OPINION

of 20 June 2011
of the Inspector General of places of deprivation of liberty

on prisoners' access to information technology

1 - Article 11 of the Declaration of the Rights of Man and the Citizen provides that "*The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law"*. This right is all the more applicable to prisoners given that, as the Constitutional Council holds, "*freedom of expression and communication is all the more precious in that its exercise is a condition of democracy and one of the sureties for observance of the other rights and freedoms*" (Constitutional Council, decision no. 2009-580 of 10 June 2009, introductory paragraph 15). It therefore behoves the prison administration to ensure this observance, with only such reservations as are essential for maintaining the security and order of the premises, preventing fresh offences, and securing the victims' interests (as stipulated by the Prison Administration Act of 24 November 2009, section 22). In other words, the prison administration cannot place any other limits on freedom of information than what is dictated by security, the prisoners' future and their victims' welfare.

2 – Modern-day information and communication tools include on-line services, to which the principle recalled above applies. As the Constitutional Council further states (introductory paragraph 12 of the aforesaid decision), "*having regard to the widespread development of on-line services and to the importance acquired by them for participation in democratic life and expression of ideas and opinions*", the right to free communication of thoughts and opinions "*presupposes the freedom to avail oneself of these services"*. The importance of this freedom to prisoners is all the greater in that, being denied freedom to come and go and much of the resultant capacity for action, information technology is a most exceptional means of gaining access to a great deal of the information originating from outside (press, training, job advertisements, administrative procedures, education, games, sundry particulars).

That freedom is naturally subject to the same restrictions, where prisoners are concerned, as the other freedoms not denied them by the court's decision. It must be reconciled with the requirements tied to security, public order, prisoners' prospects and victims' rights. This reconciliation is expressed by fulfilment of the aforesaid requirements, provided that the attendant impossibilities or prohibitions are actually necessary and commensurate with the risks present in these fields.

3 – This is not the case today.

Since the decree of 20 March 2003, Article D.449-1 of the Code of Criminal Procedure has provided that prisoners may purchase computer equipment, albeit according to the terms and the characteristics settled by the administration in a general instruction; it further provides that storage of documents on a computerised carrier can only be for the purpose of training, education or socio-cultural activity; finally it provides – in a clause whose legality is far from evident – that such equipment may in certain cases be confiscated by the administration until the end of the purchaser's sentence, with no other procedure than the "*written observations*" recorded under section 24 of the Act of 12 April 2000[1]. The "general instruction" took the form of a circular issued by the head of the prison administration (in two versions, one "for disclosure" to prisoners, the other "not for disclosure") of 9 April 2009, amended on 13 October that year. It distinguishes what it is possible for prisoners to do in the field of information technology, on the one hand in their cells and on the other hand in collective facilities. It defines the measures for control and surveillance of equipment and activities, as well as usable and prohibited equipment.

4 – In the first place, the foregoing provisions are applied in very markedly different ways from one place of detention to another. In particular, the general inspectorate has been alerted to many situations where equipment authorised in cells in one prison was not in another; a prisoner arriving there after a transfer thus has to give up an add-on, a software package or an information storage medium of which he had long been allowed the use. It may be added that transport costs for computer equipment are not defrayed by the administration, where the owner does not feel able to pack such equipment in the plain cartons in use for transfers (on this point, cf. opinion of the General Inspector of 10 June 2010 on protection of prisoners' property). Finally, before release the computer equipment is "searched" and the data erased *via* formatting of the hard disk: this formatting has already occurred (regarding files nevertheless deemed permissible) without the owner's consent although it is required by para. 6.3.2 of the aforementioned general instruction.

In the second place, certain prohibitions of equipment, for example limiting (drastically by present standards) capacity or power (thus, no hard disk storage capacity over 500 Go), have nothing to do with the security measures to be taken, only with the administration's ability to oversee their use or the content. In other words, the restrictions are governed not by considerations bound up with the dictates of order or with people's interests, but by the inadequacy of the administration's means of control.

In the third place, while in some prisons lending arrangements have been made for the purchase of equipment, the administration is too often tied to a single local supplier whose prices tend to be unrelated to market prices or has had no prices approved: a quote is as high as 3 152 euros where in the opinion of the specialists consulted by the General Inspectorate, a rate of 1 500-1 700 is considered more realistic.

In the fourth place, there are prisons in which the state of the electrical circuit leads to prohibition of all computer equipment in cells.

