Ending prison overcrowding – European perspectives and solutions

PORTUGAL – CASE STUDY

Like many other European countries, Portugal faces challenges when it comes to prison overcrowding. We are fully aware that this is a complex issue, with no single or immediate solution. At the same time, Portugal is committed to addressing this challenge and to continuing to look for effective and sustainable solutions.

And this is precisely why initiatives such as this are so important. By bringing together different countries and creating a space for dialogue and exchange, we can learn from each other — to identify good practices, to understand what has worked elsewhere, but also to recognize difficulties and approaches that may not have produced the expected results. We believe that this exchange of experiences is an essential step in finding solutions that are not only innovative, but also realistic and capable of being effectively implemented.

A) Legal Framework

Before going into the specific legal framework, I would like to make one preliminary point about pre-trial detention in Portugal, which I believe is like the approach taken in several European countries. Under Portuguese law, the concept of "preventive detention" applies not only to detention while awaiting trial but also during the appeal stage, until the judgment becomes final. This should be understood in the light of one of the fundamental principles of our criminal justice system: the presumption of innocence. As you know, a person who is in pre-trial detention has not been finally convicted and must therefore continue to be presumed innocent until a final judgment is established otherwise.
And this is why, in Portugal, we firmly recognise that precautionary measures should only be imposed when they are considered acceptable to society, bearing in mind that they may ultimately be imposed on a person who is innocent.

Pre-trial detention is consequently not a punishment. It is a precautionary measure, intended to address specific risks identified by law while criminal proceedings are still ongoing. This principle is important to keep in mind when looking at the Portuguese system as a whole, and particularly when we later consider the grounds for pre-trial detention, the

alternatives available, and the way in which the continued necessity of the measure is reviewed over time.

With that in mind, let me briefly explain how the system works in Portugal. Pre-trial measures may be imposed when at least one of three conditions is met: the first is a risk of escape; the second is a risk of interfering with or disrupting the course of the investigation; and the third is a risk that the accused may continue to engage in criminal activity or seriously disturb public order and social peace.

As regards pre-trial detention, it is intended to be a measure of last resort. It should only be imposed when the judge considers that the other available measures are inadequate or insufficient. These alternative measures include bail, periodic reporting obligations, restrictions on certain activities or rights, conduct-related obligations, and home detention.

It can only be ordered where there is strong evidence of a crime punishable by a maximum prison sentence of more than five years — or, in certain cases, more than three years, for example in relation to certain violent crimes, terrorism or organised crime.

The decision is taken by a judge and must be duly reasoned. It is also subject to mandatory review every three months.

As for the way pre-trial detention is carried out, this is governed by the Code on the Enforcement of Sentences and Measures involving Deprivation of Liberty. One of the basic principles is that pre-trial detainees must be accommodated separately from sentenced prisoners. There are also several specific rules governing the implementation of pre-trial detention. For example, the restrictions imposed on pre-trial detainees should be limited to what is strictly necessary to achieve the purpose of the measure and to maintain order, security and discipline within the prison. The implementation of pre-trial detention must also comply with the terms of the judicial decision that imposed the measure. At the same time, pre-trial detainees may, if they wish, participate in education and vocational training, work, and take part in other activities organised by the prison.

Regarding persons under 18 years old, young people aged 16 or 17 can be subject to criminal proceedings and, where the legal requirements are met, pre-trial detention may be imposed. For children under the age of 16, they are not subject to pre-trial detention under

the ordinary criminal justice system. Instead, they fall under the Juvenile Justice System, which provides for specific precautionary measures, including placement in juvenile justice centre.

B) CURRENT SITUATION (STATICAL INFORMATION)

The most recent data I was able to consult, as of 30 September 2026, show that there are approximately 13,633 prisoners in Portugal. Of these, around 3,478 are held in pre-trial detention, of those 2,907 are awaiting trial. In terms of their share of the overall prison population, pre-trial detainees account for 25.5% of the total prison population.

How did we get here?

Of course, there is no magic formula that can tell us exactly how we arrived at this number. What is particularly interesting is to look at these numbers in the context of the legislative and procedural reforms concerning pre-trial measures, and to consider all the steps that have already been taken, particularly at the legislative level, to prevent prison overcrowding.

In 1997, home detention was introduced, at a time when pre-trial detainees accounted for around 33% of the prison population. The target at the time was to reduce this figure to 15%.

Later, in 2007, a major reform of the criminal procedure code changed the rules governing pre-trial detention and further strengthened home detention as an alternative to imprisonment before trial.

