

COVID-19 PANDEMIC AND SOCIAL DISTANCING IN PRISONS

Following the World Health Organization's guidelines of 15 March,¹ as well as several other national and international guidelines and recommendations,² on 8 April the Portuguese government issued a decree to release approximately 10 per cent of the prison population (an estimated 2,000 individuals). These measures applied to inmates serving prison sentences of under two years, as well as those nearing the end of their sentences, but excluded all those convicted for violent crimes (homicide, domestic violence, sexual abuse), corruption, criminal actions performed by state civil servants or security forces officials or drug trafficking, amongst several others.³ Additionally, an exceptional presidential pardon accompanied the decree, granting the release of inmates over 65 years old with underlying health conditions – also excepting the crimes mentioned above. Additionally, furloughs were exceptionally extended from the usual 3, 5 or 7 days to 45-day periods.

As a researcher who has spent several years working on imprisonment and prison-related themes (Frois 2020; see also the Portuguese Prison Photo Project⁴), I initially considered these measures to be well balanced and did not expect any public resistance to their implementation. During pandemics, there is usually widespread awareness of contagion risks. Politicians, civil society, religious and non-governmental organizations would surely regard prisoners as vulnerable, both for the prisoners and for prison staff.

Similar to the measures put in place for care homes for the elderly, the first step taken to minimize the exposure of inmates to the outside world was to restrict prison visits. Although the well-being of the elderly tends to elicit more public concern than the welfare of prisoners, the limits included in the decree – namely, the exclusive focus on inmates confined for less serious crimes – seemed to guarantee the appeasement of public opinion.

Most citizens tend to be ill-informed about what goes on behind prison walls. If asked, the chances are that the average resident in Lisbon, for instance, would be unable to locate its central prison – which stands prominently at the heart of one of the city's central districts. In other words, problems surrounding prisons, such as overcrowding, recidivism, rehabilitation, the shortage of human and material resources and the lack of professional or educational opportunities for inmates, are not central topics of debate in Portugal.

Overall, the debate in parliament over the release of prisoners ran smoothly, despite being unable to reach a consensus. The parties on the left interpreted the legislation as a 'humanitarian concern' that needed enforcing without delay. The centre-right parties, on the other hand, opposed any kind of presidential pardon, claiming that this was just a hurried and haphazard attempt to solve the problem of overcrowding in Portuguese prisons disguised

as a response to the pandemic emergency. The sole MP (member of parliament) of the recently formed right-wing party, Chega!,⁵ was the only one who seized the opportunity to voice outrage against what he labelled as the government's intention to 'release paedophiles and murderers', warning against the risk it posed for community safety and well-being. However, the debate ended up being just a formality and, as expected, the decree was approved by parliament and ratified by the president of the republic on the very next day.

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After the first warnings about the risks of the pandemic, I could foresee how the prisoner release process might unfold in Portugal. Similar considerations were taking place in other countries, even with strict penitentiary policies such as those of the USA and UK.⁶ To implement this decree, the sentencing judges would need time to make sure their decisions were made in accordance with the eligibility criteria laid out within the new legislation: namely, only inmates serving sentences of up to two years, those with two years or less left of their sentence, those above 65 years old, etc.

Only once this had been done, would it be possible to prevent the wrong prisoners from being released. After this initial stage, it would be necessary to assess other important factors: which prisoners, out of those eligible, had a home to return to, or any kind of support network; and, bearing in mind that lockdown procedures were (and continue to be) in place for the whole population, what kinds of measures would ensure social integration – finding a job, applying for social benefits, etc. – already such a challenge under normal conditions. These are concerns and responsibilities that would need agreement between the sentencing judges, the correctional treatment staff and the various governmental and non-governmental institutions.

The timescale of the process was extremely rapid: less than three weeks after the World



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Fig. 1. Four-bed cell, Lisboa prison. Fig. 2. Medical services, Carregueira prison. Fig. 3. Refectory, Izeda prison.

Health Organization released its guidelines, the Portuguese government presented its proposal in parliament; four days later it was approved, and the day after that it was promulgated by the president. While such processual speed is impressive, what problems might arise from this?

The first inmates were released on Easter Saturday, two days after the president committed his signature. How can such a complicated process be adequately evaluated and considered within two days, taking into account all the factors at stake? Prison authorities need to inform inmates, inmates may need to sign documents, their families need to be consulted and arrangements made in each individual case.

Instead of an organized release, however, the media reported that dozens of inmates were simply given one day's notice and left at the prison gate, with their possessions in a handbag or a bin bag. Some were without any means of transport at a time when social distancing measures and restrictions on movement were already in place and public transport services restricted. Indeed, there were formidable obstacles to the simple task of returning to their homes. No other measures accompanied the release of inmates besides the distribution of face masks and gloves to prison officers and correctional treatment staff.

Was this what Portuguese inmate support associations had in mind when they proclaimed the need for a humanitarian solution for the prison population during this epidemic? With no capacity to monitor inmates after their release – and considering that the severity of the pandemic affects all spheres of society, but especially the most vulnerable – was this an effective way to protect anyone?

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At a time when 'social distancing' is being advanced as the most effective tool to control this contagious disease, the state cannot absolve itself from its responsibility towards prisoners

by simply pushing them out. This raises questions as to what impact such a sudden release might have and how it might be seen to benefit inmates and the broader community.

It also leads one to question whether there are ways in which social distancing might be achievable within existing prison settings. Portuguese law asserts the right to individual cells for each prisoner. However, few inmates benefit from this, as the overwhelming majority share their cell with at least one or two other people, in some cases larger dormitories being the rule.

