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## OPINION

of 26<sup>th</sup> September 2012

from the French Contrôleur général des lieux de privation de liberté

concerning the implementation of the partial-release scheme

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**1/** Partial release is a specific procedure for serving a sentence. The convicted prisoner is placed under this regime in three cases: either when the sentencing judge decides to do so, in the case of a sentence of less than or equal to two years of imprisonment (article 132-25 of the criminal code); or, according to the same condition concerning the length of the sentence to be served, when the judge responsible for the execution of sentences, to which the matter has been referred by the prosecution, decides that this sentence must be executed according to this procedure (article 723-15 of the code of criminal procedure); or, lastly, when this same judge decides, in principle after hearing both parties, that a sentence that has already begun may continue under the partial-release regime. Most of those under partial release therefore come directly from a state of liberty; persons who were previously in prison under general law are a minority.

Partial release is granted subject to probation (for example, Cass. Crim. 2 September 2009). This means that it may be revoked by the judge responsible for the execution of sentences if its beneficiary does not comply with the obligations associated with the regime. These are numerous (see the case of partial release under the probation regime, articles 132-44 and 132-45 of the criminal code). They most often consist of setting the times during which the person concerned may exercise a professional activity or seek work, outside which they must be present in the penal institution, meaning either an independent open prison or an open wing within an ordinary prison. They also take the form of interviews with social workers from the prison administration (prison advisers on employability and probation) and, frequently, include the obligation to receive treatment or any other activity to promote employability, intended to prevent recidivism. These conditions appear rather lax. They are, in practice, very onerous; this is why partial release can, in reality, only last for a limited period (several months).

**2/** The persons placed under this regime by the judge are therefore subjected to restrictions. They are committed to prison and deprived of their freedom of movement. The fact that it may be possible for them to leave the institution at certain times does not, of course, exempt the public authorities from "ensuring that all prisoners are held in conditions that are compatible with human dignity" (European Court of human rights, Gr.ch., 26 October 2000, *Kudla c/ Poland*, no. 30210/96; for a recent application of this established legal precedent: European Court of human rights, 3<sup>rd</sup> sect., 24 July 2012, *Fülöp c/ Romania*, no. 18999/04).

**3/** On 1 January 2012, 1,857 persons were placed under this regime. The prisons administration department has eleven open prisons and seven open wings offering 768 places, representing a rate of occupation of 241%, greater than the rate of occupation of institutions coming under general law. This rate is probably less: many institutions have cells assigned to those under partial release, which do not come within the seven duly listed sections. This uncertainty is also indicative of the interest shown in it. In any case, the rate of occupation is high. To increase the available capacity, beds have been added: in one centre of seventy-four places that was visited, there were one hundred and forty beds (practically a doubling). It is therefore common, as found by the *Contrôleur général* in an institution, to have three beds (two of which are superimposed) in 9.14 m<sup>2</sup>. Consequently, partial release means, for many beneficiaries, living conditions in which overcrowding and lack of privacy is the rule. The dimensions of the cells make it impossible to add furniture; for example, their occupants have one table for three and one, or at most two, cupboards for three, and one or two chairs for three.

What is more, the premises assigned to partial release are often old and not renovated. In this respect, some centres visited are constantly criticised. Thus the *Contrôleur général* was obliged to request (and obtain) the immediate closure of a dormitory in which bare electric wires were dangerously close to very damp partitions.

Lastly, there is the fact that, in many open prisons or wings, few checks are made on the state of the premises. Dormitories and cells are frequently in a state of pronounced disorder, with each new arrival settling in as best they can in a state of material discomfort, the elements of which are determined by the relative strengths of the cohabitants. This situation is most often because, for the sections or cells, no dedicated personnel are assigned to them. Partial release is often neglected in remand prisons: no particular rules apply to it and sometimes it is not even mentioned in the institution's internal regulations. Everything happens as if no particular attention needs to be paid to it.

**4/** The social workers (prison advisers on employability and probation – CPIP) are present in the open prisons in the form of office hours (most often having an "open" environment, for which the head office in the administrative Department may be distant from the institution) and in the open wings in the form of appointments in the prison (in this case, these are often of the "closed" environment, which are attached to the institution). Their numbers are often insufficient. Thus, in one prison visited in 2011, there were theoretically eleven staff, nine in practice and this had to be reduced to eight a few weeks later. A single adviser was responsible for the persons held in the open wing, the "outgoing" section and those placed under electronic surveillance. Their times of presence are not necessarily adapted to the times during which those under partial release are present: in one centre, the office was open from 09:00 to 12:00 and from 14:00 to 18:00. With the CPIP, either time off must be taken from work or interviews must be missed.

