

The impact of the COVID-19 pandemic on the imposition and implementation of alternatives to prison and preparation of individuals for release in Portugal

Acknowledgements

Penal Reform International would like to thank the research team at the University of Coimbra for their contributions to the project through country research activities and the completion of the report.

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The research team would like to thank the following for their inestimable collaboration:

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Provedoria de Justiça (Ombudsperson's office)

Inspeção-Geral dos Serviços de Justiça (Inspectorate-General of Justice Services)

Antónia Soares, Public Prosecutor's Office at the Lisbon Court responsible for the implementation of sentences

Dar a Mão - Associação para Ajuda à População Reclusa (NGO providing support to individuals currently or formerly in prison)

O Companheiro (NGO providing support to individuals currently or formerly in prison)

APAR – Associação Portuguesa de Apoio ao Recluso (NGO providing support to individuals currently or formerly in prison)

APAC Portugal (NGO providing support to individuals currently or formerly in prison)

SOS Racismo (NGO tackling racism)

CASA – Centro de Apoio ao Sem-Abrigo, Coimbra (NGO providing support to homeless persons)

This report was completed with the financial support of the International Penal and Penitentiary Foundation (IPPF) as part of the project “Addressing gaps in the implementation and management of alternatives to imprisonment and post-release support during the COVID-19 global pandemic.” The project received IPPF funding in support of the Foundation’s goal to ensure that criminal justice systems equitably and effectively deal with the impact of COVID-19 on offenders who are in either custodial or non-custodial settings.



Penal Reform International report

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Cover photo: Recreation of probation work during the COVID-19 pandemic, courtesy of the Portuguese Directorate-General for Probation and Prison Services

Table of Contents

Introductory Note.....	6
List of Abbreviations.....	8
Introduction.....	9
Non-custodial sentences or measures aimed at reducing the prison population as a way of preventing the spread of the virus inside prison systems.....	9
1. A collective pardon (Article 2 of Law 9/2020).....	9
2. An exceptional individual pardon (Article 3 of Law 9/2020).....	10
3. An extraordinary prison leave (Article 4 of Law 9/2020).....	10
4. An extraordinary system of early conditional release (Article 5 of Law 9/2020).....	11
Supervision and support provided by probation services.....	12
Efficacy of the measures	12
The impact of the pandemic on the preparation for release.....	14
Restrictions on contacts with the outside world	14
Restrictions on prison activities	15
Adaptation of procedures and prison premises.....	15
Clinical services.....	15
Compensatory measures.....	16
Easing of restrictions	17
Impact of the confinement measure on imprisoned individuals.....	17
Preparations for release.....	18
The impact of the pandemic on the imposition and implementation of non-custodial sentences..	21
Statistical data.....	22
Community Service.....	27
Home detention under electronic monitoring.....	28
Rehabilitation programmes.....	28
Sentences or measures using electronic monitoring.....	29
Special situations.....	29
Specific impacts on sentences persons in vulnerable situations	30
Young adults.....	30
Older persons	31
Women.....	32
Victims of Domestic Violence.....	32
Persons with disabilities or mental health problems.....	33
Ethnic minorities	33

Foreign nationals.....	33
LGBTI persons.....	34
Homeless persons	34
Unemployment and other socio-economic vulnerabilities.....	35
The impact on the work of probation services and the well-being of probation officers.....	37
Health protection for probation service staff	37
Impact on workload	37
Changes to working practices	38
Psychological and professional support for staff	39
Courts responsible for the implementation of sentences	40
Other justice services	40
Availability of civil society organisations and volunteers.....	41
The impact of the pandemic on the future of the probation service	42
Conclusions.....	43
Recommendations	45
References	48

Introductory Note

This report on the impact of the COVID-19 pandemic on the imposition and implementation of alternative sentences and the preparation of individuals for release from prison in Portugal is part of the international project ***Addressing gaps in the implementation and management of alternatives to imprisonment and post-release support during the COVID-19 global pandemic***. The project is funded by the *International Penal and Penitentiary Foundation* and coordinated by *Penal Reform International*, in partnership with the Institute for Legal Research of the Faculty of Law of the University of Coimbra and the non-governmental organisation *Hungarian Helsinki Committee*, between March and December 2021.

The aims of the project are: “to understand the impacts of the COVID-19 pandemic on the use, implementation and experience of non-custodial sentences; to raise awareness and engage government stakeholders with practical recommendations to take (urgent and systemic) steps to protect the rights of people serving probation, ensuring that during times of crisis and national adversity adaptations, do not discriminate and those serving probation receive adequate supervision and are able to complete their sentence; to develop a model of reform with evidence-based recommendations applicable internationally for the improved implementation of alternatives to imprisonment during times of national or international crisis or emergency which expand their use and do not discriminate in who they are given to or how they are managed.”

Along with other activities carried out for the project, a comparative study was conducted in the Member States of the European Union,¹ based on national reports prepared by experts from those countries and interviews conducted with representatives of the prison and probation services in some states. In four countries (Portugal, Hungary, Georgia and Kyrgyzstan) local research teams conducted in-depth studies, producing independent reports.² The report presented here is the result of the Portuguese study, carried out by a research team from the Faculty of Law of the University of Coimbra.

The research methodology adopted for this study included a review of the bibliography, including both academic articles and official information and other documents published on the subject, as well as an analysis of the relevant national legislation. The collection of official and institutional data was carried out via questionnaires sent to the Directorate-General for the Probation and Prison Services (DGRSP), which were answered in writing; and also through interviews with DGRSP managers and officers with diverse experiences from different geographical areas; the participation of a DGRSP representative in a meeting of experts organized by Penal Reform International for the project³; and analysis of the statistics published by the DGRSP.⁴ In order to collate the perspectives and experiences of persons serving community sentences and of non-governmental organisations working on the social reintegration of sentenced persons, interviews were conducted with representatives of civil society organisations, always with informed consent. These included both organisations that

1 To be published on the websites of PRI, UC and HHC. The comparative study is part of the project *PRI Alt Eur: Promoting non-discriminatory alternatives to imprisonment across Europe* funded by the European Union's Justice Programme (2014-2020).

2 To be published on the websites of PRI, UC and HHC.

3 Experts Meeting, organised by *Penal Reform International*, a virtual meeting on 28-5-2021, in which all the partners to the project took part along with about 40 professionals, academics, NGOs and experts from 18 countries.

4 Statistics available at <https://dgrsp.justica.gov.pt>.

focus specifically on assisting sentenced persons⁵ and organisations which support persons in situations of vulnerability and persons belonging to minorities.⁶ An interview with a person serving a non-custodial sentence (home detention) was also conducted. In addition, consultations were held at the Lisbon Court responsible for the implementation of sentences, with a view to understanding how the procedures had to be adapted during the pandemic, and what the main constraints had been along with the difficulties in applying the extraordinary release measures.

Meetings were also held with the Ombudsperson and the Inspectorate-General of Justice Services in order to inquire about complaints or grievances lodged with these offices from those released from prison or serving non-custodial sentences during the pandemic or any other complaints related to the exceptional release measures adopted in April 2020.

5 The following organisations were interviewed: O Companheiro; APAC Portugal; Dar a Mão - Associação para Ajuda à População Reclusa; APAR – Associação Portuguesa de Apoio ao Recluso.

6 The following organisations were interviewed: CASA – Apoio a Pessoas Sem-Abrigo; SOS Racismo.

List of Abbreviations

CEPMPL – Code governing the Implementation of Sentences and Measures Depriving of Personal Liberty (Código da Execução das Penas e Medidas Privativas da Liberdade)

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

DGRSP – Directorate-General for Probation and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais)

Introduction

In Portugal, the Prison and Probation Services (Direção-Geral de Reinserção e Serviços Prisionais, hereinafter DGRSP) started the process of preparing for the prevention of the spread of the coronavirus and the mitigation of its consequences in January 2020, with the creation of working groups charged with defining guidance and procedures to be adopted. As a result, the DGRSP approved a contingency plan, in line with the guidelines from health authorities, and created a national coordination structure for the monitoring and updating of this plan, as well as structures at regional and local levels aimed at the development and implementation of local contingency plans.

The most visible aspect of the adaptation of the penal system to the pandemic was, in the case of prisons, the adoption of emergency measures that led to the release of detainees and the temporary suspension of activities in prisons that involved contact with the outside world; and in the case of community sentences, the suspension of some face-to-face contacts and group activities and, whenever possible, the use of remote means of communication.

It must be highlighted that no deaths of people in prison from COVID-19 have been registered in Portugal.

Non-custodial sentences or measures aimed at reducing the prison population as a way of preventing the spread of the virus inside prison systems

After the first cases of COVID-19 in Portugal, and following the decree establishing a state of emergency in March 2020, the Portuguese authorities undertook measures to prevent the spread of the virus within the prison system.⁷

Taking into account the recommendations of international organisations, in particular the World Health Organisation and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as the Ombudsperson⁸ (who in Portugal is also the National Preventive Mechanism for the Prevention of Torture)⁹, the Government presented a law proposal before the Parliament. The proposal was passed by the Parliament, providing for the release – whether temporary or permanent – of individuals from prison via different types of measures of an exceptional character, as detailed below (Law no. 9/2020 of 10 April).¹⁰

1. A collective pardon (Article 2 of Law 9/2020)

Sentences of up to two years, as well as remaining periods of up to two years in the case of longer prison sentences (in this latter case, provided that at least half of the sentence had been

7 For a detailed description of the measures adopted, see Anabela Miranda Rodrigues/Inês Horta Pinto, “Portugal”, in Frieder Dünkel/Dirk Van Zyl Smit/Stefan Harrendorf, *The Impact of the Coronavirus on Prisoners and Penal Policy*, Routledge, 2021 (forthcoming), and Nuno Brandão, “A libertação de reclusos em tempos de COVID-19. Um primeiro olhar sobre a Lei n.º 9/2020, de 10/4”, *Julgat online*, April 2020, available at <http://julgat.pt/a-libertacao-de-reclusos-em-tempos-de-COVID-19-um-primeiro-olhar-sobre-a-lei-n-o-92020-de-104> [last accessed 17-7-2021].

8 Recommendation no. 4/B/2020, of 26 March 2020, to the Minister of Justice, available at http://www.provedor-jus.pt/documentos/Recomendacao_4_B_2020_Ministra_Justica__2_.pdf.

9 Under the Optional Protocol to the UN Convention against Torture.

10 Available at <https://data.dre.pt/eli/lei/9/2020/p/cons/20200529/pt/html>.

served) were granted a sentence pardon (i.e. were commuted). This pardon included imprisonment resulting from the conversion of an unpaid fine and from non-compliance with a non-custodial sentence. It also included prison sentences being served concurrently for several offences. In the case of consecutive sentences, the sentence pardon applied to the remainder of the sum of all terms, provided that the time remaining to be served was up to two years.

This pardon was only applicable to individuals whose sentences were final before the law came into force.

The law expressly excluded certain offences, such as murder, domestic violence, aggravated assault, sexual offences, torture, arson, membership of a criminal organisation, corruption, money laundering, drug trafficking, and crimes committed by members of the police and security forces, the armed forces, or by prison officials or officers in the performance of their duties; and those committed by holders of political or high public office in the performance of their duties.¹¹

The pardon was conditional on its beneficiary not reoffending for a period of one year, with reoffending requiring the original sentence to be served in full, in addition to the sentence passed for the new offence.

It was the responsibility of the courts responsible for the implementation of sentences to apply these pardons and issue the release orders as a matter of urgency.

2. An exceptional individual pardon (Article 3 of Law 9/2020)

The law also provided for an exceptional individual pardon by the President of the Republic. These individual pardons (*indultos*) are usually granted during the Christmas period (Article 227 of the CEPMPL).

Law 9/2020 provided for an “exceptional pardon”, granting the Minister of Justice the power to propose, to the President of the Republic, a total or partial pardon of the prison sentence being served by any individual aged 65 years or over at the time that the law came into force, and who was suffering from a physical or mental illness, or a diminished degree of autonomy, that was incompatible with being in prison during the pandemic. In order to implement this measure, the prison governors had, within 48 hours, to propose the detainees who met the conditions to the Director-General, along with the relevant documentation, including a medical report. After obtaining the individual’s consent and the opinion from the Director-General, the proposal was then submitted to the Ministry of Justice again within 48 hours, for subsequent presentation to the President of the Republic. Requests for this exceptional individual sentence pardon could also be submitted by interested parties within three working days of the law coming into force.

Persons convicted of the crimes listed in the section above were equally unable to benefit from this measure.

3. An extraordinary prison leave (Article 4 of Law 9/2020)

For those individuals not eligible for a sentence pardon, a system of prison release on licence, of 45 days and renewable for successive periods of 45 days, was established. Granting of the licence was the responsibility of the Director-General of the Prison and Probation Service and

¹¹ Cf. the exhaustive list in Article 2(6) of Law 9/2020.

conditional on the consent of the imprisoned individual. Renewal was dependent on the conduct of the individual during time on licence, as well as the evolution of the pandemic.

This extraordinary licence could only be granted to persons who had previously benefited from judicial prison leaves¹² and who fulfilled the general requirements for such leaves.

In contrast to the normal release on licence, this extraordinary leave imposed a duty on the individual to remain at home – a duty which was in fact in force for all citizens during the state of emergency – and to accept the supervision of the probation services and police authorities, comply with their directions and respond to them when contacted, namely by telephone. Individuals who were in an open prison regime working outside the prison might be authorised to keep their job.

If, when on licence, a person failed to comply with the conditions imposed, without justifiable excuse, the probation services would immediately report it to the Prison Service, and as a result a formal warning could be issued by the prison governor, or the licence could be revoked by the Director-General.

Time spent on licence counts as time served, except in case of revocation.

The granting of an extraordinary licence and its termination were to be communicated to the Public Prosecutor's Office at the court responsible for the implementation of sentences to verify its legality.¹³

4. An extraordinary system of early conditional release (Article 5 of Law 9/2020)

Those who had benefited from extraordinary release on licence and received a positive evaluation, could, if the court so decided, have their parole brought forward by a period of up to six months. The period so brought forward had to be spent at home, under the supervision of the probation services and the police.

