

FRENCH PRISONS, EUROPEAN PRISONS

PERPETUALLY INCREASING ?

The trend in French prison populations during the 1980s may be summarized as follows :

* A heavy increase in the number of inmates, at any given point in time, temporarily masked by pardons (1988 amnesty, general pardons in 1985, 1988, 1989, 1991 and 1992). There were 50,352 people in prison (overseas *départements* included) on January 1, 1993 ; that is, 10,000 more than on January 1, 1981.

* An older population, partly because of the clear political determination to restrict recourse to prison for youthful offenders. This policy has been materialized in a number of legislative bills on juvenile offenders - the December 30, 1985, December 30 1987 and July 6, 1989 acts - which have been effective.

* A rising proportion of women and even more so, of aliens; the latter rose from 20 % on January 1, 1981 to close to 31 % on January 1, 1992 (unless otherwise specified, figures refer to metropolitan France only). Between these two dates, there was a 2,300-unit rise in the number of French inmates, versus an increment of 6,900 for aliens. Since 1984, correctional statistics list aliens prosecuted or sentenced for breaking the immigration laws separately. On January 1, 1992 the latter represented one fourth of all imprisoned aliens. The increase in this specific category accounts for 2/3 of the increment in the number of aliens in prison since 1984.

* After a steady rise starting in the early 1970s, the number of pretrial prisoners at any given point in time has remained relatively stable since 1985. This change coincided with the application of the July 9, 1984 act, on January 1, 1985, which instated hearings of both parties before any decision on pretrial detention.

* More prisoners present at any point in time, because of longer stays rather than an increase in the number of committals : the average length of stays rose from 4.6 months in 1980 to 6.5 months in 1991, whereas the number of committals averaged 83,000 annually since 1981, as against 97,000 for 1980.

* Longer prison stays, mainly because of longer prison sentences. One reason for this evolution is a change in the relative prevalence of different types of offences punished by unsuspended prison sentences. The rise in drug-related offences comes to mind in this context. On January 1, 1992, the distribution of sentenced prisoners, on the basis of the offence sanctioned, was as follows : theft = 33 % (versus 50 % in 1981) ; narcotics = 19 % (not specified in 1981, somewhere around 5 - 6 %) ; murder = 10 % (9 %) ; rape and indecent assault = 9 % (vs 6 %) ; assault and battery = 5 % (vs 8 %) ; fraud = 3 % (4 %) ; breaking of immigration laws = 4 % (1 %).

At the turn of the 1980s, debate on correctional policy focussed on the issue of "short stays". The idea was to reduce their number, by developing *community sanctions and measures* (in the words of the Council of Europe). This involved presentencing measures such as pretrial surveillance and rapid investigations or non-custodial sanctions including community service orders, day-fines and confiscated drivers licences. As shown above, efforts in this direction have been somewhat effective, at least on the number of committals. This did not solve the problem of "inflated prison populations", however, because of the considerable impact of long sentences. Following the recent protest movements within correctional facilities, controversy has tended to revolve around much more difficult issues raised by the control of serious personal offences including drug trafficking, morals offences, violence of all sorts, etc.

IS FRANCE AN EXCEPTION IN EUROPE ?

At the start of 1993, there is no need to demonstrate the value of situating the question in a European perspective ! However necessary the approach may be, the instruments at our disposal are still quite inadequate. Penal statistics do not lend themselves easily to international comparisons, owing to the considerable diversity of the European legal systems and penal institutions, which diversity also exists, occasionally, within certain States which are highly decentralized in this respect (such as United Kingdom...). However, under the auspices of the Council of Europe, much progress has been made in the centralization of information and in comparability since 1983, through periodic surveys of the prison population of its member States.

With the inauguration of SPACE - Annual Penal Statistics for the Council of Europe - the year 1993 represents a new step in this accumulative process. This data-collection system will cover both prisoners and certain community measures and sanctions (see box).

Only three member countries of the Council of Europe - Austria, Germany and Turkey - experienced a steady decline in their detention rates (number of prisoners relatively to overall population) during the 1980s. Since 1990, however, this figure has levelled off in Germany and the trend seems to have been reversed in Austria. As for Turkey, the year-to-year variations are sometimes so massive that they raise doubts as to the reliability of the data on which they are based. Furthermore, Italy has experienced a relatively stable detention rate since 1987. It is clear, then, that none of the European 27 is engaged in a significant reduction of its prison population.

Like France, most of the member States find that inflated prison populations mean more women, more aliens and fewer young people (under age 21) in prisons.

