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MEAN STREETS

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.

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HOUSING RIGHTS WATCH

CHAPTER VII

Penalisation of Homelessness and Prison –– Prison and Inequality

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The tradition of the oppressed teaches us that the state of emergency in which we live is not the exception but the rule

Walter Benjamin (1940)

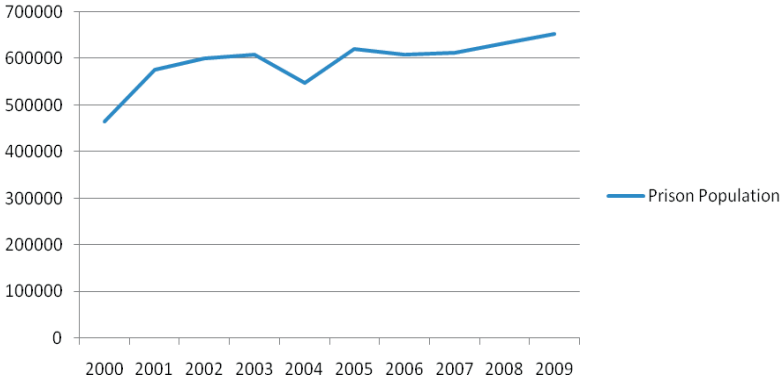
The apparatus of crime control that emerged from the beginning of the twentieth century, what Garland (2001) terms "penal welfarism", which had at its core the correction and rehabilitation of offenders through reasoned knowledge and professional intervention has been displaced by a broad, but not universal, consensus that offenders require punishment rather than correction. For Garland, these changes need to be seen as part of the broader social and economic changes associated with late-modernity, and he poses the question as to why 'contemporary crime policies so closely resemble the anti-welfare policies that have grown up over precisely the same period? His answer is that "[b]ecause they share the same assumptions, harbour the same anxieties, deploy the same stereotypes, and utilize the same recipes for the identification risk and the allocation of blame. Like social policy and the system of welfare benefits, crime control functions as an element in a broader system of regulation and ideology that attempts to forge a new social order in the conditions of late modernity" (2001: 201). Garland provides a compelling account of the interlocking social, economic and political changes since the 1970s that have allowed the prison, particularly in the US, where the rate of incarceration rose from 110 prisoners per 100,000 in 1975 to 730 prisoners per 100,000 in 2011, to function "as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety" (2001: 178).

A crucial dimension in Garland's account of the transformation of the penal sphere is that, in seeking answers to explain the rise of prison populations, we need to look outside the sphere of the criminal justice system. For example, it is clear that the relationship between rates of crime and rates of incarceration are largely independent of one another. Lappi-Seppala (2007) highlights this clearly in relation to Scandinavian countries, where from 1950 onwards, Finland, Sweden, Norway and Denmark show very similar crime patterns, but Finland had a very dramatic decline in its imprisonment rates, with the other countries remaining stable. On the other hand, some attribute the extraordinary decline in crime in the United States from the early 1990s to the present to the massive increase in imprisonment over the same period. However, as Zimring (2007) points out, north of the American border in Canada, crime declined at a similar rate over the same period, but while the imprisonment rate tripled between 1980 and 2000 in the United States, it increased only modestly in Canada by 4%. While the relationship between *crime rates* and incarceration appears independent, *crime control strategies* and rates of incarceration are demonstrably linked. Lappi-Seppälä observes a link between welfare systems, their legitimacy (social legitimacy shown by trust on the part of the citizens, and institutional legitimacy, which shows the trust in institutions/political parties) and incarceration rates. According to Lappi-Seppälä, in "less legitimate" societies, the

government seems to have a greater need to resort to "acts of propaganda" in the fight against crime to earn legitimacy among the population. Less trust prompts greater fear, which in turn increases the pressure to punish (Lappi-Seppälä, 2007). So this may be a first indicator that a "punitive shift" is taking place in Europe, because the increase in the prison population responds to criminal policy decisions and is not a reflection of a rise in crime.

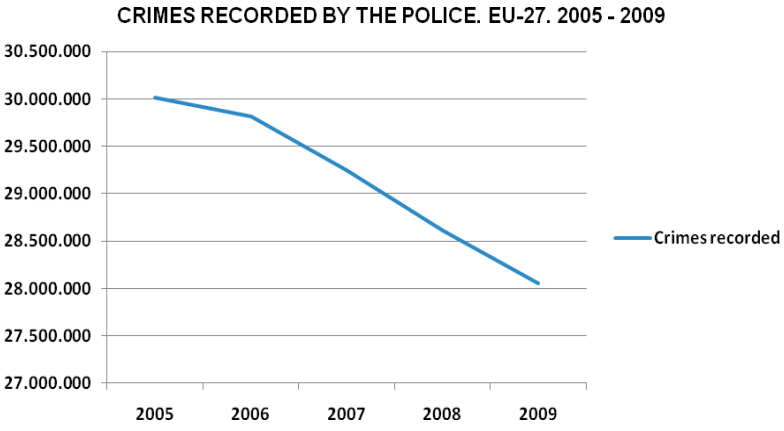
There are different judicial and criminal systems in the countries of the EU-27, which means differences in the definitions of crimes as well as in the methods in which crime is reported, recorded and counted. Therefore, it is problematic to compare different types of crimes and their rates across different countries. As a result, it must be recognized that statistics cannot provide a complete description of crime in Europe, and that crime trends noted in statistics may, in fact, reflect the level or focus of police activity in these zones (Tavares *et al.,* 2012). Even so, Eurostat statistics on "crime and criminal justice" show that crime levels have declined systematically in most EU countries and the number of crimes recorded by police in the European Union (EU-27) dropped between 2005 and 2009. Differences exist between countries, however, with Sweden, Denmark, Belgium, Luxembourg, Spain, Portugal, Italy, Slovenia, Romania and Bulgaria reporting increased crime recorded by the police for the period.

