



Foreigners in European Prisons

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Chapter 21

Portugal

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1 INTRODUCTION^(*)

First of all it must be pointed out that historically Portugal has been a country of emigration and since the fifteenth century we have been “discovering the world”; due to that fact we can find Portuguese descendents in every continent and almost every corner of the world¹. During the first half of the twentieth century our migration was mostly directed to Brazil or other South American countries but during the sixties our people turned to Europe – mostly France and Germany – where nowadays they represent an important and considerable community that is fully mixed and integrated with the native populations. It was only after democracy was consolidated that Portugal became an attractive country for foreign people, initially from Brazil and the former colonies in Africa, and later for people from Northern Europe, especially from the former Soviet Republics (e.g, Ukraine, Moldavia, Lithuania, Russia, among others). The data that we are going to present reflect this change that has occurred not only in the general population but also within the prisons. As an example, in 1980 only four persons from Romania were legally residing in Portugal. This number went up to 81 in 1993. But at that time, no prisoners from Romania were traced. After ten years, in 2003, 55 Romanians were in Portuguese prisons. Official data show that we went from a total of 50,750 foreign residents in Portugal in 1980 to a total of 276,480 in 2005². Through this project we will try to present the features that characterize foreign prisoners in Portugal. We will briefly address our penal code and the penitentiary rules that are applicable to all persons who commit a crime, whether they are foreigners or not. Secondly we will present data concerning the various nationalities involved and the types of crimes that are more relevant in these cases. We will also address the question of correctional treatment of foreign prisoners in Portuguese prisons and finally we will try to enlighten some of the future implications that a probable increase of this population in our prison system may provoke.

1.1 Overview of Penalties and Measures

A prison sentence is the toughest penalty that can be imposed in Portugal. The maximum sentence is 30 years but usually release is granted after 5/6 of the sentence has been served. In general, courts are striving to apply less severe penalties thus trying to avoid the deleterious impact of incarceration and social isolation. However, alternative measures such as probation or working in the community are seldom applied. Fines and the suspension of prison sentences still remain the preferred substitutes for prison sentences that judges impose.

On the other hand, prisoners are sometimes granted the possibility of spending several days (temporary leaves) with their families after having served at least 1/4 of their prison sentence without disciplinary problems. Afterwards prisoners can enter a “softer” prison regime, the Open Regime Turned In or Turned Out (Regime Aberto Voltado para o Interior ou para o Exterior) which is basically a form of preparing the inmate to further attain conditional release by letting him/her work all day in the community and return to

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¹ See Arroiteia, 1983.

² See <http://www.sef.pt>

the prison for dinner and sleeping. Conditional release may be granted after having served half to 2/3 of the prison sentence, depending on the seriousness of the crime committed and the length of the sentence.

Portugal introduced electronic monitoring in 2002. The result and effect of this alternative measure could be interesting but it is mostly applied to younger people. Its application with foreigners has not yet been documented³.

1.2 Overview of the Prison System

1.2.1. Organizational structure

The Portuguese prison system has 57 prisons, 54 in full operation and the remaining three are either under construction or are undergoing important restoration and adaptations. There are 35 small local prisons, 18 bigger central prisons and four special prisons where certain types of services are provided, such as hospital units or training units for younger prisoners. There is also a classification according to levels of security considering the specific design of the prison and the precautions and measures that the building has in order to prevent escapes. There are no maximum-security prisons in Portugal but some central prisons have special security units. In 2004 the Portuguese prison system had a capacity of 12.435 places of which only 11.413 were able to be used due to their actual physical conditions. Portuguese prisons have been overcrowded since the eighties but the rates have been decreasing in the last ten years (43% in 1996, 34% in 1998, 14,9% in 2002, 12,6% in 2003 and 1,3% in 2004). This decline resulted from an increase in the overall capacity of penal institutions and also from a wider implementation and application of electronic monitoring⁴.

All prisons – except for the womens' prison of St^a Cruz do Bispo – are run, fully supported and funded by the General Direction of Prison Services within the Ministry of Justice. In this (so far) exceptional case, there is partnership with a private entity but the state still holds the sectors of security and correctional treatment.

The budget of the General Direction of Prison Services is directly linked with the budget allocated to the Ministry of Justice by the government. In 2003, this budget was 219.049.828 Euros and in 2004 it was 207.053.821 Euros. This difference is in line with the general reduction of state funds imposed by the government in the light of the recommendations of the EU on general deficit reduction. More than half (136.1 millions of Euros) of this budget is allocated to payments to the personnel and – based on data from the General Direction of Prison Services 2004 annual report (see <http://www.dgsp.mj.pt>) – a total daily amount of 41.30 Euros expenses was calculated for each prisoner.

There is an internal branch within the General Direction of Prison Services – the Inspection Service – which is responsible for conducting inquiries and processes in cases of unusual occurrences (such as for instance deaths, suicides, escapes, etc.). Also the Ombudsman Service (Provedoria da Justiça) conducts regular research on the functioning of prisons (reports were published in 1993, 1996 and 2003 – see <http://www.provedor-just.pt>).

³ See for instance Caiado, 2004.

⁴ See Caiado, 2004.

1.2.2. Foreign prisoners

The data in table 1 show both the absolute number of foreign prisoners in Portugal as well as their respective share of the overall prison population from 1983 to 2004. Although these figures cover a period of more than twenty years, we will later on focus on more recent periods, because the data for these years are more complete and reliable.

