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THE PRISONS OF EUROPE, PRISON POPULATION INFLATION AND PRISON OVERCROWDING

Penal Issues

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On 30 September, the Committee of Ministers of the Council of Europe adopted a recommendation on prison overcrowding and prison population inflation in Member States[1]. The text states that "The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding". It therefore formulates a series of recommendations designed to reduce prison population inflation, and addresses the means to be implemented at each phase in the penal process in order to do so. This recommendation is based on the conclusions of a research project on prison demography and trends therein. To conduct this study properly, a number of terminological and methodological questions had to be clarified, so as to develop shared approaches and a shared vocabulary in which to discuss them, over and above the different languages spoken. The present paper deals mainly with this aspect of the problem.

Clarifying concepts

A distinction must be made between the stock index, which measures the size of the prison population of a country at a given date, and the flow index, which measures the frequency of prison committals (admissions) for a given year. In the Council of Europe Annual Penal Statistics (SPACE), set up by us in 1983, we usually called the first index "rate of imprisonment" in English and "taux de détention" in French. This amounts to the ratio of the number of prisoners at date *t* in relation to the country's population on the same date. This stock index measures the proportion of prisoners in the population. In the future, the terms "**prison population rate (per 100,000 inhabitants)**" and "***taux de détention (pour 100 000 inhabitants)***" will be used.

In the past, SPACE has referred to the second index as the "committal rate" ("*taux d'incarcération*"). It is calculated as being the number of entries into prison in year *n* in relation to the average population figure in the year under consideration. This flow index measures the frequency of an event, "the entry into prison", in the entire population. In view of the ambiguity of the term "imprisonment" both in English and French (does it denote a state or an action?), we propose henceforth to use the following unambiguous expressions : "**rate of entries into penal institutions (per 100,000 inhabitants)**" in English and "***taux d'entrées en prison (pour 100 000 inhabitants)***" in French.

Similarly, **prison overcrowding** (**surpopulation** or **surpeuplement**) should not be confused with **prison population inflation (inflation carcérale)**. As will be seen below, measurement of one or the other requires the use of different measuring instruments.

When we speak of **prison population inflation**, we mean that there is a "very large" increase in the number of inmates. Our criterion may be an increase in the number of prisoners – stock data – out of all proportion to the general population increase. In France, for example, between 1975 and 1995 the number of prisoners increased by 100 %, while the population increase was only 10 %.

Looking at the situation from this standpoint, we merely establish facts without examining causality aspects (increasing crime, greater severity in sentencing, etc.). The measurement of prison population growth seems at first glance to be straightforward : it involves using an **annual relative growth rate** expressed in percentage (calendar year or twelve-month period). But this calls for a study extending over a fairly long period. All this is done without any reference to the number of places available.

The term **prison overcrowding**, which refers to the situation at a given date, has two quite different meanings in everyday language ; a general meaning of "there are too many prisoners", without specifying the criteria on which this assertion is based, and a more specific meaning, which refers to the number of places available. In the second sense, it describes the lack of correspondence, at a given point in time, between the number of prisoners and the prison capacity. Overpopulation is then measured by what is commonly called the occupancy rate (*taux d'occupation*), the number of prisoners in relation to the number of places (expressed in %). To avoid confusion, in French, with the situation of prisoners in respect to employment, we have preferred the term **prison density** (***densité carcérale***).

Measurement here is based on the concept – difficult to define – of "room in prison". Is it not enough to put a mattress on the floor to turn a supposedly single cell into a double one ? Apart from this very complex question of definition, we meet the problem, well known to geographers, of the proper level of spatial analysis of prison density. Calculating a state's overall index is of limited utility. A density exceeding 100 definitely indicates the existence of a problem, but how does this figure apply in terms of the number of overcrowded establishments and the number of prisoners living in an overcrowded establishment ? A density below 100, presumably indicating the absence of a problem, may conceal local overpopulation. We have therefore applied a simple method which enables us to consider situations in each penal institution/prison. We call it the "**prison population descriptor**", translated into French as "***descriptif de peuplement carcéral***" (see box 1).

Overcrowding and prison population inflation are of course linked : prison population growth exacerbate the problem of overcrowding since there are not enough prisons. But does overcrowding reduce population growth by encouraging public authorities to send fewer people to prison ? Would underoccupancy – obtained by an ill-considered prison development policy – encourage prison population growth ? Given the dearth of studies on the subject, this takes us from certainty into the realm of pure speculation or ideology. But distinguishing between the two concepts at least allows us to raise the issue of the link between them.

