



VIII CONGRESSO PORTUGUÊS DE SOCIOLOGIA

40 anos de democracias: progressos, contradições e prospetivas

ÁREA TEMÁTICA: Direito, Crime e Dependências [AT]

OBSERVATÓRIO EUROPEU DAS PRISÕES/EUROPEAN PRISON OBSERVATORY

PONTES, Nuno H.

Investigador

ISCTE/CIES

nunohenriquepontes@gmail.com

DORES, António Pedro

Agregação em Sociologia

ISCTE/CIES

antonio.dores@iscte.pt

Resumo

Em Fevereiro 2004 Freitas do Amaral anunciou que a situação “atrasada” das penitenciárias portuguesas relativamente à situação geral dos sistemas prisionais na Europa só poderia ser recuperada no prazo de 12 anos, e caso fosse aplicada a reforma preconizada pelo grupo de reflexão que dirigiu. A um par de anos do fim do tempo previsto, e num quadro de generalizada ignorância sobre o que sejam as características das prisões dos diferentes sistemas europeus, um grupo de investigadores sociais europeus propõe-se montar e manter um observatório europeu de prisões.

Neste artigo descreve-se, por um lado, o processo metodológico seguido pelo primeiro projeto financiado pela Comissão Europeia, em curso, que suporta a iniciativa. Por outro lado, oferece-se aos leitores algumas informações já disponibilizadas pelo trabalho desenvolvido, com particular atenção às especificidades da situação portuguesa. Finalmente, apresentam-se alguns dilemas deontológicos e teóricos que os investigadores enfrentam na consideração de políticas públicas penitenciárias.

A persistência de taxas de mortalidade sistematicamente muito altas nas prisões portuguesas e a ausência de qualquer explicação ou esforço de clarificação das causas que produzem tais efeitos – bem conhecidos e registados por organismos internacionais – explicam e são explicadas pelas limitações quantitativas e qualitativas dos estudos penitenciários em Portugal. O reconhecimento oficial das condições “não-europeias” das penitenciárias portuguesas não tem, no mundo académico, eco na organização de estudos com o objetivo de referenciar quais sejam as metas desejáveis para avaliar o sucesso do Estado em conseguir, em 2016, afirmar estar na “média” do tratamento penitenciário europeu.

A nível europeu, apesar da disponibilidade de uma rede de investigadores europeus de vários países, só recentemente foi possível financiar os primeiros passos de um programa europeu de recolha de dados, troca de informações e reflexão sobre o que compara os diferentes sistemas penitenciários no norte, sul e leste do continente. Para além de disponibilizar dados quantitativos mais cedo e atualizados dos que os já recolhidos por outros observatórios, nomeadamente pelo SPACE financiado pelo Conselho da Europa, o Observatório Europeu das Prisões pretende divulgar dados qualitativos produzidos por protocolos apropriados e testados de observação dos diferentes sistemas.

Abstract

In February 2004 Freitas do Amaral, having headed a government appointed commission, announced that the it would take 12 years for the “lagging” Portuguese penitentiaries to catch up with the rest of the European system, and only if the commission’s recommendations were to be implemented. A couple of years from that deadline and still facing general ignorance as to what the European prison systems are actually like, a group of European social researchers proposed to create a European prison observatory.

This paper aims to first describe the methodology followed by the first project financed by the European Union, now underway, that supports that initiative. Second, it will seek to provide the reader with some of the information already produced by the project, with particular attention to the specifics of the Portuguese situation. Finally, some of the deontological and theoretical dilemmas confronted by the investigators in considering correctional policies are presented.

The fact that there is no attempt to shed light on what may cause phenomena such as the very high mortality rates in Portuguese prisons may offer some insight into why those numbers are so high. At the same time, the culture of secrecy around such phenomena goes a long way to explain the limitations (quantitative and qualitative) of penal studies in Portugal. The official acknowledgement of the “non-European” conditions of the Portuguese penitentiaries is not reflected in the academic world. To this day, there are no parameters by which to evaluate the success of the country in being able to, by 2016, be within the “norm” of European penal conditions.

At the European level, in spite of the availability of a network of researchers, it only recently became possible even to finance the first steps of a European programme of comparative data collection, exchange of information and reflection. As well as offering timelier quantitative data than that collected by SPACE (which is financed by the Council of Europe), the European Prison Observatory aims to gather and disseminate robust qualitative data.