In the fifth place, some prohibitions are devoid of any logic that would make them explicable and understandable. In the prisons concerned, printers are allowed (to a certain extent) but not blank paper. Above all, the administration is steadfastly hostile to any technology or equipment allowing communication with others. On that account, no "new generation" games console may be purchased, nor generally speaking may all the wireless add-ons. Where information storage media are concerned, only floppy disks are authorised, but not "USB" keys and external hard disks, for example. Finally, no access to on-line services is possible, whether in cells or in a supervised collective facility.

[1] *To be compared with Article R.57-7-33 of the same code, prescribing confiscation for one month at the most of equipment purchased by the prisoner, though after disciplinary proceedings.*

5 – The easing of the rules on access to information technology is necessary not only for due reconciliation of freedom of information and the imperatives of security, but also for improving prisoners' rehabilitation and prevention of fresh offences, resulting in greater security for our society. Accordingly, guided in particular by experiments already in hand (the "Cyber-base®Justice" projects in the prisons of Marseille, Bordeaux-Gradignan, Amiens, Saint-Martin-de-Ré and Metz-Queuleu in conjunction with the Bank for Official Deposits):

6 – The distinction introduced by the circular of 2009 is to be maintained: the possibilities afforded by possession and use of computer equipment are to be more extensive in collective facilities than in cells.

7 – Security demands that the administration be able to oversee the use and storage of computer equipment. However, the aims of this oversight cannot differ from those, long current, leading to monitoring of correspondence and telephone calls; it must be purely a matter of verifying that the data used or stored are not such as to jeopardise rehabilitation or preservation of good order and security. For the remainder, protection of personal data, prescribed by the Act of 6 January 1978 and ensured by the National Commission of Data Processing and Freedoms (by way of comparison, see its Guide for employers and employees), is obviously applicable. Furthermore, the exceptions in respect of correspondence with the persons mentioned in sections 4 and 40 of the Prison Administration Act must be applied in this matter. Lastly, the specially empowered officers in charge of oversight are nevertheless subject to imperatives of discretion (cf. *mutatis mutandis* what was stated concerning postal orderlies: Inspector General's opinion of 21 October 2009, *Official Gazette* of 28 October 2009).

8 - In cells, no operating or storage equipment must allow direct communication with another by wire or through any other channel. Conversely, all limitation relating to useful capabilities must be lifted. Prisoners must have the benefit, in cells, firstly of computers meeting their needs, secondly of the data storage capabilities which they consider expedient, and lastly of any add-on and any computer programme termed "external" (software…), provided – and on the sole condition – that these do not jeopardise their rehabilitation, the good order of the prison, or the victims' interests, and that the place of detention has the necessary space and electrical installation.

In particular, the administration should not object to data (especially photographs) associated with the private and family life of those concerned and those relating to the activities which they have chosen to pursue, even individually (for example, study for an examination). Thus, subject to the conditions mentioned in the preceding paragraph, these data must be saved on an external carrier when the hard disk is formatted and not only those connected with socio-cultural, educational, training or occupational activities. A prisoner owning a computer must also be able to retain his/her data on release.

9 – In shared facilities, where a third person is present (trainer, teacher,…) and /or staff of the prison administration, equipment and data allowing communication should be allowed and even encouraged.

Specifically, arrangements should speedily be made for each prison to provide linkage from these facilities to the on-line services ("*Internet*"), the administration being able to retain the possibility of blocking access to some of them on the same grounds as those stated above and only those, in a verifiable and identified manner.

Access to e mail services should also be ensured, exclusively within the limits currently provided by the Act for correspondence, to which e mail messages must be purely and simply likened. These limits are prior scrutiny of messages before dispatch, and of messages received.

Work, training, education and all activities open to prisoners must be able to use the above-mentioned services, with the equipment meeting their needs. The administration must be able to take the essential precautions to guard against theft of equipment or data.

Finally, “new generation” games consoles should be usable in the same facilities, as part of the recreation normally organised in detention.

10 - To comply with the stipulations recapitulated above, prisoners are free to purchase the necessary equipment by correspondence or on line, from any supplier whose business name is clearly indicated and subject to prior scrutiny by the administration for the sole purpose of verifying that the chosen equipment fulfils the conditions stated in para. 8 above.

Any arrangement facilitating such purchases, and consequently rehabilitation, should be encouraged.

These are the principles whose prompt implementation the Inspector General recommends. They are apt to facilitate prisoners’ rehabilitation, without jeopardising the short-term security which must naturally be ensured, hence to guarantee greater tranquillity and security for all in the medium term.

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