As for the overall rise in the number of prisoners, the Council of Europe surveys show it to be due mainly to longer stays in prison in most countries, as is the case in France since 1981. The reasons behind this extension of the time spent in prison may differ from one country to another, but European statistics are not yet able to differentiate these. There may be :

* longer procedures (judicial inquiry, scheduling of hearings, trial, examination of appeals) ;

* longer sentences, owing either to a change in the types of affairs judged or to changes in the way the same type of offence is punished ;

* modification of the legislation and/or of practices as to the individualization of sentences (fewer reductions of sentences or releases on parole)...

Thus, although most European countries have made an effort to reduce recourse to imprisonment for minor offences, the problem of growing prison populations has not been solved because of the weight of long sentences.

DOES FRANCE RANK FIRST FOR RECOURSE TO PRETRIAL DETENTION ?

Comparison of pretrial detention in France with the situation in other European countries is a subject of recurrent controversy. Questions of definition and of the comparability of the indicators used to support one position or another arise at each reform of the code of criminal proceedings.

The Council of Europe statistics are based on two indicators - the proportion of pretrial prisoners and the pretrial detention rate -, different in character but both predicated on the same definition of the pretrial prisoner.

French correctional statistics distinguish pretrial prisoners from sentenced prisoners on the basis of paragraph D.50 of the code of criminal proceedings, which stipulates that "*the term sentenced can only be applied to individuals who have been sentenced in virtue of a decision which is final in nature. However (...) the delay consented to the public prosecutor to appeal the sentence (...) is not considered here*".

A similar definition was retained for the Council of Europe statistics : all prisoners for whom a final sentence has not been pronounced are classified as "pretrial prisoners". This negative definition necessarily covers a variety of legal categories, including prisoners whose case is being investigated or who have been found guilty and are awaiting sentencing, those who have lodged an appeal following sentencing by a first court, etc. Whence the importance, when using data produced by the application of these definitions, of not considering that the investigation period is the only one involved in pretrial detention.

The rate of pretrial prisoners is obtained by comparing the number of pretrial prisoners on a given date with the total number of prisoners detained on the same date. It is usually expressed per 100 prisoners and fluctuates enormously from one country to another (see Table 1), since some prison populations are almost exclusively composed of sentenced

individuals (in Finland, Ireland, Iceland), whereas in other more than half of all prisoners has not yet been given a final sentence. With 41.4 % of pretrial prisoners as of September 1, 1991 (overseas départements included), France ranks first in this respect, behind Turkey (61%), Italy (53 %), Belgium (52 %), Switzerland (45 %) and Czechoslovakia (44 %).

One drawback of this frequently used indicator is its dependence on both the number of "pretrial prisoners" and the number of sentenced "prisoners". When the proportion rises, following an amnesty or a general pardon, this only means that the number of sentenced prisoners has decreased, while the number of pretrial prisoners remained unchanged. The pretrial detention rate, calculated by comparing the number of pretrial prisoners on a given date to the total prison population, is more significant. It is generally expressed per 100,000 inhabitants. On September 1, 1991, the rate in France (overseas départements included) was 35 per 100,000 inhabitants, placing us third, behind Hungary (44 per 100,000) and Switzerland (38), which is relatively close to Czechoslovakia (34), Spain (32), Belgium (31) and even Italy (30).

France's position within Europe is not - or no longer - exceptional with respect to pretrial detention as is often reported. However, considering the heterogeneity of the "pretrial prisoner" category, this preliminary comparison only advances tentative conclusions. Once the new, more discriminating nomenclature for the description of the correctional status of prisoners is applied by SPACE, it should be possible to improve points of comparison between people whose case is, specifically, under investigation.

Pierre TOURNIER

CNRS/CEPR

For further information, consult :

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TOURNIER (P.), *Démographie des prisons françaises : toujours plus ? Ecole Nationale d'Administration, séminaire "L'impossible maîtrise de la population pénitentiaire ?", Paris, CESDIP, Etudes et Données, n°64, 1992.*

TOURNIER (P.), *Statistiques pénales annuelles de l'Europe : PROJET S.PACE, 41e Session du Comité européen pour les problèmes criminels, Comité de l'Europe, Strasbourg, Réf. PC-R-CP (92) 6, 1992.*