Palavras-chave: prisões; Europa; método comparativo

Keywords: prisons; Europe; comparative method

COM0056

1. European Prison Observatory

The subject of prisons as violent institutions is taboo in social theory. The potential perplexity that this statement may cause is understandable. This requires a brief reference to the reach and meaning of such a taboo.

The moral tension and violence involved in prisons as institutions result in tight vigilance by the state. This means that studying such institutions implies, more than in other areas of study, unstated friction between the researcher and the subject of investigation.

That state vigilance is characterized by aggressive containment of any exposure of what goes on in prison. What happens there is subject to state secrecy reinforced by a system of social secrets. The professionals are, primarily, subject to the first type of secret, corresponding to an institutional space (the prisons) existing, to great extent, outside judicial supervision (in spite of a movement and legislation favourable to such oversight). The prisoners and their families, on the other hand, are subject to social secrets reinforced by stigma.

The professional culture of silence is built upon the penalties that any public declaration can provoke. A crime or accident in a prison can have political and social repercussions that can spin out of control, as evidenced by events like disturbances and riots, which, in the eyes of the professionals, arise as natural phenomena that can explode at any moment without warning.

The authorities' tactics of employing violence pre-emptively and of using psychological warfare to confront internal and external pressures, are ways to deal with the extreme instability of the prison environment described by Zimbardo (2007). These tactics represent the need on the part of the prison authorities to maintain control over events at the most critical moments; control that in practice is impossible to achieve. The rule of silence is the first rule of penal management, both when carrying out investigations requested by oversight authorities and in contacts with the media when explaining any controversial incidents.

In the case of Portugal, the silence of the inmates and of their families stems from, above all, a lack of basic education and of civic and legal knowledge. These are individuals with persistently profound social problems and with little or no cultural resources or communication skills. Half of all prisoners have at least one parent who was also incarcerated, 2/3 are recidivists and 4/5, before being old enough to be put in prison, having no family support, were put into social care as at-risk children and youths¹. The severity of this problem rises to the point of the developed cultural competency of some prisoners being considered a security problem by prison authorities, who see it as potentially puncturing the golden rule of internal and external silence. The families and the prisoners themselves are afraid to denounce any offenses by either inmates or prison staff because it can incur reprisals. This is made abundantly clear by the prison guards, whose principal tools for control of the prison population are the carrot and stick – the promise of every-day privileges, furloughs, and parole, on the one hand; the threat of arbitrary, successive punishments of isolation, denial of visits, abuses of visitors, corporal punishments, death (sometimes realized), etc. on the other. It often happens that prisoners prefer to allow themselves to get sicker rather than denounce medical negligence, the consequences of which they literally suffer in the flesh and may be fatal. By contrast, the prison system makes ample allowances for prisoners of a certain social status, who can avail themselves of their education, and who benefit from the right social connections. Their imprisonment is governed by distinct policies and they are housed separately in spaces created specifically for them. Some of those individuals occupy their time by writing about their exotic experiences, the publication of which becomes a way to establish their notoriety.

In reality, books written by people imprisoned during both the Estado Novo (fascist) and the democratic regime, never manage to rise above personal and localized impressions to attempt to offer a critique of institutional violence. This lack of criticality rises to the point of it being possible for prisoners of the former regime to launch their books in the same prison facilities where they were victims of abuse, in apparent ignorance of the persistence of the problems they experienced.

The cognitive taboo around prisons, in its social and political aspects, is enmeshed in the contradiction between the illusion of our being headed toward an egalitarian and non-violent society, as Elias highlights

([1939]1990), and the reality of institutional stigmatization towards, in particular, people who have been socially isolated since birth. Such people constitute the bulk of the prison population (incarcerated, it is worth pointing out, mostly for offences related to illegal drugs, a commerce which is then facilitated in prison). Who wants to know about these profound contradictions that characterize the penitentiary system?ⁱⁱ

