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"Need for and requirements of national monitoring for prisons and jails within a sovereign State"

Communication présentée au **Xth United Nation's Congress on the Prevention of Crime**, Vienne (Autriche), le 15 avril 2000

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Thirty years ago, the increasing number of violent incidents in French prisons led to several changes in French prison rules. Among these was the introduction of a "commission de surveillance" (decree No. 72-852 of 12 September 1972), a kind of bard of visitors that visit French prisons once a year – which is a big difference with the system available in the United Kingdom, where the board of visitors is active every week!

For the purposes of a research concerning the relationship between prisons and their social environment, I attended several meetings of these "commissions de surveillance", in prisons situated both within urban and rural zones.

These commissions are local – there is one for every jail or prison. They are independent. In fact, they are accountable to no one. As far as I was able to ascertain, the practices that were gradually instituted have to a great extend diverted controls from the spirit of the provisions of the code of criminal procedure. My analysis of these practices shows a kind of institutionalisation of the exclusion of civil society rather than its involvement in the control of what goes on inside prisons. Locally elected authorities are mostly interested in the eventual questions of the "overflow" of prison outside their walls[1]. For instance, a Mayor asks if it is possible that the police brings the released prisoners to a railway station outside of his city, to be sure that they

[1] **Philippe Combessie**, *Prisons des villes et des campagnes. Etude d'écologie sociale*, Paris: Editons Ouvrières – Editions de l'Atelier, 1996, p. 81-90

will not stay in his city after release. The control of imprisonment itself stays the sole responsibility of the judicial authority. Yet, Rod Morgan's conclusions with regard to his experience within the *European Committee for the Prevention of Torture and Inhuman and Degrading Treatment* (CPT) showed how limited this was [2].

If the results of CPT's inspections are so effective, one could question whether it is really necessary, at the dawn of the XXIst century, to maintain controls at a national level. Would it not be easier for the signatory States of the *European Convention for the Prevention of Torture and Inhuman and Degrading Treatment* to put more resources at the CPT's disposal so that it could carry out all necessary controls within places of detention?

In the present state of affairs, the answer is "No". Why? Because the States that have signed this convention are all sovereign States, within which most penal laws and criminal procedure rules are specific. What goes on inside prisons is mostly determined by the provisions of each penal code as well as rules of criminal procedure.

The efficiency of the control of conditions of detention would be greatly improved if the reports prepared by the controllers were to serve as the base for any discussion about drafting and modifying three types of text: prison laws, penal laws and laws and criminal procedure rules.

Prison control reports should thus be presented to Parliament each year [3]. Members of Parliament should debate these reports and propose changes in prison, penal and criminal procedure laws taking into account the elements contained in these reports.

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2 **Rod Morgan**, "Judicial Oversight and Inspection of Prison Conditions in Europe", in: ANVP-NACRO-PRI, *Monitoring Prison Conditions in Europe*, Paris: PRI, 1997, p. 37-54.

3. Collectif **Recherches Confrontations et Projets sur les mesures et sanctions pénales**, "En politique, le courage n'est pas toujours perdant", *Panoramiques*, 2000 – II, p. 120-125.

Let us remember that in France, a recent report to the Minister of Justice [4] proposes to call "prison law" the legislative instrument of reference that specifies all conditions of detention. As is the case for any legislative provisions, this instrument of reference must evolve. After a certain time, the gap in certain areas between living conditions within prisons and those of free citizens becomes so great that it is necessary to develop prison law. The enlargement of this gap is a source of aggravation of violence in prison (violence between individuals and suicides). It may seem right to some people that there should be a difference between the comfort found in prisons and that in homes outside prison; national representatives should make a decision with full knowledge of the situation. It is possible that, with regard to some points, a kind of positive discrimination in favour of prisoners is desirable.

In other respects, the elements of penal law that specify modes of sanctions also have great influence on life in prison. This brings to mind, for instance, sentences of indeterminate duration, sentences that must be served in full, but also very short sentences, imprisonment of juveniles, etc. It is possible that the control reports recurrently highlight that certain modes of sanctions are a source of great distress, both for life in prison (for inmates as well as for prison staff) and for what may happen after release. An in-depth investigation starting with the elements highlighted by the control reports could lead Members of Parliament to effectively review some provisions concerning modes of sanctions.

What goes on inside prisons is also determined by the characteristics of the people who are sent there [5]. The penal chain behaves like a filter that captures in its net and sends to prison some citizens rather than others. The legislator has at his disposal some decisive instruments to modify this selection: the texts of penal law that specify what kind of behaviour constitutes an offence or criminal behaviour, as

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4. Special report, given to the Minister of Justice on 6th March 2000, by the Commission on Monitoring of Prison Conditions in France presided by **Guy Canivet**.

5 For France, cf. **Annie Kensey**, **Pierre Tournier**, "French Prison Population. Some Features", *Travaux et Documents*, n°55, 1997, Paris, Direction de l'Administration Pénitentiaire.

well as all the texts relating to criminal procedure. The latter may involve a lot of provisions: for instance, the modes of recruitment and training of different agents involved in the penal process as a whole. All this influences the choice of individuals who are sent to prison. It would be desirable that any development of the penal law or criminal procedure regulations were to take into account the reports on conditions of detention and their effects on the concerned citizens.

Thus, the Parliament would become the keystone for prison monitoring in each country. In this one can see a double requirement: practical and ethical.

National representatives vote for laws that define reprehensible behaviour and its sanctions and are intended to punish the offenders: it is ***a practical requirement*** that they should receive the reports about conditions of detention in prisons. Only in this way can laws be improved by taking into account the effect of sanctions and the evolution of responses to them. The development of laws as well as criminal procedures can only increase the efficiency of the penal system as a whole if legislators have the means to compare them with the follow-up of modes of imprisonment (both pre and post-trial).

Members of Parliament are the representatives of the people: it is an ***ethical requirement*** that they should receive the reports and regularly debate prison conditions for citizens sent to jail or to prison in reason of a Justice which is given, in certain countries, like France, "in the name of the People".

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Fin du texte

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