EVOLUTION OF PRISON POPULATION. UE-27. 2000 - 2009

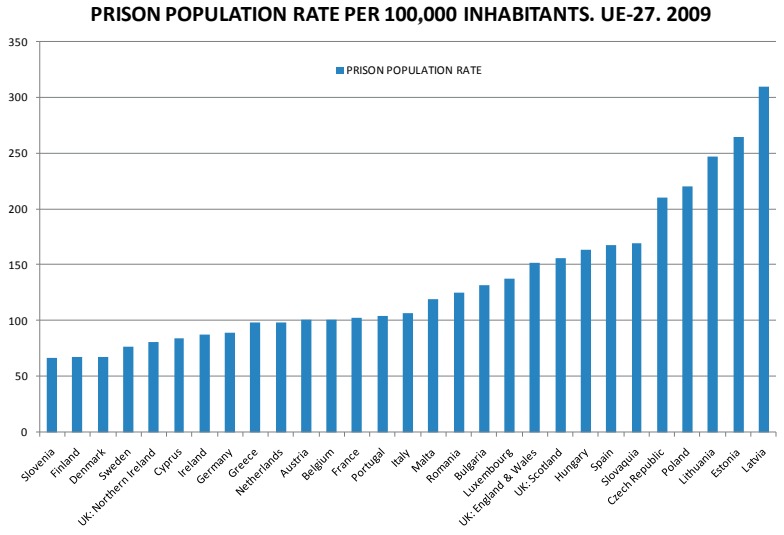


Source: SPACE I - 2009

Domestic burglary and drug trafficking stand out among the crimes that have increased in general in the EU-27 during the aforementioned period. The crimes that have declined the most in general in the EU-27 include violent crime, and in particular, homicide. However, the prison population grew to the highest levels of the decade between 2007 and 2009.



Source: Eurostat



Source; SPACE I – 2009

Thus, the disproportionate increase observed in the prison population is not directly related to increased crime, but rather relates to political decisions about how to deal with it.

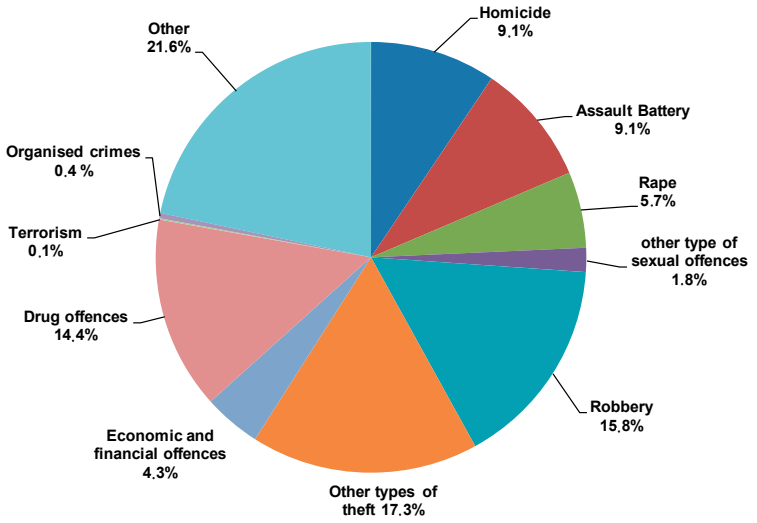
MANAGING POVERTY WITH PRISONS

Loic Wacquant (2009: xxi-xxii) argues that strategies that criminalize homelessness by outlawing begging and regulating the use of public space, aim to eliminate homelessness through incarceration, with prisons operating as "a judicial garbage disposal into which the human refuse of the market society are thrown." Much of his analysis has focused on what is happening in the United States, but

*"harassment of the homeless and immigrants in public space, night curfews and 'zero tolerance,' the relentless growth of custodial populations, the disciplinary monitoring of recipients of public assistance: throughout the European Union, governments are surrendering to the temptation to rely on the police, the courts, and the prison to stem the disorders generated by mass unemployment, the generalization of precarious wage labour, and the shrinking of social protection" (*Wacquant, 2009*).*

The development of these policies in the United States and their spreading across the European Union are a consequence of the making and remaking of what Wacquant terms the neoliberal state. In brief, he argues that a combination of workfare and "prisonfare" have provided the means to regulate intensively the poor while simultaneously withdrawing any regulation from the wealthy, resulting in a "centaur state, liberal at the top and paternalistic at the bottom" (2012: 250). As neoliberalism as an ideology, becomes increasingly embedded within transnational

Breakdown of sentenced prisoners (final sentence) on 1 September 2009, by main offence



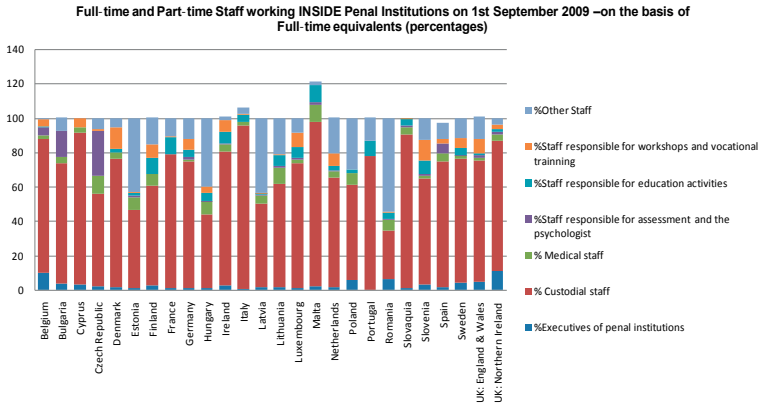
Source; SPACE I – 2009

institutions such as the International Monetary Fund and transmitted via a series of influential think tanks, the penalisation of poverty is increasingly evident across the Member States of the European Union. The emergence of this neoliberal penal state is increasingly displacing the welfare state as the mechanism for governing the poor.

