

ADJUSTMENT MEASURES OF PRISON SENTENCES : THE EXCEPTION

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In recent years, the issue of forms of enforcement of sentences to imprisonment has gained in urgency in France as well as for the Council of Europe agencies¹. The law on the presumption of innocence, voted by the French National Assembly on May 24, 2000, is completed by a very large section on "court responsibility" for release on parole (RP). Henceforth, the Minister of Justice is no longer in charge of paroling : during the decisional procedure, the person sentenced is heard, and may be assisted by a lawyer, the decisions must be motivated and an appeal may be interjected. It is in this context that we conducted a research project, the preliminary results of which are presented here.

First, a representative sample of close to 3,000 prison-leavers was established, stratified according to the nature of the offense punished. We then asked the following preliminary question : did these people, in the course of their detention, receive the benefit of employment outside of prison, semi-liberty or parole ? (see box, page 12). These three forms of sentences' adjustment all have the same consequence : they take the sentenced person out of prison before the theoretical end of the sentence, on the basis of a "contract of trust". What is involved here, then, is partial "advance release" in the first two cases (there is no formal release from prison), and a priori total and definitive advance release in the case of RP. In the latter case, there is formal release and if the person's behavior does not cause the measure to be revoked, the rest of the sentence is served outside of prison, under the surveillance of the corrections department rehabilitation and probation unit (the CDRP : SPIP in French).

According to our survey, an estimated 82 % of released sentenced prisoners did not receive the benefit of employment outside of prison, semi-liberty or parole. These measures, prescribed by the legislator to facilitate the gradual, assisted and controlled return of these people to life in the outside world are never applied to the vast majority of sentenced prisoners². The proportion of sentenced prisoners who had not benefited from any of those three adjustment measures varies with the offense for which they were punished. Irrespective of the sub-cohort studied, a large majority were non-beneficiaries, with figures ranging from 61 % for "first degree murder" cases to 93 % for "immigration offenses".

Employment outside of prison

The proportion of prisoners who were awarded outside employment, in regard to the total group of released sentenced prisoners was estimated at 1.5 %. This is the first time it has been possible to evaluate this "longitudinal" indicator : up to now, the only data on the subject were "transverse" – that is, showing the number of times a measure was taken within a calendar year. This low figure casts some doubt on the claim, occasion-

ally voiced, that the decline in RPs, observed over the last thirty years, is partially compensated by the development of another individualized measure : employment outside of prison. The latter is somewhat similar to RP, but without formal release from prison, and is allegedly more appropriate to the profiles of today's prisoners, with their violent behavior, substance abuse and other psychological problems requiring closer surveillance than that afforded by probation following formal release from prison.

There were very few cases of outside employment in any of the sub-cohorts, with figures ranging from 0 % for "immigration offenses" to 5 % for "first degree murder". The figures are actually systematically higher for major offenses than for less serious offenses³ (5.4 % for aggravated theft as opposed to 1.7 % for simple thefts – a *délit*). The former represent heavier sentences, with longer prison terms, but there too, outside employment was still an exceptional measure.

Semi-liberty

Semi-liberty was granted somewhat more frequently ; that is, in 7.5 % of cases. Here too, this is the first time we have been able to obtain this longitudinal indicator. According to the legal provisions, application of this measure pursues two goals :

- a) to adjust the enforcement of short sentences (imprisonment for less than one year) in a correctional facility, through the decision of either the sentencing court or the judge in charge of enforcement of sentences (JES), to avoid such devastating consequences of 24-hour detention as loss of employment ;
- b) to lighten the end of a sentence, upon the decision of the JES or even of the Minister of Justice, to prepare the prisoner for discharge, sometimes after prolonged detention. Semi-liberty may then be a prerequisite for RP.