Table 1 – Foreign prisoners in Portugal from 1983 to 2004

YEAR	N	% of the total prison population
1983	322	5.0
1984	510	6.4
1985	585	6.4
1986*	666	8.4
1987	740	9.3
1988	753	9.5
1989	746	8.9
1990	753	8.5
1991*	644	8.2
1992	786	8.3
1993	919	8.3
1994*	991	9.8
1995	1344	11.1
1996	1659	11.9
1997	1602	11.1
1998	1560	10.6
1999*	1387	10.8
2000	1547	12.2
2001	1582	13.7
2002	2095	15.2
2003	2145	15.7
2004	2275	17.3

* - Years where amnesties have been declared.

As we can see, the proportion of foreign prisoners in Portugal has increased more than three fold over the last 20 years, particularly since the beginning of the 21st century. In 1986, data from the European Council published in the "Bulletin d'Information Pénologique" showed that in the Western European countries the percentages ranged from zero in Scotland to 40 in Luxembourg. However, results from the S.PACE inquiry in the year 2000 showed a general increase of foreign prisoners in all western countries, particularly in Switzerland (62,6%), Luxembourg (59,1%), Greece (48,4%), Belgium (40,4%), Austria (30,1%), Italy (28,3%), France (21,6%) and Sweden (21,3%)⁵. Our data are in line with this general tendency but to a lesser degree, possibly because Portugal has a peripheral geographical position that is not so attractive for foreigners. The same seems to apply

⁵ See Tournier, 2002.

to Spain who had 12.1% in 1986 and 18,8% in 2000. It should be noted that foreigners are greatly overrepresented in the prison population in comparison to their share of the overall population of Portugal. In 2003, 2.3% (276.480) of the total population (10.407.500) were not Portuguese, in comparison to a share of currently 17% of the prison population.

1.3. Overview of Involvement of Consulates, Embassies, Ministries and NGOs

The Service of Illegal Residents and Frontiers (Serviço de Estrangeiros e Fronteiras – SEF; <http://www.sef.pt>) is the main body responsible for conducting the processes that concern foreign citizens either for administrative purposes or to assure their expulsion is carried out after serving prison sentences. The SEF services can also provide for interpreters whenever necessary, but embassies or consulates might be directly contacted by the respective prison administration to provide this support. The Ministry of Foreign Affairs is responsible for conducting the general politics of Portugal regarding its relationships with other countries, especially those with whom we have more cultural affinities and historical ties such as Brazil and our former African colonies. On the other hand, it is the Ministry of Internal Affairs – in which the SEF is located – that has responsibilities for maintaining national cohesion and provides tools for the integration of newcomers. In general, embassies and consulates fully cooperate either with the SEF or with the central or local administration of the prison service, delivering additional information about their nationals or providing the latter with some support or contact with their home country. This support ranges from helping to cover the prisoners' basic needs (e.g., toilet and hygiene articles) to legal advice and the facilitation of family contacts. In more difficult situations (e.g, the death of a prisoner) they can also arrange for the transportation of the body to the home country. To our knowledge, there is no available information of NGO's working with foreign prisoners in Portugal.

1.4. Overview of Trends

Until 1975 Portugal had several colonies in Africa. After these gained independence, many people in these colonies already had family living in Portugal, which gave them the possibility to migrate to Portugal in search of a better life. Additionally, there is a particular agreement with Brazil, which provides their nationals with the possibility of staying in Portugal for a longer period of time in comparison to other nationalities. Thus, we have to consider that the proportion of nationals from these countries living in Portugal will be far more extensive than from other countries. Another important issue is the fact that Portugal was included into the European Community in 1986 and the creation of the Union Market in 1993 added a considerable growth in the circulation of goods and people. So there have been two major changes in the Portuguese population, one as a result of the ending of our colonial empire (1974-1976), and the other as a result of our entrance into the European Union in 1986. More recently, the end of the former Soviet Union – which affected all of Europe – produced new waves of immigration that have also reached Portugal.

1.4.1. Sentencing Trends

We will now consider a shorter time period (1993-2004) from which more specific information is available, and have a closer look at the figures. In table 2 we present data concerning the most important countries that are represented in the foreign prison population in Portugal. The fact that our criminal statistics were not that complete in the past prevents us from giving a full detailed account of this specific prison population over a long period of time. Therefore, a lot of the data presented hereafter is focused on the last six years. All of our former colonies in Africa are comprised under the acronym ACPOL (African Countries of Portuguese Official Language): Angola, Cape Verde, Guiné-Bissau, Mozambique and S. Tomé. As mentioned above, even prior to their independence, many nationals from these countries were already living in Portugal. Moreover, the subsequent periods of instability, from which the majority of them suffered after independence, impelled most of their residents to seek a better life in the former colonial potency.

Table 2 Foreign prisoners in Portugal according to the most relevant countries of origin (1993 to 2004).

Countries	ACPOL	Br	Co	Ve	Fr	It	Sp	UK	Li	Mo	Ro	Ru	Uk	OE	OC	TOTAL
1993	495	49	43	-	-	-	80	33	-	-	-	-	-	101	118	919
...
1998	914	68	33	-	36	22	106	24	-	-	-	-	-	98	259	1560
1999	782	68	37	-	37	25	82	18	-	-	-	-	-	76	262	1387
2000	860	79	29	-	37	24	92	11	-	-	-	-	-	165	250	1547
2001	880	109	29	30	41	15	101	11	9	-	9	25	80	94	149	1582
2002	1126	156	30	33	25	20	122	11	12	-	59	44	130	123	204	2095
2003	1122	146	27	38	34	36	125	9	4	89	55	36	125	100	199	2145
2004	1165	183	29	52	31	36	124	8	14	71	80	27	100	117	238	2275

