

Inspection and monitoring in the commentary to the European Prison Rules



Dr. Mary Rogan



The PRILA project



- Prisons: the rule of law, accountability and rights
- Team of eight
- Five year project
- Funded by the European Research Council

Objectives

- To examine whether there are distinct European features of the concepts of accountability, the protection of prisoners and the rule of law
- To find out how accountability is implemented by prisoners, prison staff and staff of oversight bodies
- To create a typology of accountability bodies in Europe
- To contribute to scholarship
- To contribute to the development of law, policy and practice

Inspection/monitoring, complaints, litigation

The PRILA submission

- Based on a review of European and international human rights law on the inspection and monitoring of prisons
- Opportunity to build on the existing commentary and take account of developments since its drafting

Rule 9

"All prisons shall be subject to regular governmental inspection and monitoring"

Status of a general principle
Importance of inspection and monitoring & OIv

Go further?

Emphasize the particular importance of independent monitoring



"Independent monitoring, complemented by governmental inspection, are crucial mechanisms to ensure the prevention of ill-treatment, the upholding of rights, the promotion of safe and secure environments and opportunities for rehabilitation"

"Crucial mechanisms to ensure the provisions of these rules are respected"

Openness to wider society, prisons as part of society

*Inspection and
monitoring in the
commentary to the
European Prison
Rules*



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A photograph of a prison cell with a barred window, casting a blue glow. The window is in the upper right corner, and the light from it illuminates the wall and floor of the cell. The rest of the cell is in shadow.

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Rule 9

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Status of a general principle

Importance of inspection and monitoring is clear



Go further?

Emphasise the particular
importance of independent
monitoring

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Rules 92 and 93

Commentary suggests that governmental inspection would be responsible for budgeting matters

Recommend amendment to avoid the impression that governmental inspection should be limited to such matters

Governmental inspection should also assess compliance with national and international law (including the EPR)

Type of monitoring bodies

No particular model prescribed
In keeping with OPCAT and Mandela
Rules

"Independent and well-equipped" to
perform their duties

Independence

- Guarantee structural independence and independence of their personnel
- Could refer to an appointments procedure which is independent, transparent
- Terms of office
- Could suggest bodies report to parliament, not Ministry
- Propose own budget and have adequate funding

Commentary to Rule 92

- Contains a recognition that governmental inspection can assess the treatment of prisoners
- Mandela Rules:
 - "in both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and correctional services and that the rights of prisoners are protected"

Rule 93

"High quality" of supervision:
Supplement with reference to need
for balance of expertise, gender
diversity and minority
representation (Bangkok Rules)

Strengthen the powers of inspectors

Good to include reference to making findings public
Good to include reference to the ability to make proposals and comment on draft legislation (OPCAT)

Some additions needed...

Powers

- The principle of confidentiality
- A power to make recommendations
- Choice of prisons to access and power to access information

Opportunities

Opportunity to commend certain practices to inspectors/monitors e.g.

- Establishing standards for inspections (based on human rights principles) and publishing them
- Creating protocols for how visits are conducted
- Creating protocols for how recommendations are formed
- Methodology for inspections
- Duty on the authorities to examine recommendations and enter into a dialogue concerning them (OPCAT)

Opportunities

Encourage more engagement with and openness to civil society organisations
Cross reference with commentary on complaints - a complementary system

A pressing need

OPCAT is bedding down (though not implemented everywhere)

Mandela Rules contain a strong statement of the powers needed

CJEU has referred to reports of inspectors as important sources of information about prison conditions in EAW cases

Council of Europe's focus on improving conditions and reintegration: key role for inspection and monitoring

A need for a standalone recommendation on inspection and monitoring?

of information about prison conditions in EAW

of Europe's focus on improving conditions and
ation: key role for inspection and monitoring

*A need for a standalone recommendation on
inspection and monitoring?*

Thank you!

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