A variety of situations

The supposition that prison population inflation is permanent, general and equally prevalent everywhere in Western Europe[2] would

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[1] Council of Europe, *Prison overcrowding and prison population inflation*, Recommendation No R(99)22 adopted by the Committee of Ministers of the Council of Europe on 30 September 1999 and Report prepared with the assistance of André KUHN, Pierre Victor TOURNIER and Roy WALMSLEY (to be published in French and English).

[2] This study is co-extensive with the period covered by SPACE (1983-1997), and therefore does not cover those former communist countries that entered the Council of Europe after 1989. At the present time, the Council of Europe has 41 members. The stock data recorded in SPACE refer to the situation on the1st of September of each year.

Box 1. Prison population descriptor (on 1st September 1997)

Prison capacity and overpopulation : Of the 23 countries studied, 11 had an overall prison density of less than 100 prisoners for 100 places : Austria, Croatia, Denmark, Finland, Macedonia, Norway, Netherlands, Slovakia, Slovenia, Sweden and Switzerland. Were we to settle for this index, we could then say that half of the countries had no prison overcrowding problem. In actual fact, only 3 of the 23 countries studied – Austria, Macedonia and Slovakia – do not have any over-crowded prisons.

Four per cent of prisons in Sweden, 5 % in Croatia, 10 % in Denmark, 12 % in Finland, 15 % in Slovenia, 17 % in Norway, 23 % in the Netherlands and 43 % in Switzerland are overcrowded. In the other 11 countries studied, more than 50 % of prisons are overcrowded. Thus, 50 to 75 % of the prisons of Ireland, France, Latvia, Belgium, England and Wales, Italy and Spain are overcrowded. More than 80 % are overcrowded in Hungary, Portugal, Bulgaria, Rumania and Estonia. Lastly, there are some prisons with a density of at least 200 in Bulgaria (a maximum of 371 prisoners per 100 places), Portugal (max. 368), Hungary (max. 311), France (max. 299), Rumania (max. 242), Estonia (max. 208) and Spain (max. 200).

Number of prisoners and overcrowding : if, instead of the number of prisons affected by overcrowding, we take the percentage of prisoners living in an over-crowded prison, the situation is much more clear-cut from one country to another. One group of countries comprises those ten countries in which the proportion of prisoners living in overcrowded conditions is less than 30 %. These are Austria, Croatia, Denmark, Finland, Macedonia, Norway, Netherlands, Slovakia, Slovenia and Sweden. In the other countries, at least two thirds of prisoners live in conditions of overcrowding. Estonia (100 % of prisoners) heads the list, followed by Bulgaria (95 %), Rumania (93 %), Portugal (90 %), Hungary (89 %) and Italy (85 %), but the other countries in this group are not far behind (65 % in France). The most enviable situation, so to speak, being that of Switzerland, where 57 % of prisoners live in overcrowded prisons.

<u>Source</u> : Council of Europe

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not only be misleading as to the actual picture, but above all, it would prevent us from drawing conclusions from this instructive diversity of situations.

This diversity is obviously much more difficult to describe than any uniform situation. We were able to calculate annual relative growth rates for 18 countries for the 1983-1997 period, including Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, Norway, The Netherlands, Portugal, United Kingdom (taking England and Wales, Scotland and Northern Ireland separately), Sweden and Switzerland.

Over that period of time, a single country, the Netherlands, had a consistently positive series of growth rates. The number of prisoners rose from approximately 4,000 in 1983 to 13,618 in 1997, representing a 240 % increment over 14 years. The point of departure was particularly low in that country, however : in 1983, its detention rate was 28 per 100,000 inhabitants ; the lowest in Europe, with the exception of Iceland (24). At that date, the average rate was somewhere around 70 per 100,000 inhabitants.

Conversely, there was no continuous decrease in prison populations anywhere in Europe, but five countries did succeed in avoiding prison population inflation for a number of years. These included Germany, Austria, Finland, Italy and Northern Ireland.

- In Germany (excluding the new *Länder*), the number of prisoners fell from 62,525 to 48,548 between 1983 and 1990 : a 22 % drop in 7 years. However, the trend observed thereafter has gradually off-set that drop. With the inclusion of the new, eastern *Länder*, the prison population now exceeds 74,000.