ACPOL - African Countries of Portuguese Official Language; Br - Brazil; Co - Colombia; Ve - Venezuela; Fr - France; It - Italy; SP - Spain; UK - United Kingdom; Li - Lithuania; Mo - Moldavia; Ro - Romania; Ru - Russia; Uk - Ukraine; OE - Others Europe; OC - Other Countries

Considering the data presented in table 2 we can see that persons from the former Portuguese colonies have always been in the majority, in a similar proportion over time; however they seem to have been diminishing during the last years (53,9% in 1993; 55,6% in 2000; 51,2% in 2004). Among them, the nationals from Cape Verde, who were for many years the most important group of foreigners living in our country⁶, are the ones who also contribute more to the criminal statistics⁷. Moving to South America we can see that Brazil is a leading country, but countries like Venezuela – who did not present a problem in the nineties – entered the 21st century with an increasing proportion. Colombia – with a longer tradition – presents a similar proportion in the years in focus. Also, almost self-evidently, the direct proximity to Spain leads to a greater representation of

⁶ See Costa, 1996.

⁷ See for instance Ferreira, 1999.

their nationals in comparison with other western European countries, although these figures appear to have stabilized during the last years. However, in pursuing the changes that occurred in the political geography of Europe at the end of the century, Portugal has been progressively "invaded" by people from the former "communist countries" which in turn brought new and sometimes more violent forms of criminality. In 2004 the majority of convicted prisoners (57,6%) served sentences between three and nine years, while 13,5% were sentenced to prison terms between nine and 15 years in length. 7,5% had sentences longer than 15 years. The foreign prisoners are predominantly represented in the gap between three and nine years (more than 70% of the cases).

1.4.2. Characteristics of the Foreign Prison Population

Apart from the geographical origin of the foreign inmates we also have to consider the differences in terms of age, gender, academic status and other variables. Regarding the age issue, it is difficult to trace differences or similarities between locals and foreigners because we have no statistics at our disposal that indicate this. Figures are grouped in a non-homogeneous way which means that the intervals covered by the groups are not the same which prevents us from making adequate comparisons. In any case, official analyses show that the foreigner prisoners have a tendency of being slightly older than locals as far as men are concerned, while the opposite seems to be the case for women⁹. Consulting the available data regarding gender over the past five years we can see that the proportion of men and women between locals and foreigners present some differences (table 3). In fact, as mentioned earlier, the proportion of foreigners in Portuguese prisons has been consistently increasing in recent years, but the relative increase for women has been much greater than that for men.

Table 3 Gender percentages of locals and foreigners in Portuguese prisons

	2000	2001	2002	2003	2004
Portuguese Men	87,8	88,1	85,1	84,7	83,3
Foreign Men	12,2	11,9	14,9	15,3	16,7
Portuguese Women	88,6	85,7	81,8	78,0	75,5
Foreign Women	11,4	14,3	18,2	22,0	24,5

Concerning the distribution of inmates according to their academic status, we have to point out that the data may not be reliable, especially the information about foreign prisoners, due to the existence of different educational systems and the impossibility of checking their assertions in detail. However, as expected from the literature, they represent very low grades, especially on the Portuguese side. Official data show that in 2004, of the 9,027 Portuguese men with some formal education only 0.5 % had a university degree and the vast majority (65,6%) had only completed the 6th grade or less. This is in sharp contrast to their fellow inmates from abroad of whom 4,5% had a completed a university degree and only 46% had completed 6th grade or less. The same tendency is observed

among the women, with even more discrepancy (7,8% of foreign female inmates have a university degree compared to 1,0% of the imprisoned Portuguese women).

Table 4 presents data concerning the type of crimes committed by locals and foreigners (men and women) in 2003 and 2004. The figures relating to gender show that – as expected – men and women tend to commit different types of offences.

Table 4 Types of crimes committed by foreigners and locals (percentages)

	Years	Against Persons	Against Society	Against Property	Drug Related	Other Crimes
Men Nationals	2003	21,8	3,1	41,7	30,4	2,9
	2004	25,9	6,7	35,7	23,4	8,3
Men Foreigners	2003	19,1	3,3	25,6	50,1	2
	2004	18,0	8,9	19,4	48,1	5,6
Women Nationals	2003	13,2	1	12,6	67,4	5,9
	2004	16,6	6,2	16,2	58,4	2,7
Women Foreigners	2003	3,3	0	4,4	89	3,3
	2004	4,4	1,8	6,2	87,6	0,0

Nevertheless, it seems that foreign women are more prone to be involved in drug related crimes (mostly trafficking) which is no surprise, bearing in mind the number of them coming from South America. They seldom commit crimes against persons while on the other hand, males show a proportional value, very similar to the ones obtained by their Portuguese colleagues.

1.5. Overview of National Legislation

The execution of penal sentences is regulated in Law # 265/79 of 1 August 1979 in combination with the amendments stated in Law # 49/80 of 22 March 1980 and # 414/85 of 18 October 1985. The Portuguese Penal Code emphasizes the necessity of equal treatment of national and foreign prisoners and makes no distinction in terms of the penalties that are applicable to any person, either Portuguese born or foreigners. However, in this last case an expulsion sentence may be applicable after the prison sentence has been served or in case the inmate is conditionally released. In fact, what happens is that most foreigners in prison are put on conditional release as soon as they have served half of their prison sentence after which they are sent back to their countries of origin⁹. Portuguese legislation also stresses the importance of satisfying specific needs concerning religious and cultural habits and communication with family and relatives to ensure the prisoner's support. Law also allows the individual the request to serve his/her sentence in his/her country of origin; in this case, the two countries are then obliged to make the necessary arrangements to attain the prisoner's demands. Concerning the allocation of foreign prisoners there are no special guidelines for placing them in special prisons or units unless there are specific reasons (e.g., health problems, security problems etc) that indicate that differential treatment is necessary¹⁰. The only thing that could prevent a prisoner from working or attending training or a professional course in prison is health

⁹ See for instance Moreira, 2000, 2001, 2002, 2003, 2005.

