting	England 2 high security prison, outlying region	England 3 high to medium security prison, industrial area
rate of paid activities	83	43 (64 en 2003)	66	53	58	67,8	64	60	55
rate of unmet job requests	11	41 (27 in 2003)	8	37	17 %	20	16	7,5	14

¹Talandier J., 1987, Rapport présenté au nom du conseil économique et social, *Travail et Prison*, Paris, Journal Officiel. Assemblée nationale, 2000, *Rapport fait au nom de la commission d'enquête sur la situation dans les prisons françaises*, sous la présidence de M. Louis Mermaz, Paris, Les documents d'information de l'Assemblée nationale. Sénat, les rapports de (Président : J.J. Hyst; Rapporteur : G.P. Cabanel), 2000, *Prisons : une humiliation pour la République*, Paris. Loricant P., 2002, *Rapport d'information fait au nom de la commission des finances, du contrôle budgétaire et des comptes économiques de la Nation sur la mission de contrôle sur le compte de commerce 904-11 de la Régie Industrielle des Etablissements Pénitentiaires (RIEP)*, Sénat, No 330.

The rate of employment and training of our French sample compares favourably with that of the two other countries despite problems experienced at the time at the France 2

²The percentage is calculated for the total number of prisoners and includes also those on remand.

³The French statistics date from 2000, those for Germany from 2001. In both cases the percentage is even lower today, as prison employment has not been able to keep up with the increase in the prison population of the last years.

year). The high rate of unmet job requests in the two medium security prisons, France 2 and Germany 1, highlight the difficulties that institutions in remote areas experience in providing the required number of work places. The fact that the high security prison England 2, despite its unfavourable location in an area of high unemployment, has actually the lowest rate of unmet job requests, can be explained by the strong presence of prison industries and non profit organisations that help to keep a more explosive population constructively occupied.

Prison workshops fall into two main categories:

Prison industries workshops are run directly by the prison service and have a production line that is mainly geared toward the internal market (clothing for inmates, uniforms, furniture for the prison or for ministries, engineering products like bars, gates, etc.).

Concession workshops are set up and run by outside firms that have transferred part of their production inside the walls. The administration provides the floor space and the manpower in exchange of an agreed fee for the use of the premises and for the salaries of inmate workers, including employers' contributions. The company is usually in charge of overseeing the production but the prison administration retains control over security. The tasks proposed demand usually no previous qualifications (sorting, packing, light assembly).

Even if overall most tasks, in prison industries, concession workshops or in the domestic section, require few skills and do little to increase the chances of inmates in the labour market, national differences remain strong. The three German prisons offer a variety of tasks, some highly skilled, in all their prison run workshops. This is also true for some of the concession workshops. Each workshop proposes a number of skilled positions and training opportunities. Even in the case of concession workshops, the evaluation is not totally negative.

In England, budget cuts have led to the reduction of prison industry sectors to one or two per prison: carpentry, textiles or engineering in the case of the three research prisons. As the work process is broken down into a sequence of repetitive tasks, the training period is greatly reduced but so is the formative quality of work. Since prison industries can no longer provide enough jobs for the growing number of inmates, the prison service has been forced to turn increasingly to outside companies for contracts even if the tasks are little different from those proposed to the centres for the mentally handicapped.

France has always shown a preference for concession workshops. In the year 2000, out of 11 300 industrial jobs only 1 275 were directly run by the prison service. The quality of jobs is thus on average lower than in the other two countries.

If we examine the pay level we note that French inmates are relatively better off than their German or English counterparts. In our sample, French inmates work on average 30 hours a week in industry and are paid an average of 102 € net. The salary for domestic duties is lower: around 40 € per week. German inmates work longer hours: 38,5 hours per week for a salary of 58 € in industry and 30-40 € in the domestic sector. In England, the amount for our sample varied between 16 € and 96 €⁴ in workshops, with an average of 25 € for a 20-30 hour workweek⁵. Inmates assigned to domestic duties receive 7-14 € per week.

According to the calculations of the Loridant report, each French inmate requires a minimum of 40 € per week to meet

⁴ Starting in the late 90ies some bigger companies (private finance enterprises) have begun signing contracts which stipulate an enhanced pay level in exchange for a qualified and disciplined workforce.

⁵ The official rate suggested by the Prison Service is still lower: 12 € or £7,50.

his basic needs (clothing, cleaning products, tobacco, TV, etc.). Actual pay levels leave thus little margin for taking care of family responsibilities or to reduce the debt burden that weighs on many inmates. Even if German and English prisons provide more of the basic essentials, the lower salaries make it virtually impossible to put aside a sufficient amount for a new start after release.