Since the Industrial Revolution, “the size of the cities quadrupled throughout the 20th century, the capacity to wage war grew by nearly fifty times and information technology shot up eighty fold, while the per capita capture of energy merely doubled” (Morris, 2013, p. 621). Urban and information society studies have a visibility in social theory that violence does not. In the specific field of prisons social researchers must take care not to upset or run the risk of being seen as disturbing the institutional order (by causing unrest among the prisoners or fear among the authorities, who then may employ pre-emptive violence in order to avoid what they perceive to be potentially worse problems), so as to have direct access to the prisons and the subjects of their studies. The same applies to any other visitors, be it prisoners’ family members or officials who occasionally visit prisons, with the difference that it is the researcher’s purported intention to spend their time producing detailed and credible information, to be then accredited with the prestige of their respective research institutions. It is not, therefore, surprising that the idea of organizing a European prison observatory, launched in 2001 in Lisbon (Dores, 2003),ⁱⁱⁱ did not ripen until 2013, with 8 nations represented and European Union funding. It was necessary to find an acceptable pitch for funding and a willingness of the Commission to launch the project, which will hopefully be ongoing. The project foresees the possible collaboration of prison authorities, something as of yet not viable in Portugal but which may be in at least some of the other partner countries.

SPACE I reports^{iv} have been offering comparative annual statistical data covering Council of Europe member states. At the global level there are also efforts in that same direction.^v In this context, the European Prison Observatory^{vi} offers complementary work, more focused on qualitative rather than quantitative data. The Observatory began with the objective of comparing conditions of detention in Europe’s prisons (this presently means in the 8 participating nations). It aims to carry on with its activities by annually updating the collection of information and producing analysis, such as examples of national or local practices in the light of recommendations approved by the Council of Europe (many of which are not respected). It is envisioned that the project will come to cover areas such as alternatives to imprisonment; practices of prevention and treatment of disease; imprisonment of foreign nationals; strategies to ensure the dignity of prisoners’ lives, etc., preferably incorporating more European nations. This is, of course, dependent on the EPO’s capacity to garner the resources to move forward.

1.1 The Portuguese prison system

The work of developing the Portuguese EPO report began with a synthesis of the more problematic characteristics of the nation’s prison system, starting with the obvious issue of a chain of command broken at various levels, most significantly between the Ministry and the director-general, between the director-general and the guard corps and between prison directors and guards.

Disconnected from the Ministry, the Directorate General is frequently left to both draw up prison policies and to be publicly accountable for what goes on in prison. The prison directors, out of touch with the DG, are left at the mercy of securitism (the prioritisation of security), which is the responsibility of the chiefs of the guards, whose power basis is long standing. The chiefs of the guards tend to get assigned to specific prisons on a long term basis, in contrast to the mobility of the directors. This increases the likelihood that a director may not even get to fully comprehend the power dynamics in the prison, even when these are arrayed against them.

The problems continue with directors who are afraid of getting to know the wings and talk to the prisoners, which is something that the DG does not appear to think it makes them unsuitable for the position. The informality that develops between guards and prisoners can grow into a sort of intimacy where the exchange of favours and privileges are used as management tools. And, perhaps most glaringly, inspection entities seem to fear that their actions might disturb the status quo, the informal outlines of which they do not know

nor want to know. The inspectors' argument is that they need to have the trust of the local agents being inspected because they are dependent upon the information that these may be willing to proffer, and that penitentiary powers must not be challenged, for those who would suffer the consequences, as retaliation, would be the prisoners.

Problems such as these have a long and complex history, but some can be traced to more recent developments such as the growing political weight of the guards' union starting in the 80's, the introduction of illegal drugs into the prisons, the fragility of the administrative system and their tendency to hide behind justifications. All such Issues make for a prison system which, forgotten and left to its own devices by an ignorant and pretentious political class, has become inward looking and aggressive in its defensiveness. In turn this has led to the stigmatisation not just of the inmates but also of the people working in prison.

The fact is that each prison has its own rules defined locally, and neither attempts at standardization via administrative nor legislative means can bear results in a system in which respect for legality is not assured by either regulatory entities, the courts or police forces.

Who is being imprisoned in Portugal? It is above all the children and young people taken into social care – it is estimated that more than 80% of all prisoners passed, at some point of their lives, through some type institution for at-risk children and youths.

The Portuguese prison system is also characterised by a large presence of immigrants (20% of the total prison population, while less than 5% of the nation's population), and a sizeable contingent of Roma.