- Austria too experienced a highly significant decrease between 1983 and 1989, with a 31 % drop in the number of prisoners in 6 years (from 8,387 to 5,771). In spite of a practically continuous rise since then, the prison population still has not returned to the 1983 level (it was under 7,000 in 1997). It must be said that at the time, Austria had the highest prison population rate in Western Europe (110 per 100,000 inhabitants, outnumbering the Federal German Republic (100), Scotland (97), England and Wales (87), Italy (73) and France (70). The classification was totally different in 1997, when the record was held by Portugal (145 per 100,000 inhabitants), followed by England and Wales (120), Scotland (119), Spain (113) and Northern Ireland (95).

- Finland affords another interesting case. Its prison population has declined constantly (with the exception of a 6 % rise between 1989 and 1992). There were 2,800 prison inmates in Finland in 1997, as against 3,600 in 1988, the year before it entered the Council of Europe.

- In Italy, the drop was of shorter duration but of greater amplitude. Following two years of stability, a decrease occurred during the period going from 1986 to 1989. The prison population then went from 43,685 to 30,594, representing a 30 % drop in 3 years : a record for Europe.

- In 1984, there were 2,198 prisoners in Northern Ireland, representing a prison population rate of 141 per 100,000 inhabitants, as opposed to 85 in England and Wales and 90 in Scotland on the same date. A 24 % decline then occurred up to 1991 (in 7 years), followed by a further 16 % decline between 1993 and 1997. At that date there were 27 % fewer prisoners than in 1984.

The other countries which, like the Netherlands, have been unable to avoid inflation, have experienced a variety of situations. Comparison of numbers of prisoners at the beginning and the end of the period, when feasible, yielded a picture in which four groups may be distinguished :

- Very high growth : Netherlands (240 %), Spain (192 %), Portugal (140 %);

- High growth : Luxembourg (76% between 1983 and 1996), Ireland (66 %), Switzerland (56 %), Greece (49 %), England and Wales (43 %), Cyprus (40 %), France (39 %);

- Moderate growth : Belgium (28 %), Scotland (21 %), Norway (19 %), Sweden (18 %);

- Little growth : Denmark (6 %).

A three-dimensional picture

Two complementary approaches may be used for the study of the component elements of prison population growth. The changes in the structure of the prison population may be analysed according to characteristics of individuals. This amounts to making a **differential analysis of growth** of the number of prisoners based on a number of variables, be they demographic (sex, age and nationality) or penal. In the other approach, the evolution of stocks is studied in conjunction with the question of flows. If P_1 is the number of prisoners at the beginning of the year and P_2 the number at the end of the year, we have $P_2 = P_1 + (E - S)$, when E represents the total number of prison entries and S the total number of prison exits. This is what is called the **flow-stock equation**. Considering *stock* to be the result of a certain number of entries in prison and a certain number of releases over a given period quite naturally leads us to introduce, in the analytical model, a third dimension : the **length of imprisonment**, i.e., the time that elapses between the "entry" and the "exit".

The point, then, is to find out what analytical model may account for the prisoner trends observed in a given country. Six scenarios may be envisaged :

In case of prison population inflation : Scenario A1 – an increase in annual entry flows, with stable or decreasing lengths of imprisonment (prison population inflation is due to entry flows);
Scenario B1 – an increase in lengths of imprisonment, with stable or decreasing entry flows (inflation is due to lengths of imprisonment) ;
Scenario C1 – a simultaneous increase in entry flows and lengths of imprisonment (inflation is due to both entry flows and lengths of imprisonment).
When prison population declines : Scenario A2 – a decrease in annual entry flows, with stable or increasing lengths of imprisonment (prison population decline is due to entry flows) ;
Scenario B2 – a decrease in lengths of imprisonment, with stable or increasing entry flows (decline is due to lengths of imprisonment);
Scenario C2 – a simultaneous decrease in entry flows and lengths of imprisonment (decline is due to both entry flows and lengths of imprisonment).

These situations, whether they involve prison population growth or decline, will obviously have a variety of different consequences for the analysis of past crime policy and decisions on future action. One of the major contributions of SPACE has been that it has taken these three dimensions into account since 1983. This is done by the use of what we have called "**the indicator of the average length of imprisonment**" (see box 2).

Box 2. Entry into prison and indicator of length of imprisonment

Entry into a prison establishment refers to all entries which do not correspond to the following situations : entry following transfer from one prison establishment to another; entry after removal from the establishment in order to bring a prisoner before a judicial authority; entry after prison leave; entry after an escape. It is not the number of individuals that is counted here, but the number of events (entries).
The indicator of the average length of imprisonment (L), expressed in months, is calculated using the following equation : **L = 12 x P/E**, the quotient of the number of prisoners (P) divided by the entry flow (E). This formula, **L = 12 x P/E**, which can also be expressed as **P = E x d/12**, corresponds to the demographic model of the *stationary population* (the number of entries is constant from one year to another and the timetable for exits is identical for all entry cohorts). Naturally, prison populations do not generally conform with this model – and for good reason. Thus this index has no real meaning with regard to the situation at any given time, but it is extremely useful for determining underlying trends.