As noted by Fergus McNeill and Richard Sparks (2009), the impact of crime is always unequal, falling disproportionately on the shoulders of the poorest and most vulnerable sectors of the population (ICHRP, 2010). Therefore, the vast majority of imprisoned people in the EU-27 have been imprisoned for crimes against property (theft, robbery) and public health (drug trafficking) and other crimes whose origins are linked to poverty.

PRISONS ARE NOT INSTRUMENTS OF REINTEGRATION

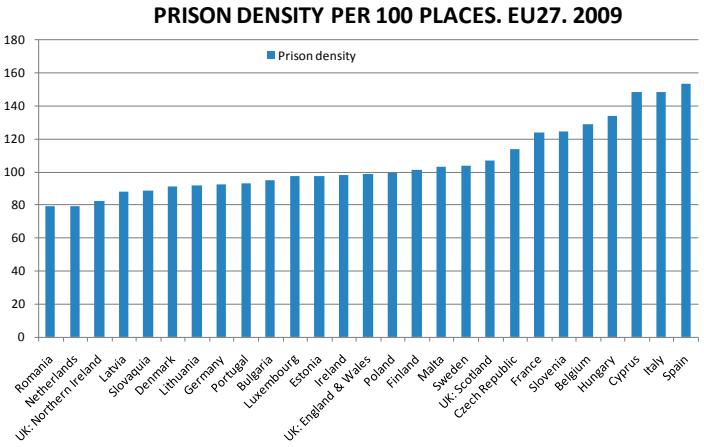
The assumption that prisons are a space for rehabilitation and reform can be questioned, when in the vast majority of European countries more than 50% of the workforce in prisons assigned to prison surveillance and guarding tasks, with a much smaller percentage is assigned to providing medical, psychological or educational rehabilitation or support.



SPACE I – 2009 [1]

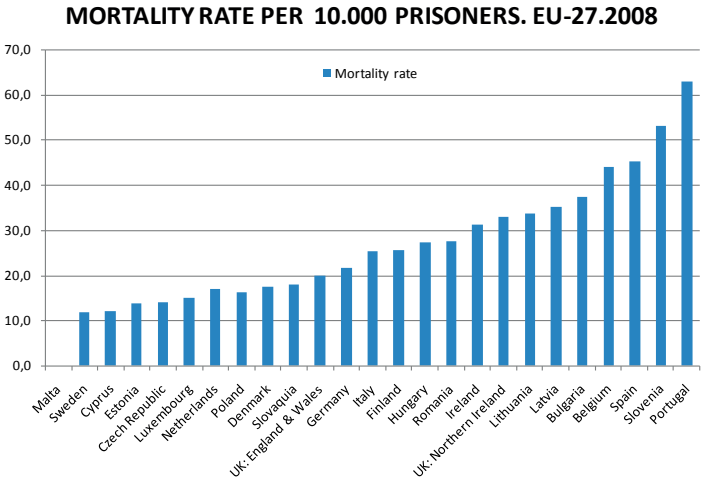
Prisons are not a good place to live. There is overcrowding in jails in many countries of the EU-27, for example in France, Belgium and Slovenia, and in some countries like Spain or Italy, the problem is structural and chronic, with rates of up to 153 and 148 prisoners per 100 places, respectively.

1. The total percentage of staff working inside penal institutions is higher than 100% in: IRELAND, ITALY, and MALTA. Some of these inconsistencies have been explained by the national correspondents of the Council of Europe Annual Penal Statistics – SPACE I – 2009. Strasbourg, 22 March 2011.



Source: SPACE I – 2009

Mortality and suicide rates in EU-27 are substantially higher inside prison walls than outside. In 2008, the prison mortality rate in Sweden, one of the countries with the lowest rates with 7.3 per 10,000 prisoners, was seven times higher than the overall rate for the general population (0.99 per 10,000 inhabitants that same year). In Portugal the numbers are even more dramatic: the mortality rate of the general population in 2008 was 0.98 people per 10,000 inhabitants while there were 62.9 prisoner deaths for every 10,000 prisoners.



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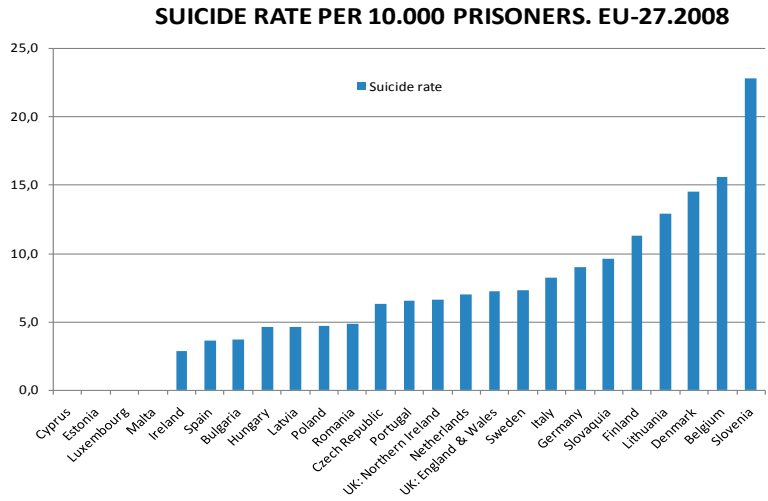

Source: SPACE I – 2009

In 2008, statistics showed 1,372 prison deaths in the EU-27, 25.5% of which were suicides. There were 1.02 deaths by suicide per 10,000 inhabitants in the EU-27 in 2008, while in prison the rate was 6.9 suicides for every 10,000 prisoners. Slovenia, at 22.8 per 10,000, or Lithuania (12.9), Denmark (14.5) and Finland (11.3) were well above this average in 2008.