Individuals convicted of offences against members of police and security forces, the armed forces, or prison wardens and officials in the exercise in their duties were excluded from the exceptional measures provided for in this Law.¹⁴

Law 9/2020 also provided for the re-examination of the grounds for remand prison, especially in the case of individuals aged 65 years or over and with health problems incompatible with being part of the general prison population during the pandemic (Article 7). The same article restated the rule that remand is a coercive measure of last resort and should only be applied when all other coercive measures are manifestly inadequate or insufficient.

As a result of the new law, 1,959 people were released from Portuguese prisons between April and June 2020 – either temporarily or permanently. Of these, 1,039 benefited from a sentence pardon, 906 were granted extraordinary release on licence, and 14 individuals aged 65 and over with health problems received an *indulto* (i.e. individual pardon) from the President of the

12 I.e. licences granted by a Court responsible for the implementation of prison sentences. In the case of individuals in closed prison regime, two previous licences had to have been granted; for those in open regime, one.

13 Pursuant to Article 141(b) of the CEPMP, as provided for by Article 4(9) of Law 9/2020.

14 Article 1(2) of Law 9/2020.

Republic.¹⁵ In addition, at least four individuals detained on remand were released under home detention with electronic monitoring.¹⁶

Law 9/2020 is still in effect and will only cease to be applicable “on a date to be fixed by law declaring an end to the exceptional measures”.¹⁷

Supervision and support provided by probation services

To ensure proper monitoring of extraordinary prison leave, with the duty to remain at home, the probation teams made contact by means of remote communication (i.e. phone calls, email), alternating this with visits to clients’ homes (without entering the premises). In addition, contact was made with family members and/or local residents to confirm that the conditions were being complied with.¹⁸ However, the frequency of these face-to-face contacts was limited due to social distancing rules, prevention measures and the increase in the teams’ workload.

For the purposes of the monitoring of this extraordinary measure, a collaboration between the DGRSP and the criminal police forces was established, designed to ensure cooperation at a local level for the purposes of surveillance and enforcement of the obligation of home detention, as the police have a more decentralised territorial scope and as such are closer to local communities.¹⁹ However, action by the latter was constrained by the need for officers also to police the health control measures applicable to the population in general.²⁰

Although the procedure manual created for this purpose called for maintaining no more than a five-day interval between contacts with each person under monitoring, almost daily contact was ensured with all persons released on extraordinary licence.²¹

Because the law did not provide for any resocialisation activities with this exceptional measure, checks by probation teams and the police were performed mainly to confirm compliance with the obligation to stay at home. Even so, these teams ended up playing an important motivational role by telephone (motivating people to fulfil the obligations inherent in being on licence, i.e. not leaving the house).²² Initially, some individuals did not have their own mobile phones; in these cases, mobile phones of family members were used to maintain contact.²³

To ensure necessary support, probation teams worked closely with prisons to obtain medical and other prescriptions from the health services. They also helped individuals with renewing identification documents and applying for social security support in cases of financial hardship.²⁴

Efficacy of the measures

The release of people from prison allowed for the creation of more room inside prisons which, in the view of the authorities, proved crucial in allowing greater physical distancing within facilities,

15 Source: DGRSP, response to questionnaire, 29-6-2021; *Diário da República* (<https://data.dre.pt/eli/diario/1/82/2020/1/pt/html>, presidential pardons).

16 Source: High Council of the Judiciary (*Conselho Superior da Magistratura*).

17 Article 10 of Law 9/2020, as amended by Law 16/2020, of 29 May.

18 Source: DGRSP (December 2020).

19 Source: DGRSP (December 2020).

20 Source: DGRSP (December 2020).

21 Source: DGRSP, interview, 27-7-2021.

22 Source: DGRSP, interview, 27-7-2021.

23 Source: DGRSP, interview, 27-7-2021.

24 Source: DGRSP (December 2020).

the separation of those detained individuals more susceptible to COVID-19 and the isolation of infected or quarantined individuals.²⁵ So far there have been no recorded deaths of people in prison from COVID-19 in Portugal.

No significant adverse reactions in society to the extraordinary release of individuals from prison were reported. It should be noted that, in the case of extraordinary release on licence, this was only granted to those who had previously enjoyed at least one previous period of release on licence and for whom there was no record of incidents or negative reactions in the family or the neighbourhood. In addition, the fact that individuals covered by these measures were obliged to stay at home may have helped to mitigate any negative reactions.

The number of recalls, although not insignificant, was relatively low statistically. According to DGRSP data, of the 906 individuals who benefited from being released on extraordinary licence, 120 had their licenses revoked due to non-compliance with the conditions imposed. Of the 1,945 persons released under the set of extraordinary measures, 235 were returned to the prison system due to their committing further offences.²⁶ From the perspective of the authorities, this statistically low number is all the more relevant considering that the pandemic brought with it economic and social conditions that hindered both the search for employment and social integration.²⁷

It should be noted that some individuals for whom extraordinary release on licence was sought, with the obligation to stay at home, either withdrew their consent or did not consent to renewal of the licence, and thus returned to prison. According to the DGRSP, such decisions were essentially taken due to financial difficulties or lack of adequate family and/or housing provision.²⁸ This should lead us to reflect not only on the vulnerability in financial and social terms of a significant part of the prison population in Portugal but also on the (in)adequacy of social support available both to those who have been released from prison and to their families.

25 Source: DGRSP, response to questionnaire, 29-6-2021.

26 The 14 granted a presidential pardon are not included in this information. Source: DGRSP, response to questionnaire, 29-6-2021.

27 Source: DGRSP, response to questionnaire, 29-6-2021.

28 Source: DGRSP; data as of December 2020.

The impact of the pandemic on the preparation for release

In February 2020 the DGRSP adopted a contingency plan, which was continually updated, and which included several measures to prevent the spread of the virus. A crisis management team was also created.²⁹ In 2020 the DGRSP invested 3.5 million euros in combatting the pandemic which included spending on the acquisition of personal protective equipment, hiring additional clinical staff, and alteration work to adapt prison facilities to the need for social distancing.³⁰

Measures to prevent the spread of the virus within prisons had an impact on the maintenance of family and social ties, on contacts with the outside world, and on the rehabilitation of imprisoned persons.

Restrictions on contacts with the outside world

The DGRSP contingency plan included measures such as the temporary suspension of visiting at all prisons, the temporary suspension of the open prison system in those areas of the country most affected by the pandemic, the temporary suspension of the granting of ordinary administrative prison leave and temporary restrictions on the admittance of clothing and food into correctional facilities from the outside.

It should be noted, however, that the law stipulated that prisons had to continue ensuring the necessary facilities for defence lawyers to be able to confer in person with their clients (i.e. individuals detained on remand) in order to properly prepare their case, while in full compliance with the guidelines of the Directorate-General of Health and the DGRSP in terms of safety, hygiene and sanitary standards.³¹

These restrictions were gradually eased as risk minimisation procedures were adopted in coordination with the health authorities. Visiting, which had been initially suspended in March, was resumed in June, after alterations to prison visiting rooms to ensure social distancing (by erecting acrylic screens and/or cabins). Ordinary release on licence was also resumed, with designated prison facilities equipped with places set aside for the implementation of 14 days of prophylactic isolation for those returning.

However, the worsening of the pandemic after the summer (the so-called “second wave”), which eventually led to the declaration of a new state of emergency, forced the DGRSP to apply various restrictions once again. Thus, in November 2020, weekend visiting was suspended. So too was day release work outside prison in local areas at higher risk as well as work for external agencies (except where working without contact between imprisoned individuals and outside staff could continue), along with educational, recreational and religious activities (except where these could be done outdoors, with social distancing or, in the case of educational activities, through e-learning). In prisons where outbreaks occurred group activities and visits were completely suspended until the outbreak had been brought under control.

29 The COVID-19 crisis group was formed of the Chief of the Centre for Responsibility of the Management of Health Care of the DGRSP, the Governor, Clinical Director, Nursing Director, the head nurse and a doctor from the Prison Hospital of São João de Deus, as well as the Head of Security Services of the DGRSP. The group was in permanent contact with the Director-General. Source: DGRSP, response to questionnaire, October 2020.

30 Interview with the Director-General of the Probation and Prison Services, *Expresso*, 20 November 2020, p. 28.

31 Article 6-A, 9, of Law 1-A/2020, 19 March, as amended by Law 16/2020, 29 May.

As for the licences for release usually granted at Christmas time (about 1,500 had been estimated), prison governors received instructions to tailor the number granted to the capacity of each establishment to be able to guarantee 14 days of prophylactic isolation for each individual upon readmission; and if this was not possible, release on licence should be granted but fulfilled at a later date.

Restrictions on prison activities

The contingency plan included the temporary suspension of educational and occupational activities which involved outside personnel.

The impact of the pandemic on **vocational training and education** implied above all a change in the teaching model, in that remote learning was adopted in periods when face-to-face activities were suspended.³²

As for **rehabilitation programmes**, these were suspended between March and July 2020 but have since resumed, with the necessary adaptations to comply with the guidelines from public health authorities. According to the DGRSP, since the specific programmes in prisons follow an annual plan, the activities that had been suspended were able to be rescheduled and new activities were more tightly scheduled, with no significant impact on the number of programmes available during the year 2020, nor in the total number of persons taking part.³³

Restrictions on access to and the development of activities in prisons also impacted the work, projects, and programmes for personal development and social integration drawn up by **civil society organisations**. Volunteering and face-to-face activities were suspended and the support provided to some individuals began to take place by correspondence. In some cases this led to a breakdown in the confidential relationships that had been established, while in others it allowed for more intimate and personal companionship, and it is a practice that may be continued after the pandemic.

Adaptation of procedures and prison premises

The reception of new detainees took place only in prison establishments or units designated for that purpose and each person was subject to 14 days of prophylactic isolation on admittance. The contingency plan also provided for the temporary suspension of transfers of individuals between prisons.

Individuals considered to be at greater risk due to age or health problems were protected either through being housed separately from the rest of the prison population or by arranging different timetables for daily activities.

Meals were served in shifts to avoid overcrowding. Areas were created in each prison to serve as quarantine zones if necessary.

Some staff were put on remote working or shift work to ensure social distancing.

Clinical services

The DGRSP took steps to prepare prisons' medical facilities for cases of infection among the detained population. Back-up wards and field hospitals were set up in some establishments;

32 Source: DGRSP, response to questionnaire, 29-6-2021.

33 Source: DGRSP, response to questionnaire, 29-6-2021.

hygiene and cleaning procedures in prisons were intensified in compliance with health authority guidelines; individual protective equipment was distributed to clinical services staff; wearing a mask became mandatory for prison workers, as well as for detained individuals when leaving cell blocks and, subsequently, in all communal prison areas; in addition, detained individuals' temperatures were taken daily. Based on a pre-existing protocol with the Ministry of Health, the use of electronic prescriptions for medication and the scheduling of video consultations with doctors were introduced. Cooperation with public health clinics was established in order to ensure the testing of all people inside prisons, including staff.

Compensatory measures

To compensate for the suspension of visitations and, later on, the reduction in the number and length of visits, the number of telephone calls permitted per day was increased from one to three.

Worth mentioning here is the September 2020 launch of two pilot projects in which landline telephones were installed in cells, with a view to promoting more contact between individuals and their families and allowing these contacts to take place in a more propitious environment. This alleviated the tension caused by the telephone cabin system, with its limited hours of use, strict time limits on calls and queues for the use of telephones in communal areas and also contributed to a reduction in mobile phone trafficking. Although this initiative had already been planned by the DGRSP, it ended up contributing to individuals keeping in contact with their families on the outside during the pandemic.³⁴ The pilot project was subsequently extended to other prisons.³⁵

The opportunity to make video calls, available in all establishments since December 2019, should also be mentioned. The equipment is installed in a private room and each person is permitted up to 20 minutes of video calling each week. This also allows for video communication between persons from the same family who are held in different prisons.³⁶

Also of note is that during periods when school activities were suspended, the DGRSP, in cooperation with the Ministry of Education, adopted remote learning in prisons.³⁷ The methodology varied according to the availability of computer equipment, human resources and facilities in each prison. Most of the prisons did not have the resources to ensure live online classes, so they resorted to a model in which teachers provided students with learning materials, which were delivered to prisons in person or by email, which was then photocopied and delivered to students by prison staff, who later returned to teachers the work done and the doubts raised by the students. Only about 15% of prisons managed to provide live online classes, with some irregularity. In addition, all detainees have access to the television channel "RTP Memória", a public service channel where classes for all levels of schooling were broadcast daily for students nationwide (#EstudoEmCasa). Detainees were able to follow the broadcasted classes, on their own initiative or whenever teachers recommended so. Those attending the Higher Education at *Universidade Aberta* ("Open University") had no constraints, since the

34 Cf. reply from the Portuguese government to the CPT report on its visit to Portugal from 3 to 12 December 2019, CPT/Inf (2020) 34, § 82.

35 Cf. information provided by the DGRSP on 25-6-2021, at <https://justica.gov.pt/Noticias/Projeto-de-instalacao-de-cabines-telefonicas-nas-celas>, last accessed 28-7-2021.

36 Cf. reply from the Portuguese government to the CPT report on its visit to Portugal from 3 to 12 December 2019, CPT/Inf (2020) 34, § 82.

37 DGRSP Order no. 17/GDG/2020, 24-11-2020.

regular teaching model of this university is distance learning, so the methodology remained unchanged. Equally, and to compensate for the restrictions in effect during the pandemic, a partnership was established with the Ministry of Culture, with a view to making 70 films available for projection in prisons during that period.