The 2007 reform, introduced by Law No. 48/2007, represented a significant shift in the Portuguese approach to pre-trial detention. Before the reform, pre-trial detention could generally be imposed for offences carrying a maximum sentence of more than three years. In 2007, this threshold was raised to five years, thereby narrowing the scope for the use of the most severe coercive measures.

At the same time, specific exceptions were introduced for serious forms of criminality, including terrorism, violent and highly organised crime, such as trafficking, corruption, money laundering and criminal association. Pre-trial detention could also be imposed where an existing measure of home detention had been breached.

The reform also reduced the maximum time limits for pre-trial detention at the different stages of criminal proceedings. For example, the maximum period before indictment was reduced from six to four months, and the period before a final conviction was reduced from two years to one year and six months.

Overall, the 2007 reform pursued a clearly rights-oriented approach: limiting the use of pre-trial detention, strengthening home detention as an alternative, requiring more rigorous judicial reasoning, and reinforcing the exceptional, subsidiary and temporary nature of pre-trial detention.

In this sense, the reform may be seen as a moment of "decompression" of pre-trial detention, bringing the Portuguese system closer to the European understanding of deprivation of liberty before trial as a measure of last resort.

The impact of the 2007 reform was also visible in the prison population figures. Within one year, the relative share of pre-trial detainees fell by 8.5%. The use and excessive duration of pre-trial detention decreased, and admissions of sentenced prisoners came to exceed admissions to pre-trial detention. In other words, pre-trial detention was no longer the main route into the prison system.

The numbers are clear: when the reform entered into force on 15 September 2007, pre-trial detainees represented 22% of the prison population. One year later, this had fallen to 19.3%.

Naturally, we cannot establish a direct causal link between the introduction of home detention and the reduction in the use of pre-trial detention. However, the statistical data show that the strengthening of this measure, particularly following the 2007 reform, took place against a broader trend of a sustained reduction in the use of pre-trial detention and a growing preference for less restrictive measures.

A subsequent reform, in 2010, Law No. 26/2010 was in many ways, a partial reversal of the 2007 approach. The legislator felt that some serious offences had been left outside the scope of pre-trial detention because of the new five-year threshold. So, the law once again broadened the situations in which pre-trial detention could be used.

At the same time, the main safeguards remained in place. Pre-trial detention continued to be a subsidiary measure and still required strong indications of criminal involvement.

Another important aspect of this reform was the introduction of a legal framework for electronic monitoring. This made home detention a more realistic and effective alternative to pre-trial detention, because compliance with the measure could now be properly monitored. So, while the focus in 2007 was mainly on limiting pre-trial detention and strengthening individual guarantees, in 2010 the emphasis shifted towards finding a new balance between those guarantees, public security, and the effectiveness of criminal proceedings.

In short, if 2007 marked a "decompression" of pre-trial detention, 2010 was about finding a new balance between individual rights and security.

However, after the 2010 reform, there was a significant increase in the number of people held in pre-trial detention. At the end of 2010, there were 2,307 people in pre-trial detention. One year later, at the end of 2011, this number had increased to 2,470.

Although we consider these legal reforms to have been positive, and we believe that the legal framework is now properly implemented and balanced, the number of people in pre-trial detention continues to show an upward trend.

This leads us to an important question: is the problem of prison overcrowding in Portugal really a problem of the "law in the books", or is it more a problem of the "law in action"?

In our view, the legal framework itself provides important safeguards, and there are good practices and alternative measures in place. So, perhaps the main challenge is not so much the law itself, but rather how these rules and measures are applied in practice.

Let me therefore briefly highlight some of the safeguards and good practices that are already part of our system.

C) Good practices and measures

Pre-trial detention is recognised as a measure of last resort. It requires specific reasoning and must be subject to regular review by the judge.

At the same time, Portuguese law provides a broad range of alternatives to pre-trial detention. These include the obligation to provide an identity and residence address, bail, the obligation to report periodically to the authorities, the suspension of professional or

other activities or rights, prohibitions or obligations concerning certain conduct, and home detention.

Home detention with electronic monitoring, in particular, was introduced gradually and with the support of a dedicated task force. This was based on the understanding that, when introducing new practices and changing established approaches to punishment, the most effective strategy was to promote prior coordination between the different authorities and professionals involved in the criminal justice system.

The key challenge is no longer whether alternatives to pre-trial detention exist. They do. The challenge is ensuring that they are used consistently, confidently and effectively in practice. This is an issue that has been the subject of much discussion and reflection within the project in which we are delighted to be involved – *European Innovations to Combat Prison Overcrowding* – , known as Innovapris. Funded by PACE – the Public Administration Cooperation Exchange programme of the European Union, the aim of the project *"European Innovations to Combat Prison Overcrowding"* — PACE INNOVAPRIS – is to create an ongoing technical dialogue between the participating Member States — Belgium, France, Portugal and Romania — around the common challenges they face. Through this dialogue, we want to identify innovative and practical solutions that can help reduce prison overcrowding in a sustainable way, while also meeting the commitments undertaken by these countries before the European Court of Human Rights.