PENALISATION, CRIMINALISATION AND MIGRATION

As noted above, it has been argued that prisons have increasingly abandoned any pretence of providing rehabilitation and support, and instead operate simply to warehouse increasing numbers of the poor, often infused with a racist hue (Simon, 2012). Neoliberalism is, in many cases, the preferred explanation for the increase in the numbers of people who are incarcerated and their characteristics, as prison is viewed as a mechanism for managing the advanced marginality or the social insecurity generated through the systematic dismantling of the welfare state and a veneration of markets. Furthermore, Wacquant (2012: 246-247) has argued that "penalisation takes many forms and is not reducible to incarceration", while at the same time noting that levels of incarceration have risen; that many European societies utilise the police more than prison to curb social disorder, what he refers to as the front end of the penal chain rather than the backend; and that European societies have simultaneously and contradictorily expanded police intervention and welfare intervention that has "both stimulated and limited the extension of the penal mesh". It is also of note that migrants/foreigners are substantially over-represented in the prisons of Europe, particularly in the southern and continental member states as shown in table 2 (see Barker, 2012).

TABLE 2:
FOREIGN PRISONERS AS A PROPORTION OF THE TOTAL PRISON POPULATION

Estonia	40.3
Latvia	1.3
Lithuania	1.3
Czech Republic	7.2
Poland	0.7
Slovak Republic	1.8
Hungary	3.4
Slovenia	11.7
Average	8.5
Portugal	20
Spain	34.2
Greece	57.1
Italy	36.2
Average	*37*
Austria	46.4
France	17.8
Belgium	41.1
Netherlands	26.2
Germany	26.7
Luxembourg	68.7
Average	*38*
Norway	32.5
Sweden	27.6
Finland	13.3
Denmark	21.7
Average	*24*
United Kingdom	7.8
Ireland	13.6
Average	*11*

Source: World Prison Brief www.prisons.org

This overrepresentation had led De Giorgi (2010: 156) to claim that, "when observed from the perspective of those who cannot claim full membership in the EU but

only some form of subordinate inclusion in its flexible labour markets, the picture of European societies as strongholds of penal tolerance and moderation becomes increasingly blurred, leaving room for a reality of selective criminalisation".

DETENTION CENTRES FOR FOREIGNERS AS AN ALTERNATIVE TYPE OF PRISON

THE SPANISH CASE

In June 2008, the European Parliament approved Directive 2008/115/CE, known as the "Return directive". This directive consolidates the process of regression of human rights that is taking place in the European Union. During the 1980s, "Alien's laws" included norms regulating internment and deportation, but after Directive 2001/40/CE this legislation has become a European policy focused on illegal migration and on the expulsion of migrants. Since the approval of Directive 2001/40/CE, the undermining of rights and the exclusion and criminalisation of foreign migrants have become standard throughout Europe (Silveira, 2011). In 2004, 650,000 deportation orders were issued across Europe, 164,000 of which resulted in forced deportations (EMN, 2008). Administrative measures of control and repression of illegal immigration have turned the European countries into "expelling States", that is, administrative machines bent on internment and expulsion, where foreigners are treated as "lesser persons" and, in the case of irregular immigrants (undocumented or "without papers"), even as "non-persons" (Silveira, 2009).

Detention Centres for Foreigners have become a common instrument in State policies aimed at foreigners. Consequently, CIEs (Detention Centres for Foreigners) have been included in the "special or administrative criminal law" that legislators have established to provide instruments of control and repression of migrants. This special administrative sub-system sets sanctions that are essentially equivalent to prison sentences, thus undermining the fundamental rights and liberties of persons. For instance, regarding internment, European legislation clearly acknowledges that the fundamental right to freedom can be restricted through an administrative order –– for migrants. According to section 15.2 of the Return Directive, administrative or judicial authorities are empowered to make decisions. Every year, thousands of migrants are subject to deportation orders in European countries, but many of those orders are not implemented. The orders are not carried out for several reasons, ranging from the lack of a readmission agreement with the migrant's country of origin to the failure to determine her country of origin, to the lack of sufficient funding to implement all the deportations (although in recent years the European Union has increased funding allocated to deportations or people who return "voluntarily"). Migrants who are subject to deportation orders, who might be interned, must immediately be released if the Administration knows that it will not be able to implement the deportation before the end of the internment period as determined by a judge (Silveira, 2011).