Easing of restrictions

With the improvement of the pandemic situation in the country, following the success of the vaccination process, it was possible to start a return to the normal prison regime in existence before the pandemic. Given the positive performance of the Portuguese prison services in protecting the prison population from the spread of the virus, and with the high vaccination coverage of detained individuals and staff (the vaccination rate of the detained population is 92%), it was determined by the Director-General in September 2021 that restrictions on visits could be progressively eased, while maintaining some precautions. In particular, personal visits are still subject to prior appointment and the capacity limits for the visiting rooms are maintained, while visits without acrylic screens will be allowed progressively and only for vaccinated detainees, with visitors required to present a digital certificate or a negative test. Conjugal visits also resumed only for vaccinated detainees, and visitors must also present a digital certificate or a negative test.

Impact of the confinement measure on imprisoned individuals

The measures restricting social contacts had a strong impact on the entire Portuguese population, but they affected the well-being and mental health of those deprived of their liberty in prison all the more. The measures consequently taken to compensate for confinement were not always sufficient to mitigate the negative effects of the isolation and inactivity in prisons.

During the pandemic, the Inspectorate-General of Justice Services received numerous complaints from detained persons and their families regarding the suspension of visiting, the restriction of contacts with the outside world, the limitations imposed on activities, and the suspension of and/or delays to the processing of transfer requests between prisons. Even after the cessation of this suspension of transfers, the DGRSP's capacity to respond to requests was affected by new logistical requirements and the need to maintain quarantine zones. Also remarked upon was the observation that these restrictive measures (i.e. suspension of visitation and certain activities) affected the younger prison population more harshly, both in terms of mental and physical health.³⁸

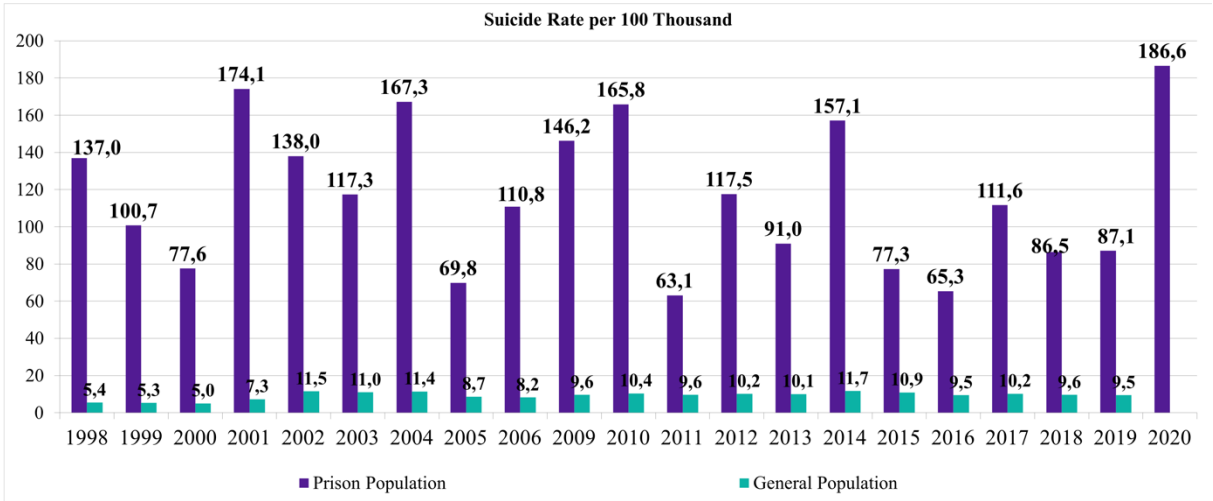
The most frequent issues raised in the complaints received by the Ombudsperson's Office in 2020 from individuals deprived of their liberty were access to healthcare, disciplinary action and assignment to a specific prison, with special emphasis on healthcare. Situations of refusal or revocation of extraordinary leave created by Law 9/2020 were also raised. There was also a significant increase in the number of complaints of physical violence. Regarding occupational activities, some specific issues also emerged. For example, situations where continuity of in-person activities became unfeasible because they implied the regular entry of external people into the prison and situations where continuation of activities by remote means was not feasible due to a lack of adequate computer equipment were noted. In many cases, it was possible to overcome existing difficulties through the commitment and collaboration of the detained individuals themselves, the directors of the establishments and the training institutions,

38 IGSJ, interview, 2-9-2021.

achieving solutions that minimized the harmful effects of the required modification to the attendance regime.³⁹

It should also be noted that prison statistics show that the suicide rate in 2020 (186.6 suicides per 100,000 individuals) was the highest recorded in Portugal and more than double the rate of previous years (86.5 in 2018; 87.1 in 2019) (Graph 1). In absolute numbers (21), it represented 10 more suicides than in the previous year and the third highest number since 1998 (There were 23 suicides in 2001, and 22 suicides in 2004 and 2014).⁴⁰ Such an unusual statistical variation in the year 2020 may indicate that measures that caused greater isolation for people held in prisons had repercussions on mental health, as has been suggested by scientific research.⁴¹ However, the correlation has not yet been established and will require further investigation.

Graph 1



Note: The data on deaths in the general population Portugal for the year 2020 had not been published when this report was written. Sources: DGRSP, *Annual Prison Statistics, 2007-2020*; Fundação Francisco Manuel dos Santos, *Base de Dados Portugal Contemporâneo – PORDATA*, Deaths of Portuguese residents by cause available at www.pordata.pt.

Preparations for release

Despite the restrictions on access to prisons that were in force, probation workers did not cease to have access nor to be able to liaise with prison officers, namely for the purpose of preparing reports and opinions.⁴²

The main occurrence that must be highlighted here was the sudden release of numerous individuals from prison without adequate preparation as a result of the pardon mechanisms provided for in Law 9/2020. While these mechanisms had a positive impact when it comes to the management of the pandemic within prisons, they posed challenges for the provision of necessary and adequate monitoring and services in the community for those released.

39 OFFICE OF THE OMBUDSPERSON, *Report to Parliament – 2020*, pp. 138-141.
 40 DGRSP, *Annual Prison Statistics, 2007-2020*, available at <https://dgrsp.justica.gov.pt>.
 41 On the risk of suicide and effect of the pandemic on the mental health of imprisoned persons see, e.g. Thomas Hewson *et al.*, “Effects of the COVID-19 pandemic on the mental health of prisoners”, *Lancet Psychiatry*, 2020, pp. 568-570; Sean M. Mitchell *et al.*, “Considering the impact of COVID-19 on suicide risk among individuals in prison and during reentry”, *Journal of Criminal Psychology*, vol. 11, no. 3, pp. 240-253.
 42 Source: DGRSP, interview, 27-7-2021.

In cases where the person to be released did not have housing outside (or needed temporary accommodation on the journey home, as was the case for some individuals residing in Madeira or the Azores in the Atlantic), the DGRSP set up a link with the social security service, private social solidarity institutions, local authorities, and the National Strategy for the Integration of Homeless Persons (ENIPSSA). The aim of this cooperation was to ensure referral to housing for each person. Another example from Lisbon, a protocol involving the municipality and the *Associação O Companheiro* (NGO which provides support to currently or formerly imprisoned individuals), allowed for the temporary accommodation of people released from prison at a campsite (On this point, see in more detail below, Chapter IV, “Homeless persons”).⁴³

The DGRSP also ensured that individuals who were on medication when released under the extraordinary measures took enough medication with them for the first few days, along with their prescriptions, so that they could acquire necessary refills from pharmacies. Medical reports were also provided at the point of release, so that these could be presented to local health units in individuals’ areas of residence.⁴⁴

Despite this, it was found that responses to the needs of individuals during the pre-release transitional period were lacking and that follow-up after release was insufficient, especially for those who had already completed their sentences. The pandemic seems to only have served to reveal weaknesses and exacerbate failures already existing in the system. It was found that, notwithstanding individual efforts from probation officers, the lack of trained technical staff and institutional resources meant that a more individualised approach could not be taken and the basic needs of individuals preparing for release could not be met.⁴⁵

Even in the period before the pandemic, there had been cases of people leaving prison without valid personal documentation, with neither transport home nor money for public transport, without housing or a place to stay, and without money for their subsistence or a proper life plan. We were told by an organisation supporting individuals experiencing homelessness that a large proportion of those benefiting from its programmes were people who had recently been released from prison or who had once served a prison sentence. We also obtained reports of cases in which the family contacts or housing details provided as an onward address by an individual to be released had not been verified, and it had turned out that after release such a plan had been frustrated (for example, because the relative in question had died or because a perpetrator of domestic violence had been living at the address). Consequently, it had been necessary to resort to the help of volunteers to find shelter for these people. Such situations became more serious in the case of individuals with drug dependence or mental health problems due to their need for medication and specific support services.

The Inspectorate-General of Justice Services also receive grievances of those in custody demonstrating concern about the living conditions they would face after release, due to the

43 Office of the Ombudsperson, *Cadernos da Pandemia: Os Sem-abrigo em Tempos de Emergência*, 2021, p. 42.

44 Source: DGRSP, response to questionnaire, October 2020.

45 This reality is also described by Sílvia Azevedo, President of the Board of Association of Higher Technical Professionals in Social Education (*Direção da Associação dos Profissionais Técnicos Superiores de Educação Social*) in “Sair da prisão e não ter para onde ir... Que liberdade é esta?” (“Leave prison with nowhere to go. What kind of freedom is that?”) *Observador*, 14-6-2021, available at <https://observador.pt/opiniao/sair-da-prisao-e-nao-ter-para-onde-ir-que-liberdade-e-esta/> [last accessed 13-8-2021].

absence of a family or social network and a future life plan. However, these types of grievances were also received before the pandemic.⁴⁶

During the pandemic, with the sudden release of numerous imprisoned individuals, these problems intensified in number and severity, due to the lack of preparation for those to be released and shortage of structures to house them, together with the reduction in public transport and the restrictions on the operations of many services. The protocols established by the DGRSP were not always sufficient and, according to information obtained by the Ombudsperson, despite the efforts made, there was an increase in the number of homeless persons as a result of the exceptional release measures.⁴⁷ In many cases, civil society organizations had to improvise solutions for people who were homeless, without transport, without money or who were released at night and had no place to stay, depending on the availability of volunteers to help resolve these situations. Although it was mentioned in the conducted interviews that the emergency releases in response to the pandemic proved that alternatives to imprisonment are viable and suggested that deprivation of liberty is often unnecessary, it was nevertheless a very turbulent period that brought about a very significant increase in workload for volunteers and associations working to support individuals in vulnerable situations. Nevertheless, it was found that the coordinated efforts of various civil society organisations were successful and that, in general, it was possible to obtain positive results, at least in those cases that came to the attention of the NGOs.

What was revealed, however, is that there are flaws and insufficiencies in the preparation of individuals for release from prison and in the institutional response both at the moment of release and during the subsequent period in the community. Existing post-release assistance protocols with some civil society organisations do not cover all the needs of recently released individuals and are sometimes not wide-ranging enough to include everyone. For instance, we have not found organisations that can provide housing for women released from prison, there are not enough resources for persons with mental health problems, and the capacity to integrate less self-reliant older persons into residential structures is limited. Consequently, support for such persons at times depends on the availability of volunteers who have limited resources and opportunities to help. In addition, it was reported that an organised and structured network linking justice services and civil society organisations is lacking in some areas, and the referral of people without social and family support to NGOs that can assist them often depends on the personal initiative of individual probation workers; this generally occurs with little advance notice. It is thus likely that many cases never come to the attention of organisations and volunteers, and that some individuals leave prison without any assistance at all. It is often left to the individuals themselves to, once released, seek out support from these organisations.

While the number of individuals released under these extraordinary measures who have committed further crimes is not statistically high, it may also be observed that many of these cases revealed deficiencies in terms of resocialisation support. In fact, even if the extraordinary measures resulted in individuals being released suddenly and without serving their full sentence, it should be noted that those who were granted a pardon of the remainder of up to two years of their sentence had to have already served at least half of their sentence, which would mean that

46 IGSJ, interview, 2-9-2021.

47 Office of the Ombudsperson, *Cadernos da Pandemia*, cit., p. 42.

a significant amount of work on resocialisation should have already been carried out in the prison.

A case appearing in the press of an individual recently released under this pardon scheme – who had serious drug dependency issues, had always refused treatment and who, after release, assaulted and threatened his mother and her neighbours to extort money from them in order to feed his habit. He was placed on remand and tried for robbery, extortion, and assault. At trial, he told the court that on leaving prison he had nowhere to stay and went to the city of Porto, where he slept on the street and in an abandoned building. It is worth noting that he was six months from the end of his sentence when he was granted the pardon, which means he would have been released shortly afterwards even without the extraordinary measures in place, and so the events that subsequently took place would be unlikely to have been different.⁴⁸ In other words, the extraordinary pardon was not the problem.

As such, if individuals were better prepared for release (ideally, from the moment they enter prison), if probation teams were strengthened with more resources and more technical staff, and if the institutional structure was expanded and networking with civil society organisations was strengthened to meet the existing deficiencies and basic needs of people both at the time of and after release, some problems faced during the pandemic could have been mitigated.

The impact of the pandemic on the imposition and implementation of non-custodial sentences

The pandemic also had an impact on non-custodial sentences and on imprisonment served under a home detention regime.

The procedures adopted by the Portuguese probation services during the state of emergency included a reduction in the number of face-to-face meetings and the suspension of group rehabilitation programmes for people serving their sentences in the community.

In an initial phase, from March 2020, as a result of the measures to contain the pandemic adopted nationally, there was a decrease in the number of face-to-face interviews and meetings, a situation which lasted until the end of May of the same year. At that stage, probation teams and electronic monitoring teams reduced their number of home visits and other face-to-face contacts, instead favouring remote means of communication (i.e. telephone, email) when available, provided that this ensured a minimally acceptable level of service quality.⁴⁹

With the decrees of a state of alert and, soon afterwards, a state of emergency in March 2020, face-to-face contact with those under supervision were reduced to the essential and urgent, and all group activities were suspended. The hours of operation of services were reduced⁵⁰ and the number of professionals working face-to-face in the probation and electronic surveillance teams was limited to the essential, with all other members of the teams working remotely on a rotating

48 “Pandemia tirou-o da prisão e logo cometeu oito crimes”, *Diário de Coimbra*, 1-9-2021, p. 5.