The legal status of inmate workers is but a poor reflection of outside conditions as they are denied many of the rights and social protections normally associated with a work contract. France has gone further than most countries in addressing this problem. Since 1987, work is no longer mandatory. Those employed in prison workshops are granted almost the same social protections as outside workers with the sole exception of unemployment benefits. Working conditions including a job description are spelled out in writing and signed both by the administration and the inmate concerned⁶. The decisions of hiring and firing is no longer taken by the employment manager or the first prison officer but by a committee comprised of several staff members from different fields. This is certainly a positive development, yet the gap between the rights of inside and outside workers remains large. Inmate workers are excluded from collective agreements. They have no say on hiring procedures or working conditions or salary. The protections provided by the labour code against unjustified layoffs and firings do not apply. The same holds true for compensation payments in the case of work related illnesses or accidents. Workers are also deprived of all guarantees concerning job stability. All rights that could give them a certain control over their work, such as the right of expression or the right to be represented are nonexistent. Not only are the inmate workers deprived of the majority of rights associated with a work contract they are also denied access to the courts traditionally competent to handle labour disputes. Alternative access to administrative courts remains rudimentary.

Unlike France, Germany gave itself, as early as 1977, a penitentiary law that was exemplary at the time and remains so in many aspects. The regulation of prison labour has changed little over the years. Work is still mandatory. Social protections are similar to those in France with the difference that German prison workers are covered by unemployment insurance (after release) but are excluded from the pension scheme. If the workshop closes for technical reasons, workers continue to receive 33% of their pay. Inmates on sick leave because of a work accident receive compensation payments of 80% of their average salary; even inmates on the waiting list for a job are given pocket money. After one year of regular employment, workers are entitled to three weeks paid vacation. Despite these positive aspects we note the same shortcomings regarding individual and collective rights as in France, but there is better access to the courts, including the Constitutional Court.

As far as England is concerned the term "legal status" hardly applies as prison labour has been completely separated from the regulations governing outside work. There are no social security provisions apart from medical care provided to all inmates independent of their work status. Even in the case of a work accident, the position of the injured worker is little changed from what it was a hundred years ago. The burden of proof remains inverted and it is the worker who has to prove the negligence of the contractor or the lack of duty of care of the prison administration. Access to the courts is thus extremely limited, and inmates are better advised to use the road of complaint to the Prison Ombudsman or to the Independent Monitoring Board.

⁶ The document, called a *support d'engagement*, has however no binding legal effect.

Prison industries as a whole have ceased to be a source of income for the Prison Service, and several actually operate at a loss. In 2002, the accounts of the French *régie* showed a small benefit of 175 000 €. This was only possible, however, thanks to a hidden subsidy of four million euros that covered the salaries of the workshop staff (Rapport Lorient, 2003, 20). In Germany, the situation varies from *Land* to *Land*. Whereas Bavaria and Lower Saxony claim that prison labour is still profitable, the *Land* of Hesse admits a net loss of 3 658 327 € for 2001 (Justizministerium Wiesbaden, 2002). According to the Report of the Industries Review Team for England⁷ (2003, Annex E) the net loss of prison industries for 2002 is estimated at 13 212 727 € (£ 8 808 485). The poor economic performance is linked, at least in part, to the low productivity of prison workshops. The gap is greatest in Germany, where prison industries reach only 15-20% of outside levels⁸. The English figures are slightly more encouraging: 20-24% in textiles and 30 to 40% in engineering workshops⁹. The highest rate can be found in France where average productivity reaches 40-50%¹⁰. Even if the national differences seem unwarrantedly high, the fact remains that the productivity level of prison industries compares unfavourably not only to local standards but also to those of emerging countries.

The shortcomings of prison labour: the inmates' point of view

Employees of a company are often in a good position to spot certain shortcomings in the production process and to offer constructive solutions. This also holds true for inmate workers. We have therefore asked them, through an open question in the questionnaire, how they would improve certain aspects of work if they were given the chance.

Question: In your view, how could work in prison be improved? If possible, make 3 suggestions.

Suggestions	France	Germany	England
Concerning the pay scale : increase; different distribution	56 %	51 %	73 %
Labour law : social insurance; paid vacation; compensation payments; greater job security; work contract.	38 %	33 %	8 %
Organisation : more up to date methods; less bureaucracy; longer workdays; better equipment.	39 %	23 %	20 %
Quality and choice of jobs: jobs for which there exists a demand outside; bigger choice to suit different aptitudes.	30 %	27 %	56 %
Professional training : wider choice; better geared to outside market; higher standards.	29 %	23 %	39 %

In all three countries, if the inmates were at the head of prison enterprises, they would first of all **modify the pay scale**. It does not come as a surprise that this proposal is most strongly voiced in England, the "poor man" of Europe, as far as prisoners' wages are concerned. English inmates see a strong correlation between pay and productivity. As long as the Prison Service continues to pay them ridiculously low wages, it will have to put up with an unmotivated, unproductive workforce.

French prisoners would then **reform the organisation of the production and the management style**, which they consider

cumbersome and outdated. They want a continuous workday and the introduction of two shifts, in order to create more jobs. They also put greater emphasis on staff training and are less tolerant about shoddy work and lazy workers. Above all they want to alter the hierarchical relationship between workshop instructors and workers, and replace it with more dialogue, more individual responsibility and more mutual trust.

