

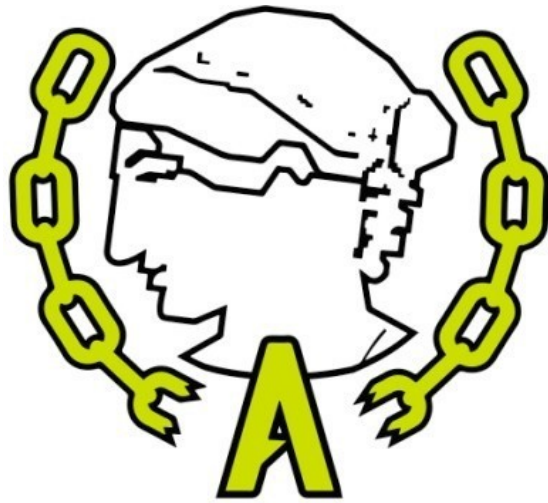
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

TABLE OF CONTENTS

<i>Preface</i> , Susanna Marietti, Alessio Scandurra	7
PART ONE - A PRISON WORLD OVERVIEW with the contribution of the European Prison Observatory and the American Civil Liberties Union	15
BELGIUM - <i>So far, so good? Health and prisons in Belgium during Covid-19 pandemic</i> , Elena Gorgitano, Adriano Martufi	17
BRAZIL - <i>Covid-19 and prisons in Brazil: conditions and challenges</i> , Bruno Rotta Almeida, Elaine Pimentel, Patrick Cacicedo	27
BULGARIA - <i>Covid-19 and the prison system in Bulgaria</i> , Krassimir Kanev	34
FRANCE - <i>The pandemic crisis and opportunities for lasting change in French prisons</i> , Cécile Marcel	40
GERMANY - <i>Covid-19 shows substantial problems in the German prison system</i> , Melanie Schorsch, Christine Graebisch	47
GREECE - <i>Isolation for protection. Facing the Covid-19 pandemic in Greek prisons</i> , Ioanna Drossou, Nikolaos Koulouris, Theodora Pantelidou, Sophia Spyrea	55
HUNGARY - <i>Much ado about nothing. Banning visitation did not prevent the virus spreading into Hungarian penitentiaries</i> , Zsófia Moldova	62
ISRAEL - <i>A matter of absence: the Ministry of Health and Covid-19 in Israel's prisons</i> , Anat Litvin, Dana Moss	68
ITALY - <i>Coronavirus and Italian prisons: a success story?</i> , Federica Brioschi	75
PORTUGAL - <i>The management of Covid-19 in Portuguese prisons</i> , Vera Silva	85
SIERRA LEONE - <i>Covid-19 responses to mitigate the impact of the virus in Sierra Leone's prisons: an overview</i> , Lydia W. Kembabazi, Isabella Cordua	91

SPAIN - <i>Coronavirus management in Spanish and Catalan prisons</i> , Alejandro Forero Cuéllar	99
UNITED KINGDOM - <i>Covid-19 in prisons: the view from England and Wales</i> , Matt Ford	106
UNITED STATES OF AMERICA - <i>United States' failure to respond to the Covid-19 crisis in prisons and jails</i> , Udi Ofer	116
PART TWO - THE PANDEMIC AND PRISON: REFLECTIONS AND INSIGHTS	126
<i>The Covid-19 pandemic: the urgency to rethink the use of pre-trial detention</i> , Laure Baudrihayé-Gérard	128
<i>The Covid-19 pandemic highlights the urgent need to decriminalise petty offences in Sierra Leone and beyond</i> , Isabella Cordua, Joseph Bangura	139
<i>Pandemic and democracy: for a global constitutionalism</i> , Luigi Ferrajoli	151
<i>Assessing strategies to prevent and control Covid-19 in prisons in the initial emergency phase of the pandemic</i> , Matt Ford	160
<i>How the pandemic has aggravated the gendered impacts of drug policies on women who use drugs and incarcerated women for drug offences in Mexico</i> , Corina Giacomello	171
<i>The social revolution of fraternity against the virus of identitarian ideology</i> , Patrizio Gonnella	190
<i>Policy responses to Covid19 in prison. Testing the (in)action of European institutions during the pandemic</i> , Adriano Martufi	198
<i>Health and prison</i> , Aldo Morrone	212
<i>University and prison. A complex but unavoidable (more than ever in time of Covid-19) institutional and cultural interweaving</i> , Iñaki Rivera Beiras	225
<i>Prisons, health and drug control in the time of Covid-19</i> , Gen Sander	242
<i>In the United States, the Coronavirus devastated prisons and jails, exposing the violence and indifference of the country's mass incarceration system</i> , Alice Speri	257
AUTHORS	272