⁹ See Albuquerque, 2006.

¹⁰ See for instance Provedoria da Justiça, 2003.

problems. Of course, foreign inmates may experience some difficulties relating to language differences, but that is by no means a criterion of exclusion. Only health problems can interfere with a job assignment. In some prisons occupational problems are more frequent because of overcrowding, but these affect both Portuguese nationals and foreigners.

A bilateral transfer agreement between Portugal and Brazil has been in place since 2003 that can be applied if the behaviour in question is considered criminal in both countries and the resulting sentence is longer than six months. More elaborate information and documentation on this subject can be accessed at <http://www.gddc.pt/siii/docs/rar45-2003.pdf>.

2 TREATMENT OF FOREIGN PRISONERS

The Portuguese Penal Code emphasises the importance of rehabilitation and re-socialization being the main objectives of prison sentences. Therefore, all efforts should be made to assure that inmates can serve their sentence in a productive manner, either by studying, working or engaging in professional training courses provided by the administration. Prisoners maintain their fundamental rights as persons and are also entitled to the essential social and cultural rights, that is, the right to have a paying job, the social security benefits, and as far as possible, the right to have access to culture and to the full development of their personality. The exercise of these rights is, however, subordinated by the restrictions that the sentence imposes and also by the internal regulations of the prison and orders from its director or medical constraints. Nevertheless, this subordination must attend criteria of reasonability, normality and non-abusiveness of the prisoner's rights. Finally, it is important to note that there is a great difference between the means and facilities that a central prison can offer compared to local prisons, particularly those that are quite small. In fact, while a more personal and individual approach is more possible in these smaller institutions, there are much more opportunities for problems to occur in the larger prisons where 1,000 prisoners or more can be held¹¹.

2.1 General

Overall, there is no difference in treatment, prison allocation or prison work assignment between Portuguese prisoners and foreigners. In fact, more restrictive measures are only applied when the security of the institution or special security issues related to the type of crime committed and the type of prison sentence make this necessary. That is mainly the case with criminals who have been convicted for crimes against the state (e.g., terrorism, organized crime) or those who pose a serious threat to other prisoners or themselves. The separation of prisoners who have the same nationality or ethnic background is only implemented if there is solid evidence of planning activities that could threaten the security of the institution or of other inmates or staff. Otherwise no effort is made to impede the more or less spontaneous reunion of prisoners who share affinities or socio-cultural backgrounds.

¹¹ Nevertheless it should be pointed out that the average number of prisoners in central facilities was 431 in 2004 while in local facilities it was 99; see Moreira, 2005.

Language might be a complicated matter for prisoners from countries that have no affinity with Portugal in terms of culture and language. This is particularly the case for prisoners whose home countries are in the north of Europe such as the former Republic of the USSR or even Russia itself. These prisoners may have more difficulty in making themselves understandable to our personnel; when they refuse to make an effort to understand anything, they may even use their apparent inability to speak our language to cause problems for the Portuguese Prison Administration. In more difficult cases an interpreter is contacted. However, efforts are being made to translate basic materials (for instance the rules of the institution) related to prison that are handed out to the foreign prisoners. At a later point of their sentence, these prisoners can be enrolled in language courses. These courses already exist within the prison system for illiterate prisoners, and with some adaptations they could also be adequate for foreign prisoners. It is necessary to make some adjustments to them because most foreign prisoners from the eastern European countries are not illiterate but simply lack the basic comprehension of the Portuguese language.

2.2 Living conditions and facilities

The allocation of prisoners is initially effected on the grounds of the place where the crime was committed and where the court decision is made. After sentence is pronounced, prisoners can request to be transferred to a prison that is closer to their family in order to facilitate visits. This is generally granted depending solely on the capacity of the requested prison and its rate of occupation. Foreign prisoners are not generally allocated to a specific institution but those who have no potential visitors or family bonds in Portugal are more prone to be transferred to the Funchal Prison on the Island of Madeira, which is one of the newest prisons in Portugal (built in 1994) and generally has more places available, or Izeda (inner north of Portugal). Although the Portuguese prison law specifies that prisoners should be entitled to a single cell, overcrowding has long time ago eluded this "rule" and other typologies of allocating prisoners have emerged. The most common disposition is the allocation of two prisoners to one cell, provided that they accept the presence of each other and no incompatibilities are evident. As the rate of overcrowding is declining it is possible that in a few years all prisoners can have single cells.

2.3 Reception and admission

Reception procedures are the same for Portuguese nationals and for foreigners. Difficulties may arise due to language barriers, but this seems to be more and more exceptional. First of all, prisoners have the right to inform their family and legal representatives, and in the case of foreigners to call their diplomatic mission immediately after their entry into the prison. It is expected that prison staff fulfil their duties and inform foreign prisoners about the legal dispositions and rules of the prison and proceed to allocate the individuals on grounds of reasonability considering the prison's conditions. There is no internal indication or "rule" to constitute "ethnic units" although by reasons of cultural, religious, language or ethnic affinity, prisoners can be put together on the grounds of choices or preferences that they may further enunciate.