1.2 The Findings

The findings of the Portuguese report, unsurprisingly, leave little room for doubt as to the dimensions of the task of bringing the nation's prison system into compliance with Council of Europe recommendations. Of course Portugal is not alone in facing these challenges, as is made clear by the following excerpts of a preliminary analysis of all eight national reports by the EPO's section of the University of Padua (Maculan et al., 2014).

For example, as to prison health care, European Prison Rules recommend that “medical services in prison shall be organised in close relationship with the general health administration of the community or nation” (40.2) and “health policy in prison shall be integrated into, and compatible with, national health policy” (40.3). A reform push comes also from the World Health Organisation strongly recommending that closer links be made between prison and public health care (Hayton, et al., 2010). The common objective is to make prison health services as similar as possible to the external ones, following article 40.3 of the European Prison Rules (“Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation”), reaffirmed by the Health 2020 programme (Kickbusch, et al., 2013) (WHO, 2013).

The EPO national reports show that from a legal standpoint, only in France, the UK, Italy and Portugal is the responsibility of delivering health care in prison managed by the Ministry of Health, as it happens in society at large. In the other EPO countries, prison medical services fall under the prison administration structure. Although there are exceptions in relation to some specific issues (e.g. in Latvia the Ministry of Health covers the costs of medication for TB and HIV/AIDS as well as laboratory analysis for HIV/AIDS patients, while in Poland public health care facilities cooperate with penitentiary units in providing medical services, especially in cases that endanger the life or health of the prisoner), the relationship between the two systems is often tenuous or non-existent.

Even where prison health care is under the National Health Service, medical, surgical and psychiatric services are often insufficient. The gap between theory (what the law requires) and the practice is a common issue. In Portugal, the more specialized medical services are theoretically available, but in practice sick prisoners, especially those waiting for costly treatments, can experience great difficulty gaining access to these, due to security and administrative obstacles placed in their way.

The European Prison Rules also state that “the services of qualified dentists and opticians shall be available to every prisoner” (41.5). Most national reports are critical as to the implementation of this rule, stating that prisoners' needs are not satisfyingly met. In principle dental care must be made available within all prisons, given the widespread need, in particular among drug addicted prisoners. However, waiting lists are considerable (e.g. 3 months in Portugal), even in cases of urgent need.

On the other hand, a great deal of attention appears to be given to contagious diseases inside prisons. In every EPO country the law provides measures to isolate prisoners suffering from infectious diseases (or those suspected of being so). In some cases the decision to isolate lies with the doctor (e.g. in France and Poland); in others it is shared between doctor and governor (Greece).

As to mental health matters, the European Prison Rules order that “specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality” (47.1). The Rules also prescribe that “the prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention” (47.2). In our preliminary findings we established that every country has separate facilities (or branches inside prisons) where mentally ill prisoners can be cared for. In some cases (Spain and UK), the main issue is whether they function appropriately and if they are enough to address the number of prisoners with mental health problems. Such units are often used to house prisoners thought to be at risk of self-harm or suicide.

Furthermore, the quality of medical treatment is frequently poor. In Portugal, the law sets out various provisions for the care of mentally ill prisoners, including the internment in public mental health institutions or in prison mental health units specifically set up for that purpose. In fact there is very little in the way of therapeutic attention for the mentally ill in Portugal: the only practice is to calm patients when their behaviour becomes unbearable for the staff. This typically means making them spend a few days in the prison hospital, where they are often indiscriminately restrained with drugs. In Italy psycho-active drugs are also used in high quantities, both inside prisons and judicial psychiatric hospitals, where people can be restrained until a judge certifies them as no longer representing a danger to society.

Along with mental illness, drug addiction is one the most widespread and serious health issues in European prisons. The European Prison Rules prescribe that “when examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention - among the other issues - to dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol” (42.3 d).

Our analysis of the staff involved in the treatment of drug related problems in the EPO countries show that, in general, specialist health services, physicians, psychologists or social workers (and sometimes psychiatrists) give support to prisoners with such problems. Also we found various counselling programmes (detoxification, etc.) in operation. In some prisons there are special wings (drug-free) or therapeutic units where, as in Poland, prisoners participate in meetings where they have the opportunity to learn about addiction, develop their motivation to maintain abstinence and acquire specific skills to prevent relapse. As a rule, they have to agree to regular urine tests in order to stay on those special wings.