While the social workers should be concentrating on the effects of work, or treatment, or job seeking and employability, many interviews are for much more urgent purposes, particularly to obtain identity documents, which those under partial release do not have. At least for those who were previously in prison, it would be better to perform these operations during the prior detention period. It was not possible to do this, either due to staff shortages amongst social workers or because of the inflexibility of certain administrations. This means that under partial release, the support of the CPIP is related to subjects that are admittedly decisive, but have nothing to do with the personalities and the effort that has been deployed.

The consequence is that certain necessary support procedures are impossible to perform. For example, concerning alcohol, the transition from being a prisoner under general law to partial release involves an absolute prohibition on drinking. Although alcoholic drinks are prohibited in the open prisons or wings, it is possible to consume them during release hours. One of the routine problems of these

places is of those under partial release coming back in the evening in a state of intoxication. Support in the matter is almost non-existent. It should be concerned with the practical difficulties of persons, when the transition from full detention to partial release causes them.

**5/** Treatment constitutes an important shortcoming of partial release as it currently functions.

Concerning health conditions and treatment to be dispensed for pathologies, those on partial release no longer have access to the arrangements covering prisons. They therefore have to find the necessary resources (often in a town where they have no knowledge of anything). They need social-security protection: certain institutions, but not the majority, have made agreements with the social-security system to accelerate the necessary applications<sup>1</sup>. They also need local health-care services: some institutions have made agreements with health centres (municipal, for example); but not all. Treatment centres do not accept those on partial release because they consider that they are not residents of the municipality.

Concerning obligations for treatment imposed by magistrates (notably in cases of addiction), the specialised centres are often overloaded and the waiting times are in weeks or months. Because partial release does not exceed several months, the obligations are not wholly, or only partly, actually followed.

**6/** The access to work or training, and especially to a job when one has to be found, is made difficult for several reasons.

The primary difficulty is that certain open prisons or wings may be far removed from employment pools, even more so because as we know, over the last 25 years, new prisons have been built outside towns. Consequently, a means of transport must be found, which may be distant and scarce. One institution had planned "two wheeler" rental to resolve this difficulty: it had to abandon it due to lack of resources; its residents walk several kilometres in all weathers to reach their work, and to come back. These distances are difficult to reconcile with the hours imposed. A prisoner who is "seeking work" states that he is entitled to go out from 09:00 to 12:00: "I have an hour's journey to get home, collect my documents, telephone or travel to companies, then I have to be back at midday".

The choice of establishing open prisons or wings should always favour significant employment basins: this is far from being the case today. Partial release "blindly" follows the geography of penal institutions, thus causing profound inequalities. To say the least, existing means of transport and their costs should be examined. Some open prisons allow "two wheelers" belonging to prisoners to park within their premises. This practice should be general.

As these concerns are not taken into account, some open prisons or wings remain largely unoccupied, with magistrates rightly reluctant to order employment plans to take place there that carry high risks of failure.

Secondly, it is the case that the opening times of centres or wings are too restricted and incompatible with the hours of some jobs that prisoners have less difficulty finding than others (catering, building,...). Restricting the hours is an operation that, in reality, results in reducing the chances of holding down a job. Many open prisons allow exit and return day and night. This rule should be generalised, including for the open wings.

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<sup>1</sup> On this point, see the 2011 annual report from the *Contrôleur général des lieux de privation de liberté*, chapter 3, "Access to social entitlements for prisoners".

Thirdly, the assignment of those on partial release must take into account the place of their planned employment, so that it has the greatest chance of success, given the opinion of the Court of Final Appeal (Cass. Crim. 21 November 2005) that ruled that a person on partial release could only be assigned to a place specifically planned for partial release. In a centre in the Paris suburbs, the inspectors met a person who worked as a lorry driver in the Loiret. He left the centre at three o'clock in the morning and returned after eight o'clock in the evening. However, there is an open prison at Montargis where it would have been judicious to locate him. Even if the assignment cannot always be made from the outset in relation with the place of employment, transfers should at least be able to be made upon request, with the agreement of the judge responsible for the execution of sentences. The administration has no difficulty in ordering transfers for perfectly legitimate security reasons. Successful integration into society is just as legitimate.

