

25TH COUNCIL OF EUROPE CONFERENCE OF DIRECTORS OF PRISON AND PROBATION SERVICES

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THEME	COVID-19: Challenges, lessons learned and strategies for the future”
<p>Monday, 9th</p> <p>14h30-17:00</p> <p>Opening Plenary Session</p> <p>Council of Europe – Christos Giakoumopoulos, Director-General Human Rights and Rule of Law</p> <p>- Keynote speeches:</p> <ul style="list-style-type: none">• Dirk van Zyl Smit: <i>Revised European Prison Rules</i>• Rob Canton: <i>10th anniversary of the Council of Europe Probation Rules</i>• Mykola Gnatovskyy: <i>Covid-19 related measures and safeguards</i> <p>Panel discussion related to the Keynote Speeches</p> <ul style="list-style-type: none">• Caron McCaffery (Ireland)• Danijela Mrhar Prelic (Slovenia)• Christiane Jesse (Germany)• Rómulo Mateus (Portugal)	

PART I- European prison Rules and European Probation Rules – brief comments about the implementation of these rules in the Portuguese Prison and Probation services

- In Portugal, there has been a great effort in the past years to modernize and improve the system of execution of judicial sentences, with the aim of raise its effectiveness and efficiency in the pursuit of its primary mission of preventing recidivism and fight against crime through the rehabilitation and social reintegration of offenders.
- The evolution of the Portuguese system over the past few years was significantly marked by important legislative and organizational changes. These changes were strongly inspired by the humanist principles of respect for the Human Rights and promotion of social reintegration through the rehabilitation of deviant behaviours and in line with international recommendations and guidelines in terms of good practices, such as the "European Prison Rules" and the "European Probation Rules".
- Firstly, in 2007 there was a penal reform in which the possibilities for the execution of sentences in the community were broadened by the courts, based on the idea of achieving better results for non-violent crimes, such as:
 - Community Work was able to be applied for crimes with criminal frame until 2 years;
 - The possibility of anticipation of the probation period one year in advance was implemented;
 - The introduction of the possibility for sentences to be carried out in house arrest using technical means of remote control (Electronic Monitoring) for crimes of up to 1 year, or exceptionally up to 2 years;
 - The extension of the possibility of applying the Suspension of Execution of Prison Sentences up to 5 years, as well as considering the penal framework up to 5 years for the eventual Provisional Suspension of the Process.
- Secondly, after a long legislative process, the reform of the prison system took place with the approval and entry into force, in 2010, of the Code of Execution of Sentences and of the General Regulation of Prison Establishments, which provided a renewed regulatory framework and introduced increased requirements;

- This reform was based on the need to update the legal framework of the execution of sentences as a consequence of the internal changes in the legal system, as well as facing the changes of the profile of the prison population and the evolution of the social and criminal reality that create new challenges for prison intervention;
- At international level, this reform incorporated the most recent Rules and Recommendations from the Council of Europe and the United Nations, as well as several reports from different Commissions, recommendations of the Ombudsman as well as the international bodies with competence in the field of Human Rights.
- In practical terms, this reform of the legal framework of the execution of freedom depriving measures highlighted several innovative approaches aligned with the international recommendations, such as:
 - The definition of the inmate's legal status by expressly defining inmate's rights and duties (articles 7 and 8);
 - The reinforcement of the inmates' guarantees regarding the decisions of prison administration, providing them the right to challenge these decisions before the supervisory court, namely in terms of the disciplinary procedure;
 - Also regarding the safeguarding of inmate's rights and duties, this reform foresees the right of complaint and petition with express reference to the entities and bodies to which inmates can address with the innovative principle of the mandatory response, that in the case of the director of the prison establishment, establishes a maximum period of 30 days to respond to an inmate's complaint or petition;
 - The reinforcement of the principle of jurisdictionalization of the enforcement of the sentence, with a very significant extension of the intervention of the court of execution of sentences in the control of the acts of the Prison Administration;
 - The reinforcement of the principle of assessing individual needs and risks and the preparation of the Individual Rehabilitation Plan;
 - The enhancement of education, work, professional training and attendance of specific programs with advantages in making the execution of the sentence more flexible;
 - Special attention to the victim, highlighting the introduction of the possibility for the prisoner to participate in restorative justice and reparation programs inside prison (art. 47º nº4);

- The reinforcement of community participation in the execution of sentences, with emphasis on the duty of the prison administration to promote the participation of private institutions and volunteers in cultural, occupational, social and economic support activities and in social reintegration, namely, in housing and employment.
 - The reinforcement of the integration of inmates in the society, through their inclusion in the National Health System and in national education, training and social support policies;
- On the other and, the evolution of Probation Services in Portugal has been following over time the political reforms and the evolution of the judicial system;
 - Progressive stages on refocusing of the activity in the execution of penalties and measures in the community have been adopted, which were the basis for the creation of the Social Reinsertion Institute, in 1982 - aiming at the creation conditions that would allow the implementation of the penal reform of that same year;
 - Later, in 2007, with the transfer to the social security area of the competences in matters of juvenile protection processes, it succeeded an exclusive focus on issues related to delinquency, intensifying the frameworks of articulation with community and with courts;
 - This theoretical and practical expansion and development of the probation services took into account the European Probation Rules, both in terms of legislative production and in terms of good practices in the application of community measures, reinforcing the perspective of assessing the individual risk and needs factors that can contribute to the change of the offender's behavior;
 - In this context and along the years there has been strategic developments in the DNA of the probation services, namely:
 - A more clear guidance for the prevention of recidivism and the adoption of pro-social behaviors;
 - Increasing investment in reducing risk factors and promoting protection factors of the offenders;
 - Introduction of intervention centered in the assessment of criminogenic factors and risk management;

○ Implementation of responses to specific criminal needs - structured programs and activities.