For instance, in Spanish legislation, Héctor Silveira (from the Observatory on the Penal System and Human Rights of the University of Barcelona) explains that detention is a

precautionary measure aimed at the execution of the deportation. This means that, as soon as it is discovered that it is impossible to deport someone, his/her term of detention should end. Nonetheless, this does not imply that once a person has been released from detention that he or she ceases to be subject to an deportation order; indeed, this fact will be the source of serious problems in the future. So, for example, when a foreigner is subject to an infringement procedure that could lead to an deportation order, or is subject to an administrative or judicial deportation order, he or she will not be allowed by the administration to undertake procedures regulated by laws on migrants ("aliens"). The individual is banned from initiating those procedures that are specifically designed to help overcome this situation of illegality. He or she is legally excluded from the legislation and enters into a situation of "administrative extralegality". This is how a "lesser person" is treated as a "non-person": the individual is not entitled to rights because he or she is a potentially deportable foreigner. The foreigner, in the words of Dal Lago, becomes a non-person when the law expels him or her from its sphere and ceases to care for the foreigner except to take him or her out of the situation of extra-legality, thus "'legally' sanctioning her non-existence, and ejecting him or her" (Dal Lago, 2000). Over the course of eight years in Spain, 439,000 foreign individuals were arrested, with an annual average of 54,875 persons. In four years, 58,466 of these people were put into detention; and 257,699 people were deported (Silveira, 2011).

Moreover, it is important to note that in the 2005 Homeless People Survey conducted by the Spanish National Office for Statistics, 48.2% of homeless people were of foreign origin, while the foreign population accounted for only 8.46% of the total population in the 2005 Census. The 2003 survey of services for homeless people shows how the population group that was most frequently assisted was immigrants, accounting for 58% of the total, while in the 2008 survey of services for homeless people this percentage grew to 62.7%. Of the homeless foreigners in the 2005 INE survey, 43.6% come from Africa, 37.5% from Europe (20.8% from EU25), 14% from South America and 4.6% from Asia. According to the same survey, 59.4% of homeless foreigners have been in Spain for less than three years. In the 2008 night-time count of roofless people, foreigners accounted for 53% of the total in Madrid and for 62.2% in Barcelona (Cabrera *et al.*, 2008). However, the largest groups by nationality were Romanian, Moroccan and Polish in both cities, although in different proportions. Therefore, it could be concluded that there is an increasing number of immigrant people among "roofless" people, thus confirming their exclusion from social resources and their increased risk of being expelled as a consequence of being considered non-persons by the law.

THE DRAMATIC SITUATION OF DETENTION CENTRES FOR FOREIGNERS (CIES) IN SPAIN

In Spain, detention centres for foreigners are directly managed by the Ministry of the Interior. These centres receive, after a report by the public prosecutor's office and the authorisation by the examining magistrate, foreigners targeted by an administrative deportation procedure, basically because they are living in Spain without proper documents or permits. People can be prosecuted under these administrative procedures because of their failure to obtain an extension of their visa, the lack of a visa, or if their visa has been expired for three or more months. People are not detained because they have committed crimes

under Spanish national law.[2] According to Organic Law 4/2000, the aim of internment is to prevent the failure to appear of the accused during the handling of her procedures of expulsion. Consequently, imprisonment is meant as "prevention" and is implemented in the framework of an administrative procedure. A foreign individual can be interned in a centre for a maximum of 60 days, which is a 20-day extension on the original wording of Organic Law 4/2000, which respects the limit described in section 16.4 of the European Convention on Extradition of 12 December 1957.[3] In 2008, a European Commission directive (Directive 2008/115/CEE of 16 December 2008) –– known as the "Directive of shame", was transposed into Spanish law and allows State to intern foreign people who do not have appropriate documents for six months, with an option to extend this sentence for twelve more months, for a possible total of eighteen months.

Foreigners who are interned have some rights including the following: respect for life, health and physical integrity; they cannot be subject to mistreatment or to physical or verbal abuse; their dignity and privacy shall be preserved; they have the right to receive adequate health and medical care, and to be assisted by social workers at the detention centre; they have the right to receive legal assistance by a lawyer (a *pro bono* lawyer will be provided if needed) and to communicate privately with her/him, even beyond the schedule established by the centre, in case of emergency; they can receive the assistance of an interpreter if they do not understand or speak Castilian (for free if the internee lacks the necessary economic resources) and the right to contact NGOs and national, international and non-governmental immigrant advocacy agencies.[4]

Nevertheless, as noted by Cristina de la Serna and Carlos Villán Durán, members of the Spanish Society for the International Human Rights Law (AEDIDH), several reports denounce the irregularities detected in Spanish CIEs.[5] Those reports basically focus on the conditions of the facilities; access to health and social services; irregularities regarding procedures and effective legal protection; and alleged torture,

2. The internment of foreign people in CIEs is regulated by sections 62, 62 bis, and 63 of Organic Law 4/2000 of 11 January on rights and freedoms of aliens in Spain and their social integration (from here, "Organic Law 4/2000"); sections 153 to 155 of the Royal Decree 2393/2004 of 30 December 2004, which lists the regulations of Organic Law 4/2000; and in the Ministerial Order of 22 February 1999, which lists regulations and procedures for detaining foreigners.
3. Extension to 60 days was introduced by Organic Law 2/2009 of 11 December, reforming Organic Law 4/2000 of 11 January on rights and freedoms of aliens in Spain and their social integration.
4. Granted under Section 62 bis of Organic Law 4/2000 which establishes that CIEs are "public establishments of a non-penitentiary nature"
5. – Annual reports by the Spanish ombudsman (Defensor del Pueblo) from years 2007, 2008, and 2009 (the 2010 report has not been published yet);
   – A report prepared by a civil society organisatio, the Comisión Española de Ayuda al Refugiado (CEAR), in the framework of the European Civil Society Report on the Administrative Detention of Vulnerable Asylum Seekers and Illegally Staying Third-Country Nationals, DEVAS), started by the Jesuit refugee Services in 2008 with funding by the European Refugee Fund (ERF) of the European Commission. This study, published in December 2009 and headed "Situación de los centros de internamiento para extranjeros en España", analyses the situation in three of the nine Spanish CIEs: Aluche (Madrid), Zapadores (Valencia), and Capuchinos (Malaga).
   – The report "Voces desde y contra los Centros de Internamiento de Extranjeros" published in October 2009 and jointly prepared by the following civil society organisations: Ferrocarril Clandestino, SOS Racismo Madrid, and Médicos del Mundo Madrid. It analyses the situation in the Aluche CIE (Madrid), the biggest in Spain.