49 DGRSP, “COVID-19 Measures for Probation in Portugal”, 17-4-2020.

50 Cf. Order of the Director-General of the Probation and Prison Services, 27-3-2020, available at https://dgrsp.justica.gov.pt/Portals/16/Covid19/dsp_ERS-att-prescial-Covid19.pdf?ver=2020-04-02-102214-660.

schedule.⁵¹ Situations considered urgent and essential, justifying face-to-face assistance, included the following: preparation of reports in cases of the imposition of electronic monitoring measures; preparation of reports in support of decisions involving the release of persons deprived of their liberty; and requests judged to be urgent by the judiciary.⁵²

After this phase, teams sought to resume face-to-face contacts where possible, while still favouring remote communication, and strengthened their work with the police at the local level.

There was a significant reduction in external services, i.e. travel to the area of residence of clients under supervision. This had a negative impact on the assessment and monitoring of the individuals' family, housing and community situations. Whenever these constraints occurred, whether caused by changes to working practices or by other restrictions in force (including situations in which those under supervision or others to be interviewed were in prophylactic isolation or in institutions that were under lockdown), the court was informed of the limitations of any reports that had been drafted.⁵³ This reduction also created the perception, in those affected, that there was less oversight.⁵⁴

Throughout the pandemic, face-to-face contacts with those under supervision were often replaced by remote communication.⁵⁵ Clients had the team's mobile phone number and were able to use this in case of need, which included situations of anxiety, difficulty in fulfilling obligations, and the need to authorise leaving home.

In this context, it is also worth mentioning that both at the Ombudsperson's office (who also acts as National Preventive Mechanism) and the Inspectorate-General of Justice Services (body at the Ministry of Justice responsible for the inspection and supervision of services within the Ministry of Justice) there are almost no complaints regarding the execution of non-custodial sentences, although there are many records of complaints from detained individuals and their families.⁵⁶ During the pandemic, the office of the Ombudsperson recorded only one grievance regarding an alternative sentence (community work), but it concerned a judicial decision so it was not within the scope of the Ombudsperson's mandate.⁵⁷

Statistical data

2020 was characterised by a general decline in requests from the courts to the probation service, both in terms of technical advice on decision-making (i.e. reports and hearings) and implementation of sentences and measures in the community, as a result of the slowdown in activity of the courts as a consequence of the COVID-19 pandemic.⁵⁸

As regards requests for technical advice (i.e. reports and hearings) on rulings by the courts, there was a total decrease of 14.83% compared to 2019 (from 57,502 to 48,976 requests), after a relatively stable period for the number of such requests between 2017 and 2019 (Graph 2).

⁵¹ DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

⁵² DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

⁵³ DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

⁵⁴ Source: DGRSP, reply of December 2020.

⁵⁵ Source: DGRSP, response to questionnaire, 29-6-2021.

⁵⁶ Interview with the IGSJ, 2-9-2021, interview with the Ombudsperson, 7-10-2021.

⁵⁷ Interview with the Ombudswoman, 7-10-2021.

⁵⁸ DGRSP, Annual Statistical Report – Technical Assessments for Judicial Rulings (Reports and Hearings) and Supervising of Sentences and Measures in Penal and Juvenile Justice – 2020. Lisbon: DGRSP, 2021, p. 4, available at <https://dgrsp.justica.gov.pt/Portals/16/Est%C3%A1tisticas/Assessoria/REA-%202020.pdf> [last accessed 20-08-21].

By type of penal measure, it appears that the decrease in the total number of requests for technical advice was more accentuated in cases of orders for community service work (-27.62%) and in the application of fines (-23.15%). In contrast, there was an increase in requests regarding the commutation of custodial sentences, namely in cases of parole (+14.33%), which may have been a result of the measures of the exceptional regime established by Law No. 9/2020⁵⁹ (Table 1).

Graph 2



Source: DGRSP. Annual Statistical Report – Technical Assessments for Judicial Rulings (Reports and Hearings) and Supervising of Sentences and Measures in Penal and Juvenile Justice, Lisbon: DGRSP, 2021, p. 8.

Table 1. Requests for technical advice (reports and hearings)

	2019	2020	increasing rate
pre-trial measures	1 296	1 503	15,97
provisional suspension of proceedings (diversion measures)	1 673	1 331	-20,44
sentencing	18 331	15 866	-13,45
community service	7 976	5 773	-27,62
suspended sentence	10 552	9 327	-11,61
fine and ancillary penalty	622	478	-23,15
assistance to the Courts responsible for implementation of sentences	15 009	12 649	-15,72
parole	328	375	14,33
security measures for non-imputable persons	285	283	-0,07
others non-specified	1 430	1 391	-2,73
Total	57 502	48 976	-14,83

Source: idem, p. 7.

As regards requests from the courts received by the probation services for community-based sentences and measures, 2020 saw a decrease of 19.6% compared to the previous year. It is

59 Article 5, which provided for early parole for persons who had benefited from extraordinary release on licence with a positive assessment. The increase may also be due to fewer requests from the courts regarding the granting of conditional release, given the ongoing pandemic.

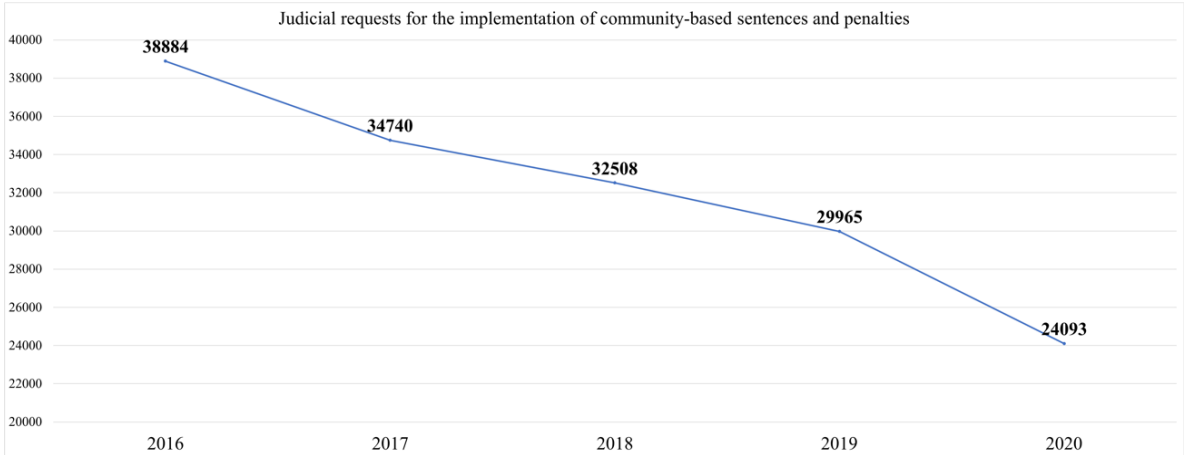
worth noting the fall in community service work (-35.07%), which was accentuated by the pandemic, but which had already been trending since 2017 (Table 2 and Graph 3).⁶⁰

Table 2. Judicial requests for the implementation of community-based sentences and measures

	2020	2019	increasing rate
pre-trial measures in the community	549	409	34,23
provisional suspension of proceedings	8 810	11 865	-25,75
community service	4 476	6 894	-35,07
suspended sentence	7 690	8 864	-13,24
parole	1 520	1 713	-11,27
security measures in the community	223	159	40,25
other	825	61	1252,46
Total	24 093	29 965	-19,6

Source: idem, p. 13.

Graph 3.



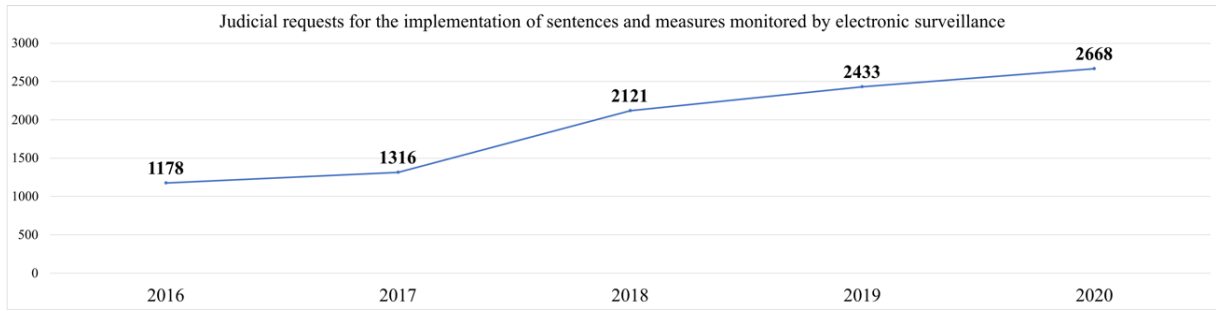
Source: idem, p. 13.

The exception to this tendency towards a general decrease in the number of requests from the courts was activity relating to sentences and measures monitored by electronic surveillance, which continued to show an increase.⁶¹

⁶⁰ It is important to note that in these “community service” data include both the sentence of community service, as a replacement penalty to imprisonment of up to two years (Article 58 of the Penal Code), and community service work in lieu of payment of a fine (Article 48 of the Penal Code). The decrease seen in recent years is mainly due to the latter.

⁶¹ DGRSP. Annual Statistical Report – Technical Assessments for Judicial Rulings (Reports and Hearings) and Supervising of Sentences and Measures in Penal and Juvenile Justice – 2020. Lisbon: DGRSP, 2021, p. 4.

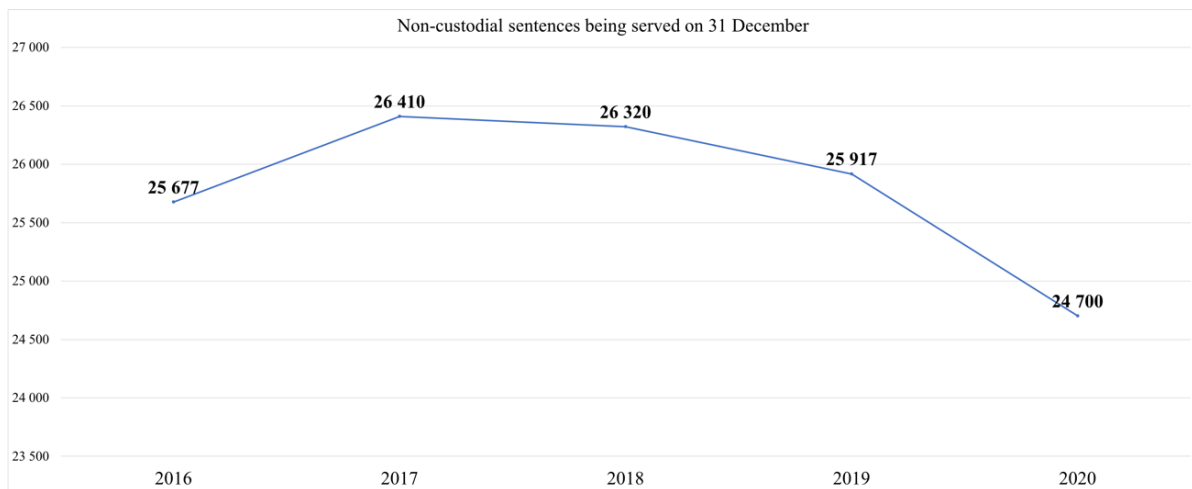
Graph 4.



Source: idem, p. 18.

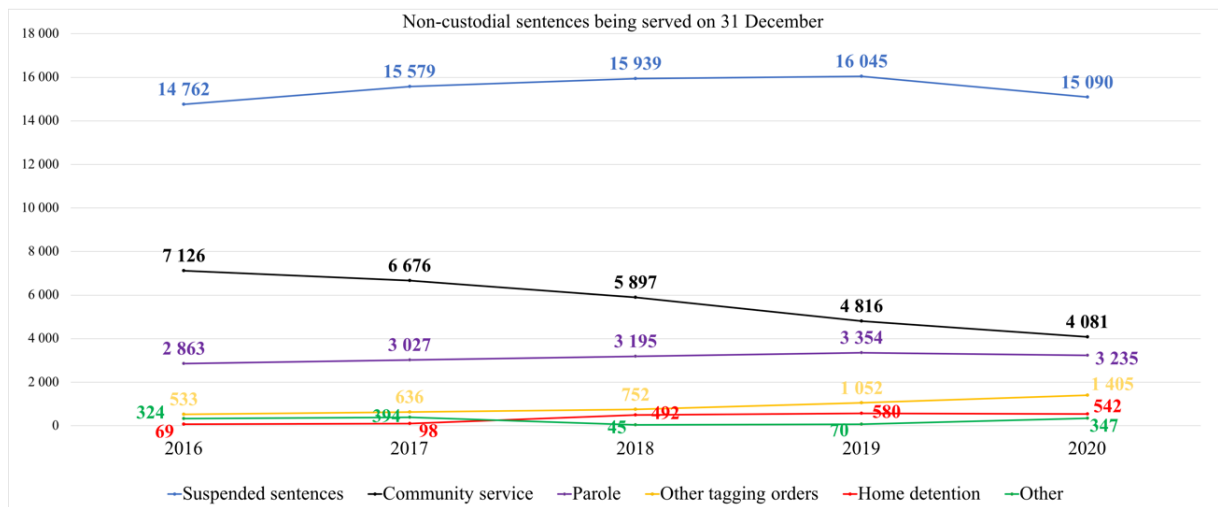
When analysing the data relating to sentences being served as of 31 December, it appears that although the number of non-custodial sentences has been falling since 2018 (-0.3% in 2018 and -2.9% in 2019), the decrease was a slightly more accentuated in 2020 (-3.4%; see Graph 5). This decrease had a greater impact on suspended sentences (-5.2% between 2019 and 2020) and community service (-13.4%), although the latter had already been in decline since 2017. Sentences monitored by electronic surveillance were the only ones that showed a significant increase in 2020 (+33.5%), which reveals the continuity of a trend observable since 2016, but also the increased imposition of electronic monitoring during the pandemic (Graph 6).