Could this exceptional release, in itself, resolve the prevailing overcrowding situation? We might suppose that transfers could alleviate overcrowding by removing particularly vulnerable inmates (age, underlying health conditions, etc.) from unsafe conditions into prison hospitals or similar institutions. Also, in some prisons, it may be possible to adjust daily routines – meals, time in the yard, etc. However, prison authorities cannot observe social distancing guidelines in settings where lockdown is the rule and not the exception.

So although in theory, social distancing might be achievable in prison settings, in practice, it is quite impossible.

The current pandemic inverts some of our standard preconceptions regarding prison settings, confinement and security. We view 'criminals' as constituting a threat to the community, and prisons as places in which to confine them. However, while the Portuguese people go into quarantine to protect themselves from the pandemic, the country's authorities have suddenly begun to release prisoners, without much detailed reflection or consideration, posing enormous risks to both prisoners and society. While the early release of prisoners would usually be vetoed, they are now being released, in a vulnerable state, as part of a political agenda – in effect abandoning rather than liberating them – in a global pandemic emergency.

For those familiar with prison history, when actors apply policies, theories, legislation, codes of conduct and rules in a blinkered, standardized and uniform manner, the outcome is bound to be flawed. Borrowing Angela Davis' (2003) expression, current events serve to highlight the obsolescence of the prison institution as we know it. Moving along with the political orientation of the moment, a new prison rule has been conceived in Portugal. However, prison was never a solution: neither to fight crime, nor to fight the pandemic. The time will come when responsibility for this particular fiasco will be assigned: a 'scheme' designed to 'improve the human condition' (Scott 1998) would appear to have missed its purpose. ●

Catarina Fróis

ISCTE – Instituto Universitário de Lisboa
Catarina.Frois@iscte-iul.pt

1. *Preparedness, prevention and control of COVID-19 in prisons and other places of detention. Interim guidance.* World Health Organization, 15 March. http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.
2. The Council of Europe secretary general, Pejičinović Burić issued a similar request to European Union member states, when the 2019 SPACE (Council of Europe Annual Penal Statistics) report was published on 7 April 2020. https://wp.unil.ch/space/files/2020/04/200405_FinalReport_SPACE_I_2019.pdf.
3. Law 09/2020. <https://data.dre.pt/eli/lei/9/2020/04/10/p/dre>.
4. <https://www.prisonphotoproject.pt/en/ppppp-en.html>.
5. Chega! can be translated into English as 'Enough!'. Chega! bears similar characteristics to other far-right parties such as the Italian Five Star Movement, the Austrian Freedom Party of Austria or the Spanish Vox.
6. See, amongst others, Fassin & Kutz (2018) on this topic, followed by critical discussions from prominent scholars on this field.

- Davis, A. 2003. *Are prisons obsolete?* New York: Seven Stories Press.
- Fassin, D. & C. Kutz 2018. *The will to punish.* Oxford: Oxford University Press.
- Frois, C. 2020. *Prisões.* Lisboa: Fundação Francisco Manuel dos Santos.
- Scott, J.C. 1998. *Seeing like a state: How certain schemes to improve the human condition have failed.* Yale: Yale University Press.

STRUGGLING FOR FOOD IN A TIME OF CRISIS

A comment on Caplan (see pp 8-10 in this issue)

Pat Caplan's stimulating and timely article details the food insecurity crisis in relation to the Covid-19 pandemic. I concur with all that she has said, but here want to add more critical context.

Caplan alludes to cuts in the food and health sectors. In the wake of the 2008 financial crisis and driven by an ideology of the small state with a low-tax, low-welfare and a low-regulation economy, the government made severe cuts to the National Health Service (NHS) and welfare services (Caraher & Furey 2018; Taylor-Gooby 2012). These effectively dismantled the already inadequate safety nets for health and social care. Those now championing the NHS and welfare care services also delivered these cuts and left us in a state of unpreparedness (Buck 2019; Caraher 2019). All this has been part of the privatization or 'charitization' of state welfare, driving it back to not just Victorian but Elizabethan times, with restrictive access to food through charity and the re-emergence of concepts of the deserving and undeserving poor (Thane 2018).

Caplan put it that the very existence of food banks 'conveys the message that "something is being done"'. The Covid-19 crisis exposes the frailty of the current corporatized system of food provision to vulnerable groups through food banks. With between six to eight people food insecure for every two users, food banks are the 'canary in the mine'. Even in the 'best of times', food banks cannot meet the needs of all who are food insecure (Barrie 2019; Caplan 2016). During the present Covid-19 crisis, the UK government is handing over food supply to the already powerful retailers, when it could and should have led the response. It could, for example, have used hospitality outlets for community food hubs, as with 'national kitchens' in World War II as described by Caplan.

Caplan also referred to rationing and World War II. Rationing involves central government food control and the levelling out of inequalities (Hammond 1951). Food control includes not just the delivery of food, but the procurement of goods, creating stocks of critical foods, controlling prices on the stock market

and nationalizing all restaurants. In WWII there was a strong presence of the state in food control, all in the public interest.

While some hospitality companies have re-established themselves by serving takeaway food to NHS and key workers, the majority have ceased trading. The government has thereby neglected the vast collection of skills and facilities to feed communities. Other solutions, such as the provision of vouchers to those entitled to free school meals have, like the introduction of Universal Credit, proved not fit for purpose, with delays in processing, not everyone receiving their vouchers and some vouchers not working at the cash tills, thus showing a lack of planning.

Already burdened by Covid-19, low-paid workers are often only one pay cheque away from disaster and credit card or payday loans as their only options. In the first weeks of the crisis, one in five families suffered a financial hit by taking out loans (Food Foundation 2020). Nurses, healthcare assistants, shop assistants and delivery drivers count as key