

EUROPEAN PARLIAMENT



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A3-0439/93

REPORT

of the Committee on Civil Liberties and Internal Affairs

on a social charter for prisoners

Rapporteur: Mrs Claudia ROTH

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PE 206.968/fin.
Or. NL

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
absolute majority of Parliament's component Members to give assent
except for simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ****I Codecision procedure (first reading)
simple majority
- ****II Codecision procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members either to adopt a declaration of intent
to reject the common position, or to amend or confirm the rejection of the common position
- ****III Codecision procedure (third reading)
simple majority to approve the joint text
absolute majority of Parliament's component Members to reject the Council text

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On 14 February 1992 the President of the European Parliament announced that he had forwarded the motion for a resolution by Mrs van Dijk on a code of conduct for the treatment of prisoners, pursuant to Rule 45 of the Rules of Procedure, to the Committee on Civil Liberties and Internal Affairs as the committee responsible.

At its meeting of 22 April 1992 the Committee on Civil Liberties and Internal Affairs decided to draw up a report and appointed Mrs Roth rapporteur.

At its meeting of 23 September 1993 the committee decided to include in its report the following motions for resolutions which had been referred to it:

- B3-0824/93 by Mr Panella on the unacceptable nature of prison sentences for minor offences or 'offences without victims'; forwarded on 15 July 1993; responsible: Committee on Civil Liberties and Internal Affairs;
- B3-0825/93 by Mr Panella on the need for sentences other than imprisonment for minor offences; forwarded on 15 July 1993; responsible: Committee on Civil Liberties and Internal Affairs;
- B3-0826/93 by Mr Panella on overcrowding in prisons and the need to reduce the prison population; forwarded on 15 July 1993; responsible: Committee on Civil Liberties and Internal Affairs.

At its meeting of 24 February 1993 the committee decided to include in its report the following petition which had been referred to it:

- Petition No. 656/92 by Mr Earry Oumars (French) on conditions in police custody.

At its meetings of 2 December 1992 and 27 September, 11 October, 1 December and 21 December 1993 the committee considered the working document and draft report.

At the last meeting it adopted the motion for a resolution by 6 votes to 2.

The following took part in the vote: Turner, chairman; Roth, rapporteur; van den Brink, Jarzembowski, Mebrak-Zaïdi, Newman, Van Oustrive and Wijsenbeek.

The report was tabled on 21 December 1993.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A
MOTION FOR A RESOLUTION

Resolution a social charter for prisoners

The European Parliament,

- having regard to the motions for resolutions tabled by:
 - (a) Mrs van Dijk on a code of conduct for the treatment of prisoners (B3-1924/91),
 - (b) Mr Panella on the unacceptable nature of prison sentences for minor offences or 'offences without victims' (B3-0824/93),
 - (c) by Mr Panella on the need for sentences other than imprisonment for minor offences (B3-0825/93),
 - (d) by Mr Panella on overcrowding in prisons and the need to reduce the prison population (B3-0826/93),
- having regard to the joint declaration of 5 April 1977 on the protection of fundamental rights¹,
- having regard to the Treaty establishing the European Union,
- having regard to the general legal principles common to all the Member States,
- having regard to the Universal Declaration of Human Rights and the jurisprudence relating to it,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols,
- having regard to the 1983 Convention on the Transfer of Sentenced Persons,
- having regard to the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
- having regard to the resolutions and recommendations of the Council of Europe concerning custody pending trial (R(80)11), prison leave (R(82)16), custody and treatment of dangerous prisoners (R(82)17) and foreign prisoners (R(84)12),
- having regard to the Council of Europe recommendation on the European Prison Rules (R(87)3),
- having regard to the standard minimum rules for the treatment of prisoners, adopted by the Council of Europe in 1973,
- having regard to Rule 45 of the Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties and Internal Affairs (A3-0439/93),