Limited resources, however, mean that meeting the needs of drug addicted prisoners can be problematic. There is general agreement among the EPO countries that drugs are easily found in prisons and many inmates continue or start drug use while incarcerated, so that the use of illegal substances among prisoners is still high.

As for treatment, in some exceptional cases, like in Greece, drug-addicted prisoners suffering from withdrawal symptoms on arrival are sent to a prison psychiatric clinic. Typically, methadone is the treatment offered, in a graduated therapy of progressively decreasing doses. Yet it happens, as in Portugal, that, although methadone programmes exist, often nothing more than tranquilizers are given. Although programmes of harm reduction aimed at giving information and spreading knowledge are often employed, Spain appears to be the only case where adequate programmes of harm reduction (e.g. through the dispensation of sterile injection equipment) are implemented. In France the Ministries of Health and of Justice are looking to introduce an experimental syringe exchange programme. However, even if influential

and careful empirical studies have shown that syringe distribution is not followed by an increase in illicit drug use and does not compromise security, such programmes struggle to be accepted and implemented (Kerr *et al.*, 2004) (Stover *et al.*, 2003).

On activities, the European Prison Rules state that "every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations" (28.1). Almost everywhere educational institutions operating in prisons include all levels of instruction up to university level. However, due to a common lack of resources, not all types of education are provided.

The European Prison Rules state that "Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners" (26.5) and "Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline" (26.6).

Prison work should be an opportunity to develop confidence and skills needed to return to society (Coyle, 2002).

In France, according to recent data, there are around 17.800 prisoners working in prison (28% - down from 37% in 2000). About half of them (47.5 %) work for the prison administration (or for private firms if the prison is privately run) and carry out work related to the running of the prison, such as maintenance, kitchen work or food distribution within the prison. Prisoners might also get manufacturing jobs, which they carry out in workshops or in their prison cells, from private companies (45.5 %) or from the prison industrial services (7 %).

Approximately 5.300 job posts are available for 12.500 prisoners in the 34 Greek prisons.

In Italy only about one prisoner in five works.

In 2012 no more than 30% of Polish prisoners were given the opportunity to work (including paid and unpaid).

In Latvia on 31 December 2011 only 1.224 sentenced prisoners (591 in the prison maintenance, 633 in work offered by enterprises/private employer) and 8 pre-trial detainees (7 in the prison maintenance, 1 for private employer) of a total of 6.561 prisoners had employment.

In Portugal more than one third of the inmate population serve their sentences without any purposeful activity.

A reading of all the national reports indicates that as a rule, individual vocational training needs are not taken into account. Even when legislation calls for vocational training programmes in order to meet rehabilitative goals (and indeed there are isolated attempts by selected employers to this end), the development of prisoners' skills and qualifications is not provided as a general practice. The majority of available jobs simply cover daily prison needs (e.g. cleaning, cooking, food distribution, etc.) and there are no personal development plans or preparation schemes for life after release. The jobs offered are simple and repetitive, therefore not requiring nor developing skills.

Generally, the acquisition of any kind of employment is a question of luck, regardless of personal aptitudes and preferences. What is more, work is sometimes used as a bonus or to compel individuals to become informants for the security staff. It also happens that the latter do not appreciate vocational training programmes because they see these as an increase of their workload, as it happens in Portugal, where, sometimes, training programmes have very low participation, in part because of obstruction of prisoner enrolment by the security staff.

Across the EPO countries, the tendency is for the right to work to be denied due to the shortage of jobs available inside prisons. This trend means that a large proportion of the prison population remains without opportunity to acquire the skills that would enhance the likelihood of their obtaining gainful employment once released (Solomon *et al.*, 2004).

As to security, physical controls are the main security measure used in the prisons analysed in the national reports. These controls can be employed at any moment, especially after certain types of activities such as work, recreational activities and educational courses. They may also be used after meetings with family members, friends, prison volunteers and so on.

There are various types of physical controls with varying degrees of invasiveness:

1. The least intrusive: the metal detector, which may vary from some type of hand-held wand to any of various elaborate walkthrough devices.
2. The common method of palpating various parts of the body. The aim of this practice being to detect if the subject hides anything unauthorised.
3. Strip-searching, whereby the prisoners are made to take off all clothes, except underwear.
4. And the most invasive: the x-ray exam and the direct examination of the oral, anal and vaginal cavities.