FRANCE - The pandemic crisis and opportunities for lasting change in French prisons

Cécile Marcel¹

1. Late release measures

Inside and outside prisons, the outbreak of the health crisis in February took the authorities by surprise. One thing was certain even then: the state of French prisons did not allow them to face up to the situation. While France had just been condemned by the European court of human rights for the inhuman conditions in its prisons and chronic overcrowding, overcrowding in the country broke a new record, with 72,650 people detained. How could the rules of social distancing be respected when three or even four prisoners were locked up in nine-square-metre cells in pre-trial detention prisons, which had an average occupancy rate of 140 per cent? How could detainees protect themselves, clean, disinfect and ventilate the space when a large part of the infrastructure is crumbling and unhealthy? How to take care of the sick when health units suffer from a chronic lack of means and staff? Every prison is, indeed, a potential cluster. For years, the situation in the prison system has been deteriorating. The crisis has shed light on an already sick

system.

Given these circumstances, the need for action was urgent. However, the government's initial announcements were by no means up to the task ahead, focusing only on reducing movements and exchanges between the inside and the outside world. On 17 March, the Ministry of Justice decided to suspend family visits and all activities (work, training, socio-cultural and educational activities). Many voices spoke up asking to consider a different measure, the only appropriate one: reducing the numerical pressure on the detention system. The *Contrôle général des lieux de privation de liberté* (Cglpl, the French Npm) warned, in a press release, the administration that "it will fail to comply with its obligation to protect the people in its custody if it does not take the necessary measures as a matter of urgency". The *Contrôle* recommended at the time that the detained population should be reduced by "proposing, adopting or urging all measures to promote exits from prison and reduce entries". In the wake of this, various professional associations and

organisations urged the authorities to “allow as many people as possible to leave prison immediately”. At the same time, more than a thousand lawyers, magistrates and health workers called for an urgent and significant reduction in the number of prisoners and the release of the most vulnerable ones for health reasons. “Not tomorrow. Not next week. Today”, stressed the signatories of an appeal published in *Le Monde*. Prisoners, driven by anxiety, also mobilised. In a text that circulated in various institutions, it was written: “We, the prisoners, accuse the justice and prison system of endangering our lives and demand that all prisons be immediately alleviated of the overcrowding that characterises them”. However, for the Ministry of Justice to change its position, the recommendations of international bodies, which called for the use of alternatives to deprivation of liberty, were necessary. While at first the Ministry of Justice had stated that it was “not at all of the idea” to release the less dangerous prisoners, the government announced on 23 March that it would authorise the release of 5,000 prisoners close to ending their sentence. On 25 March, an order issued during the state of health emergency set the conditions for the release of some detainees. A correct but late step, that was considered insufficient both by observers and by some magistrates who, in some territories, decided to act on their own initiative. On the other hand, the order included a deeply liberticidal measure, which contradicted the objective of reducing the detained population: the automatic extension of pre-trial detention orders with no debate. This measure was then repealed by the Court of Cassation.

2. Meanwhile, in prison

While probation magistrates, prosecutors, prison administrators and health workers worked side by side to have as many prisoners as possible released from prison, the administration tried to limit the spread of the virus in prison as much as possible: two-week quarantine for newly-arrived inmates, tests to identify infected people, isolation of symptomatic cases, limitation of contacts within detention places as much as possible. Concerning preventive measures, the administration followed the attempts of the government. It took on board its inconsistencies, particularly on the issue of face masks, initially banned in prison and still very difficult to obtain for prisoners at the beginning of June. The - sometimes absurd - securitarian logic opposed the necessities of prevention policies, with the risk of endangering prisoners. Thus, for example, hydroalcoholic gel was banned, because alcohol is forbidden in prison. “While promiscuity is normal and access to water, particularly during outside walks, is very limited, prisoners are deprived of a product that is important as a preventive measure”; these the words expressed with indignation in an appeal signed by various actors who operate in the field of risk prevention, together with the Oip. During the open-air time, collective showers or when accessing telephone booths, interactions are numerous, and preventive measures are sometimes impossible to respect.