¹ OJ No. C 103, 27.4.1977

- A. whereas humane treatment for prisoners and respect for their rights are the hallmark of democratic societies,
 - B. whereas the purpose of prison should be to reeducate and reintegrate into society those who have committed illegal and criminal acts,
 - C. whereas there are considerable national differences within the EC where the use of detention, the rules governing the prison system and their application are concerned,
 - D. whereas the legal order and criminal procedure directly affect living conditions in prisons, which often fall below the most basic standards,
 - E. whereas prison terms are, on average, under a year in length, and whereas offences involving the use of violence account for an estimated 5% of all offences,
 - F. whereas detention enhances public safety only to a limited extent and for a temporary period,
 - G. reiterating the aim, expressed by the Council of Europe, of making sentences more humane and minimizing the damaging effects of detention,
 - H. whereas imprisonment represents, at best, a partial failure and whereas it should be used as judiciously as possible, since there is a risk that it may turn non-violent prisoners into dangerous individuals and make those who are already dangerous still more so,
 - I. whereas for some offences sentences served outside the prison system satisfy the need for criminal sanctions and are more effective in preventing recidivism,
 - J. whereas prison sentences are justified in cases where it is necessary to isolate an offender from society, because he represents a danger to it,
 - K. having regard to the rights of victims and whereas alternative sanctions, unlike prison sentences, can help to compensate for the damage caused,
 - L. alarmed by the high suicide rates in prisons, particularly among persons awaiting trial or serving short sentences,
1. Takes the view that, in view of the free movement of persons and the establishment of cooperation on judicial matters, there is an urgent need to adopt a social charter on the treatment of prisoners;
 2. Calls for the adoption of a European social charter in the form of a solemn declaration by the Commission, the Council and the European Parliament, laying down the minimum rules applicable in the EC to harmonize and guarantee the status, rights and living conditions of prisoners, which must be based on humanity, respect for human dignity and the wellbeing of society;
 3. Requests that its competent committee be asked to draw up the draft Charter taking account of the recommendations contained in this resolution;

4. Calls for the Charter to include in full the provisions of the Council of Europe's Prison Rules, in a more precise, complete and up-to-date form, and emphasizes in particular the provisions on impartiality and non-discrimination, material conditions, hygiene, medical care, access to work, contact with the outside world, prison leave and parole; the provisions on women and foreign prisoners; and those on the reception and release of prisoners, religious and moral support and access to social, educational, cultural and sporting activities and to activities in preparation for release;
5. Calls for the Charter to take account also of the following criteria:
 - models for the development of social skills, personal resources and a sense of responsibility must be developed;
 - material conditions must meet stringent standards and respect the dignity of the individual; overcrowding must be avoided; there must be only one prisoner per cell, which must be sufficiently spacious and equipped with a sanitary installation; hygiene, food and health care must also be of satisfactory quality and meet the standards applicable outside the prison system;
 - prisoners must be given appropriate information about their rights and duties;
 - pre-trial custody should not exceed a reasonable period, i.e. six months;
 - minimum procedural guarantees must be given;
 - priority should be given to small prison establishments which are open to society and geographically close to the prisoner's social and family environment;
 - prisoners must be allowed to have visits as often as possible and communicate by telephone, except in specific cases where the courts have provided otherwise;
 - no oppressive, inhuman or degrading practices can be allowed;
 - no use may be made of solitary confinement or of the high-security wing for prisoners who have already been sentenced;
 - prisoners must have access to individual counselling and have the opportunity of doing decent work and being paid appropriately for it;
 - there must be laws banning discrimination against former prisoners on the labour market, and vocational training completed in prison must be recognized;
 - particular attention must be given to the staff, their status, tasks, qualifications, working conditions and income, in order to fulfil one of the conditions on which the effective implementation of the Charter depends;
 - encouragement should be given for the training of social workers who, by agreement between local bodies, prison authorities and voluntary associations, should be able to plan and carry out training and educational activities for prisoners; the number of such social workers should be more or less the same as the number of prisoners;
 - particular attention must be given to groups which require specific treatment, such as women, immigrants, ethnic minorities and minorities in terms of sexual orientation;
 - prison terms may not be imposed on minors or people suffering from mental illness;
 - measures must be taken to make provision for the problems peculiar to women in prison, particularly with regard to health, pregnancy, childbirth; account should also be taken of the fact that women have