Palpation and strip-searches are made by prison officers of the same gender as the person searched (prisoners or visitors).

Cell searches generally happen without warning and when the prisoners are not in their cells. The principal aim of this type of control is to check for the presence of objects prohibited inside the prison. Typically the object of these searches is drugs, alcohol, weapons (that can be used to assault prison officers or other detainees) or instruments of escape.

As indicated above, even visitors (such as prisoners' family members, friends, volunteers, teachers, legal representatives, social workers etc.) can be searched by prison officers. For this reason the European Prison Rules underline that "the obligation to protect security and safety shall be balanced against the privacy of visitors" (57.9).

All the national reports highlight that everyone can be searched before entering a prison facility. But here too, the types of controls vary, with a wide degree of invasiveness. The most common type of control is the metal detector. Also palpation searches (pat-downs) are often used to prevent the visitors from bringing contraband into the prison. In some cases visitors can be strip-searched. Finally, the most invasive type of control for visitors is the internal physical search. Generally only prisoners' family and friends are subject to being searched by palpation and strip-searched, whereas other visitors (volunteers, advocates etc.) pass only through metal detectors. Of all reported practices, visitor controls seem to be particularly invasive in Portugal, where the problem rises to the point of there being complaints of sexual abuses during the strip searches.

On the issue of discipline and punishment, European Prison Rules state that "disciplinary procedures shall be a mechanisms of last resort" (56.1), and: "whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners" (56.2), and: "only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence" (56.3). Despite these recommendations, only Spanish penitentiary law holds the use of disciplinary procedures as a mechanism of last resort. All the reports describe disciplinary procedures as being employed frequently, in what seems to generally constitute the ordinary form of prison management.

Disciplinary procedures are used in many cases: when a detainee answers offensively or does not show respect to prison officers; when prison officers detect forbidden items in a detainee's cell (for example drugs or alcohol) or items s\he holds without permission; when a detainee refuses to do his\her work or recreational activities; or when s/he is involved in fights, assaults etc. In all reporting nations, it seems that prison officers have broad discretion in deciding whether to start a disciplinary procedure against a prisoner, which gives them a great deal of power to control and over every aspect of prisoners' lives.

According to the European prison rules "any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law" (60.1), "The severity of any punishment shall be proportionate to the offence" (60.2), "collective punishments and corporal punishment, punishment by placing in a dark cell,

and all other forms of inhuman or degrading punishment shall be prohibited” (60.3), “punishment shall not include a total prohibition on family contact” (60.4), “solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible” (60.5) and “instruments of restraint shall never be applied as a punishment” (60.6). In practice a wide range of disciplinary procedures is used. Most of these procedures are common in the institutions of all the reporting countries, such as exclusion from work activities (with the suspension of salary); exclusion from cultural, educational and recreational activities; loss of employment (France); prohibition to leave the cell (for several days); solitary confinement (for a variable length of time); deprivation of objects (such as TVs) (England, Wales, France); prohibition to receive money from the outside world for several months or to purchase anything else but hygiene products, tobacco, or correspondence tools (France, Latvia); prohibition to make phone calls; and transfer to another cell, unit or prison. In Italy, a disciplinary procedure automatically cancels the reduction of the period of detention (45 days every 6 months) that the law grants to the prisoners who behave correctly.

As stated by European prison rules, “a prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority” (61) and request a review of the procedure. In England and Wales, for instance, if a prisoner (or a member of staff) believes the punishment or the conviction for a disciplinary offence was flawed because it was illegal, unfair, or incorrect procedures were followed, s/he can bring this to the attention of the governor or director. If the governor agrees, the punishment may be remitted or the conviction rejected, where the adjudication was conducted by a governor. If it was conducted by an independent adjudicator the prisoner can request a review by a senior district judge. In Greece punished prisoners can appeal to the Court for the Execution of Sentences (a three member judicial council); in Spain to the judge of Execution; in Portugal to the Tribunal of Sentences Execution. These appeals for review are largely meaningless as punishments are rarely overturned or altered. Usually the duration of the appeal procedures is very long and there is the risk of their resulting in further sanctions.

As to the use of force, as highlighted by the national reports, the prison officers’ use of force should happen only in exceptional cases defined by law: to deal with prisoners’ violent acts, to prevent escape attempts and in case of resistance to officers’ orders. If such criteria are not respected, this can constitute an abuse of power, subject to legal prosecution. However, judicial prosecutions of such incidents are rare.