mistreatment and other abuses by security staff. For instance, in his last annual report, the Ombudsman drew attention to the following: the lack of privacy afforded internees in dormitories (separated by railings/bars, rather than walls) and toilets; segregation by gender which prevents families from staying together; deficiencies in the hygiene conditions and cleaning of the premises; overcrowding (from six to eight internees per dormitory); lack of camera surveillance in common areas; and lack of leisure areas. On the other hand, the Comisión Española de Ayuda al Refugiado (CEAR) is concerned about the lack of medical attention for internees with special needs, such as those with withdrawal symptoms or psychiatric conditions. Moreover, about 30% of interviewed internees from the CIEs in Madrid, Malaga and Valencia "report weight loss or weakness, hunger or physical or mental discomfort, which they attribute to a poor diet", and "about 75%, at some point, feel sad and feel like crying, while 10% report having considered suicide" (Pérez, 2009).

The only available data about the number of foreign people interned in CIEs are provided by the State General Prosecutor (Fiscal General del Estado) in his 2010 annual report (with data from 2009). According to this source, in 2009 in Spain there were 16,590 foreign persons held in CIEs, 8,935 of which were expelled from the country (FGE, 2010). Therefore, if we trust data provided by the report, it should be noted that, in 2009, according to a basic mathematical operation, 7,655 irregular immigrants would have belonged to the group of aliens deprived from their fundamental right to the freedom of movement but, eventually, not actually expelled. Taking into account that detention is aimed at guaranteeing expulsion, the figure of 7,655 people deprived from their freedom of movement but not qualifying for expulsion can only be defined as unjustified and out of proportion (Serna *et al.*, 2011). Cristina Manzanedo (2012), from Centro Pueblos Unidos, explained in the 2012 annual report, that approximately 1,000 foreign persons enter the CIE each month, of which just over half are expelled. In 2012, Centro Pueblos Unidos visited 328 immigrants in the CIE. Only 88 of these were people with criminal records, while the rest (240), hadn't previous criminal records. The criminal records of people in the CIE are usually associated with poverty and very few have a social hazard profile.

Several critics, including the Ombudsman, the State General Prosecutor and NGOs point out that Spain's systematic internment of foreigners is not in line with the law on "foreigners". Reports on all of the detention centres indicate inhuman conditions; frequent mistreatment and abuse; difficulties and barriers for the internees to access justice, be it a judge, the State's attorney office, lawyers or relatives; or even access to medical assistance. These problems also are proof of the violation of other inalienable human rights, such as the right to moral and physical integrity and the right to an effective remedy (Serna *et al.*, 2011).

Therefore, the widespread internment of foreigners without papers in CIEs is a discriminatory legislative policy and violates their right to freedom and the principle of legal certainty, as established in section 5 of the European Convention on Human Rights. As compared to the State's (legitimate) aim to regulate migration, the measure is absolutely disproportionate, and also violates the general principle of non-discrimination that inspires international human rights law as a whole. The same argument was put

forward by the United Nations Human Rights Council Special Rapporteur on the Human Rights of Migrants: "States should not deprive migrants of their right to liberty because of their migratory status. […] States should consider and use alternatives to immigration detention in accordance with international law and human rights standards. Detention should not be considered necessary or proportionate if other less restrictive measures to achieve the same legitimate objective have not been considered and assessed".[6] The Special Rapporteur proposed some measures as alternatives to internment, such as a registration system for irregular migrants; guaranteeing their presence in court through monitoring systems; the deposit of a financial guarantee; or an obligation to stay at a designated address, an open centre or other special accommodation. In fact, the report by the Special Rapporteur emphasises the effects of the punishment of migration on the protection and the exercise of human rights, and underlines the negative consequences of these policies on groups that should not be assumed to be irregular migrants, such as victims of trafficking in human beings, asylum seekers, and children. This report also provides examples on good practices, such as the adoption of an approach based on the human right to migration, and a management of irregular migration not based on penalties.

In Denmark, an NGO called Projekt UDENFOR has witnessed cases of the deportation of homeless migrants from Copenhagen because of certain behaviours (Ohrt Fehler, 2012). In December 2010, 69 homeless migrants were arrested and put in detention for staying overnight in a private low-threshold shelter in Copenhagen; many were later deported. Their arrest and subsequent detention was carried out because they were "guilty" of being foreigners and homeless.

In June 2011, the former Danish government established a new policy on deportation and new guidelines were put into practice. As a result, homeless migrants who are EU citizens cannot be deported simply because they are poor or homeless –– that is, lacking the means for subsistence. The means of subsistence is determined to be 350 DKK per day (around €50) and at routine police checks, homeless migrants who could not demonstrate that they have this much money, could, prior to the change in practice, be deported. Between 2009 and mid-2011, 278 EU citizens were deported from Denmark under this policy. The "Report on Homeless Migrants in Copenhagen 2012" estimates that an absolute minimum of 200 EU migrants each day and 500 each year live as homeless people in Copenhagen. About one-fifth of these are what we describe as "particularly vulnerable homeless migrants".