The scenario most frequently encountered is **Scenario B1** : prison population growth due to an increase in lengths of imprisonment, with stable or, in most instances, decreasing entry flows. This is the case, with variations, in **Belgium, Cyprus, Denmark, France, Italy, Luxembourg, Norway and Portugal**.
Let us take the example of Belgium (see table below). On the third line, we indicate the values of P which we obtain from average values of E and L (P = E x L) : 6,200, 6,600 and 7,300. In the case of Belgium, the decline in entries is more than offset by the increase in length of imprisonment – hence the growth in the prison population.

Belgium		**1982-1986**	**1987-1991**	**1992-1996**
Entries	E	21 300	17 900	17 600
Length (months) of imprisonment	d	*3,5*	*4,4*	*5,0*
Number of Prisoners	P	6 200	6 600	7 300

In the following table, we calculated the theoretical total number of prisoners (P) assuming that the length of imprisonment is constant

(3.5 months). The average total P over the last period would then have been 5,100; i.e. 30 % less than the actual 7,300 :

Model	E	21 300	17 900	17 600
with constant	d	*3,5*	*3,5*	*3,5*
length	P	6 200	5 200	5 100

In the last table, we calculated the theoretical total number of prisoners (P) assuming that the number of entries is constant (21,300). The average total P over the last period would then have been 8,800, i.e. 20 % more than the actual 7,300 :

Model	E	21 300	21 300	21 300
with constant	d	*3,5*	*4,4*	*5,0*
entries	P	6 200	7 800	8 800

The situation in two countries corresponds to scenario A1, with an increase in the annual entry flows and stable or decreasing lengths of imprisonment : Greece and Ireland. Two other countries had situations corresponding to scenario C1, with a simultaneous increase in entry flows and lengths of imprisonment : Spain and The Netherlands.
In France, the prison population has been decreasing over the last four years. If we confine our reckonings to metropolitan France, there were 48,468 prisoners on the 1st of January 2000 as against 49,672, 50,754, 51,640 and 52,658 one, two, three and four years earlier, respectively. This represents a differential of – 1.9 % in 1996, - 1.7 % in 1997, - 2.1 % in 1998 and – 2.4 % in 1999. It is certainly excessive to speak of a deflation process so soon – we prefer the term "disinflation" –, but it is a fact that the trend, in recent years, is of the A2 type scenario (with fewer entries prevailing over the increased lengths of imprisonment, resulting in smaller prison populations).

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As we have seen, most countries have experienced an increase, often considerable, in lengths of imprisonment, and frequently, this factor alone has accounted for their inflated prison population. However, where a lengthening of prison terms has been shown, it unfortunately tends to become a sort of *leitmotiv* for politicians and commentators, who do not necessarily draw the right conclusions from it. This method for looking at trends over time should, however, enable us to go from an approach to the question of alternatives to prison formulated in the restricted terms of avoidance of prison-entering for some people (reduced recourse to pre-trial imprisonment, development of alternatives to short sentences) to a **polysemic approach** addressing the criminal justice process as a whole. The action involved should range from consideration of "the possibility of decriminalising certain types of offences or reclassifying them so that they do not attract penalties entailing the deprivation of liberty" (paragraph 4 of the recommendation) to the development of measures such as conditional release which reduce the actual length of the sentence served (see box 3).

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Box 3. Beyond the criminal justice process : the enforcement of custodial sentences

[...] 23. The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualised measures, such as early, conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).

24. Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.

25. In order to promote and expand the use of parole, best conditions of offender support, assistance and supervision in the community have to be created, not least with a view to prompting the competent judicial or administrative authorities to consider this measure as a valuable and responsible option.

26. Effective programmes for treatment during detention and for supervision and treatment after release should be devised and implemented so as to facilitate the resettlement of offenders, to reduce recidivism, to provide public safety and protection and to give judges and prosecutors the confidence that measures aimed at reducing the actual length of the sentence to be served and community sanctions and measures are constructive and responsible options.

Excerpt of the recommendation adopted by the Committee of Ministers of the Council of Europe, on 30 September 1999