Although national laws authorize the use of force only as a last resort, in practice it is used regularly, and often not in compliance with the rules. This has been emphasized by several reports, particularly the Italian, the French, the Portuguese and that of the United Kingdom. The French report underlines how the director of the penitentiary is supposed to be informed of every instance when violence is resorted to, but in practice, such reporting is often incomplete or absent. The hierarchy of the prison as well as the judges in charge of the cases often justify the use of violence, even excessive violence, by the behaviour of the convict and by referring to “how hard this job is” (cfr. France report). The Portuguese report highlights wide and indiscriminate use of force by the officers, without any sort of professionalism or respect for the physical integrity of the prisoners. In the Portuguese prisons the use of force is deemed legitimate whenever the penitentiary order is arbitrarily declared to be at risk (cfr. Portuguese report).

With regards to the use of instruments of restraint, the European Prison Rules prescribe that “the use of chains and irons shall be prohibited” (68.1), that some instruments such as handcuffs, restraint jackets and other body restraints should be used only “if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise, or by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority” (68.2). At number 68.3 and 68.4 the European Prison Rules state that the “instruments of restraint shall not be applied for any longer time than is strictly necessary” and “the manner of use of instruments of restraint shall be specified in national law”.

As highlighted in the reports, the most common instruments of restraint used in the EPO countries’ prisons are handcuffs. Handcuffs are used especially for transfers but, in some cases, could be used for any

movement out of the cell of convicts who are considered dangerous (cfr. France). In Greece the Penitentiary Code states that the use of handcuffs should be avoided if the inmate is juvenile, sick, elderly or pregnant. In Poland the most common instruments of restraint are straitjackets and restraining belts, which are applied to immobilize the detainee and are used only in a special soundproof room. They can be used only if no other coercive measure are deemed to be effective. The UK reports the use of various devices, each of which is allowed within specific legal parameters: physical (using physical force without equipment), mechanical (using equipment such as handcuffs or leg restraints, staves and batons), chemical (using medication), environmental (e.g. seclusion), technological (e.g. electronic tagging, pressure pads or alarms), psychological (e.g. repeatedly telling someone that they are not allowed or that it is dangerous to do something, or depriving a detainee of something that is necessary for what they want to do, such as a walking aid). In Portugal the most common actions of restraint, a tactic often used to intimidate, are handcuffs and immobilization by brutal force. A particular problem present in Portugal is also the use of chemical restraints, both in the country's dedicated psychiatric-hospital prison and in the mental health units of any other prison. This problem was noted in the CPT report of 2012 (cfr. Portuguese report). The Latvian report too shows the use of various instruments such as handcuffs, batons and electric shock, as well as the use of physical force and the use of special fighting methods to deal with the possibility of escape, assault etc.

1.3 Conclusion

The European Prison Observatory foresees the collaboration of the authorities responsible for prison services and of those interested in the subject. The task of providing authoritative comparative information will benefit from contributions both in the sense of adducing more information and improving its quality. In the case of the Portuguese state this collaboration has not been possible. This corresponds to the meagre interest in prisons on the part of Portuguese civil society, in comparison to, for example, Spain, where dozens of organizations formed by prisoners' families and lawyers dedicate themselves to collecting information for publication. Equally meagre is the Portuguese state's regulatory activity of the sector. Whatever focus on Portuguese prisons there is, it is owed to Meneres Pimentel who, when Ombudsman (from 1992-2000), began a practice of publishing reports and studies about the situation of the nation's prisons. This practice has stopped since 2003.

In these circumstances, the work of the EPO in Portugal is, on the one hand, made easier – in the sense of there being a lot less to do than in countries like the UK and Italy where there is an abundance of critical information about the operation of the prisons. On the other hand, it is harder: there are difficulties in the collection of information and in the validation of official and unofficial data. There is a dearth of critical and comparative analysis. The main deontological challenge arising from these studies is establishing the most useful critical distance between the Observatory and the State in order to accomplish one of the main objectives of the project: providing reliable information about prison conditions in Europe. That ideal distance will depend on the very different circumstances in each country. In the case of Portugal, the maximization of that distance as imposed by the State does not seem very useful. That imposition does substantially reduce the margin of manoeuvre for methodological and theoretical fine-tuning on the part of the Portuguese team. From a researcher's point of view, the work may be easier, but it fails to reach its practical objectives. Here, as in other areas, productivity suffers.

