



OPINION

of 10th January 2011

of the French Contrôleur général des lieux de privation de liberté
concerning the use of telephones by persons deprived of liberty,
delivered in accordance with Article 10 of the French Law of 30th October 2007

1/. The possibility for a person deprived of liberty to use a telephone to contact their family and administrative bodies is one of the provisions of the right to family life and the right to defence, recognised as fundamental rights, and one of the means of carrying out a number of necessary steps in preparation for release - for prisoners - or departure - for foreigners held in detention centres or in waiting areas.

The prison population

2/. That is why for several years now the prisons administration has authorised convicted prisoners to use the telephone, the use of which has gradually become widespread. The Prisons Act, late in coming into force on this point, now accords the same rights to defendants, subject to authorisation by the judicial authority. In any case, the use of the telephone is naturally subordinate to the requirements of proper order and security. That is notably why conversations are listened to, except where otherwise provided by the regulations.

Yet although the principles widen the scope of possibilities for prisoners' links to the outside world and although the *contrôle général* has noted that, for the most part, official instructions followed along these lines, the practicalities of telephone use should not limit this scope. In light of the observations made during visits of the establishments, several important recommendations have been formulated in this respect.

3/. In the first place, telephones are often installed in exercise yards, or sometimes in activity rooms.

The interest of this location can be understood, both to facilitate a certain freedom of use of the telephone by prisoners and to avoid the additional movement of institution staff (closed detention centres). But these advantages are outweighed by the major drawbacks. On the one hand, the only regulation of telephone use (other than the rarely implemented call duration) is the one established between prisoners: the weakest among them therefore are far less likely (if at all) to have access to the telephone than others. On the other hand, there can be significant pressure from fellow prisoners to use the telephone to dial numbers that have not been previously approved. Finally, confidential conversations are not possible.

In institutions where the telephone is installed in the passageways, no additional precautions are taken to preserve confidentiality with respect to third parties. In detention centres with an "open" cell regime, telephones are often installed near the gate that closes off the passageway, where prisoners are most inclined to congregate. This configuration also facilitates all forms of pressure.

Respect for private and family life necessitates, on the one hand, stopping the practice of installing telephones in exercise yards or collective rooms; and on the other hand, constructing veritable phone booths - as is already the case in some institutions - which enable conversations to remain private from other prisoners, as the *Contrôleur général* has already underlined in several recommendations.

4/. The number of telephone numbers approved by the administration, based on requests from the prisoners concerned, varies from one institution to another despite its establishment in a memorandum from the director of the prisons administration dated 29th October 2009. It would be highly desirable, subject to the necessary approval for each, that this number be standardised, otherwise, in the case of transfer, the prisoner may have to relinquish calls to certain persons. Furthermore, this number cannot be too small without compromising the scope of the principle set out in article 30 of the Prisons Act.

5/. Certain obstacles to telephone authorisation raised by the procedures currently in place must be removed. There is thus no reason that the authorised recipients of calls should be those with visiting permits (in fact there are grounds for the contrary): this is not provided for in the legislation. Furthermore, in all cases authorisation cannot be subject to the production of telephone bills by the persons who should be the recipients of calls: not only is this production impertinent to legal entities (e.g. the Pôle emploi employment centre), but there are some countries in which paper invoicing does not exist (Belgium, for example). Prisoners' correspondents must therefore be able to establish the authenticity of their telephone number by any means of proof and these means must be regarded with flexibility. With regard to consent to receive calls, it would be more appropriate to consider the designation of a family member or friend as presumption of consent, unless otherwise specified by this person, and subject to communication bans.

6/. Calling hours are often problematic. It is natural to limit the length of calls where this is justified by the size of the prison population (and only in this case). In general, however, these calls can only be made during the day. Notably, in all institutions, the telephone is inaccessible after 17:30. Prisoners, women in particular, therefore argue that they can never contact their family and friends who arrive home after this time. Additionally, prisoners detained in mainland France whose family and friends live overseas encounter great difficulties in contacting them due to the time difference. The implementation of the right to telephone thus implies, despite the additional charges that it entails, that the calling hours be extended, particularly in the evening, at least up until the night team takes over service in the detention centre (19:00 or 20:00 as the case may be). It must also enable prisoners housed or working in facilities without a telephone to have access to one (for example assistants working in an open wing).