But we also recognise that finding solutions is only part of the challenge. We also need to understand what is required for these solutions to be accepted — both by the public and by policymakers — so that they can be put into practice.

The project is organised into four thematic working groups. Each group focuses on a key area related to prison overcrowding, with the aim of identifying good practices that could be adopted, as well as possible obstacles and, importantly, mistakes that we should try to avoid.

Our approach is very much based on reflection and exchange. We are looking at strategies and possible initiatives that can help inform and raise awareness among the different stakeholders, the wider community, opinion leaders and policymakers — both about good practices that are already in place and about new and innovative solutions that could be developed.

D) Challenges and practical difficulties

So, if our legal mechanisms are already quite robust, and if we have viable alternatives to pre-trial detention, we should now consider how the "law in action" can respond to our practical difficulties. I do not believe that prison overcrowding should be addressed simply by expanding prison facilities. We do, in fact, have a significant number of people held in pre-trial detention.

At the same time, the criminal landscape is constantly evolving.

In addition, there are important demographic reasons to consider. Portugal is no longer a country of 10 million inhabitants. In 2025, Portugal had a population of approximately 11.4 million people (or more precisely, 11,424,031 inhabitants). This demographic change is also relevant when we look at the evolution of the prison population and the challenges facing the criminal justice system.

In recent years, we have seen a strong presence of crimes such as organised crime, including organised crime involving foreign nationals with no connection to the national territory, drug trafficking, cybercrime, and domestic violence. These types of crime can make it much more difficult to rely on non-custodial measures.

For example, we cannot simply keep a defendant at home in a situation involving domestic violence if the defendant continues to live with the family. We cannot simply keep a defendant at home, or subject them only to regular reporting obligations, when they have committed a cybercrime, because they may still have the opportunity to continue their criminal activity. And the same difficulty can arise in drug-trafficking cases, where preventing the continuation of the criminal activity can be particularly challenging...

Looking at the most recent data, in 2025 recorded crime in Portugal continued to be dominated by property offences, which accounted for more than half of all reported offences. Theft was the most frequent offence, and, given the applicable sentencing framework, it will generally not meet the legal requirements for pre-trial detention.

However, domestic violence continues to have a significant presence in the statistics. There were also increases in serious and violent crime, including rape, homicide, and resistance to law enforcement. For example, among offences against sexual freedom and sexual self-determination, child sexual abuse, rape, and child pornography accounted for

the highest number of new investigations and arrests in the last year. In both rape and child sexual abuse cases, there is also a significant prevalence of cases involving someone known to the victim or a family member. Cybercrime is another area of concern... We are seeing an increase in cyberattacks, which are becoming more technically sophisticated, complex, and frequent. The main offences involve different forms of social engineering, such as phishing, online fraud, and the compromise of accounts, particularly bank accounts. We also see an increase in child sexual abuse material offences, linked to the expansion of digital platforms and the growing sharing of illegal content.

This brings us to the question of how we should respond to these challenges in the future.

E) Future perspectives

The current criminal landscape presents us with several challenges. But these challenges should also encourage us to reflect on measures that can address the problem. This is one of the reasons why Portugal is committed to European projects and to events such as this one.

On the one hand, we need more training and awareness concerning alternatives to pre-trial detention, as well as their effectiveness. Naturally, this also requires adequate resources — for example, to allow the relevant prison and probation services to properly monitor these measures.

On the other hand, we cannot ignore the types of crime that may justify the use of pre-trial detention. We therefore need to improve the mechanisms that can ensure that pre-trial detention lasts for the shortest possible period. And, beyond this, we need to continue working from different perspectives — social, cultural, and judicial — to ensure that pre-trial detention is not used as a form of early punishment. But, for this to happen, when deciding whether to impose a coercive measure, we need to consider not only the suspicion of the offence, but also whether the specific preventive purposes of the measure are present.

It could be interesting, consider changing the current review procedure for pre-trial detention. Allow social reports prepared by prison/social reintegration services to inform the review and ensure that reviews consider the defendant's current social circumstances

and situation, rather than relying solely on the information available when pre-trial detention was initially imposed.

Ultimately, the challenge is to maintain the necessary balance between individual rights, public security, and the effectiveness of criminal proceedings.

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