- a special relationship with their children and that everything should be done to ensure that the children of women in prison suffer as little as possible from the situation;
- adequate measures must be taken to avoid sexual harassment and racist behaviour by prisoners and staff, with this in view, awareness and education programmes should be introduced for prisoners and staff;
 - foreign prisoners must be able to contact their diplomatic or consular representatives, have access to reading materials in their own language and be able to keep abreast of events in their own country;
 - all prisons and places of pre-trial detention should be directly managed by the State and prison personnel should be State employees;
6. Calls on the Member States to endow the Charter with legal force, by incorporating its provisions in their respective legal orders;
 7. Calls for provision to be made for control procedures, to verify that these standards are respected; asks that provision be made for legal procedures whereby all prisoners can appeal in the event of abuse, omission or violation;
 8. Calls on the Commission to set up a European Prison Monitoring Centre with sufficient financial, logistical and human resources to inspect all prisons in the EC and check that the Charter's standards are respected; the Centre must submit an annual report to the European Parliament and the competent authorities of the Member States;
 9. Requests that Members of the European Parliament should be authorized to visit any prison within Community territory and requests that all measures be taken to ensure that the Protocol on the Privileges and Immunities of the European Economic Community annexed to the Treaty of 8 April 1965 is amended to this effect;
 10. Opposes the privatization of prisons;
 11. Opposes the practice of double punishment, whereby foreign prisoners are deported after serving their prison sentence;
 12. Recommends, therefore, that more extensive use be made of non-custodial sentences or other alternatives to prison sentences, in respect of offences committed by individuals who do not represent a danger which would justify a custodial sentence;
 13. Proposes that sentences be classified with reference to the criterion of danger to society:
 - for persons sentenced for minor offences, who do not represent a risk which would justify a custodial sentence, 'ancillary' punishments, preventive measures, safety measures, community service and alternatives to custody must be the only sanctions imposed, and must have autonomous status;
 - for 'intermediate' offences which do not represent a particular danger and are committed by persons who are not particularly dangerous, provision should be made for a mixed system of custodial sentences and alternative measures. A period of detention would be succeeded automatically by the alternative measure. Measures such as house

arrest, parole, partial freedom and work outside the prison system must be incorporated in this system;

- prison sentences should be maintained for the most serious crimes and the most dangerous criminals; these should not exceed 10 or 15 years, but should be enforced without exception and to the letter. There are no rational considerations which can justify longer sentences;
14. Considers that, in order to overcome the problem of overcrowding in prisons, behaviour such as drug-taking, which causes harm only to the person concerned, should be decriminalized;
 15. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the governments of the countries which have applied for EC membership.

B

EXPLANATORY STATEMENT

Need for a code of conduct for prisoners

The rules governing the prison systems in the various countries of the European Community, and particularly the application of those rules, show substantial differences. Living conditions in prisons are directly influenced by the legal system and criminal procedure in force and often fail to meet even the most basic international standards, particularly as far as hygiene is concerned.

The abolition of border controls within the Community, freedom of movement, non-discrimination and the close international cooperation between police forces and courts more than warrant the drafting of a set of recommendations to harmonize and guarantee the status, rights and living conditions of prisoners in the European Community.

According to Council of Europe figures, the number of prisoners per 100 000 inhabitants at 1 September 1988 was as follows:

Belgium:	65.4	Denmark:	68.0
Spain:	75.8	Metropolitan France	81.1
Greece:	44.0	Ireland:	55.0
Italy:	60.4	Luxembourg:	86.5
Netherlands:	40.0	Portugal:	83.0
FRG:	84.9	United Kingdom:	97.4
USA:	455.0	South Africa:	311.0
European average:	70.0		

It can be seen that the figures vary dramatically, with some countries' average double that of others. International studies on sentencing reveal that the type and degree of crimes committed are similar in all the Member States of the Community and have socio-economic factors in common. The different levels of prison occupancy must therefore be attributed to a greater extent to the type of criminal procedure and sentencing employed.