2.4 Work – Education – Training – Sports – Recreation

Data concerning professional occupation in prisons show that, proportionally, foreign prisoners have more work assignments than national prisoners, especially the female foreigners. This may be explained by the fact that most of them have no family support and therefore the prison administration will provide them with work more rapidly, so that they can acquire the money they need to cover their basic needs. One aspect that supports this assumption is the fact that most of these prison jobs do not require special skills or procedures that may cause difficulties for the inmate, especially those in which language problems could arise. Concerning the level of education, data show that on average foreign prisoners from European countries and female prisoners from South American countries have higher degrees of formal education than Portuguese prisoners. This can be a feature that may foster future social reintegration. Nevertheless, many foreign prisoners attend school classes in order to improve their knowledge of the Portuguese language. Professional training is also promoted in prisons and foreigners can access it provided they fulfil the minimum requirements and pass selection tests. Professional training is mainly on jobs for constructions and building, mechanics, electricity, gardening and computers. Women are mostly assigned to hairdressing, embroidery and nursing. Sports and recreation are promoted in every institution, but the central prisons naturally have better conditions and facilities for practicing. Gymnasiums and outdoor sports pitches represent one of the latest improvements by the Portuguese Prison Administration. Prisoners can have regular access to these spaces but they use them mostly on weekends when they are not working. Often, prison educators, teachers and social workers organize championships and meetings with teams from the community to foster interaction with the outside world and promote social reintegration. Leisure rooms for the prisoners have also been created lately in some prisons but their number is still small¹². Following European legislation – Resolution (73) 5 and Recommendation (87) 3 of the European Council – prisoners are entitled to two hours of recreation in open space per day, which is applied even to those who choose to remain inactive during prison time.

2.5 Food – Religion – Personal Hygiene – Medical care

The problems arise with those religious and cultural dress requirements that should be respected and preserved as long as they are feasible and do not collide with prison security. In doing so, the prison administration avoids conflicts and prevents any feeling of hostility or inequality among the prison population. Nowadays, prison uniforms are not so important but they still exist and prisoners should wear trousers, shirts/t-shirts and jackets. Dressing in long robes or wearing turbans is not permitted by the prison administration. Since Portugal is a country with a catholic tradition, prisons were generally built with a chapel but no other religious groupings were expected. In fact, the majorities and minorities that are found within the different ethnic groups in society are the same as in prison. Religious groups can in fact congregate and practice their religious beliefs so long as they are permitted to do so by the prison warden. Also, religious representatives can access the prison institutions and visit the prisoners so long as they are granted access by the warden. Such meetings and visits are only rarely turned down. Food habits can reflect this

¹² See Provedoria da Justiça, 2003.

cultural diversity. It may prove difficult for the prison administration to produce a 'menu a la carte' for each preference but, if no family support is present, it should be possible to meet those needs related to cultural background, if only through supplying the prison canteens with the desired product. However, the prison administration must acknowledge the problem and they should be aware of the differences and needs of the prisoners. Over the last ten years efforts have been made to provide WC facilities and showers in all cells. However, some of the oldest prisons still maintain common showers and WC facilities that represent interventions into the privacy and security of inmates¹³.

The Portuguese Prison Administration has one central hospital located near Lisbon for situations that require longer medical interventions. Every central prison has an infirmary to which prisoners are moved when their state of health requires it. When more severe health problems require it they are transferred to the prison hospital or to a central prison where they can receive proper care. In matters of urgency transport is provided to the nearest central hospital. Medical assistance is totally free for the prisoners, in a vast number of cases, namely: 1) for the female prisoners during pregnancy, child birth and further assistance to the newborn; 2) female prisoners can have their children living with them until they are three years old; 3) while in prison, all medical care given to the children is also free of charge; 4) if the prisoner had an accident while working¹⁴; 5) all sorts of dental treatment except prosthesis; 6) and in the cases of sexually transmitted diseases (including AIDS), for which first screening is mandatory, and subsequent treatment and monitoring follow. No distinction between nationals and foreigners is made regarding the provision of medical assistance.

2.6 Consular and legal help

Prisoners are allowed to contact their legal representatives and receive visits from them in an adequate and appropriate office, where standards of confidentiality and privacy must be granted. He or she is also legally entitled to receive any documents or papers related to the resolution of their legal problems. In the case of the foreigners these rights are also extended to the accredited diplomatic or consular authorities of their home countries, but the visits need to be authorized by the Ministry of Justice. Data show that the number of these visits has been increasing along the years with visits of Spanish representatives predominating, followed by the other European Union countries and South Americans in the case of women. The forms of assistance that Embassies and Consulates generally provide concerns the provision of essential goods, legal representation, the facilitation of making and maintaining contact with the family, and sometimes monetary support.

2.7 Contact with the outside world

Normally, the criteria regarding a prisoners' allocation is to place them in the proximity of their family. However, this is not applicable to most foreign prisoners, especially not to those from Northern Europe, because most of them have no relatives living in Portugal to visit them. Contact by regular mail is common and phone calls using a card phone are

¹³ Provedoria da Justiça, 2003

¹⁴ The prisoner is also entitled to an insurance allowance the same way as if he was working in the community.

permitted after previous authorization by the prison director. According to the rules existing in every prison, visits to the inmates are permitted on certain days; normally one day is for relatives and the other for friends. The visit period is normally two hours and the number of persons that can enter the prison each time is restricted to avoid confusion and threats to security. In the case of pre-trial detainees, visits from the family are allowed every day of the week. Although newspapers, books and magazines in foreign language can be available, prison directors only rarely authorize them, especially when they are written in languages that are not understandable for the officers whose job is to screen them. Radio and TV sets are allowed with only few limitations (e.g., larger sizes are forbidden) but there is no limit in the number of channels broadcasted. So, foreign prisoners theoretically have access to their home channels and channels in foreign languages so long as these can technically be received in the institution.