FROM THE STREET TO JAIL - FROM JAIL TO THE STREET: USING HOUSING TO BREAK THE CYCLE

Homeless people are at increased risk for incarceration and, conversely, release from jail or prison leaves a person particularly vulnerable to an episode of homelessness (Homeless Link, 2010; Social Exclusion Unit, 2002, Seymour, 2006; Metraux *et*

6. Report of the Special Rapporteur on the human rights of migrants, doc. A/65/222, 3 August 2010.

al., 2007). Thus, homelessness can be seen as a cause and/or consequence of incarceration, since release from incarceration, together with eviction and family disintegration, are key causal factors in homelessness processes, but in turn, long periods of incarceration can be the precursor of evictions and the breaking of family or spousal ties (Busch-Geertsema *et al.*, 2010). For example, Hickey (2002) conducted a small-scale study that concludes that there are a number of pathways into homelessness and a variety of complex relationships between homelessness and the committal of a crime, and between release from prison and entering a cycle of homelessness, crime and re-offending behavior. For some, homelessness contributed to their offending behavior through the criminalisation of certain behaviors such as public order offences (like being drunk and disorderly and vagrancy); the adoption of criminal behavior for street survival (such as shop-lifting); and their development of addictions to cope with the isolation, insecurity and difficulties of being homeless. For others, it was criminal behavior that led to homelessness, most crucially because the nature of the offences for which they were imprisoned led to a break-up of their relationships and their time in prison led to a loss of accommodation. In addition, both groups had drug and/or alcohol addiction and mental health problems to contend with, and these contributed to and exacerbated their problems of homelessness and, in turn, had an influence on their likelihood of reoffending (Hickey, 2002).

It has been shown that homeless people are overrepresented in both arrest rates and prison population statistics, and the lessons from research (Busch-Geertsema *et al.*, 2010) tell us that one cannot read into arrest and incarceration rates that homeless people have a criminal disposition and that this disposition is a cause of their homelessness. Rather, the objective condition of homelessness is, in itself, defined as criminogenic through the actions of legislators. In addition to criminalization of the status of homelessness by state regulation, the condition of homelessness may result in homeless people engaging in "strategies of survival", which are often illegal and hence generate higher arrest rates amongst homeless people (Busch-Geertsema *et al.*, 2010). For instance, the Policy Briefing on Criminal Justice from Homeless Link (2009a) includes different studies in England evidencing the following:

- The risk of homelessness increases after having been in prison:
  - → 30% of people released from prison will have nowhere to live (Niven *et al.*, 2005).
  - → 18% of clients in an average homelessness project are prison leavers (Homeless Link, 2009b).
  - → 12,000 prisoners were released with nowhere to go in 2005/06 (Shapps, 2008).

- Finding oneself in a situation of homelessness increases the risk of reoffending.
  - → Ex-prisoners who are homeless upon release are twice as likely to reoffend as those with stable accommodation (ODPM/HomeOffice, 2005).
  - → 35% of Young Offenders aged 16 to 25 felt a lack of accommodation was the factor most likely to make them re-offend (Prince's Trust *et al.*, 2008).

- Many people undergo cycles of homelessness and imprisonment:
  - → 51% of prisoners had housing problems prior to imprisonment (Home Office, 2003).
  - → 5% of prisoners were sleeping rough before they were sent to prison (Niven *et al.*, 2005).

- Prison leavers with complex needs are often more likely to be homeless.
  - → The Revolving Doors Agency found that 49% of prisoners with mental health problems had no fixed address on leaving prison (Revolving Doors Agency, 2002).

Therefore, we can see the centrality of housing as a key factor in reducing homelessness and re-offending rates. In Spain, Cabrera indicates that there are 7,000 homeless people in prison, who currently have a roof (the prison roof), but who say they have nowhere to live when they get out. It is essential to ensure their right to housing in order to ensure their quality of life and prevent them from reoffending when they are released from prison (Cabrera, 2011). In England, a study by the Social Exclusion Unit (2002) suggested several key factors which can have a huge impact on the likelihood of prisoners re-offending, one of which is housing. Evidence shows that having stable accommodation reduces the risk of re-offending by 20% as it can provide the stability necessary to enable individuals to address their offending behavior and to access a range of other services such as community mental health services and to gain employment (Crisis, 2011). In New York, supportive housing has been documented to reduce criminal justice involvement drastically, reducing jail incarceration rates by up to 30% and prison incarceration rates by up to 57% (Culhane *et al.*, 2002).

In addition to human reasons, there are also economic reasons justifying the centrality of housing in interventions with homeless people (Pleace, 2011). Numerous studies in different countries show that providing emergency supports such as homeless shelters is more costly than providing the supports to assist homeless people in permanent or regular housing. In Canada, the IBI Group, a multi-disciplinary firm for urban development, estimates that homelessness costs Canadian taxpayers $1.4 billion (CAD) each year and concludes that financial reasons alone are sufficient to necessitate transition to a homelessness prevention model of service delivery (IBI Group, 2003). Prison and jail are among the most expensive settings to serve people who are homeless in USA: one nine-city study calculated median daily costs for prison and jail at $59.43 and $70.00 respectively, compared with $30.48 for supportive housing (The Lewin Group, 2004). Moreover, the US Housing First model emphasizes placement of homeless individuals in permanent housing, where they have access to services necessary to stabilize them and keep them housed (Tsemberis *et al.*, 2004). Consequently, Housing First users also make less use of emergency shelters, less use of emergency medical services, and are less likely to get arrested than when they were homeless, all of which produce savings for the US Taxpayer (Culhane, 2008; Tsemberis, 2010).