The proportion of semi-liberties granted ranged from 0 % for the sub-cohort "immigration offenses" to 20 % for "failure to produce administrative documents, driving offense". On the whole, the proportion of released prisoners to whom semi-liberty was granted was somewhere around 10 %:

- It is clearly very low for offenses connected with illegal immigration, i.e. "immigration offenses" and "forgery and use of false administrative documents", the latter category being comprised of 84 % of foreigners, 87 % of whom are expelled ;
- It is very low for all serious offenses, with semi-liberty for "short sentences" prevailing over "end-of-sentence" semi-liberty ;
- It greatly exceeds 10 % for "drunken driving without unintentional injury", "failure to produce administrative documents, driving offense" and "fraud, swindling, breach of trust". These offenses incur short sentences, with medians of 3 months, 8

³ French law divides offenses into three categories, on the basis of increasing seriousness :

- *contraventions* ("minor offenses"), which are judged by *tribunaux de police* ;
- *délits* (termed moderately serious offenses), which are judged by *tribunaux correctionnels* ;
- *crimes* (termed major offenses), which are judged by *cours d'assises*, in which a jury sits.

¹ See *Penal Issues*, XIII.2 March 2000.

² The question of temporary leaves was not dealt with here, since the specific prison records, on which our data collection was based, did not contain that information.

months and 6 months respectively. Further, they involve individuals who are relatively well integrated, socially and occupationally speaking, and who are granted semi-liberty from the outset, so that they will not lose these assets. For these three groups, then, the proportion of those who declared a profession when entering prison was 70 %, 75 % and 63 %, as against 45 % on the average. The proportion of those with a secondary or higher education was respectively 44 %, 41 % and 46 % as against an average of 36 %.

Release on parole

According to the *Quarterly statistics on the population in custodial facilities*, published by the Corrections administration, the overall proportion of RP among the entire population of sentenced prisoners released in 1996 was 10.3 %. The national record on prisoners (FND) gives a figure of 10.4 % for the same year. The estimation reached on the basis of our survey is slightly higher : 11.7 %⁴. This proportion varied considerably with the offense involved, ranging from 4.8 % for "drugs (use only)" to 33.3 % for "first degree murder". But at best, release on parole only affected 1/3 of those released (see table 1).

Table 1. Proportion of RP among released prisoners, per sub-cohort, in decreasing order

	No. released	% of RP
Drugs (use only)	62	4.8
Assault, insulting an officer, contempt of court	250	5.6
Simple theft	540	7.0
Immigration offenses	182	7.1
Sale of drugs	133	8.3
Drunken driving without unintentional injury	130	9.2
Failure to produce administrative documents, driving offenses	95	9.5
Forgery and use of forged administrative documents	109	10.1
Sexual assault or other sexual offense against a juvenile	126	10.3
Assaulting an adult	322	10.9
Receiving	140	12.1
Robbery	139	12.2
Fraud, swindling, abuse of trust	120	19.2
Drug offenses, except sale only or use only	234	20.1
Aggravated sexual assault or other aggravated sexual offense against a juvenile *	104	23.1
Aggravated theft *	56	26.8
First degree murder *	117	33.3

*Only these three categories are *crimes*, serious offenses ; all others are *délits*, moderately serious offenses.

It is often claimed that RP is exceptionally granted to prisoners sentenced for drug offenses or to sex offenders. While it is true that the lowest figure is found for use (only) of drugs, the figure is 8 % for sale (only) and above all, it rises to 20 % for other drug offenses. The latter sub-cohort only involves moderately serious offenses, and it was exclusively up to the JES to take RP measures for this group⁵. As for sexual violence against a juvenile, the proportion was 10 % for moderately serious offenses and 23 % for serious offenses. As a rule, the percentage of those released who were given parole was highest for those having committed a serious offense. So, contrary to popular beliefs, RP is not reserved, in practice, for those prisoners sentenced for violent offenses. More will be said of this apparent paradox below, in our discussion of the effect of length of the sentence.