In prison, prisoners were very concerned. “Here social distancing is not respected at all”, said one of them in a call to the Oip on 25 March. “Showers are in common areas and there is no disinfection. They send three or four people at a time. The

question of hygiene scares me a lot, with the coronavirus. There is not even plastic film on the meat; the dishes are still served in open stainless-steel bowls. And the bowl goes from hand to hand, we don't know who has touched it. I haven't eaten for three days". Another prisoner was panicking: "I'm afraid of dying in here". To the fear was added isolation, reinforced by the suspension of family visits. It is true that the Ministry of Justice had planned an additional telephone credit of 40 euros per month to maintain ties with family members, but some ran out of credit quickly. And in the many institutions that do not have phones in cells, there is another problem: "There is only one working phone booth, and it is located in the walkway. No hygienic measures are taken, the phone is not disinfected after each call, the virus will circulate very quickly, it will be a disaster", explained a person detained in Avignon. For fear of being infected, some inmates abandoned their ties with their loved ones. With the suspension of activities and confinement in their cells, some were exasperated. On the phone with the Oip, a woman collapsed: "I can't take it anymore, I'm at the end of my tether. There is nothing here, there are no more activities, we don't meet the Cpip (penitentiary advisor for insertion and probation) anymore, I can't talk to anyone anymore". The situation was difficult for the inmates, but also their relatives, confined outside. "It has been four weeks since I last saw my partner - and for those who have children it is even more difficult - and it will last another month: it is hard", said a prisoner's partner in mid-April. She also shared with us her material difficulties: "I have just been told to work on a part-time basis, I wonder if I can continue to send him the money that I

send him every month". The effects of the crisis are likely to be felt, in prison and outside, for a long time to come.

4. Keep the best after avoiding the worst

It may take time, for prisons as for the rest of society, to learn the lessons on how to manage this crisis. However, one thing must be acknowledged and welcomed: the worst has been averted. While it is true that prisons have been more affected than the rest of society, the virus has not spread as widely within them as might have been expected - even though two people died after contracting the disease, one a prisoner and one an officer. Some will see this as the result of the prison administration's policy, others as a good deal of luck, given the various management shortcomings. However, it is important to underline the progress and hopes born from the crisis.

Indeed, during the emergency everyone had to invent solutions to prevent the situation from deteriorating further. So, while prisoners' movements were multiplying all over the country, the management of the institutions showed initiative and ingenuity, reducing tensions and preventing the situation from exploding. They made use of article 29 of the Penitentiary law, which states that "prisoners must be consulted by the prison administration on the activities proposed to them", setting up spaces for discussion with prisoners on the devices provided to deal with the Covid-19 health emergency. Although all forms of collective expression are still prohibited in prison, this is a first step towards the creation of spaces for dialogue and consultation with prisoners, and towards the application of the

principle of *dynamic surveillance* advocated by the Council of Europe, which recommends the restoration of order through dialogue and negotiation, rather than through the use of force. To allow the preservation of ties with the outside world, which have been severely put to the test by the suspension of visits, a system was introduced (and must be maintained) to allow families to leave a message for their loved ones. Other countries have gone even further, for example by allowing video conferencing. It is in this direction that we must look, in particular by allowing the use of the internet.

The associations and organisations that work in prisons have not been unimaginative, keeping channels of communication with prisoners open and breaking their isolation. The establishment of freephone numbers by the various ministers of religion and a dedicated line by the Ombudsman, the opening of telephone lines by associations that deal with legal assistance, the establishment of correspondence... These dynamics were often encouraged by prison managements, although some associations regretted the reticence of the central administration to go further in terms of innovation. The importance and abundance of these initiatives are, however, guarantees of the vitality of a civil society on which we will have to rely in the future to strengthen the links between inside and outside. One of the initiatives taken is particularly noteworthy: the partnership established between the association *Lire pour en sortir* (Read to get out) and *La Chaîne parlementaire* (the Parliament's television channel) for the creation of the television

programme *Dé- con-fi-nés* (Un-confined). Born from the observation that not only does “nobody talk about prisoners”, but that “nobody talks to them”, the partnership proposed a programme to the prisoners during the period of lockdown: for example, the families were invited to send messages to their detained relatives that were then broadcast on air. But above all, it opened a window on the prison for the general public, at a time when “we feel what it means not to be able to get out, not to be free to move”, as the presenter, Maïtena Biraben, explained in an interview, in which she added: “I hope that we will realise that we are facing a serious problem”. Has she been heard? Paradoxically, while inside the prisons the prisoners had the impression of being particularly abandoned when they were *confined to prison*, their situation was the subject of great media coverage.