Graph 5.



Source: DGRSP. Technical Assessments for Judicial Rulings – Non-custodial community Supervising of Sentences and Measures in Penal and Juvenile Justice. Lisbon: DGRSP, 2016-2020.

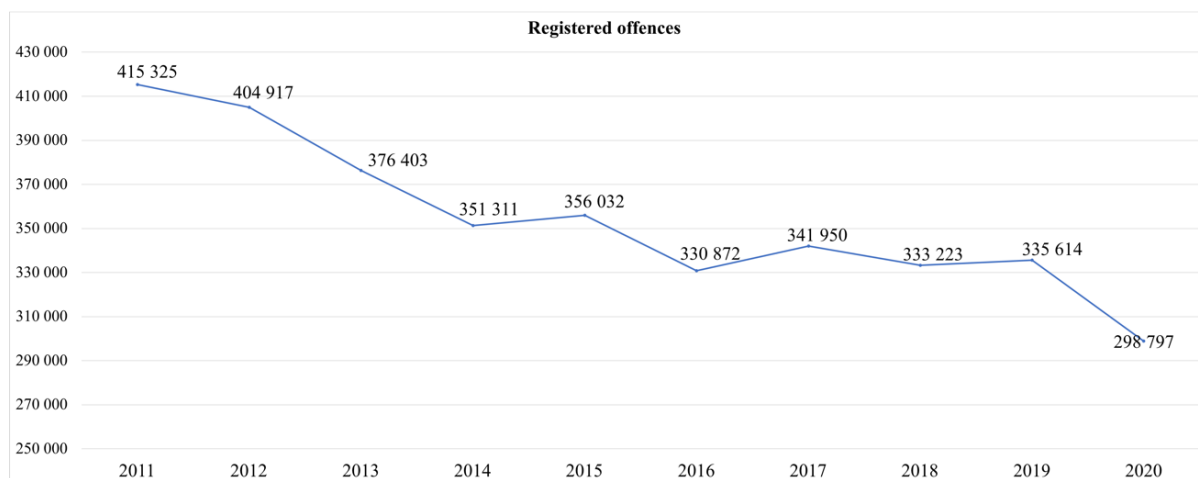
Graph 6.



Source: idem.

The reasons for this decline in the use of non-custodial sentences have not yet been firmly established, but it might be attributable, at least in part, to a decrease in criminality due to an improvement in the country's economic situation as well as to a natural decrease, due to the use of these sentences stabilising after several years of rising rates. In 2020 specifically, the sharp decline was probably a consequence of the slowdown in court activity during the pandemic as well as, possibly, of a decrease in criminality due to lockdown measures, which can be seen in the data published by the Ministry of Justice regarding the number of crimes registered in the country (Graph 7). In the period from 2011 to 2016, the number of recorded crimes decreased from 415,325 to 330,872, or -20.3%; after a period of relative stability between 2016 and 2019, in 2020 the number dropped sharply to 298,797 (-11% compared to the previous year), the lowest number of crimes recorded in the past 10 years.

Graph 7.



Source: Ministry of Justice Judicial statistical information system, available at: <https://estatisticas.justica.gov.pt/sites/siej/pt-pt>.

Other than the general impact of the pandemic on the number of sentences passed and requests addressed to probation services, its impacts on specific types of sentences and measures are discussed in more detail below.

Community Service⁶²

The pandemic had repercussions for the imposition and implementation of community service, primarily due to the fact that some institutions that would benefit were not able or willing to accept community service workers. As such, situations occurred where either community service sentences were interrupted or placement of sentenced persons was postponed.⁶³ However, according to the information we collected from non-governmental organisations that usually accept community service placements, even during the pandemic they were able to continue their activities and admit such workers.

The decision whether or not to continue to implement community service was dependent on a case-by-case assessment of the conditions under which the work could be performed in compliance with health protection measures.

In situations where the necessary conditions for work to continue were not met, the probation services informed the court of the interruption and the reasons for it.⁶⁴ The probation services also reported to the courts cases in which early termination of the sentence/order or its modification might be appropriate (for example, by replacing it with a financial obligation).⁶⁵ Courts considered a sentence served once its term had passed, as the community service obligations had not been fully complied with for reasons that were not attributable to the offender.

The Criminal Code provisions on community service already contained mechanisms that allowed for the adaptation of the sentence in the face of some arising circumstances. In particular, Article 59 of the Penal Code provides that:

- “Community service may be provisionally suspended on serious medical, family, professional, social or other grounds, but the total length of the sentence may not exceed 30 months.” (§ 1)
- “If the performance of the community service is considered satisfactory, the court may declare it accomplished once two-thirds of that sentence has been served, provided that the original sentence is not less than seventy-two hours.” (§ 5);
- “If the agent is unable to perform the work to which he was sentenced for a reason that is not attributable to him, then the court, considering whichever is more suitable to the fulfilment of the aims of the punishment, shall: a) substitute the term of imprisonment originally imposed with a fine (...); or b) suspend the sentence of imprisonment originally imposed, for a period between one and three years, subject (...) to the fulfilment of appropriate duties or rules of conduct” (§ 6).

62 The information contained in this section refers not only to community service sentences (replacement penalty for a term of imprisonment of up to two years), but also to the “provision of services in the public interest”, applicable as an injunction under the measure for the “provisional suspension of the procedure” (a diversionary measure during the investigatory phase which avoids prosecution and trial) to an order associated with a suspended sentence, and also to work provided in lieu of the payment of a fine.

63 Source: DGRSP, response to questionnaire, 29-6-2021.

64 DGRSP, “COVID-19 Measures for Probation in Portugal”, 17-4-2020.

65 DGRSP, “COVID-19 Measures for Probation in Portugal”, 17-4-2020.

Home detention under electronic monitoring

Like other sentences or measures supervised using electronic monitoring, home detention was one of those most suitable, by its own nature, for remote monitoring. Remote surveillance equipment was already part of the monitoring system for this type of sentence, also including the provision of a free phone line for making contact. As a result of the pandemic, the number of face-to-face contacts and home visits was reduced, as has been mentioned above, but they did occur whenever circumstances required it. As a matter of fact, officers from the electronic monitoring teams were among the first DGRSP staff to be issued with personal protective equipment (PPE) for the purposes of fulfilling their duties.⁶⁶

During stay-at-home periods for the general population, many of those serving home detention were confined for twenty-four hours a day, similar to society in general. In practice, those who were attending a driving school had their lessons suspended and those benefiting from monitoring or treatment in public health centres had their sessions suspended or postponed – although these later resumed. Among those who were in employment, some were able to shift to remote working, while others were laid off.⁶⁷

Rehabilitation programmes

The restrictions imposed in response to the pandemic also had negative impacts on attendance at rehabilitation programmes. In the period between March and July 2020, to comply with the guidelines in force, group activities were suspended and the launch of new group courses was postponed.⁶⁸ There were situations in which individuals serving suspended sentences started attending programmes but did not complete them, thus resulting in the frustration of their rehabilitative aims.⁶⁹

Subsequently, probation services sought to find alternatives in order to gradually resume these programmes (namely, the psycho-educational component of the Domestic Violence Offenders programme and other behaviour modification programmes, as well as the probation schemes *Taxa.zero* (i.e. Zero Limit) and *Licença.com* (Licence.com), dealing with traffic crimes). The chosen solutions included the organising of sessions in small groups, in person, or digitally either on an individual basis or in small groups.⁷⁰ However, these attempts were not fully successful. On the one hand, the worsening of the pandemic in early 2021 led to a further suspension of group activities between January and May 2021, and on the other, the organisation of online group sessions was abandoned due to the various difficulties that this option raised. Some of the noted challenges included difficulty in organising groups, problems with the use of technology as well as a realisation that these types of activities did not always work when not conducted face-to-face.⁷¹ As such, the option that was ultimately chosen was to hold individual sessions online (requiring some adaptations to the sessions, i.e. making them shorter), which in several cases allowed the measures to be fulfilled, these sessions being generally considered positive.⁷² In particular, the example was given in which the road crimes prevention programme “STOP” was

66 Source: DGRSP, interview, 27-7-2021.

67 Source: DGRSP, interview, 24-8-2021.

68 Cf. Order of the Director-General of the Probation and Prison Services of 27-3-2020, available at https://dgrsp.justica.gov.pt/Portals/16/Covid19/dsp_ERS-att-prescial-Covid19.pdf?ver=2020-04-02-102214-660.

69 Source: DGRSP, responses December 2020.

70 Source: DGRSP, responses December 2020.

71 Source: DGRSP, interview, 27-7-2021.

72 Source: DGRSP, interview, 27-7-2021.

adapted and carried out online for a single individual so that this person, nearing the end of the programme, would not miss out on the chance to complete it.⁷³

Notwithstanding the efforts of probation staff to adapt their work to the restrictions imposed by the pandemic, it was stated that monitoring became more a case of control than intervention, due to the difficulties of focussing remotely on the individual skills and needs of each person.⁷⁴

After this period of suspension of face-to-face group activities, they did resume but still functioned with a reduced number of participants.⁷⁵ The probation service reported that the interruption made their resumption difficult due to the need to reschedule and re-form groups and the fact that some individuals had in the meantime reached the end of their sentence or measure.⁷⁶

It is interesting to note that the most recent training programme for those probation officers involved in delivering the *ser.pro* initiative for young offenders already includes preparation for delivering it remotely if it becomes necessary.⁷⁷

Sentences or measures using electronic monitoring

As early as March 2020 routine visits to homes of offenders under supervision were suspended and replaced by remote forms of contact.

Installation and removal of electronic monitoring equipment were subject to cancellation if the concerned individual was ill, was possibly infected with COVID-19 or in prophylactic isolation, at least while personal protective equipment was not available for staff.⁷⁸ To minimise delays in this regard, personnel from the electronic monitoring teams were among the first to receive personal protective overalls.⁷⁹

As already stated, the electronic monitoring teams had fewer officers working face-to-face, with the remaining members of the team working remotely on rotation (i.e. “mirrored” teams).

Special situations

Despite the general policy of limiting interviews to urgent and essential situations, the probation service chose to continue conducting face-to-face interviews in high-risk cases, such as domestic violence. Due to the pandemic, however, these interviews did not maintain the strict regularity provided for in the current procedures manuals, valid in normal situations. Work with these individuals became more centred on monitoring and control, rather than intervention and support with the aims of changing behaviour and promoting skills. This work was affected by the suspension of programmes and by limits on the length of face-to-face interviews, and opportunities to work on individual needs that had been identified were lost.⁸⁰

73 As related by the DGRSP, interview, 27-7-2021.

74 DGRSP, interview, 27-7-2021.

75 Reference date: July 2021. Source: DGRSP, interview, 27-7-2021.

76 DGRSP, interview, 27-7-2021.

77 DGRSP, interview, 27-7-2021.

78 DGRSP, “COVID-19 Measures for Probation in Portugal”, 17-4-2020.

79 DGRSP, interview, 27-7-2021.

80 DGRSP, interview, 27-7-2021.

Specific impacts on sentences persons in vulnerable situations

In addition to the exceptional measures designed to prevent the spread of the virus to detained individuals – a group already in a particularly vulnerable situation simply because they are deprived of their liberty, in a situation where they are largely dependent on the state, and housed in communal living areas that do not allow for the necessary social distancing – the government and other public entities undertook numerous measures to protect those in other vulnerable situations (i.e. older persons, children, young persons, persons with disabilities, LGBTI persons, victims of domestic violence and human trafficking, migrants and refugees, members of the Roma community, and homeless persons) throughout the pandemic.⁸¹ In particular, even when the general duty to stay at home was in force in Portugal, an exception was maintained for travel intended to provide assistance to or emergency shelter for victims of domestic violence or human trafficking, children and young persons at risk, persons with disabilities, older persons and for the care of minors.

However, in general, these were measures of a transversal nature, not specifically designed for cases of persons serving their sentences in the community.

From the perspective of the probation services, the specific impact of the pandemic on community-based sentences for those in the categories listed above cannot be assessed. This is primarily because the majority of their clients do not fall into one of these categories, but rather present other signs of vulnerability that are of a more socioeconomic nature. However, it is also because a differentiated impact of the pandemic on these groups (with the exception of health vulnerabilities, in particular old age) was not verified by the probation service, and as such a need to design specific strategies for them was not felt. According to the DGRSP, the aim of the probation service is always to identify the actual human needs present in each case, regardless of “categories” of vulnerability, bearing in mind their duty to act impartially and offer equal treatment.⁸²

Described below are some of the measures taken in relation to certain population groups with special needs or who found themselves in a situation of particular vulnerability.

Young adults

Publications, posters and infographics targeting young persons were posted on the Health Service's social networks, with messages on how to promote healthy relationships in the context of COVID-19 and on how to seek help, with emphasis on the following themes: promotion of parenting and of healthy relationships; protection of children and the most vulnerable persons.⁸³

As already stated, the Inspectorate-General of Justice Services noted a particularly harsh impact from restrictive measures in prisons (restrictions on visiting, outside contacts and prison activities) on young detained persons.

81 For an exhaustive description of these measures, see the document prepared by the National Commission for Human Rights, which organised the main measures taken during the pandemic from the perspective of the promotion and protection of human rights, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, pp. 13 ss.

82 DGRSP, interview, 27-7-2021.

83 CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 21 (initiatives in areas of intervention of the National Programme for Child and Infant Health and the National Programme for the Prevention of Life Cycle Violence, which includes Action on Child and Infant Health at Risk and Action on Health on Gender, Violence, and the Cycle of Life).

Regarding the DGRSP programme *ser.pro* for young offenders, preparation for streamlining the online programme if necessary is already included in the training of staff.⁸⁴

Older persons

Older persons are one of the few categories of people recognised as being in a situation of particular vulnerability among persons serving criminal sentences and specifically targeted by a measure seeking to address this.