Table 1. Prison populations on 1.9.1991

Country	Total number of prisoners	Detention rate per 100,000 inhabitants	Percentage of petrial prisoners	Petrial imprisonment rate per 100,000 inhabitants
Cyprus	218	38,0	10,1	3,8
Iceland	101	38,9	5,9	2,3
Turkey	26 544	44,0	60,6	26,7
Netherlands	6 662	44,4	38,8	17,2
Greece	5 008	49,5	34,8	17,2
Sweden	4 731	55,0	21,9	12,1
Italy	32 368	56,0	52,9	29,6
Norway	2 510	59,0	20,3	12,0
Ireland	2 114	60,4	6,5	3,9
Belgium	6 035	60,5	51,6	31,2
Finland	3 130	62,6	9,2	5,8
Denmark	3 243	63,0	26,5	16,7
Bulgaria	7 822	68,2	23,8	16,2
Czechoslovakia	11 831	75,6	44,4	33,5
Germany	49 658	78,8	30,5	24,1
Portugal	8 092	82,0	35,5	29,1
France	48 675	83,9	41,5	34,8
Switzerland	5 688	84,9	44,7	37,9
Austria	6 655	87,5	32,8	28,7
Luxembourg	348	90,3	20,1	18,2
Spain	36 562	91,8	35,3	32,4
United Kingdom	52 830	92,1	21,9	20,2
Hungary	14 629	146,0	30,2	44,2

Germany : exclusive of the five new *Länder*
 Cyprus, Denmark, Netherlands : as of 1.9.1990
 France : metropolitan and overseas *départements*
 Poland, Malta : no data furnished

Source : Tournier (P.) Conseil de l'Europe,
 Bulletin d'information pénitentiaire n° 17 (at press)

Table 2. Committal rates for 1990 and indicator of mean length of detention

Country	Number of committals	Committal rate per 100,000 inhabitants	Percentage of committal of petrial prisoners	Mean length of detention, in months
Bulgaria	4 513	39,3	53,6	—
Czechoslovakia	11 389	72,8	92,5	—
Cyprus	558	99,6	27,2	4,1
Italy	57 738	100,3	84,6	6,8
Portugal	11 127	106,9	80,9	9,8
Hungary	13 639	130,5	52,7	10,1
Iceland	344	134,3	26,2	3,6
Netherlands	19 965	137,8	50,9	3,9
France	80 977	140,3	77,8	7,0
Germany	100 892	160,9	—	5,8
Luxembourg	641	171,2	76,3	6,6
Belgium	17 406	176,3	75,8	4,5
Finland	8 831	176,8	21,8	4,2
Spain	69 467	180,5	—	5,7
Turkey	135 176	239,4	65,5	4,1
Norway	10 861	271,5	31,1	2,5
Austria	20 944	275,6	57,2	3,6

Germany : exclusive of the five new *Länder*
 Cyprus, Denmark, Netherlands : 1989
 France : metropolitan and overseas *départements*

Source : Tournier (P.) Conseil de l'Europe,
 Bulletin d'information pénitentiaire n° 17 (at press)

COUNCIL OF EUROPE ANNUAL PENAL STATISTICS (SPACE)

SPACE is a two-part data-collection system set up at the start of 1993 :

QUESTIONNAIRE I

Covers *prison populations* and supersedes the enquiries conducted twice yearly since 1983. The key innovations are the introduction of new items (prison capacity, median age, number of inmates under age 21), enlargement of the nomenclature for the legal status of prisoners from two possibilities (pretrial/sentenced) to five :

- * sentenced prisoners (final sentence)
- * sentenced prisoners who have appealed or who are within the statutory limit to do so
- * prisoners who are convicted, not yet sentenced
- * untried prisoners (not yet convicted)
- * other cases (specify)

Furthermore, a variable part, relating to a specific theme for each survey, has been introduced. For the current survey, the subject chosen is the evolution of suicide attempts in prisons during the 1983-1991 period.

QUESTIONNAIRE II

Covers *certain community sanctions and measures* pronounced as the principal penalty by criminal courts (for both adults and juveniles) during the reference year :

- * exemption from punishment following finding of guilt
 - without condition
 - conditional, without supervision¹
 - conditional, with supervision

- * Pronouncement of sentence deferred following finding of guilt (without committal)
 - without supervision
 - with supervision

- * fine
 - fine with or without stay of execution, imposed by a court or prosecutor excepting fines imposed by administrative procedure
 - day fine

- * community service

- * prison sentence imposed, with execution being fully suspended
 - without supervision
 - with supervision

- * prison sentence imposed, with part to be served, and part to be suspended
 - without supervision
 - with supervision

with, in each case, a division into four classes depending on the part of the sentence to be served (- 3 months, 6 months - one year, one year and over).

- * other cases of "probation" following finding of guilt including measures and sanctions in the field of criminal law

- * prison sentence (without full or partial suspension) with a division into four classes depending on the part of the sentence to be served (- 3 months, 3-6 months, 6 months - one year and over).

¹ - without supervision by a probation and/or assisting agency