References

- AA.VV. (2013) Transformative justice. S. Francisco: Generations FIVE. <http://www.generationfive.org>.
- Collins, Randal (2008) Violence: A Micro-sociological Theory, Princeton, Princeton University Press.
- Coyle, Andrew (2002) A Human Rights Approach to Prison Management. Handbook for prison staff, International Centre for Prison Studies, London.
- Dores, António P. (2003) (org.), Prisões na Europa - um debate que apenas começa - European prisons – starting a debate, Oeiras, Celta. <http://hdl.handle.net/10071/6008>

- Dores, António P., José Preto (2013) *Segredos das Prisões*, Cascais, RCP.
- Elias, Norbert ([1939] 1990) *O Processo Civilizacional (Vol I and II)*, Lisboa, D. Quixote.
- Foucault, Michel (1975) *Surveiller et punir : naissance de la prison*, Paris, Gallimard.
- Giddens, Anthony (1985) *The Nation-State and Violence - Vol II A Contemporary Critique of Historical Materialism*, Cambridge, Polity.
- Gilmore, Ruth (2007) *Golden Gulag – prisons, surplus, crisis and opposition in globalizing California*, Berkeley, University of California Press.
- Kerr, Thomas, Even Wood, Glenn Betteridge, Rick Lines, Ralf Jurgens (2004) Harm reduction in prisons: a ‘rights based analysis’, *Critical Public Health*, Vol. 14, No. 4, 345–360.
- Kickbusch, Ilona, Thorsten Behrendt (2013) *Implementing a Health 2020 vision: governance for health in the 21st century. Making it happen*, World Health Organisation.
- Lines R. (2007) HIV infection and human rights in prison, *In Moller, L., Stover, H., Jurgens, R., Gatherer, A., Nikogostian, H., Health in prison. A WHO guide to the essentials in prison health*, WHO: 61-71
- Maculan, Alessandro, Francesca Vianello, Diniela Ronco (2014) *EPO Provisional Final Report*, University of Padua
- Morris, Ian (2013) *O Domínio do Ocidente*, Lisboa Bertrand.
- Pont, Jörg; Heino Stöver, Hans Wolff (2012) Dual Loyalty in Prison Health Care, *Am J Public Health*. 2012 March; 102(3): 475–480.
- Solomon, Amy L.; Kelly D Johnson., Jeremy Travis, Elizabeth C. McBride (2004) *From prison to work: the employment dimensions of prisoner reentry. A report of the reentry roundtable*, Urban Institute, Washington.
- Stover and Nelles (2003) Ten years of experience with needle and syringe exchange programmes in European prisons. *International Journal of Drug Policy*. 14: 437-444.
- Wieviorka, Michel (2005) *La Violence*, Paris, Hachette Littératures.
- Wilkinson, Richard; Kate Pickett (2009) *The Spirit Level – why more equal societies almost always do better*, Penguin.
- Young, Jock (1999) *The Exclusive Society*, London, Sage.
- Zimbardo, Philip (2007) *The Lucifer Effect: understanding how good people turn evil*, Random House.

ⁱ Estimated numbers circulating without official confirmation but with tacit recognition on the part of officials who do not refute them to those most knowledgeable of Portuguese prison life nor to the professionals who have been contacted to validate their credibility.

ⁱⁱⁱ For a critical feminist perspective of the criminal-justice system’s social function, regarding the sexual abuse of children, read AA.VV. (2013) at http://www.generationfive.org/wp-content/uploads/2013/07/G5_Toward_Transformative_Justice-Documents.pdf, and translated to Portuguese at <http://home.iscte-iul.pt/~apad/justica%20transformativa>.

ⁱⁱⁱ European Conference “Prisons in Europe” UNICS/ISCTE-ACED, 29 and 30 of Jun at ISCTE.

^{iv} <http://www3.unil.ch/wpmu/space/space-i/annual-reports>.

^v <http://www.prisonstudies.org/world-prison-brief> and http://www.kcl.ac.uk/depsta/law/news/news_details.php?id=203.

^{vi} <http://www.prisonobservatory.org>.