One of the extraordinary measures approved by Law 9/2000 was the “exceptional pardon”. This was the sentence pardon granted by the President of the Republic and applied only to individuals aged over 65 years and with health, physical or mental problems, or with a degree of autonomy that was incompatible, in the context of a pandemic, with being housed with the general prison population.⁸⁵ Fourteen individuals benefited from this exceptional measure.

There was also concern within the prison system that older detained persons and/or those with health problems needed increased protection. Added protective measures were taken by relocating such individuals to other areas of accommodation within the prison and by differentiating daily timetables in order to try to separate and protect, as much as possible, those considered to be the most vulnerable (i.e. aged over 60, or with immunosuppression or chronic illness, including respiratory conditions, hypertension and diabetes).

As for older persons (or persons who, for health reasons, were in a COVID-19 at-risk group) serving community-based sentences or other measures in the community, procedures involving travel and in-person contact were avoided and replaced by remote contact,⁸⁶ except in urgent situations where face-to-face contact was essential. Requests were reported from older persons serving home detention for permission to take a walk in their local areas for the sake of their health and in order not to lose their mobility.⁸⁷ Importantly, it was noted that older persons as well as those with limited or no literacy could not be covered by the programmes that took place online on electronic platforms, due to the difficulty of access.

In preparing for release, and regardless of the pandemic, particular difficulties were reported in the integration of older persons who lacked autonomy, in that vacancies in housing units for the elderly were scarce,⁸⁸ and associations that accepted individuals recently released from prison did not have facilities for those who were reliant on others.

84 DGRSP, interview, 27-7-2021.

85 “The Minister of Justice may propose to the President of the Republic a pardon, in whole or in part, from a sentence of imprisonment passed on a prisoner of 65 or more years of age at the date of entry into force of this law and has an illness, whether physical or mental, or a degree of autonomy that is incompatible with being housed with the general prison population in the context of this pandemic”. Unlike the sentence pardon provided for in Article 2, which was automatic and referred only to sentences or remaining periods of sentences of or shorter than two years, this “exceptional pardon” was by request and regardless of the length of the sentence.

86 Source: DGRSP, response to questionnaire, 29-6-2021.

87 Information collected at the Lisbon Court responsible for the implementation of sentences, 26-7-2021.

88 DGRSP, response to questionnaire, 29-6-2021.

Women

Women serving non-custodial sentences, although still the minority, take up a larger proportion than women serving custodial sentences (10.3% as compared to 6.7% in 2020), similar to the prevailing situation in most Council of Europe countries.⁸⁹

It was stated that in general, after release, relatively few women face difficulties with their family or housing situation, and, for these reasons, the few housing protocols that exist with civil society organisations cater to recently released men. However, we were informed by an organisation of a case of a woman who was released under the exceptional measures and had nowhere to stay. Due to the absence of housing protocols for women released from prison, there were difficulties in finding housing for her.

The experience of having to stay at home during lockdowns can have a positive effect of raising awareness among the general population of the obstacles faced by those serving a home detention sentence, especially those with children. NGOs interviewed for this report described two cases (prior to the pandemic) of women who headed single-parent families – one with three children and the other with five – who faced particular difficulties in complying with home detention due to the limits on the times they could leave the house. The one who lived alone with five children had her home detention revoked, apparently due to a failure to attend meetings when required.

It is interesting to note that in some families, where the man was serving a custodial sentence but at home on exceptional prison leave, a reversal of traditional gender roles was observed, with the woman going to work and the man staying at home with the children.⁹⁰

Victims of Domestic Violence

Aware that home detention, though granted in order to fight the pandemic, could potentially increase the risk of domestic violence and at the same time make it difficult for victims to seek help, several measures were taken to protect potential victims of domestic violence. In particular, channels of support for victims were strengthened – for example with the introduction of a 24/7 freephone helpline, a dedicated e-mail inbox violencia.Covid@cig.gov.pt, the provision of help via confidential SMS, and through strengthening of cooperation between organisations to ensure a prompt response – and information campaigns were launched in the media and on social networks (i.e. #SegurançaEIsolamento) about available channels of help, alerting people to the signs to watch out for in their neighbourhood.

Additionally, during the state of emergency, all support and shelter services for victims stayed open and in operation, as they were considered essential services. Temporary emergency shelters were also opened.⁹¹

It should be noted that these measures were of a transversal nature, not specifically aimed at persons serving criminal sentences.

89 AEBI, Marcelo F.; HASHIMOTO, Yuji Z. Space II – Council of Europe Annual Penal Statistics: Persons under the supervision of Probation Agencies: Strasbourg: Council of Europe, 2020.

90 Source: DGRSP, interview, 27-7-2021.

91 On this series of measures, CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 14 s.

Persons with disabilities or mental health problems

The Directorate-General of Health furnished recommendations on the prevention and symptoms of and the precautions to be taken in relation to COVID-19 in Portuguese sign language and created a video call answering service for the National Health Service telephone line, thus ensuring information for those with hearing difficulties was accessible and adequate. A COVID-19 manual was made available on the internet in an accessible format for people with disabilities, their families and carers.⁹² The campaign for the prevention of domestic violence campaign, as referred to above, also had all its resources available in sign language.⁹³

The category of those with mental health problems was identified both by probation services and by the courts as one that posed the greatest challenges in terms of sentences in the community.⁹⁴

Ethnic minorities

In Portugal, the collection of data on an ethnic-racial basis is not allowed.⁹⁵ This factor makes the gathering of specific data on the impact of the pandemic on those belonging to ethnic minorities more difficult.

Nonetheless, the main difficulties felt when implementing sentences in the case of ethnic minorities can be identified as: a lack of knowledge on the part of probation staff of the specific cultural characteristics of some minorities, which is an important factor in establishing a relationship, and the contextualization of behaviours and beliefs shown and practised by members of ethnic minority groups. The processes of change that are undertaken to prevent recidivism also face difficulties in cases where criminal behaviour is justified by cultural values or beliefs incompatible with Portuguese law.⁹⁶

It should also be stated that an awareness-raising campaign directed at Roma communities was launched to ensure that the duty to stay at home was observed.⁹⁷ While the campaign did not refer specifically to those serving sentences, as is the case with several other governmental measures, it is anticipated that it also benefited Roma individuals within this population.

Foreign nationals

During the pandemic, several measures were aimed at protecting migrants and refugees in recognition of their uniquely vulnerable position. Examples included extending the validity of residence permits, granting exemptions from medical costs in the diagnosis and treatment of COVID-19, regardless of a person's legal or residence status, ensuring dissemination of adequate

92 CNDH, "Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19", p. 19. Manual available at <https://www.inr.pt/manual-Covid-para-pessoas-com-deficiencia>.

93 CNDH, "Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19", p. 14.

94 Interview with the DGRSP, 27-7-2021 (referring to the difficulties in intervening in case of those with mental health problems, the main concern being to ensure that the person benefits from assistance by the local mental health services), and information collated at the Lisbon Court responsible for the implementation of sentences, 26-7-2021 (referring to situations in which the person under a home detention order leaves the house in a moment of decompensation, thus breaking the duty to stay at home).

95 This is a sensitive issue, and one which was much debated in relation to the Census of 2021. See by way of example an article in the newspaper *Público* by a group of individuals and organisations: "Collection of ethnic-racial data yes, but with whom and for what purposes?", 4-2-2018, available at:

<https://www.publico.pt/2018/02/04/sociedade/opiniao/recolha-de-dados-etnicoraciais-sim-mas-com-quem-como-e-para-que-1801635>.

96 DGRSP, response to questionnaire, 30-7-2021.

97 Campaign: "For your sake, and for everyone's, stay at home". Cf. CNDH, "Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19", p. 22.

and accessible information on COVID-19 and the vaccination process to migrants and refugees in various languages and creating an online platform that permitted foreign nationals – even those lacking a National Health Service user number or unlawfully in the country – to register for the national vaccination programme.⁹⁸

Materials for #SegurançaEIsolamento, the campaign to prevent domestic violence during lockdown, were made available in eight foreign languages (Arabic, Bengali, English, French, Hindi, Mandarin Chinese, Nepali and Russian).⁹⁹

However, these were also measures of a general nature, not specifically aimed at the prison population.

As regards its supervision of sentences being served by foreign nationals, the DGRSP admits that it encounters difficulties in obtaining collateral information for the purposes of assessment and monitoring where the person concerned has no family background in Portugal. Language barriers are also evident, both in terms of communication and in the probation process, as there are no programmes specifically aimed at people who do not speak Portuguese. When the legal status of such persons in Portugal has not been settled, there are difficulties in work, educational or training placement and also in addressing more specific problems such as ones related to mental health.¹⁰⁰ These difficulties, however, are not specific to the pandemic.

LGBTI persons

Our research uncovered limited information on actions by the government or the DGRSP that specifically targeted LGBTI (lesbian, gay, bisexual, transgender and intersex) persons and their protection during the pandemic. Some concrete measures included steps taken by the health authorities to guarantee access to medical treatment and medication for transgender individuals¹⁰¹ and stepping up efforts to prevent domestic violence, as already stated.

Homeless persons

As noted above, the implementation of the pardon provisions in Law 9/2020 resulted in the sudden and simultaneous release of numerous individuals from prison without adequate preparation. In cases where it was realised that a person to be released did not have housing available, the Prison Service sought to coordinate with the social security services, private social solidarity institutions, municipalities and ENIPSSA to ensure the individual received a referral to temporary accommodation. For example, in Lisbon, a protocol with the municipality and the *O Companheiro* Association provided accommodation for people released from prison in bungalows at the Monsanto campsite, with vocational training for these individuals provided so they might join the cleaning services of the municipality.¹⁰²

98 CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 18 s.; platform for vaccination appointments for persons without a National Health Service number (<https://servicos.min-saude.pt/Covid19/vacinacao-nao-utente>); information from the High Commission for Migration at: <https://www.acm.gov.pt/-/COVID-19-medidas-orientacoes-e-recomendacoes?> [last accessed 21-8-2021]; “Government creates platform so that foreigners at a Health Service number can have the vaccination against COVID-19”, *Público*, 17-3-2021, available em: <https://www.publico.pt/2021/03/17/sociedade/noticia/governo-cria-plataforma-estrangeiros-cartao-utente-terem-vacina-Covid19-1954679>.

99 CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 14.

100 DGRSP, response to questionnaire, 30-7-2021.

101 CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 22.

102 Ombudsman, *Cadernos da Pandemia: Os Sem-abrigo em Tempos de Emergência*, 2021, p. 42.

Nonetheless, the media reported cases of people released under the pardon scheme who were found sleeping in the street; it was said that some individuals had omitted to inform the Services that they had nowhere to go for fear of not being released.¹⁰³ The data collected by the Ombudsperson from the *Núcleos de Planeamento e Intervenção Sem-Abrigo (NPISA*, i.e. Centres for Planning and Intervention for the Homeless) and social solidarity institutions in various parts of the country also showed an increase in homelessness due to the extraordinary releases from prison; in some of these cases, the persons in question had already been homeless before being imprisoned.¹⁰⁴

As the “extraordinary prison leave” provided for in Law 9/2020 entailed an obligation to stay at home, it was not granted to people who did not have a place to live. In this case, homeless persons (and persons without family support) were discriminated against.

It should also be noted that during the pandemic, several measures were taken to protect those experiencing homelessness. In particular, emergency shelters were created, providing health care, food and clothing, in conjunction with local authorities and civil society organisations.¹⁰⁵

In the view of organisations working with vulnerable populations, there are in any case greater obstacles to the reintegration of homeless persons into society – regardless of the pandemic. This is because of the problems that need to be addressed at an individual level (such as access to hygiene facilities and ability to comply with duties such as punctuality) and due to the lack of available job openings, as there is some resistance from companies and institutions to employing individuals who are homeless.

Unemployment and other socio-economic vulnerabilities

As stated, the most important vulnerability among those serving non-custodial sentences, one that imposes obstacles that are difficult to overcome, is of a socioeconomic nature. This includes not only those without a family environment and those who are homeless but also the unemployed and persons in a precarious financial situation. Unemployment is in itself a risk factor that hinders the process of reintegration into society and, at times, hinders the person's motivation, and is aggravated in the presence of other problems, such as substance dependency and/or mental health issues.¹⁰⁶

During the pandemic, there was an increase in the obstacles faced by unemployed persons due to the situation in society in general, i.e. the lack of job opportunities and the precariousness of work. As was the case within the general population, the increase in unemployment and the suspension of many economic activities negatively affected the employability of people serving non-custodial sentences. This resulted in a lack of motivation in some to persevere with courses focusing on employability and the development of personal and professional skills, with the NGOs organising such courses observing many dropouts during this period. The suspension of face-to-face contacts and meetings was also mentioned as a factor leading to demotivation and dropouts.

103 “I don’t want this freedom. The inmates Covid threw out of prison”, reporting by Helena Bento and Tiago Soares, *Expresso* online, 16-11-2020, <https://multimedia.expresso.pt/reclusosCovid19> [last accessed 18-8-2021].

104 Ombudsman, *Cadernos da Pandemia*, cited, p. 42.

105 CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 19.

106 DGRSP, response to questionnaire, 30-7-2021.

We interviewed one man serving a home detention sentence, with two children, whose wife had lost her job during the pandemic due to the insolvency of the company that employed her, resulting in financial difficulties for the family. According to this man, due to the restrictions he was under – home detention for twelve hours a day, with authorised outings only for formal work – he had great difficulty in finding ways to increase his contribution to the household budget (e.g. through self-employment or by finding an informal job in addition to what the court had authorised).¹⁰⁷ In other cases of persons serving sentences under electronic monitoring, it was mentioned by NGOs that, despite the quick response by the justice services in granting leaves of absence, the necessary procedures ended up hindering the process of looking for a job. Requirements such as prior court authorisation to attend a job interview, the need for an employer to issue a statement about the interview and subsequently confirm the veracity of the statement were mentioned. This problem, however, is not limited just to the time of the pandemic.