In a number of Member States, many prisoners are kept in sub-standard conditions: limited access to sanitary facilities, lack of space and privacy and long periods of inactivity spent in overcrowded cells. Prisoners who share a small cell or dormitory have no privacy and often have to use the same toilet facilities in full view of their cell mates.

In Europe, maximum sentences range from ten years to life imprisonment or hard labour for life. The death sentence still exists in certain countries. In some countries, non-custodial sentences are not an option, and the rules governing the release of prisoners on licence differ widely. Facilities for release on parole vary greatly from one Member State to another.

The Council of Europe's Prison Rules

The most comprehensive Recommendations are the 'European Prison Rules' adopted by the Council of Europe in 1987. They constitute the revised version of the 1973 Standard Minimum Rules for the Treatment of Prisoners. They seek to achieve humane treatment and justice, the welfare of society and effective management. They aim to ensure that the basic values of respect for human dignity will prevail.

The Rules advocate that deprivation of liberty should be effected in the material and moral conditions which ensure respect for human dignity; they should be applied impartially and without distinction on grounds of race, colour, sex, language or religion. The treatment of prisoners should aim to sustain their health and self respect, develop their sense of responsibility and help them to return to society and lead a law-abiding life.

Allocation of prisoners should be determined by age, sex and legal situation. Prisoners should not be made to share a cell, unless sharing is preferable and requested.

Adequate sanitary facilities should be provided, and prisoners should have proper access to them. They should be properly maintained and clean. Particular attention should be paid to personal hygiene, clothing, bedding and food. Cultural and religious traditions should be respected, and health care should be on a par with that of the outside world as regards quality and accessibility. Collective, inhumane or degrading punishments or instruments of restraint should not be employed to maintain order and discipline. The right of appeal should be available to prisoners, where appropriate.

Prisoners should be authorized to receive visits as often as possible. The treatment programme should comprise a parole facility. Foreign prisoners should be permitted to contact their diplomatic or consular representative. Means of keeping abreast of current affairs should be made available to prisoners, bearing in mind the linguistic requirements of foreign prisoners. A religious and moral adviser should be provided for those who wish to consult one.

The Rules pay particular attention to the status, duties, qualifications, working conditions and remuneration of prison staff, since that is essential for the proper application of the principles of the Rules.

The Rules emphasize the need to minimize the detrimental effects of imprisonment to make the sentence more humane. Detention within institutions which are more open in character and provide opportunities for contacts with the outside community is encouraged wherever possible.

This is a set of minimal rights which is not legally binding. The relevant European instruments which deal with this subject are the appropriate conventions, the most important of which is the European Convention on Human Rights. While not incorporating any specific provision on prisoners, that Convention serves nonetheless as the basis for the European Commission of Human Rights which deals with prisoners' grievances. The most frequently invoked article is Article 3: 'No one shall be subjected to torture or inhuman or degrading treatment or punishment'.

The Prison Rules still represent an instrument of crucial importance. They guarantee, at least in principle, the dignity and rights of prisoners. However, they do not possess the force of law and often represent no more than a pious hope. Our aim, therefore, is not to propose a declaration of intent which is likely to remain a dead letter. Our first priority is to upgrade the Rules by demanding that they be made legally binding within the European Community. To achieve this, monitoring and verification procedures must be introduced to ensure that these standards are being maintained, as well as judicial procedures to allow prisoners to appeal, should the rules be broken, neglected or infringed. The Rules must be updated, extended and clarified.

John Stuart Mill believed that the only justification for the use of criminal law was for the protection of others. In his essay 'On Liberty', he writes: 'The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'

The most widely accepted justification for the existence of prisons is broader than this and can be summed up in three general points: to protect society, to counsel inmates prior to their release and to act as a deterrent.