5. Against the return of prison inflation

But the major transformation is the one we least expected. Thanks to the combined effect of the policy of early release of prisoners at the end of their sentences, the reduction of judicial activity and the drop in crime during the lockdown, on 24 May prisons were hosting 13,649 fewer prisoners than at the beginning of the crisis. Of course, this figure hides considerable disparities and some of the pre-trial prisons remained dangerously overcrowded. However, if France has experienced continuous inflation of the prison population over the last twenty years, this unprecedented situation shows that another way is possible. For the better. Staff unions have welcomed the improvement in working conditions for prison officers and the

reduction of tensions in prison. The huge number of exits has not brought the country to its knees. Concerning prosecutors, the experience of recent months has raised questions about their practices. “Should a prison sentence continue to have the centrality that it has had?” one prosecutor asks. He adds: “What made me think is that, during this period, it has been said: this one we release, this one we don’t. With a stroke of a pen, we changed everything. If we don’t understand this, we don’t understand anything!”.

Already on 20 April, the national union of prison directors warned: “The epidemic that is hitting us so hard has swept away various obstacles and fears: it will no longer be possible to say that individual detention is an unattainable goal” (in French prison law it is a right to be detained in a single-occupancy cell). On 3 June, more than a thousand people, including politicians, artists, prison directors, prison administration officials, legal practitioners, academics, associations and trade union leaders sent an open letter to Emmanuel Macron. For the first time united, they gave voice to the *crazy hope* that this situation was giving origin to. They called for “the management of the emergency to be replaced by a real policy of prison deflation, able to guarantee detention in individual cells and decent conditions”.

While for the Minister of Justice, detention in single cells is an objective *to be toned down* - an absurdity, being a right provided for since 1875, ratified by the 2009 prison law and constantly violated - the Ministry of Justice now relies on the effects of the reform of the judicial system, which came into force on 24 March, to

prevent the number of detainees from rising. This position does not convince the actors and observers of the penitentiary world, who are certainly not short of ideas and proposals. Some suggest an amnesty for minor convictions, to eliminate the many convictions that have not yet been served, freeing the judicial machine. Several professional organisations are calling for a *numerus clausus*, with the introduction of “an exit mechanism when the number of prisoners exceeds the number of available places”. For its part, the Cgpl is calling for the introduction of a system of numerical regulation of the detained population into the law: “It is a question of establishing in each jurisdiction a periodic and frequent review of the different personal situations, in order to manage in an individualised way the detention programme and alternative measures while ensuring that the occupancy rate of an institution never exceeds 100%”. It is up to the executive and legislative authorities to examine all these alternatives; if they do not do so, they will be guilty of failing to seize a historic opportunity. But it will not be enough. To reverse the trend, it will be necessary to review the criminal policies that have led to the explosion of the detained population over the last twenty years and rethink budgetary priorities. As the country prepares to enter an unprecedented phase of economic recession, the time has come to abandon pharaonic plans to build new prisons and invest heavily in alternatives to detention.

6. The second pandemic wave

On 1 October 2020, the prison population reached 61,102 units. 2,400 more than three months earlier. French prisons have once again reached a prison population

rate of over 100%, which is almost 115% in pre-trial prisons. Already after the summer, the number of incarcerations had risen again.

At a time when the country is in the midst of the second wave of the epidemic, there is once again an urgent need for action to halt the phenomenon of prison overcrowding and limit the spread of the virus in prisons. The number of confirmed cases among prisoners is multiplying: from 47 on 5 October to 88 on 14 October, then from 117 on 20 October to 178 on 4 November.

The Minister of Justice, on 23 October, called on the public prosecutor's office to request alternative measures, either at the review hearing or when sentences were applied. A worthy but insufficient initiative.

The urgent need to take action in connection with the health crisis comes after France was condemned by the European court of human rights last January for the undignified conditions in its prisons. On that occasion, France was called upon to reduce its prison population. The country's highest courts, for their part, have learned the lesson: after the Court of Cassation, in July, the Constitutional court, in a recent decision, also reaffirmed the principle that a person cannot be remanded in custody in undignified conditions. It gave the legislator until 1 March 2021 to introduce the possibility of an appeal that would make this principle applicable. The scope of this decision is immense. One day, thousands of people detained in overcrowded, old and unhealthy institutions could file an application to be released. If the government wants to avoid

being in an unmanageable situation, it has no choice but to implement solutions to permanently curb overcrowding.

Notes

¹ **Cécile Marcel:** Director at the French section of the Observatoire International des Prisons (OIP).