The proportion of RP increases with the length of the sentence

The highest percentages of RP were usually found for the heaviest sentences ; that is, those involving serious offenses and drug offenses, with the exception of sale only and use only (see table 2). However, there are some discrepancies that prevent any clear-cut correlation. For instance, whereas the median length of sentences for moderately serious sexual violence is relatively high (18.3 months), the proportion of RP was relatively low (10 %) and comparable to that for "forgery and use of forged administrative documents" and "assaulting an adult", for which the sentences were one third as long (5 to 6 months). Conversely, for a same median quantum of 6.1 months, parole was granted to 19 % of the group sentenced for "fraud", 12 % for "receiving", 7 % for "simple theft" and 5 % for "use of drugs".

⁵ As regards drug offenses, the Minister of Justice has practically never granted a single RP in recent years, but the cases involved are not of the same nature (traffickers sentenced to over 5 years imprisonment).

⁴ This figure should not be confused with the rate of granting of the measure, which is the proportion of releases on parole granted during a given year, calculated on the basis of the number of people eligible for that measure.

Table 2. Proportion of RP among released prisoners according to median length of sentence, from shortest to longest median sentences

	median length of sentence	% of RP
Drunken driving without unintentional injury	3.2 m	9.2
Assault, insulting an officer, contempt of court	4.1 m	5.6
Immigration offenses	4.1 m	7.1
Forgery and use of forged administrative documents	5.1 m	10.1
Assaulting an adult	6.1 m	10.9
Simple theft	6.1 m	7.0
Receiving	6.1 m	12.1
Fraud, swindling, abuse of trust	6.1 m	19.2
Drugs (use only)	6.1 m	4.8
Failure to produce administrative documents, driving offenses	8.1 m	9.5
Robbery	9.2 m	12.2
Sale of drugs	10.2 m	8.3
Drug offenses, except sale only or use only	16.6 m	20.1
Sexual assault or other sexual offense against a juvenile	18.3 m	10.3
Aggravated theft *	5 years	26.8
Aggravated sexual violence or other aggravated sexual offense against a juvenile *	6 years	23.1
First degree murder *	10 years	33.3
*Only these three categories are <i>crimes</i> , serious offenses ; all others are <i>délits</i> , moderately serious offenses.		

To put this in other terms : considering the length of the prison sentence, some categories seem to have been "penalized", where RP is concerned. They are the sub-cohorts of "use of drugs", "sale of drugs" and "sexual offense against a juvenile – a *délit*". Others – notably, the "drunken driving without unintentional injury" and "fraud, swindling, abuse of trust" sub-cohorts – were relatively advantaged. However, if we analyze the variations in the proportion of releases on parole with respect to length of the sentence within each sub-cohort the results are far more regular. For 13 sub-cohorts out of 17, the frequency of RP rose as the length of the sentence increased. For some offenses – "assaulting an adult (moderately serious offense)", "simple theft", "receiving", "fraud, swindling, abuse of trust" and drug offenses, the amplitudes between the groups at either extreme were very marked. This was less true for other offenses : "first degree murder" and "robbery (another *délit*, moderately serious offense)".

The positive correlation, for a given offense, between the length of the sentenced pronounced and the proportion of RP, may have several explanations. In a sense, the non-individualized measures for adjusting prison sentences (that is, the quasi-automatic cutbacks of 3 months per year in prison terms for good conduct and the annual collective pardons for the 14th of July, since 1991) are in competition with RP. For the shortest sentences, the date at which it is possible to grant RP may seem too close to the normal release date, to both the judge and the prisoner.

The JES may think that such a short period of surveillance outside of prison (the time remaining to be served) is insufficient for the implementation of any serious social and educational follow-up by the corrections department rehabilitation and probation unit.

The prisoner may prefer to count on having his sentence reduced, or on collective pardons, in the hopes of leaving prison without any surveillance, particularly since the JES has the ability to prolong the follow-up period for one year beyond the time remaining to be served in detention. If we add to this the time required to prepare the application and, in practice, the time to find an employer and a place to live, the correlation discovered above is not surprising.