In the case of women who lose custody of their children as a result of having been in prison, unemployment after release is an additional obstacle. The situation of a woman who had been granted extraordinary prison leave and was later granted parole was reported. The difficulty in finding a job during this period of the pandemic was an obstacle to her regaining custody of her 14-year-old daughter, who had been placed in the care of an institution.¹⁰⁸

During the pandemic, new partnerships were established to employ individuals released under the exceptional measures, as in the example of the partnership between the NGO *O Companheiro*, the Lisbon City Council, and the parish councils of Benfica and São Domingos de Benfica, which offered jobs to some released persons thanks to vacancies arising due to employees belonging to high-risk groups (for COVID-19 infection) being unable to work in operational areas. These individuals received training and gained employment in urban hygiene, street weeding and workshops.¹⁰⁹

There is also an agreement for cooperation between the DGRSP and the *Instituto de Emprego e Formação Profissional* (Institute for Employment and Vocational Training), which sets procedures and routes to employment suitable for those serving sentences and orders in the community, although it was not specifically established to counter the difficulties of the pandemic.¹¹⁰

Socio-economic difficulties were also reflected in the greater difficulty of persons with limited computer skills or lacking equipment to adapt to the new reality of digital supervision by the probation service, whether this was due to a lack of suitable computer equipment or difficulties in using electronic platforms. Similarly, limited computer literacy or lacking access to needed equipment restrict probation clients' opportunities for remote education or employment.

107 Telephone interview by the UC research team in August 2021.

108 "The pandemic threw us out of prison", reporting by Ana Tulha, *Notícias Magazine*, 22-6-2020, available at <https://www.noticiasmagazine.pt/2020/a-pandemia-tirou-os-da-prisao/historias/250278/> [last accessed 13-08-2021].

109 *Idem*.

110 DGRSP, response to questionnaire, 30-7-2021.

The impact on the work of probation services and the well-being of probation officers

We also sought to understand the impact of the pandemic (lockdown, remote working, social distancing) on probation service staff – on their work, on their well-being, on their work-life balance, and in terms of risks to their health.

The DGRSP was considered an “essential public service” and so could keep on operating, on a face-to-face basis, during the national state of emergency.¹¹¹

Exceptional and temporary measures were also adopted to restrict staff leave for the period of time necessary to guarantee essential DGRSP services in security and health care in prisons, juvenile justice centres and the electronic surveillance system.¹¹² As such, prison officers, health professionals and probation professionals were denied leave for a period deemed essential to ensuring the minimum essential service level in terms of security and health care in prisons, juvenile justice centres and the electronic surveillance system.

Health protection for probation service staff

Probation officers had access to personal protective equipment on duty, with staff from the electronic surveillance teams being the first to receive it. They were vaccinated, although, due to the lack of vaccines in the initial phase of the national vaccination process, only those dealing with people in prison were prioritised; staff on electronic surveillance teams then followed, and other probation service staff were vaccinated by age group, according to the national vaccination programme, as with the population as a whole.¹¹³

Impact on workload

The creation of the extraordinary measure of prison leave with home confinement resulted in a substantial increase in workload for the probation service, requiring an increased effort on the part of both probation teams and central management. From the outset, there was a need for operational changes to be made to probation teams as well as the creation, in the short term, of guides on procedures and methodological guidelines on the supervision process.¹¹⁴

In addition to checking that the terms of a licence were being complied with, there was also a need to decide on renewal every 45 days (involving preparation of the proposal for renewal and its presentation for adjudication by the Director-General) as well as consider possible revocation, which meant that immediate analysis and prompt response was needed, even at the weekend. The probation service stated that this increase in workload meant that there was less scope to carry out external services on a regular basis, these being ones related to other types of measures in the community.¹¹⁵ An attempt to mitigate the increase in the workload was made by seeking the collaboration of local police forces in the supervision of individuals on special prison leave.

111 Order no. 3614-C/2020, 27 July, <https://dre.pt/application/conteudo/130600788>.

112 Order no. 3587/2020, 23 March, <https://dre.pt/application/conteudo/130546229>.

113 Source: DGRSP, response to questionnaire, 29-6-2021, and interview, 27-7-2021.

114 Source: DGRSP, interview, 27-7-2021.

115 Source: DGRSP (December 2020).

An increased effort was also caused by cases of absences of colleagues due to their need to self-isolate. This was somewhat mitigated by the decrease in court proceedings, due to the suspension of court deadlines,¹¹⁶ and requests from the courts for technical assessments (i.e. reports and hearings) in order for them to rule on sentencing and other measures, as shown in the data above (graphs 1 and 2 above).

Reference should also be made to the increased requirement for probation staff to self-monitor for symptoms during face-to-face meetings, checking the temperature of and any symptoms shown by those present, and also to carry out sanitisation procedures and reorganise the room to ensure physical distancing.¹¹⁷

Changes to working practices

As has already been stated, face-to-face contacts with those under supervision were reduced to the urgent and essential and group activities were suspended as early as March 2020, with the decree of a state of alert and then a state of emergency.

Hours of operation were reduced¹¹⁸ and the number of professionals working face-to-face in the probation and electronic surveillance teams was limited to the essential (in order to ensure a functioning telephone service as well as face-to-face service for essential and urgent situations; and to access databases or computers that were not accessible remotely), leaving the other team members working remotely on a rota.¹¹⁹ The situations considered essential and urgent, in order to qualify for a face-to-face meeting, included the following: preparation of reports with a view to the imposition of orders enforced by electronic surveillance, preparation of reports in support of decisions involving prison releases and matters considered urgent by the courts,¹²⁰ plus services provided to those in high-risk situations. All face-to-face meetings were preceded by a check for symptoms of COVID-19 and took place in compliance with the guidelines for social distancing.¹²¹

After the most restrictive phase, teams sought to resume the system of face-to-face contacts, while all the same favouring modes of remote communication, and strengthened their cooperation with the police at the local level.

Working practices were in the main adapted to involve remote means of communication, whether this was in contacts with people under supervision or internal office meetings, which, according to the probation service, meant savings in time and effort of travelling.¹²² The fact that probation officers could be heard by the courts via video link has also meant a significant time saving. The ease of meeting online with teammates from other regions in order to exchange information and harmonise procedures was identified as a positive aspect of remote working.¹²³ The recent renovation of the IT infrastructure, the availability of laptop computers for teams and

116 DGRSP, response to questionnaire, 29-6-2021.

117 DGRSP, interview, 27-7-2021.

118 Cf. Order of the Director-General for Probation and Prison Services of 27-3-2020, available at https://dgrsp.justica.gov.pt/Portals/16/Covid19/dsp_ERS-att-prescial-Covid19.pdf?ver=2020-04-02-102214-660.

119 DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

120 DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

121 DGRSP, "COVID-19 Measures for Probation in Portugal", 17-4-2020.

122 DGRSP, response to questionnaire, 29-6-2021.

123 DGRSP, interview, 27-7-2021.

the possibility of remote access (through a VPN) were pointed out as very useful tools for promoting efficiency at work.¹²⁴

Naturally, there were difficulties as well. For example, calls made by staff from home or from individual mobile phones were made from a private and confidential number, and due to the caller not being identified, they were sometimes unanswered or unreturned. In such cases, the central services department had to call the person again and ask them to answer the call, resulting in duplication of efforts. Passing a work mobile phone on from one team to the next shift was also impractical in a remote working context.

Officers considered that they had to “reinvent” their way of working, above all by recourse to means of remote communication.¹²⁵ For example, they had to learn to conduct lengthy interviews by phone (a means of communication beforehand used only for occasional contacts).¹²⁶ They also encouraged their clients to create email accounts to facilitate contact. It was reported that even staff less familiar with technology made a significant effort with positive results.¹²⁷

The probation service stated that, “despite the difficulties experienced, this support has promoted a potential for continuous learning, (...) revealing itself to be a positive experience and with transferable knowledge for monitoring community sentences and measures.”¹²⁸

Psychological and professional support for staff

The interviewed probation officers mentioned that they felt supported from higher up, namely from the directors and regional directors. Team coordinators endeavoured to provide the necessary support to their staff as an added level of internal support, to manage episodes of emotional instability, fear and insecurity, and rejection of some tasks (especially in the initial phase of the pandemic, with greater uncertainty and lack of knowledge). There was also an increase in the number of senior management meetings with regional directors to deal with the occurring difficulties.¹²⁹

It should also be mentioned that the Ministry of Justice approved a scheme intended to balance the need for these professionals to be available, as essential public service workers, against any assistance needs for their families. With different considerations for households where one or both parents were considered essential workers, this scheme was meant to ensure that at least one parent was entitled to a family assistance allowance. Furthermore, when in-person schooling was suspended nationwide, it was determined that a school in each school district should be designated to remain open for the children of health professionals and other essential service workers, whose mobilization for service or promptness prevented them from staying at home with their children.¹³⁰

124 DGRSP, interview, 27-7-2021.

125 Source: DGRSP, interview, 27-7-2021.

126 DGRSP, interview, 27-7-2021.

127 DGRSP, interview, 27-7-2021.

128 Source: DGRSP (December 2020).

129 DGRSP, interview, 27-7-2021.

130 Order no. 3586/2020 of 23 March, setting out “rules on the balance between family care and availability for professionals who ensure the essential services of the Directorate-General for Probation and Prison Services in matters of security and health care in prisons, centres for juveniles and in the electronic monitoring system”, <https://dre.pt/application/conteudo/130546228>.

Courts responsible for the implementation of sentences

Courts responsible for the implementation of sentences (*tribunais de execução das penas*), as the court system in general, had to adapt their methods of working.

These courts saw a significant increase in their workload in the months of April and May 2020 due to the pardons provided for in Law No. 9/2020. During this period, the staffing of these courts was temporarily increased in order to ensure that they were capable of fully and swiftly complying with the provisions of the law.

Following the passage of Law no. 9/2020, judges of the Lisbon Court responsible for the implementation of sentences met among themselves to ensure that criteria were applied uniformly, and so did the prosecutors at the same court.¹³¹

There were also changes to the functioning of the “technical council”, which provides opinions to the judge regarding relevant decisions concerning the implementation of prison sentences. As a rule, instead of all its members being physically present in the prison, the judge, prosecutor and clerk of the court took part by video link, as did the probation officers and attorneys involved; only the prison warden and the prison staff were physically present. The hearing of people in prison for the purposes of parole decisions was also carried out by video link (with the individual alone in a room equipped with video link equipment). In the case of persons under home detention, any hearings before the supervisory judge (e.g. in cases of non-compliance with the rules or for the granting of parole) occurred, as a rule, with the client physically present in court, although they could also be held remotely, if the necessary equipment was available at the individual’s home.¹³²

Other justice services

It should also be noted that, during the state of emergency, the offices of the Prosecutor-General and the Ombudsperson remained open and fully functional so that their powers could be exercised to the full extent in order to defend the rule of law and citizens’ fundamental rights.¹³³ As of March 2020, the visits of staff of the Ombudsman's Office to prisons were suspended, to be resumed in September for specific purposes, but the outbreak of the pandemic prevented in-person visits even beyond this point. Thus, for contact with detained individuals, preference was given to the telephone, and the Ombudsperson’s helpline was posted in every prison.¹³⁴

In the same way, the Inspectorate-General of the Justice Services (the arm of the Ministry of Justice with responsibility for auditing, inspection and regulation of entities, services and other bodies under the aegis of the Ministry of Justice or subject to its supervision or regulation) remained in operation, including the considering of complaints filed, *inter alia*, by detained persons and overseeing the conditions of detention. The Inspectorate-General increased the number of telephone lines available, providing a new service number, and continued its service roster of inspectors for dealing with cases and for follow-up purposes. It also adapted its working

131 Information collated at the Lisbon Court responsible for the implementation of sentences, 26-7-2021. As the research did not include interviews with other regional courts, there is no information on such meetings elsewhere. Nevertheless, as the other courts responsible for the implementation of sentences have significantly fewer judges, it is likely that similar discussions took place among colleagues more informally.

132 Information collated at the Lisbon Court responsible for the implementation of sentences, 26-7-2021. This procedural adaptation happened in the majority of cases but naturally differed depending on the judge.

133 Source: CNDH, “Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19”, p. 30.

¹³⁴ OFFICE OF THE OMBUDSPERSON, *Report to Parliament – 2020*, pp. 140-141.

methods to streamline communication with complainants and those entities that were the subject of the complaints, something which is to be maintained in the post-pandemic period.¹³⁵

Availability of civil society organisations and volunteers

Civil society organisations played a fundamental role in supporting individuals who were released under the extraordinary measures by assisting probation staff with persons without a family environment, experiencing homelessness, and those without transport home or money for meals. The fact that there was no preparation for a sudden mass release over a period of a few days resulted in an overload of work and placed additional obstacles on organisations and volunteers.¹³⁶

During this period, some NGOs also provided support to those under non-custodial measures, especially in areas concerned with self-motivation, employability, and awareness of and compliance with the general rules on prevention of COVID-19. However, throughout our research, we found that the majority of civil society organisations dealing with sentenced persons focus on supporting currently or formerly incarcerated persons and their families, with assistance to those serving community sentences a secondary and occasional concern. This is justified by the greater vulnerability of those in custody, but it does result in a scarcity of resources for this latter category of people.

The work of the various associations also had to adapt to the new reality brought on by the pandemic, with the suspension of all face-to-face activities in prisons, the creation of new means of support for detained individuals (e.g. by correspondence), and the use of remote means of communication to keep in contact with those being supported. It was stated that changing these organisations' internal working practices was easy enough; the greatest difficulty was in keeping in contact with those being supported, whether due to their lack of motivation, lack of equipment, lack of ability to use technology, or a breakdown in bonds caused by the lack of face-to-face interaction.