If these considerations are important, it is because they partly determine the future of the measure. Indeed, one of the main causes of revocation of the partial-release regime by magistrates is lack of compliance with the times of presence in the institution. The more distant it is from the place of work or various obligations, the greater the hazards related to returning to the place of imprisonment by the deadlines (some are obviously related to the persons in question). Generally, the rate of failure of partial release, either due to revocation by the magistrate or due to escape, was 24% in one centre visited and 15% in another. This rate of failure would be reduced by improving the adaptation of partial release to the realities of the activity imposed.

**7/** Partial release can only be granted if the persons to whom it applies have the necessary papers for getting a job. The practice of prefectures, which consists of not renewing the residence permits of foreign prisoners who are legitimate residents at the time of their imprisonment and whom, it is assumed, intend to remain in France, effectively deprives some of these foreigners from the option of benefiting from a partial-release measure (with no current residence permit, no job is possible, therefore no employment plan can be approved by the judge). This is a case of discrimination that has no justification with regard to the criminal penalty. It must be ended.

**8/** Discipline in the sections or centres is obviously much less disrupted than under ordinary detention circumstances.

They often contain disciplinary cells, that certain managements, questioned on this point, refuse to call as such and call "waiting cells". They are used to hold persons who are detained when they return in a state of intoxication or if they commit offences (violence) during their hours of release, while they are waiting to be placed in custody, or in case of disorder (making a noise, damage,...) on the premises, or when the judge has been requested to revoke partial release and the persons in question are waiting to be transferred to a prison (usually) or a detention centre. These confinements occur without any disciplinary procedure, simply by administrative decision, most often upon return from work in the evening.

These confinements can only be seen as either preventive measures, meaning confinement in a discipline cell by the head of the institution or his/her agent while waiting for the meeting of the discipline commission, in accordance with the provisions of article R. 57-7-18 of the code of criminal procedure; or the immediate return to ordinary detention decided by the head of the institution in application of article D.124 of the same code. But, in the first case, none of the guarantees of the disciplinary procedure are applicable; in the second case – the most probable – the reintegration period and its conditions are not associated with any detailed instructions and therefore no precautions. Therefore, no doctor comes to check the state of health of the person (article R.57-7-31 of the code): a conscientious head of an institution who wanted to call the emergency medical services for this purpose was unsuccessful in calling them out. Consequently, partial release also involves a reduction in the guarantees provided under general law to prisoners.

This measure should be precisely regulated, by distinguishing punishment from waiting (one cannot be put in a disciplinary cell while waiting for custody or return to a prison), by specifying a maximum period of holding, the rights that the person concerned still has and, above all, by defining a subsequent procedure, adapted to these institutions, allowing the person concerned to defend themselves, all the more so as such a measure may have a serious effect on his/her external activity. Encouragement should also be given to the signature of protocols between the judicial authorities and the managements of the penal institutions concerned, for the awareness and handling of incidents that occur, for a better assessment of their gravity and more appropriate follow-up.

**9/** Moreover, one must wonder whether discipline in places of partial release should not be relaxed, at least in the matter of objects or substances that are prohibited. Here is the list of the latter shown in the internal regulations on an open prison: "drugs, alcohol, canned soft drinks, portable telephones, cash, cassette recorders, DVD readers, personal stereos [and necessary equipment], camera, hi-fi players, computers, hot plates, weight-training equipment, motorcycle helmet, food, coffee maker". Although some of these restrictions are in place for obvious reasons, others are not. For some of these goods (money, computer) the aim is probably to avoid theft, which is widespread in these places. But why not leave it to the persons concerned to determine what they want to do with their own goods? Furthermore, although the prohibition on portable telephones is justified in an open wing included in a prison where these appliances are forbidden (on this point, the *Contrôleur général* requested a change in his/her opinion dated 10 January 2011 – *Journal officiel* of 23 January), to prevent the risk of transmission from one section to another, it has no basis in independent open prisons. Lastly, although the question of full-body searches must be raised again for all institutions<sup>2</sup>, their performance in every case does not appear to be necessary in the open prisons. The restrictions of all kinds must be reconciled with the imperative of making a success of the ongoing employment plan (those on partial release have professional obligations) and of everything that can contribute to the social inclusion of the person in question. In this respect, partial release may be more successful in the independent centres than in the sections of institutions coming under general law, especially ordinary cells in remand prisons.