- Moreover, in 2012, the merger of the former prison services and probation services, with the integration, in the same service, of criminal prevention and social reintegration policies, an intervention model was implemented that enhances the knowledge and experience accumulated by the previous services, allowing an integrated and coherent approach and focused both on the risks and needs of the offender, as well as on the protection of the victim and the community.
- In addition to the advantages in terms of reducing operational costs, this merger has numerous potentialities, as it allows for a more homogeneous and articulated intervention in terms of criminal policy, although needs consolidation and development.

To conclude, and even though the analysis of the trends in the evolution of numbers referring to the prison population is a complex exercise, it is important to highlight the impacts achieved with the measures described above in terms of the number of the prison population and under supervision of the probation services in the years following the entry into force of all reforms (2013):

- In terms of prison population, currently the Portuguese prison system has a total of 11,148 prisoners, which means a reduction of about 21% when compared to the situation in 2013;
- Currently, Portugal has a ratio of 112 inmates per 100,000 inhabitants, slightly higher than the European average (Average 106.1 in 2019);
- With regard to the community measures, during the same period (2013-2020) there was an increase of 15% in the number of people under the supervision of the probation services.
- Currently, Portugal has a ratio of 298 probationers per 100,000 inhabitants, which is above the European average (Average 216.7 in 2019).

PART II – Measures adopted in Portugal to fight the pandemic of the COVID-19

- The Coronavirus pandemic disease (COVID-19) has created extraordinary challenges for authorities around the world. There are, however, specific challenges for staff who work inside prison context and for those who are incarcerated in various places of deprivation of liberty.

- While recognizing the clear imperative to take firm action to combat COVID-19, the Portuguese Prison and Probation Services approved, in line with the guidelines of the National Health Authority and with national and international recommendations, an internal “Plan of Action” in order to prevent and fight against the epidemiological infection by COVID 19 - PA-C19 with the main objective of safeguarding the health of all its professionals and inmates, in absolute respect for the Human Rights of all those targeted;
- The vulnerability of prisons and educational centers to an explosive outbreak of COVID-19 is of great concern to all countries, including Portugal of course. In addition to their devastating effects for inmates and prison staff, these outbreaks would also undermine the efforts developed and applied in the community and would aggravate the additional demand for public health services;
- Prisons and educational centers must therefore be a part of the national response to COVID-19. The context of confinement inherent in detention and imprisonment should be limited to those for whom there is no alternative and significant support should be provided to all those who are in contact with the criminal justice system during this unprecedented crisis.
- Concerted and urgent action involving prison administrations and all other relevant sectors of government and society was a reality in Portugal and as a consequence there were adopted a set of affirmative steps to reduce prison populations in order to prepare the prison system for an outbreak of the pandemic;
- The adoption of legislative changes and the application of exceptional measures have played a fundamental role in the pursuit of the initial aim of pandemic prevention and control.
- Indeed, alternative measures to pre-trial detention and the commutation or temporary suspension of certain sentences were valuable tools for reducing new admissions to prisons. On the other hand, release mechanisms were particularly relevant for prisoners for whom COVID-19 presents specific risks - such as the elderly and prisoners affected by chronic illnesses or other health conditions - and other selected categories of prisoners, including pregnant women, women with dependent children, inmates approaching the end of the sentence and inmates convicted of minor crimes
- Following guidelines of the National Health Authority for the prevention and control of infection by COVID-19 and taking into consideration the recommendation announced by the United Nations for member states to study ways to protect prisoners who are particularly vulnerable to COVID-19, namely the elderly, the sick and low-risk offenders, as well as the recommendation of the Portuguese Ombudsman for the adoption of a flexibility regime for exit licenses currently foreseen in the Code of Execution of Sentences, the Portuguese Government approved the following extraordinary measures, namely:

1. A pardon of prison sentences:

- A pardon up to two years in the prison sentences of two years or less.
- This pardon does not cover “serious crimes”, namely, murder, domestic violence, ill-treatment, sex offenses, qualified theft, criminal association, corruption, money laundering, arson and drug trafficking.