Furthermore, the JES may be of the opinion that for relatively short prison terms, there is enough of an "erosion" of punishment through reductions of sentences and collective pardons, in addition to which there may be semi-liberty and, in some exceptional cases, employment outside of prison, and that it would be unreasonable to go any further, barring which the sentence pronounced would become meaningless. In the case of longer sentences, on the other hand, the JES may feel that release on parole would be more helpful in achieving rehabilitation than further imprisonment, with its harmful consequences. A more thorough analysis would be required for each sub-cohort. A single example will be taken here, the sub-cohort of "drug offenses except use only and sale only". There was a relatively high proportion of RP – 20 % – in this group. While the length of the sentence pronounced is the most discriminating variable, it is not the only one. The proportion of RP also varied with marital status, occupational status and correctional situation upon committal. For instance, 43% of those sentenced to imprisonment for over one year who were not judged by a rapid procedure (summary trial), who claimed to have a profession when committed and were married were given RP. All else being equal, the proportion dropped to 34 % for those who were not married and to 16 % for those without a profession. If we look at sentences to less than one year with the same char-

acteristics, we arrive at a figure of 11 %. Socio-demographic and penal variables are intertwined, then.

But the question of the competition between individualized measures (primarily RP) and collective measures (collective pardons and *de facto* reductions of sentences), evidenced here, is certainly an essential one to be considered, if RP is to be given any real boost, and one of the hardest to solve. Turning the decision over to the courts, as Parliament has done, was definitely a necessary preliminary for such a boost. But there is reason to doubt it will be sufficient.

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Definitions and methods

Employment outside of prison means that the sentenced prisoner may be employed outside of the custodial facility at jobs controlled by the administration, with or without the surveillance of corrections personnel. The work may be performed for an administrative agency, a local community, a legal entity or a natural person. The judge in charge of the enforcement of sentences (JES) is only allowed to grant employment with surveillance for prisoners whose sentence does not exceed 5 years and who have not been previously sentenced to more than 6 months, except if the prisoner is eligible for release on parole or for semi-liberty. The conditions for outside employment without surveillance are even stricter, since it may only apply to those prisoners who have no more than one year of their sentence left to serve, or those who are eligible for release on parole and whose remaining term does not exceed 3 years.

Semi-liberty may be pronounced by the court when it sentences an individual to imprisonment for one year or less. The decision may also be made by the JES for the same type of sentence, at the time of its enforcement. The JES may also grant semi-liberty to prisoners already in detention when the time remaining to be served does not exceed one year. The Minister of Justice grants it when it is a prerequisite for release on parole – that is, for sentences to more than 5 years – since the January 6, 1993 bill was passed.

Release on parole (RP) : sentenced prisoners may be given RP if they "offer serious guarantees of social readjustment". If the sentence does not include a safety period, RP may be granted when the prisoner has served at least half of the prison term to which he or she was sentenced. When the total duration of detention does not exceed 5 years, RP is granted by the JES following advice from the committee for the enforcement of sentences (CES). For sentences exceeding 5 years, the decision is made by the Minister of Justice on the basis of a proposal formulated by the JES following advice from the CES. RP may be attended by special requirements such as aid and control measures designed to facilitate and verify the prisoner's rehabilitation. These measures are implemented by the JES with the help of the CDRP, in the probation situation. Release on parole is prescribed for a period at least equal to the remainder of the prison term at the time of release, but the JES has the faculty to prolong it for one year.

The sample : up to now, the few quantitative studies made on the adjustment of sentences generally concentrated on sentences to 3 years or more of imprisonment. They were inherently limited by the absence of a survey base for the determination of a representative sample on which to work. This possibility is available, henceforth, thanks to the national record of prisoners (FND in French). The present study examines sentenced prisoners released between May 1, 1996 and April 30, 1997 for one of the following reasons : term covered by pretrial detention, end of term (including pardons and amnesties), release on parole (by the JES or Minister of Justice), payment in lieu of civil imprisonment or civil imprisonment completed, being escorted to the border. Using 17 offenses-based sub-cohorts, 2,859 records were examined (with a sampling rate ranging from 1/30 to 1/5 depending on the offense). Given the frequency of the offenses selected, the 17 categories represented 85 % of all released convicts.