

International Conference

STRUCTURAL

PROBLEMS IN PRISONS:

Prospects for European

Intervention

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THE PORTUGUESE CASE:

STRUCTURAL PROBLEMS, REMEDIES, AND THE LENGTH OF IMPRISONMENT

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The Portuguese case: structural problems, remedies, and the length of imprisonment

The Portuguese punitive system

- Humanistic tradition
- Progressive and humanistic laws
- No life imprisonment
- Maximum prison sentence – 25y
- *Ultima ratio* of deprivation of liberty
- Wide range of community sentences
- Portugal ranks 7th. on the Global Peace Index 2024

The Portuguese case: structural problems, remedies, and the length of imprisonment

The Portuguese prison population

[as of 31/12/2023]

- **Prison population:** 12,012
- **Incarceration rate:** 113 per 100,000
- **Occupancy rate:** 96.3%

- **Pre-trial detainees:** 22.3%
(includes those whose sentence is not final)
- **Women:** 7.4%
- **Foreign nationals:** 16.7%

- **Average length of imprisonment** - very high, compared to European median values

*SPACE: indicator of the average length of detention for sentenced prisoners, in months
(based on the total number of days spent penal institutions): 45*

The Portuguese case: structural problems, remedies, and the length of imprisonment

Conditions of detention

- 49 prisons
- Old facilities
- Lack of investment in modernising or replacing prison establishments
- Overcrowding in many prisons
- lack of individual space, lack of privacy, inadequate ventilation, lighting, climatisation, hygiene
- understaffed

The Portuguese case: structural problems, remedies, and the length of imprisonment

Petrescu v. Portugal (December 2019)

The Court **found**:

- a **structural problem** of overcrowding in a significant number of Portuguese prison establishments
- **Lack of effective preventive/compensatory remedies**
- **Recommended** adopting **general measures** to ensure that **detention conditions** comply with Article 3 and, additionally, to offer those deprived of their liberty **domestic remedies** to prevent the continuation of alleged violations or to improve their detention conditions

The Portuguese case: structural problems, remedies, and the length of imprisonment

After *Petrescu*...

- *Bădulescu v. Portugal*, 20-10-2020
- *Da Silva Santos Pereira and Diamantino da Silva v. Portugal*, 9-6-2022
- *Ribeiro dos Santos and Jevdokimovs v. Portugal*, 22-9-2022
- *Dos Santos Neves v. Portugal*, 2-3-2023
- *Cunha Casaca v. Portugal*, 6-7-2023
- *Nieuwolt v. Portugal*, 9-11-2023
- *Ferreira Capitão and Gil Cardoso v. Portugal*, 18-1-2024
- *Mgbokwere e outros v. Portugal*, 8-2-2024
- *Marques Ângelo v. Portugal*, 22-2-2024
- *Barros de Carvalho and Alves Ferreira v. Portugal*, 16-5-2024

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Domestic remedies

The Court found that

- **none of the remedies** invoked by the Government was **an effective remedy** to be exhausted, as it was **not possible to conclude with a sufficient degree of certainty that Portuguese law offered the applicant a preventive and/or compensatory remedy regarding conditions of detention.**

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Conditions of detention – developments

- Multiannual **investment plan** approved by the Government (Council of Ministers Resolution No. 119/2023 of 9/10/2023)
- Council of Ministers Resolution No. 118/2022 of 29/11/2022 – approved plan for the **closure of Lisbon Prison** (19.th century)
- Renovation plan for **sanitary facilities** (to ensure privacy) was implemented
- In-cell **phones**, digital **platform**
- Occupancy rate at 96%

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Challenges

- Funding / human resources

Issues for debate

- Practical effectiveness of preventive remedies if root causes are not addressed

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