It is estimated that 5% of the crimes recorded by police involve violence. The majority of prisoners do not pose a significant enough threat to society to warrant their imprisonment. This is supported by the fact that the majority of the prison population is composed of remand and convicted prisoners who serve only a short period in prison (less than one year). In this instance, prison can only offer a temporary solution to the problem.

Sir Alex Paterson said that you cannot put a man in prison and teach him to be free. If there is little doubt as to the benefits of counselling the prisoner, most observers would agree that prison impedes that process. It imposes practically no sense of responsibility on its prisoners and constitutes a school for crime. While in prison, the prisoner does his utmost to get out and, once he is out, does his utmost to get back in.

There is nothing to support the notion that, if fewer criminals were sentenced to a term in prison, the number of crimes committed would be any higher. Quite the opposite applies in the United States, where the number of crimes committed is high, despite a prison population which is ten times greater than that of the Netherlands. Nor is there anything to suggest that long prison terms have any more of a deterrent effect than shorter ones. On the contrary, they increase the risk of re-offending. It is worth noting that criminologists discovered some time ago that the deterrent effect of the punishment did not reside in its severity but in the probability of its being carried out. The most obvious example is the death penalty.

If imprisonment can be considered as at best a partial failure, then it follows that it should be imposed only after lengthy deliberation. Our analysis must be based on a realistic perception of crime and sentencing as opposed to a short-sighted one, and we must show political courage rather than fear public opinion.

The increase in crime and in the prison population in Europe calls into question the effectiveness of traditional methods of treating offenders. One proposed solution involved drawing up an alternative strategy which would be based less on the imprisonment of offenders and more on the maintenance of links with the community.

Non-custodial sentences can satisfy the need to impose a penalty and are more successful at preventing recidivism. The chances of reforming an offender are generally higher if he lives in a community environment, provided that the public is adequately protected.

With this in mind, and with a view to the drafting of a code of conduct for prisoners, it is reasonable to ask, even before laying down the criteria for the living conditions of a prisoner, whether the first right of a person on remand or a convicted prisoner should be that of not being imprisoned where imprisonment cannot be justified on grounds of security. Imprisonment could

therefore be regarded as a last resort, justified by the need to isolate an offender who poses a threat to society.

It is advisable to disrupt family and social ties as little as possible, given that most offenders spend a relatively short period of time in prison. Although the maintenance of close links with the outside world may pose a threat to safety, in the case of the vast majority of prisoners the risk is so slight that it cannot justify severe restrictions being imposed on the prisoner. The advantages of adopting a liberal approach outweigh the disadvantages. Even in the case of those offenders who pose a serious threat and who are serving long sentences, there is all the more reason for contacts to be maintained.

Much still remains to be done to counteract the damaging effects of the closed and coercive nature of prisons. The right of the victim must also be taken into consideration. The prison sentence imposed on a thief does not restore to the injured party what has been stolen from him.

Alternative sentences could go some way towards compensating for the crime committed. In this way, it may be possible to grade punishments according to the threat posed to society:

- for the most serious crimes and the most dangerous criminals, prison sentences must be 10 to 15 years. They should be rigidly enforced without exception. Longer sentences cannot in any way be justified;
- for 'intermediate' crimes which do not pose any particular threat to society, a combined system of imprisonment and alternative sentences could be introduced. After a fixed period of imprisonment, the alternative sentence would automatically come into force. Measures such as house arrest, release on licence, restricted freedom and work within the community should be implemented;
- for those convicted of petty crime who do not warrant imprisonment, 'secondary' punishments - preventive and security measures, community service and alternative sentences to imprisonment - should be the only punishment.

The certainty and equality of prison and alternative sentences must be guaranteed, and crimes which do not involve a victim and those which do not harm the community must be decriminalized. Most national laws on drugs account for 30-60% of the total number of prisoners in the European Community, according to the country involved, by punishing the individual behaviour of the offender whose crime involves no victim other than himself. Moreover, it appears that if current practice were to conform to these criteria, there would be a significant reduction in the cost to society. This is really a matter of political priority which would allow humane treatment to go comfortably hand-in-hand with the need to protect society and achieve cost effectiveness.