During periods when a general duty to stay at home was in force, staff from associations carried a declaration exempting them from this duty in order to offer the necessary support to persons who had been released or who were serving alternative sentences. It should be noted, however, that partnerships with civil society organisations that support individuals on and after release from prison proved to be insufficient. Often referral depends on the availability of volunteers, who end up being able to provide support only in the more serious and urgent cases.

During the pandemic, some organisations had to deal with a reduction in the number of volunteers caused both by the need for those most susceptible to COVID-19 to stay at home, including older people or those with health problems, and by demotivation and other obstacles arising as a result of the lockdown measures in general. In other organisations however, this decrease was offset by new volunteers who wanted to help during the pandemic, in some instances because they had been furloughed and had time available.

As already stated, some entities that would normally take on individuals performing community service work were unable or unavailable to do so during the pandemic.

135 Source: CNDH, "Portugal and the Promotion and Protection of Human Rights in the Time of COVID-19", p. 30; IGSJ, interview, 2-9-2021.

136 Information on the work of civil society organisations was obtained through interviews but is also described in "The pandemic threw us out of prison", reporting by Ana Tulha, cited.

The impact of the pandemic on the future of the probation service

Though the issue of reducing the prison population and extending alternatives to prison was already on top of the agenda in Portugal, especially due to prison overcrowding and associated problems, continually stressed by the European Court of Human Rights in its judgments concerning Article 3 of the Convention, the COVID-19 pandemic – and the risk of similar events in the future – means that we need to take seriously the principle that custody is a sanction of last resort. The model of mass imprisonment and overcrowded prison systems must be ended.

The fact that the vast majority of those released from prison under the exceptional measures passed during the state of emergency have neither posed a risk to society nor created social disquiet supports to the conclusion that imprisonment is in many cases unnecessary.

Having said that, it is essential that alternatives to custody are designed and implemented so as to provide effective opportunities for resocialisation and to address the individual needs of offenders. Just as importantly, the use and implementation of non-custodial sanctions must serve to reduce the use of imprisonment without widening the net of criminal sanctions as a whole.

When discussing the impact of the pandemic on the future of non-custodial sentences and measures (i.e. whether it is foreseeable that some of the measures created due to the pandemic will become a permanent feature), DGRSP emphasised the importance of allocating greater resources to means of remote communication with those under supervision as well as to facilitate work processes and technical supervision.¹³⁷ It was also mentioned that the use of video links is expected to be continued in order to allow the courts to hear technical assessments from probation officers in a manner that would result in time savings and, thus, greater efficiency for the service. The interviewed probation officers considered that it would be beneficial for teams to have smartphones, as they can be used for video calls and e-mail, as well as scanning, sending and receiving documents, etc.¹³⁸ However, they regard the employment of digital technology in programmes with a psycho-educational component or in groups as more challenging, while not totally rejecting it.¹³⁹

Remote communication was mentioned by all those involved in the supervision of sentences as an asset for the future, as long as it is balanced with face-to-face activities and takes into account the fact that some are unable to use these means (e.g. older persons, people with limited or no literacy, with mental health problems and those in financial trouble, or due to lack of equipment and/or an inability to use such platforms). In addition, it was stated that online programmes can be a means of lowering the dropout and absenteeism rates, especially among younger persons.

137 DGRSP, response to questionnaire, 29-6-2021.

138 DGRSP, interview, 27-7-2021.

139 Source: DGRSP, interview, 27-7-2021.

Conclusions

In Portugal, the adoption of exceptional measures for the release of individuals from prison and the temporary suspension of activities and visiting in prisons contributed to preventing and mitigating the spread of the virus in prisons, with no deaths of individuals in detention from COVID-19 being recorded. Nevertheless, the impact of the confinement measures was detrimental on the mental health of those in prison and their families, with young detained persons particularly affected.

Although the most striking effects of the pandemic on the criminal justice system were felt in the prison system, non-custodial sentences were also impacted, not least because of the increased workload the Probation Services faced as a result of the adopted emergency release measures. Particularly negative impacts included a reduction in the number of face-to-face meetings with probation services and the suspension of face-to-face and group resocialisation activities. At the individual level, there was a higher level of demotivation among probation clients and an increased difficulty in finding employment, and there were also instances of individuals under supervision ending assistance from non-governmental organisations aimed at improving employability and the development of personal and professional skills. Positive impacts were also noted, such as advances in the use of new technology, which opened up new opportunities and allowed some activities to be run more quickly and efficiently.

It may be stated that the pandemic amplified existing failures and problems in the implementation of community-based sentences and in the preparation of individuals for release, as detailed below:

- The lack of timely preparation for release. The process of preparation for release should start from the moment an individual enters the prison system, with the updating of personal documents, obtaining suitable post-release housing and assessing the family environment, and with appropriate and sufficient activities and programmes for resocialisation. All these items need to be regularly updated and checked throughout the period of incarceration, along with individual rehabilitation plans;
- Insufficient probation staff, resources and organised structures to prepare individuals for release, to assist in the drawing up of a post-release plan, and for the process of social reintegration and resumption of personal and social ties; and for individualised monitoring and psychosocial support for people serving community sentences. The average ratio of one probation officer per 70 clients in the community¹⁴⁰ is inadequate for achieving the rehabilitative goals attached to non-custodial sentences;
- The lack of protocols and civil society organisations providing support specifically to persons serving alternative sentences.

What should be highlighted as a very positive factor, however, is the professional dedication and ability to adapt to the adversities of the pandemic shown by probation officers. This allowed them to alter their ways of working and continue to supervise community sentences and measures during the pandemic, thus overcoming or mitigating the negative effects arising as a result of the measures taken to avoid the spread of the virus.

¹⁴⁰ Source: DGRSP, response to questionnaire, 30-7-2021. Average figure – we were given an example of an officer monitoring 140 people.

It is also worth mentioning the fundamental role played by civil society organizations in supporting individuals released by the exceptional measures. It was noted, however, that there are almost no non-governmental organizations working specifically to support persons serving community sentences – an issue with more visible implications at times of crises, such as the COVID-19 pandemic, that call for increased services and support for individuals serving community-based sanctions.

With regard to persons in situations of potentially increased vulnerability (e.g. women, young persons, older persons, LGBTI individuals, people from ethnic minorities and foreign nationals), an increased impact of the pandemic in relation to others serving sentences could not be detected, except in the case of older persons and those with health problems that would make them more vulnerable to infection by the virus. This increased vulnerability was paralleled in society in general. Measures specifically aimed at protecting such groups were taken by the Government, but for the most part they were transversal measures, not specifically aimed at those serving sentences. The absence of any evidence of a specific impact on these groups, when serving their sentence in the community, can be attributed either to the non-existence or practical irrelevance of such differentiated impacts, or to a lack of sensitivity or capacity on the part of authorities and organisations to the specific needs of these persons.

However, the case of persons in situations of homelessness deserves to be mentioned. On the one hand, lack of housing was an obstacle to the application of the extraordinary prison leave mechanism to this population (added to the fact that, even outside the context of a pandemic, the absence of housing constitutes an obstacle to the use of some alternatives to imprisonment, such as home detention); on the other hand, the sudden release from prison by individuals who were granted pardons created new situations of homelessness, which the system was not adequately prepared to deal with.

What stands out from the study is that socioeconomic vulnerabilities (i.e. unemployment, and inadequacies in housing, employment, family situation, social context and educational or professional qualifications) have the most strongly negative impact on the probation process. This impact is compounded in times of social turmoil and economic uncertainty, such as was brought upon by the COVID-19 pandemic.

The first major impact on the work of the probation teams was caused by the extraordinary temporary prison leaves, which placed an increased strain on officers, both in the creation, in the short term, of procedures and methodological guidelines, as well as in the modification to operations, the regular monitoring of measures and, subsequently, the preparation of individual assessment reports for the purposes of renewal of licences.

From the outset, the types of sentences that were monitored using electronic surveillance were, by their very nature, some of the most suitable for remote monitoring. As with the population in general, most individuals under home detention were confined for 24 hours a day during the nationwide lockdowns.

As for community service, some providers continued their activity (especially those providing essential services), and thus it was possible for those clients working for them to serve their sentence. In situations where it was not possible to fully comply with the hours imposed (e.g. due to a suspension of the provider's activity or its closure), probation services informed the courts of this and the reasons for it. Existing provisions in the Penal Code allowed for the temporary suspension, replacement, and/or quashing of sentence, since non-performance of

the community service could not be attributed to the client concerned.

The blend of new technologies with face-to-face activities was well-received by all parties involved in the probation process for those serving alternative sentences. Some groups have been unable to benefit, however. These include older persons, persons with limited or no literacy or with certain mental health problems and the economically vulnerable, due to a lack of computer equipment and/or an inability to use electronic platforms. In addition, social programmes for skills development were negatively affected, either because lacking personal contact made it more difficult to motivate people and establish relationships or because psycho-educational and other group programmes could not adequately be carried out remotely.

The use of video links to allow the courts to hear probation officers was highlighted as a good practice that could be extended into the post-pandemic period, as it affords significant time savings and therefore greater efficiency.

New technologies have the potential to play an important role in the future of non-custodial sentences. They can increase opportunities for resocialisation, such as distance learning when courses are not available in the individual client’s area of residence, or participation in programmes or activities unavailable in a specific area or which, for whatever reason, the sentenced individual cannot attend in person. In addition, communication technologies proved useful in providing closer and more regular support on the part of probation officers. However, it is essential to ensure that technology remains complementary to human contact and does not serve as a pretext to reduce or replace it, as it is a fundamental component of the socialisation process.

Recommendations

In order to protect the rights of those serving non-custodial sentences alternative to imprisonment and of individuals in the process of preparation for release from prison, ensuring that, in times of crisis and adaptation to adversity, there is no discrimination and that people continue to receive adequate care and benefit from suitable conditions for serving their sentence, it is recommended to:

AT THE CRIMINAL POLICY LEVEL:	
1.	Develop a national strategy with the joint collaboration of government, justice, academic and civil society institutions, for eliminating and preventing overcrowding in prisons, avoiding the need to adopt emergency prison release measures in the event of future crises;
2.	Through increased use of non-custodial sanctions and reduced duration of imprisonment ensure that deprivation of liberty as a criminal sanction is only used when all alternative measures can be proven to inadequately meet the aims of sentencing, thus also supporting improved prison conditions in terms of facilities, hygiene, services and care provided;
3.	Develop policies that promote the use of non-custodial sentences in place of imprisonment, providing community sanctions and measures that are designed and implemented in a way that allows them to address individual needs of sentenced individuals to effectively support re-socialisation and other sentencing aims;
4.	Promote a reduction in the length of prison sentences actually served by allocating sufficient resources to improved effectiveness through early and more effective rehabilitation work and a

focus on reintegration into society from the start of detention;
5. In the event of future crises or situations that call for the release of persons from prison, utilise existing mechanisms (e.g., "modification of execution of the prison sentence"), with adaptations as needed, instead of a mix of exceptional measures such as pardons .
IN PREPARING INDIVIDUALS FOR RELEASE:
6. Start the process of preparing individuals for release from the first moment of entry in prison, namely through regular updating of individual rehabilitation plans, renewal of identification documents when needed, verification of the existence and conditions of housing and family support upon (temporary or permanent) release, and provision of activities and programs consistent with individual reintegration needs; personal details should be revisited and verified regularly;
7. Harness experience with new information and communication technologies gained during the pandemic to broaden individual's access to reintegration activities and enhance contact with the outside world, with virtual means serving to complement, not replace, in-person services, support and visits;
8. Increase human and institutional resources to prepare individuals for release, including support and assistance in the development of the individual rehabilitation plan, the process of social reintegration and in the rehabilitation of affective and family relations;
9. Strengthen links and coordination between the prison and probation service and other areas of public administration and with civil society organisations to plan for and manage individuals' basic needs at the time of and after release. The reintegration of persons who have served a prison sentence back into society should be considered as a mission of all sectors of the State, not only of the justice sector;
10. Ensure that no individual is released without having accommodation and transport to the place of accommodation; for those without a home or family accommodation, ensure that a place in a transition house or other residence is provided;
11. Include training on information and communication technologies (including using a smart phone, using the internet, writing and sending emails etc.) as part of release preparations and reintegration support.
IN THE IMPLEMENTATION AND MONITORING OF NON-CUSTODIAL SANCTIONS:
12. Provide probation teams with more resources and personnel to ensure individualised monitoring and psychosocial intervention for individuals serving sentences in the community;
13. Establish more protocols and encourage non-governmental organisations to extend their activities to include specific support to persons serving sentences in the community, and ensure that they have appropriate resources to that end;
14. Develop guidelines, methodologies and training for probation staff in order to adapt work methods to include a mix of in-person and remote means of service delivery, enabling support and intervention activities and programmes to be carried out remotely when appropriate, as a complementary way to in-person assistance and ensuring consistent respect for clients' right to privacy;
15. Promote research and pilot projects to increase knowledge and development of effective activities and rehabilitation programmes which can be carried out remotely, namely for those cases in

<p>which geographical location does not allow attendance at a face-to-face group or to overcome future situations in which in-person attendance is not possible;</p>
<p>16. Provide training in information and communication technologies (including using a smart phone, using the internet, writing and sending emails etc.) for individuals serving sentences in the community;</p>
<p>17. In the context of a communicable disease pandemic or other crisis, provide adequate support and alternatives for individuals who are not able to use digital means due to a lack of equipment and/or computer literacy, particularly older persons, people with limited or no literacy or with certain mental health problems and those economically vulnerable;</p>
<p>CONCERNING THE JUSTICE SERVICES:</p>
<p>18. Consider, whenever feasible, the possibility of conducting videoconferences for the hearings of probation staff by the courts;</p>
<p>19. Encourage the use of communication and information technologies to strengthen the exchange of experience and information between staff from different regions as well as between probation services and the judiciary;</p>
<p>20. Provide prison and probation professionals with training in information and communication technologies, where required, as well as access to adequate necessary equipment for remote working;</p>
<p>21. Ensure that electronic platforms and means of distance communication used by justice services comply with international, European and national data protection regulations.</p>

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