**10/** The presence of the telephone is important because no open prison or wing visited had a phone booth as is now found in conventional penal institutions. The reason sometimes given is that the concession-holder chosen for these appliances would consider such an installation unprofitable. Whatever the reason, this absence means that the right given to prisoners to telephone (article 39 of the prisons act of 24 November 2009) does not apply to those on partial release. Furthermore, the regime applied to letters lacks coherence: generally, in the independent centres, they are not opened but if (for a former "ordinary" prisoner) they transit via the prison, they arrive opened (and sometimes stapled on arrival at the centre). Lastly, there are few provisions for family and friends to visit, which may be acceptable if they live in the neighbourhood, but this is often far from being the case.

Such restrictions, by which partial release is, again, regressive in relation to the regime applied in ordinary detention, are even less justifiable in the case where those on partial release are obliged to remain in the institution at weekends or for whom the hours of release are very limited; and also for prisoners under general law who work as cleaning or maintenance "auxiliaries" in the independent centres, who are disadvantaged compared to those in other institutions. These discriminations should be ended.

**11/** Lastly, one of the most sensitive matters concerning partial release is relative to the role that magistrates play.

They have been told that when a custodial sentence of less than two years is imposed, the sentence may take the form of subjection to partial release. The periods within which, after the sentence,

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<sup>2</sup> See the annual report for 2011, chapter 7, "Body searches, security and public order in prisons."

the judge responsible for the execution of sentences defines the procedures for its execution may be very long. In twelve cases examined when a centre was visited it was an average of two years and three months. It may be advantageous to use these waiting periods to assess the overall situation of the person. They nevertheless have many disadvantages: during this time lapse, firstly the sentence is not executed and secondly, the convicted person (who is often employed) and his/her family, live with the uncertainty (and anxiety) about the measures to be taken. In truth, the reduction of these barely-acceptable waiting periods involves better coordination between the prosecution and the presiding judge, quickly transmitting the necessary elements and increasing the number of civil servants responsible for shaping the decisions taken by the magistrates.

The waiting periods stemming from the decision of a judge responsible for the execution of sentences to place a prisoner in an open prison are admittedly shorter (out of eighteen cases examined, thirteen months on average). They are nevertheless excessive and compromise plans for social inclusion (a place with an employer, for example) which the person in question and his/her prison adviser on probation and employability may have been able to design.

Prisoners' plans are also greatly compromised by the periods during which the application is submitted to the necessary hearing in the presence of both parties. The pace of integration, in the prevailing employment situation and with the intrinsic difficulties related to the capacity of prisoner, is often much quicker than that of the procedures intended to agree to it.

Generally, the insufficient number of magistrates and social workers means that the idea of individualised case management of those on partial release is illusory. Also, as the dispensation of treatment is the responsibility of these social workers, one of the prisoners may, after a consultation, need to go to a pharmacy outside the fixed hours of release to buy the medicines that were prescribed to him/her. An authorisation from a magistrate is necessary. It is in reality either given late or the decision is taken hastily without verification, which is pointless. Greater effort should be addressed towards getting the person in question to take responsibility.

There should doubtless be an increase in staffing levels, but certain responsibilities should also be delegated (we know that, since the prisons act, the head of the institution can change the release hours: article 712-8 of the code of criminal procedure) and encourage subsequent checks on behaviour, to assess the validity of the plan, both concerning its results and its original content.

**12/** Those on partial release represent 20% of persons in custody who are not accommodated in ordinary detention, and less than 3% of prisoners under general law. Although their number on 1 January 2012 was up compared to the previous year, the number of partial-release measures decided over the last four years has been regularly decreasing (-16% compared to 2008). This is a paradox that is probably partly due to the increasing use of electronic surveillance, a rather scant arrangement in which there is usually absolutely no social support. Partial release, a sentence given subject to probation, is, however, a very useful instrument, well-designed in principle, which can contribute significantly to the reintegration of sentenced persons and the prevention of recidivism.

Still, those in question need to be given the desire to succeed. This depends on them, but also on the circumstances that the material conditions of life and the rights that are associated with partial release combine to bring about; that the individualised support and attendant measures are sufficient, particularly for controlling difficulties that have previously been highlighted; and that the persons in question do not have to manage numerous unexpected and complex procedures as well as their working time. It is under these conditions that the number of those on partial release could be increased and the successful proportion of those subject to the measure, already high, could be improved still further.

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