Our recommendations will be based on the above considerations and pay particular attention to groups such as women, juveniles, immigrants and ethnic and sexual minorities which, because of their specific nature, require special treatment.

MOTION FOR A RESOLUTION (B3-1924/91)
pursuant to Rule 63 of the Rules of Procedure
by Mrs van DIJK

on a code of conduct for the treatment of prisoners

The European Parliament,

- A. whereas humane treatment of prisoners and respect for their human rights are important hallmarks of a civilized society,
 - B. whereas counselling of prisoners prior to their release is essential to prevent recidivism,
 - C. whereas inhumane and demoralizing prison conditions increase the likelihood of prison disturbances and recidivism,
1. Calls for the introduction of an official code of conduct laying down a set of rules to be applied in prisons;
 2. Calls in particular for rules to prevent prison buildings from holding more inmates than they were designed to accommodate;
 3. Calls for individual counselling of prisoners while they are serving their sentences, with work, education and training opportunities being adjusted to suit each individual's personal needs;
 4. Calls, having regard to prison work, for new contacts to be established with employers to improve opportunities for subsequent reintegration, and calls for realistic wages to be paid for prison work;
 5. Calls for acceptable standards of visiting and parole facilities to enable prisoners to maintain normal ties with their families and the community;
 6. Asks the committee responsible to treat this matter urgently.

MOTION FOR A RESOLUTION (B3-0824/93)
pursuant to Rule 63 of the Rules of Procedure
by Mr PANNELLA

on the unacceptable nature of prison sentences for minor offences of 'offences without victims'

The European Parliament,

- A. whereas a significant proportion of the prison population have been sentenced for failure to pay a fine,
 - B. whereas too many people are imprisoned for minor offences which do not in any way threaten society,
 - C. whereas between 50 - 75% of prison sentences concern drug offences,
 - D. whereas this means penalizing acts which do not harm anyone other than their authors,
1. Reaffirms the general legal principle that acts or behaviour which do not harm anyone other than their authors should not be punished;
 2. Calls, therefore, for offences without victims, including the consumption and possession of prohibited drugs, to be decriminalized.

MOTION FOR A RESOLUTION (B3-0825/93)
pursuant to Rule 63 of the Rules of Procedure
by Mr PANNELLA

on the need for sentences other than imprisonment for minor offences

The European Parliament,

- A. whereas prison sentences only very rarely help to rehabilitate offenders,
- B. whereas in many cases prison actually breeds crime,
- C. whereas alternative non-prison sentences have often proved to be a more useful means of reintegrating offenders,
 - 1. Calls for alternatives to imprisonment to be promoted and for custodial sentences to be passed only where, owing to the nature of the acts committed, society has to be protected;
 - 2. Considers that open or semi-open prisons, parole and any other solution guaranteeing contact with society are steps in the right direction.

MOTION FOR A RESOLUTION (B3-0826/93)
pursuant to Rule 63 of the Rules of Procedure
by Mr PANNELLA

on overcrowding in prisons and the need to reduce the prison population

The European Parliament,

- A. whereas most Community prisons are overcrowded,
- B. whereas the number of inmates in certain Community prisons is twice as many as they were planned to hold,
- C. whereas this situation cannot but create serious social and other problems and seriously undermines supervision and hence the changes of reintegration,
 - 1. Believes that steps must be taken to combat overcrowding;
 - 2. Considers that this problem cannot be resolved by increasing the number of prisons places available;
 - 3. Calls for prison sentences to be kept to a minimum.

Petition No. 656/92 by Mr Barry OUMARS (French), on conditions in police custody

The petition and two other individuals were kept in police custody in Sarcelles (France) from 25 to 27 June 1992, during which 72-hour period their only entitlement to food was two hamburgers. The petitioner had money with which to buy food but was not given the opportunity of so doing. He complained about the ill-treatment suffered to the magistrate but the latter took no action.



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