One of the main preoccupations of English inmates concerns the **obsession of the prison administration with security**, which shortens an already brief workday and discourages outside contracts. On a personal level, the frequent controls are perceived as humiliating and counterproductive. Inmates are also critical of the lack of standards in many workshops, instructors being more intent on keeping inmates busy than on producing quality goods. Their judgement on the professional competence and general attitude of the personnel is sometimes devastating: "Let's get rid of this dead wood, these lazy instructors who do nothing but yell at us all day long." They have however no illusions about some of their fellow workers and suggest a better separation of teams according to skills and motivation. The desire to be given more responsibility and to be taken seriously as competent workers is often expressed, especially by workers over forty.

The **reform of their legal status** is more important to German prisoners than organisational improvements. They insist particularly on the extension of the social security package to give them access to public health insurance (covering also their families) and inclusion into the pension scheme. It is particularly this second aspect, which poses a problem. One out of three respondents have expressed their fear about leaving prison without hope of finding a job, given their age, and without any provisions for their old days despite the many years they have worked in prison.

As far as labour rights go, French prisoners would like improved protections, especially against technical or economic layoffs. They also consider it unfair not to receive financial compensation for days lost because of a work accident or sickness.

By contrast, English prisoners seem little concerned about the imperfections of their legal status, maybe because their expectations are lower in a context where even free workers enjoy in general less protections than their continental counterparts.

More than half (56%) of English inmates criticise however the **quality and the choice of work**. They complain about monotonous, boring tasks that do not teach them anything and do not improve their chances on the labour market. They would like to see them replaced by jobs in more promising fields like in information technology, the service sector or in construction. They would also wish to increase the variety of workshops to bring them in line with individual aptitudes and inclinations. Almost one third of French inmates and a quarter of our German sample formulated similar propositions. In France, the reduction of the number of badly paid, labour intensive jobs such as sorting and packaging are on the top of the list of necessary reforms, followed by the lack of job security, due to the fact that many concession firms withdraw from their prison engagement at the slightest economic downturn.

German inmates have less reason to complain about the low skill level of their jobs, yet they would like a smaller number of vocational jobs and a greater variety for those who are not "manual".

Constraints and obstacles: the point of view of the managers

The list of shortcomings pointed out by the workers is largely confirmed by the industrial and workshop managers : too brief a working day further shortened by frequent security controls;

⁷ Industries Review Team, Regime Service Group (report by), 2003, *Prison Service HQ Review Programme: Prison Industries*, London, Home Office.

⁸ Dünkler F., 1999, Germany, in Van Zyl Smit D., Dünkler F., (eds.), *Prison Labour: Salvation or Slavery*, Dartmouth, Aldershot UK, 87. Fulton R., Smartt U., 1996, *Are German prison industries really so much better than ours?*, Prison Service Journal, 103, 5.

⁹ *Workshop Expansion Scheme (North)*, H.M.P. Featherstone, Year 2-Business Plan, 1998/99 (Internal document).

¹⁰ Talandier J., 1987, 65.

unsuitable work areas and outdated equipment; organisational inefficiencies; staff lacking commercial know-how; unmotivated workforce. But this list is not complete. From the managerial team's point of view other factors are just as important to explain the chronic shortage of jobs and the poor performance of many workshops, in particular 1) the steady increase in the prison population, 2) globalisation, which allows companies to move labour intensive tasks (the mainstay of contract work in prison) to Eastern European or South-East Asian countries, and 3) a prison workforce that is increasingly underqualified and unable to follow the rhythm and the quality standards of free enterprise¹¹. The new consumer driven production style imposing low stock levels and short delivery terms have also dealt a hard blow to prison industries. They cannot match the degree of flexibility and reactivity needed, as the requirements (overtime, access to the stocking area after closing hours of the workshops, a selection of the best workers, labour saving machinery) go against prison routine and can at best be implemented in a few selected workshops.

Any outside firm working under the same constraints would be doomed to fail. The reform of prison labour is thus urgent. Staff would begin with two points: 1) Give back to prison labour its place as the central tool for the rehabilitation of inmates. If prison services saw work again as the best means to assure the social inclusion of the persons in its care, funds would become available and constraints could be reduced to their strict minimum. 2) Make sure that inmates get every help possible to find and keep a job after release, knowing that the recidivism rate of those who find stable employment is 33-50 % lower than for those who apply in vain¹². Up till now only England has put in place such a scheme with an obligation for prisons to show concrete results.

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To know more about the subject: SHEA E., 2005, Les paradoxes de la normalisation du travail pénitentiaire en France et en Allemagne, *Déviance & Société* (to be published).

¹¹The self evaluation of inmates differs in this point considerably from that of their instructors. The vast majority of French, German and English inmates are convinced that they work every bit as well as outside workers.

¹²Hammerschick W., Pilgram A., Riesenfelder A., 1997, Zu den Erwerbsbiographien und Verurteilungskarrieren Strafgefangener und Straftlassener, rekonstruiert anhand von Sozialversicherungs- und Strafregisterdaten, in Hammerschick W., Pilgram A., (eds.), *Arbeitsmarkt, Strafvollzug und Gefangenearbeit. Jahrbuch für Rechts- und Kriminalsoziologie*, Baden-Baden, Nomos Verlag, 155-187. Simon, 1999, *Prisoners' Work and Vocational Training*, London, Routledge, 175.