2.8 Re-integration activities – Prison leave

No agency or authority is specifically concerned with the foreign prisoners after they have left prison. The Institute of Social Reinsertion is the state institution that provides help when prisoners have completed their sentences, or supervises those who are on probation or conditional release. This institution is also responsible for providing some monetary help at the beginning and their technical staff includes psychologists and social workers who provide contacts with relatives of the prisoner when they face monetary problems and controls for the existence of false declarations regarding professional places that the prisoners allege. This happens mostly when individuals remain under supervision (probation, conditional release), but for those who complete their full prison sentences, rarely any support is given, regardless of their nationality. There is no official data on the number of foreigners who are discharged on conditional release but it is assumed that when an expulsion sentence is annexed to the prison sentence the conditional release is automatically granted at the mid-point of the sentence¹⁵, which means that a foreign prisoner benefits from a less severe regime in the concession of conditional release¹⁶.

2.9 Release- Expulsion

Having committed a crime and to be considered „*persona non grata*“ is sufficient reason for expulsion procedures. According to the 2004 report of the Service of Illegal Residents and Frontiers (Serviço de Estrangeiros e Fronteiras: SEF), available at <http://www.sef.pt>, a total of 162 expulsions on judicial grounds were executed, with people from Brazil (32 cases), Cape Verde (29 cases), Ukraine (18 cases) and Moldavia (15 cases) accounting for more than 50% of the decisions. The most frequently committed crimes were drug trafficking (102 cases), extortion (20 cases) theft and robbery (7 cases each). Only one homicide and one rape were observed. When individuals are under the measure of expulsion they are escorted under supervision of the SEF authorities from prison to their countries and handed over to their national authorities. In fact, and as of that moment, they become completely free because it is not possible to supervise their conditional release outside the borders of Portugal. According to the Convention on the

Transference of Condemned Persons approved by the European Council, the foreign individual has the right to require serving his sentence, either in his country of origin or in the country where he lives at the moment. It should be noted that persons who are also Portuguese nationals due to being married to a Portuguese citizen cannot be expelled.

2.10 Aftercare – Probation

Those foreign offenders who can or will stay in the host country after being released from prison may use the facilities provided by the Instituto de Reinserção Social and Social Welfare Services to foster their reintegration (for instance access to programmes for housing, free meals in Social Welfare canteens, actual financial support, help in finding employment and in accessing the facilities of the Health National System). However, they can only benefit from these services if they have a valid stay permit and are not under a removal or expulsion measure. Additionally, they must hold a regular job to cover their needs and be fully integrated into the social system.

2.11 Staff

Table 5 and figure 1 show the evolution of the various “prison populations” over 16 years. It is quite evident that the main effort has been in reinforcing the number of prison guards compared to the other professional groups, especially the technical staff which is mainly composed of psychologists, social service workers and sociologists.

Table 5 “Prison populations” (1987-2003)

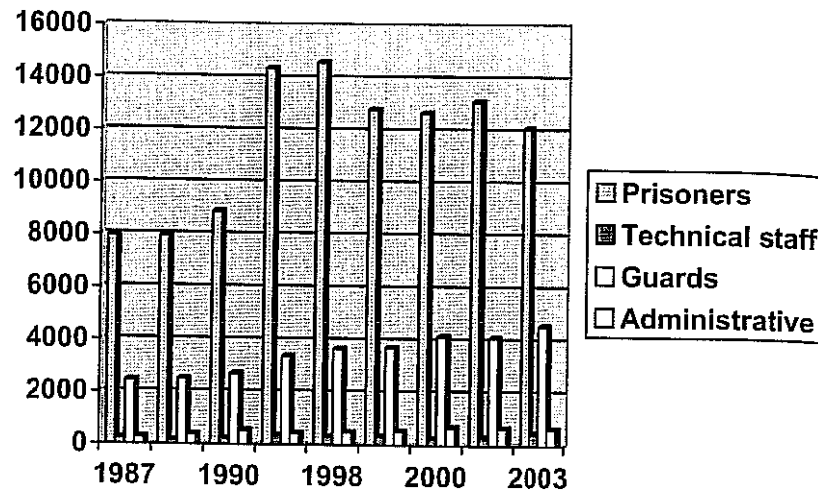
Years	1987	1988	1990	1997	1998	1999	2000	2001	2003
Prisoners	7965	7958	8874	14361	14598	12808	12683	13112	12109
Technical	238	160	222	357	320	342	256	308	478
Guards	2446	2495	2700	3379	3667	3723	4167	4121	4575
Administrat.	268	387	536	439	482	522	677	654	636

Source: *Extracted from Gonçalves (2005)*

¹⁵ See Moreira, 2005.

¹⁶ See Albuquerque, 2006.

Figure 1 "Prison populations" comparative evolution (1987-2003)



Source: Extracted from Gonçalves (2005).

This indeed shows that the main concern of Portuguese prison authorities relies heavily on security issues and almost forgets the need for the implementation of specific programs and interventions directed to changing attitudes, acquiring social competences and dealing with emotional problems, among others. This is valid for foreigners as well as for nationals. Prison staff receive no special training for dealing with foreign prisoners. However, they are made aware of some special issues that they may face when dealing with these offenders, especially their physical training and their higher degree of school education. In most cases staff learns through experience while performing their jobs in the prison.