7/. The cost of local telephone calls was substantially increased in February 2010, as a result of national decisions, by the operator with which the administration has a contract. Although no one denies the need for prisoners to finance their calls (the administration usually and gladly bears the cost of one euro of communication on arrival at the institution, in order to inform convicted prisoners' family and friends), they must also be able to do so in similar conditions to those prevailing outside of institutions; all the more so as they do not have any choice of operator. The question of telephone access for deprived persons also merits examination in commissions dealing with

"poverty", in the form of a flat rate that covers a minimum number of communications, as provided for in institutions with a delegated management system.

8/. International calls, in particular for foreign prisoners (who often have no contact with their family), must be authorised under the same conditions as national calls. The formalities imposed (cf. above on the production of invoices) must not present an obstacle: again, the forms of proof (relation, address etc.) by any means (passport, letter envelopes etc.) must prevail, particularly in the case of nationals of distant countries. Calling hours must take into account time differences, in line with the above statements: without this flexibility, the right to call family and friends remains a dead letter.

9/. There is currently no material possibility for spouses or partners who are both imprisoned to communicate by telephone, as it is not possible to place calls to telephone booths in prisons.

This barrier must be removed, as, even imprisoned, these persons have equal rights, evidently adapted to the circumstances, to maintain links to family life.

More generally, the interest in being able to call a telephone booth inside a prison from the outside, particularly in penal institutions for convicted prisoners, as is possible in waiting areas for example, should be considered. This solution would present advantages in terms of sharing the cost of communication.

10/. Approved numbers must be able to be quickly modified at the request of the prisoner. Thus when a family member or friend is taken to hospital, the delay in authorising calls to the corresponding establishment is currently too long; these delays can be a source of concern in the case of hospitalisation for serious medical conditions or when the correspondent is very elderly. The administration should be able to adapt to these situations and therefore eliminate a source of unnecessary tension.

11/. Some telephone numbers are not taken into account by the telephone software installed. Such is the case for numbers with the prefix 800 or numbers which, once dialled, require additional options to be selected on the dial pad (press "1" or "2" for such option, for example): this may be the case for numerous service organisations (e.g. employment or credit agencies). Since many steps towards rehabilitation must be undertaken by the prisoners themselves (moreover, due to the workload of integration and probation staff), there is no obstacle in principle to making these numbers accessible, provided of course that they are duly identified. The software should be adapted to this effect.

12/. It should be noted that, while telephone conversations are listened to on principle, some are subject to confidentiality, as the prisons administration has reiterated in its circulars. Institutions should therefore ensure that telephone numbers which trigger the disconnection of the listening system (lawyers, the *Contrôleur général* etc.) are set out in the procedures.

13/. The more restrictive telephone access is in practice, the greater the temptation for prisoners to resort to mobile phones, the existence of which is recognised in prisons, despite their being prohibited. As jamming devices are ineffective in most cases, consideration must be given to the conditions in which these mobile devices could be used, provided that legitimate security and control measures could be found to apply.

Foreigners held in detention or in waiting areas

14/. The equipment in ordinary detention facilities for illegal immigrants, often located in police stations, does not include a telephone, contrary to paragraph 3 of article R. 553-6 of the Code

for Entry and Residence of Foreigners and Right of Asylum. The solution of authorising detainees to use a service phone in the presence of police officers cannot be deemed as satisfactory in regard to the right to respect for private and family life.

15/. Detention centres and waiting areas include - in most cases - the necessary telephone equipment (in accordance with the respective provisions of articles L.551-2 L. 221-4 and R. 553-3 of the Code for Entry and Residence of Foreigners and Right of Asylum). However, the operating instructions are poorly distributed and, generally, only available in French. In particular, the indications (notably given by representatives of the French agency in charge of migration and welcoming foreign people, OFII) for buying cards, payment for communications, and dialling international numbers should be provided in the form of written instructions in several languages and be issued on arrival at the centre or the waiting area, even when the expected duration of stay is short.

16/. The confidentiality of conversations should be generally improved, as there is no guarantee of sound insulation for most telephones.

17/. All mobile phone devices comprising a photographic device are confiscated on arrival at a detention centre or waiting area, on the grounds that photography could infringe upon the image rights of other persons detained in the facility. Insofar as a large number of devices are nowadays thus equipped, in practice this rule leads to the confiscation of most telephones and complicates the access to telephone communication provided for. It is desirable that these telephones be retained by their owners, who may be advised that the taking of pictures is forbidden during their stay, and that a posteriori sanctions may be imposed (confiscation of the mobile phone, for example) in the event of failure to comply with this prohibition, as defined by the rules of procedure.

These simple measures impact the full effectiveness of a right that the law or rules of procedure already accord to prisoners or foreigners held in detention or waiting areas.

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