- In addition, the pardon is granted under the resolute condition that the beneficiary does not commit a willful infraction in the year following the date of entry into force of this law, in which case the penalty applied to the supervening infraction will be add to the period granted by the pardon.
- **Under this measure, until October 30th were released from prison 1.314 detainees.**

2. A special regime of pardon of prison sentences granted by the President:

- The Ministry of Justice proposed to the President of the Portuguese Republic the pardon, in whole or in part, of the prison sentence applied to prisoners who are 65 years of age or older at the date of entry into force of this law, and whether they have a disease, physical or mental, or a degree of autonomy incompatible with normal detention in prison, in the context of this pandemic.
- **The President granted this exceptional measure to 14 detainees, all proposed by the Ministry of Justice.**

3. An extraordinary regime of administrative leave for convicted prisoners:

- a. The Director-General of Prison and Probation Services granted the sentenced prisoner, with his consent, a leave of absence for a period of 45 days, renewable, provided that the following requirements are cumulatively met:
 - i. Fulfillment of the general conditions and criteria for granting the exit license foreseen in article 78 of the Code of Execution of Penalties (namely, founded expectation that the prisoner will behave in a socially responsible manner, without committing crimes; compatibility of the exit with the defense of order and social peace; and a well-founded expectation that the inmate will not escape the execution of the penalty or measure depriving of liberty);
 - ii. The prior benefit of at least one leave granted by the Supervisory Court to the prisoner serving a sentence under the open regime or the previous benefit of two judicial exits to the prisoner serving a sentence under the common regime;
 - iii. The absence of any situation of evasion, illegitimate absence or revocation of parole in the previous 12 months.
 - iv. The convict will have the duty to remain in confinement at home and to accept the surveillance of the probation services and elements of the territorially competent criminal police bodies, fulfilling their guidelines and responding to periodic contacts, establish accordingly.
 - v. **Under this measure the Director-General granted authorization of leaves to 703 detainees.**

4. The extraordinary anticipation of release on parole:

- a. After the successful compliance of the administrative exit license granted under the terms of the previous measure, the release on conditional release may be anticipated by the Supervisory Court, for a maximum period of six months.
- b. The convicted person is obliged, during the period of the anticipation, in addition to complying with the other conditions imposed, to the regime of permanence in confinement at home, accepting the surveillance of the probation services and of the territorially competent criminal police bodies, fulfilling their guidelines and responding to periodic contacts.
- c. **Under this measure, until October 30th, 211 detainees were granted with parole in anticipation of release.**

- In summary, in the scope of the legislative alteration measures, a total of 2017 prisoners were awarded.
- This reality allowed the system to reorganize itself and develop responses to face the challenges presented by the new contingency situation.

5. Internal Prevention Measures:

Under this scope, the Portuguese Prison and Probation Services (DGRSP) has been defining several measures with the objective of protecting all prison service professionals and the prison population in the face of the COVID-19 pandemic:

- Since February 17, the Contingency Plan for COVID-19 (at the time referring to the containment phase) has been in place and released by the prison system and has been regularly updated following the evolution of the situation.
- The Contingency Plan foresees the following levels:
 - Level 1 – Preventive measures:
 - Level 2 – Prevention and control of the infection:
 - Level 3 – Response in case of confirmed cases:
- Since March, 22 thousand masks were received, of which 13,900 were distributed throughout the country, and the stock of masks and other contagion prevention materials will be renewed as needed.
- Likewise, in March an order from the General Director was issued, reinforcing that the masks must be worn by all employees - they are given a mask whenever they start their daily duties.
- The set of measures adopted by the DGRSP has already had repercussions in terms of positive results with regard to preventing and combating cases of internal transmission, both in the prison population and in workers.

- In fact, the impact in terms of the effectiveness of the extraordinary measures adopted and implemented through PA-C19 allow us to conclude that the initial objectives of preventing and combating the spread of the COVID-19 virus in prison have been largely achieved.
- The data known to date reveals that the policies adopted have managed to contain and prevent the occurrence of contagions due to internal transmission, whose incidence is currently 0.07% compared to the total population, with no outbreaks and it is possible to break the transmission chains in a timely.
- Contributing to this highly favorable scenario were the legislative and free change measures, the organizational measures for internal prevention as well as the budget and human resources reinforcement measures specifically allocated to the fight against Covid-19 infection in a context of deprivation of freedom.
- The set of measures adopted and implemented by the Portuguese Prison and Probation services achieved the following direct impacts:
 - Among the target of 20,475 persons (workers - 8257; inmates (average) – 12218), we are fortunate to say that we had 0 casualties, as well as no cases requiring differentiated health care services.
 - The total number of confirmed cases among inmates and staff was until now of 99 cases of infection, which means a prevalence of 0.48%;
 - In terms of rates referring to inmates, we had until now 47 prisoners with confirmed infection (prevalence - 0.38%), and at the present moment 19 (incidence of 0.15%) are still active and 28 (prevalence of 0.22%) already recovered from the infection;
 - In terms of staff, of a total number of 52 confirmed cases (prevalence of 0.62%), 18 (incidence of 0.21%) are still active and 34 (prevalence 0.41%) already recovered;
- In short, the measures adopted by the Portuguese Prison and Probation Services were able to achieve the initial objectives since all the indicators point to a very low rate of prevalence and incidence of new cases positive for COVID-19 in prison, and that among them citizens deprived of liberty are always more protected than professionals, which reveals an effective strategy to contain the spread of the phenomenon from the outside.