2.12 Projects

There are no specific projects for foreign prisoners related to their specific nature and no research has been conducted to acknowledge for their specificity. However, they can benefit from and are indeed included in those other dimensions that prisons provide, for instance drug treatment and cultural manifestations (drama and comedy representation, music, painting and ceramics ...).

3 ADMINISTRATIVE DETENTION OF FOREIGN PRISONERS

3.1 Institution

The SEF is responsible for granting permanent residence visas and they manage the processes of removals and expulsions, regardless of criminal procedures. Administrative detention of foreigners is generally executed at four locations in Portugal. These facilities are "transit zones" because they are located in the airports of Lisbon, Porto, Faro and Ponta Delgada (Açores). The creation of new detention centres is not a priority in the short term for the government, even if the Law No. 34/94 of 14 September 1994 allows the creation of such centres¹⁷.

3.2 Ministry responsible and Legislation

The Ministry of Internal Affairs is the highest responsible entity and supervises the SEF. Law 60/93 of 3 March 1993 established the special regime of entering permanence and leave of foreign citizens and their relatives, born in EU countries. Law no. 15/98 of 26 March 1998 establishes a new regime for asylum seekers and refugees. This regime basically states that anyone who comes from a country where he/she might be submitted to torture or other reproachable actions because he fought for the ideals of democracy, freedom of speech or where he was socially excluded on the basis of his skin colour, political opinions or religious convictions, can be granted asylum and then become a legally recognized refugee.

3.3 Capacity institutions

Most of the foreigners in administrative detention in Portugal are detained in the transit zone of Lisbon airport, which has a capacity of 40 people. On average, there are 10 to 15 persons being detained at any one time. The building is divided into two wings, one for asylum seekers and one for irregular migrants, each with 20 places.

3.4 Length of stay

The administrative detention of foreigners in Portugal may be imposed for a period not exceeding 60 days as stipulated in Law no. 15/98 of 26 March 1998. There are no known problems concerning delays in the application of the decisions, which are generally in adherence with the deadlines as stated in law.

3.5 Decisions procedure

The persons who may be detained in these centres are:

- People requesting asylum until the SEF decides whether these persons have legitimate grounds for such an application. On average, they are detained for three days. If the SEF decides that they are not entitled to ask for asylum in Portugal, they are expelled to where they came from within a period of time not exceeding 60 days. If

¹⁷ The Law refers to "centres of temporary set-up".

an application for asylum is initially approved, they are transferred to reception centres.

- Irregular migrants facing removal. Even though this practice remains seldom, irregular migrants may be arrested by police forces when they have no permit to reside in the country. In such cases, they appear before a judge who may decide to place them in custody for the period of time that is necessary in order to remove them. They may be detained either in prisons with convicted criminals or in one of the transit zones mentioned above.

3.6 Appeal procedure

Appeal procedures must be done through regular administrative courts with legal assistance. Such a procedure should be accompanied with professional legal advice. Courts may provide legal assistance free of charge by designating a lawyer for the petitioner.

3.7 Irregular stay

Unless the person has committed a crime, illegal entrance in Portugal only accounts for administrative procedures that will end in an administrative process of expulsion. Irregular stay in itself is not a criminal offence.

3.8 Numbers

In 2004 the prison system registered 5,670 newcomers of whom 1,180 (20,8%) were foreigners. It should be noted that these figures were 2,5% lower compared to the previous year (2003).

3.9. Expulsion

Data from the 2004 SEF report shows that out of a total of 2.909 individuals who were notified to leave the country voluntarily in that year, Brazil stood ahead (37%), followed by Romania (20%), Ukraine (11,7%), Angola (3,6%) and Cape Verde (3,3%). A total of 1,382 procedures of administrative expulsion were initiated in the same period and decisions were reached in 558. Of these, a total of 445 administrative expulsions were implemented, mostly concerning citizens from Romania (85 cases), Ukraine (83 cases) and Brazil (75 cases), while the 113 remaining cases were authorized to stay in Portugal and cleared of all charges.

3.10 Not-expelled prisoners

There is unfortunately no precise information available on what happens with those administrative prisoners who are not expelled from the country.

3.11 Detention irregulars under criminal law

Foreign nationals under a measure or procedure of removal or expulsion can be detained in regular prisons with other inmates who face criminal charges should the transit zones

be overcrowded. Distinctions are made in the case of minors, who can be sent to different institutions, but in most cases they remain with their parents. No actual figures have been disposed regarding this issue.

3.12 Minors

Foreign minors living in Portugal with residence visas are not allowed to leave the country unless they are accompanied by their parents or legally certified and authorized guardians. When irregularities are detected and unless these minors are at risk they stay with their parents or accompany them to the institutions.

4 NATIONALS DETAINED ABROAD

No regular or official information exists on this topic but since Portugal has historically been a country of emigration it is somehow self-evident that its nationals should face problems with justice abroad.

4.1 Numbers and composition group

According to recent information portrayed by the State Secretary of the Communities, a total of 1,900 Portuguese citizens are being held in foreign prisons. This number represents roughly 1/6 of the actual prison population within Portugal.

4.2 Detention countries

Predominantly in South America, but no figures are available.

4.3 Reasons for detention and sentencing

According to the State Secretary of the Communities, 80% of the prisoners are in custody for drug related offences. Others are former workers who become unemployed and commit crimes in order to cover their basic needs. Types of sentences are not documented but in certain countries drug possession can result in a sentence to death.

4.4 Involved organisations

Consular protection is the principal and most effective entity in helping Portuguese prisoners abroad, providing help at various levels by giving basic goods, medication and other goods. In exceptional cases repatriation is also provided.

4.5 Release and reception

When the prisoner is released it is again the Consulate that can provide help for their return to Portugal, but the individual must be aware of the different types of legislation and penalties that each country presents. Cases handled within the European Union are simpler than outside of it. Usually, relatives support reception in the home country.

4.6 Aftercare

Concerning the type of measure given (release or expulsion) the responsibility is upon the individual or the expelling state. When the person has been released in the foreign state he or she has to pay for his/her own transportation back to Portugal. In cases of expulsion, the foreign state has to cover the expenses of returning the Portuguese prisoner to Portugal.

4.7 Public opinion and the media

This is not a subject that attracts the public opinion, unless a public person is involved. Some months ago a case was particularly covered by the media because a Portuguese film-maker was caught in possession of a certain amount of drugs (which he claimed was for private use) in a Middle-Eastern country where possession is severely punished. It was only through diplomatic channels that this matter came to a good ending. But ultimately no one is aware of the number of Portuguese prisoners abroad.

5 EVALUATION AND RECOMMENDATIONS

As mentioned above, Portuguese prisons are predominantly occupied by Portuguese nationals. The second group of inmates are Africans who were born in our former colonies. The third major group are the Brazilians. However, recent years have seen the emergence of new groups from other countries, especially Europeans. They pose different problems to prison administrations and prison staff contrary to the former groups who have a similitude to Portugal in terms of language and cultural habits. Prison statistics have shown a continuous growth in foreigners among our prison population, especially on the part of women. They tend to be predominantly South American born and are imprisoned for offences related to drug trafficking. On the other hand, there has been an increase in the number of male foreign prisoners from the North European former communist countries, with Ukraine and Romania leading the group, who are detained either for expulsion on behalf of administrative problems or who are serving prison sentences. Although related to drug trafficking as well, their involvement in violent crimes against other persons is considerable. Also, the fact that most of them have had good military training contributes to a portrait of aggressiveness and dangerousness that was not common before. Our data also show that in proportion, foreigner prisoners in general had higher levels of previous school achievement than the Portuguese prisoners, and this is particularly due to the fact that recently most of them have been coming from North European countries such as Ukraine and Moldavia. We wish to particularly emphasize the need to provide prison staff with more skills and training in order to deal with these new groups of prisoners.

The Portuguese Prison Administration is making an effort to provide these new categories of inmates with the same opportunities of social reinsertion and reintegration that are offered to Portuguese nationals. However, since our legislation in these cases frequently imposes expulsion after the prison sentence has been (partially) served, issues of re-integration tend to be overlooked. There is no reliable information about the problems that foreign prisoners state to the prison administration. In fact, the information gathered

by the staff only accounts for isolated problems concerning specific individuals in the same way as it occurs with national prisoners. However, foreign prisoners could face problems in the following areas: language, cultural habits, religious habits and diets. The lack of family support, psychiatric problems (morbidity) and proneness to suicide are also grounds for concern. Based on a more impressionistic point of view, we might say that the foreign prisoners in Portugal, although increasing in numbers, are being integrated in the main cultural trend. In prisons as well as in society they are generally treated with tolerance unless their behaviour and attitude indicate the need for a more repressive and secure policy. But that does not appear to be the case.

Contact with inmates originating from South European countries like Spain or Italy and the French-speaking countries do not present problems. Also, the Portuguese people in general are quite familiar with the English language so this should not present a serious problem. Furthermore, as can be taken from the statistics, the great majority of our foreign prisoners either come from former Portuguese colonies in Africa or Brazil who all have Portuguese as their mother-language.

Electronic surveillance appears to be a valuable contribution to solve the overcrowding problems in prisons and can be applied in the cases of persons who have to wait several months before going trial (pre-trial detainees). Using it on individuals who might have communication problems or problems in making themselves understood – like the foreign population – could turn out to be more of a problem than a solution, but it may be worth trying.

Finally, we want to address the gipsy community in our prisons. There is no reliable data concerning the prevalence of the gipsy population in our country. However, in the prison system they represent on average between 5 and 6% of the total inmate population¹⁸. In recent years their criminal activities have shifted from crimes against property (thefts, robbery, and smuggling) to drug trafficking. Also, several of them were seriously involved in organized crime. Their illiteracy problems put them in a position that makes accessing training and professional courses difficult, which in return influences the prospects of their future re-integration. Their traditional activities (e.g., selling things in the streets or in local fairgrounds) are declining and no other employment possibilities are available. Although they are not foreign prisoners – they are Portuguese – they represent a problem due to the limited qualifications they have and the negative stereotype they carry.

It is clear from our work that, despite the effort made, information is lacking in several domains in which there is no research available. Although foreign prisoners do not currently represent a major issue in our prison system, they unequivocally require our attention now in order to prevent problems from arising in the future.

¹⁸ See for instance Moreira, 1998.

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- www.detention-in
- www.min-nestrangeiros.pt This is the site of the Ministry of Foreign Affairs where information can be obtained about relationships between Portugal and other countries and where reference is made to bi-lateral agreements.
- www.secomunidades.pt In this site information can be obtained about the situation of Portuguese people living outside Portugal.
- <http://www.dgsp.mj.pt> This is the site of General Direction of Prison Services where information can be found about general trends in criminality, national prisoners and foreign prisoners

<http://www.provedor-jus.pt> This is the site of the Ombudsman Services.

Chapter 22 Slovakia

No information available.

Chapter 23 Slovenia

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