In recent years, many policy-makers and service providers in EU member states have become interested in Housing First concepts. Housing First has been incorporated in

homelessness strategies in Denmark, Finland, Portugal,The Netherlands, Ireland, and France. Pleace (2012) differentiates three basic Housing First approaches in Europe:

- "Pathways Housing First (PHF)": Following American model closely. PHF is targeted only at chronically homeless people.
- "Communal Housing First (CHF)": Congregated housing with on-site support, but self-contained and with permanent contract, using harm reduction approach.
- "Housing First Light": Low-intensity mobile support to formerly and potentially homeless people living in scattered housing; case management/service brokering approach, often focusing on people with lower support needs.

In a recent review of Housing First projects in a number of Europe cities, Busch-Geertsema (2013:7) concluded that it is possible to house homeless persons even with the most complex support needs in independent, scattered housing. It is hard to evaluate the economic cost of each of these models separately, as they vary considerably from one country to another and depend, for example, on whether new buildings have to be built or not. But, Finland, for instance, decided on an approach that involved extensive use of a CHF service model in the context of their strategy to reduce long-term homelessness because, as Kaakinen (2012) says:

- It is a question of ethics: Housing First treats formerly homeless persons as normal citizens rather than as clients or patients.
- It is a question of economy: A survey carried out in a Tampere supported housing unit shows that housing with intensified support halves the use of social and health care services compared to service-use during homelessness. This equates, to 14 000 euros of savings per resident/year. The total annual savings for 15 residents in the unit in question amounted to 220 000 euros. The greatest savings were gained from the decreased use of institutional care and special health care. This housing unit has 22 independent flats and 5 support workers.
- It is a question of customer choice: Many homeless people prefer CHF, because they fear isolation and loneliness in scattered housing.

The robust evidence on the efficacy and cost-effectiveness of Housing First type approaches to ending homelessness clearly demonstrate the viability of inclusionary, rather than exclusionary, responses to homelessness and marginality.

CONCLUSIONS

A number of observations can be drawn from the analysis above. First, the consistent variations in both the growth and scale of incarceration over the past 30 years or so demonstrate that there is no inevitable logic, be it globalisation or neo-liberalism, driving incarceration in an upward direction. Divergence, rather than convergence, remains the dominant feature when comparative penal populations are examined. Second, rates of incarceration and rates of crime are independent of one another. Rising prison populations are the result of a range of political decisions, rather than a reflex response to crime. Third, social policies and criminal justice policies are

both means of managing marginal populations. Social policies, by and large, aim to integrate marginal populations through inclusive strategies, whereas criminal justice policies explicitly exclude marginal populations through banishment, incapacitation and stigma.

It could be concluded that part of the institutions and the administration of the Rule of Law have been transformed into instruments for the control, management, and repression of poverty, homelessness and immigration, especially immigration labelled as "irregular". "Regular" immigrants, who comply the entry and residence regulations, are temporally granted certain civil, social and political rights, while "irregular" immigrants are subject to public order regulations, precautionary measures and penalties, such as detention-arrests, internment, fines and expulsions.

The Spanish case shows how people living a normal life can suddenly be caught up in administrative procedures of arrest, detention in internment centres, and deportation from the country (Silveira, 2011). As noted by Cristina Manzanedo and Daniel Izuzquiza (2011), it seems that, regarding concerns over the internment of foreigners, the Spanish government uses this policy as an instrument of control. Nevertheless, empirical data demonstrate that this approach is not even an effective control of irregular migration flows, but is, above all, a means of social control. The government seeks to show Spanish citizens that it exerts tight control over irregular immigrants: it is a message of peace, order and control. And, simultaneously, irregular immigrants receive a message of fear, persecution, harassment and criminalisation.

Finally, we can say that there is evidence to demonstrate how access to housing helps to break the institutional circle, guaranteeing human rights and saving public expenditure.

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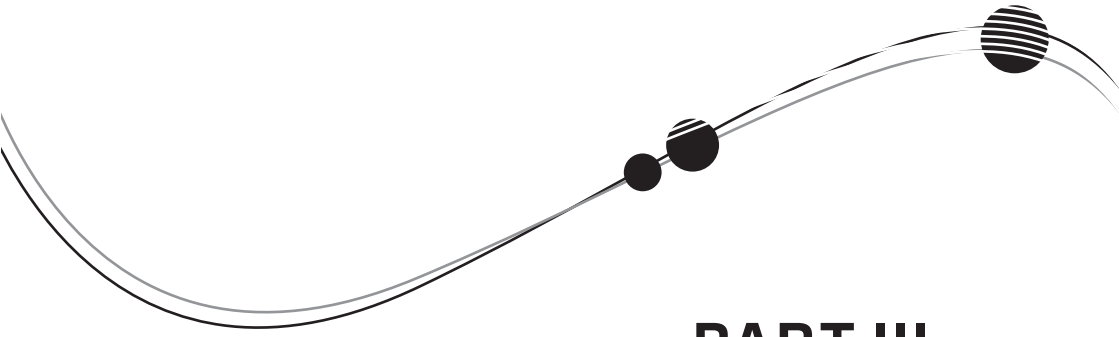

PART III
GOOD PRACTICES

"I was rapidly learning that one of the challenges of being a street lawyer was to be able to listen."

The Street Lawyer, by John Grisham (1998)

GOOD PRACTICES - POLITICAL MEASURES

The purpose of this part is to show that it is possible to make policy that is respectful of the human rights of homeless people through national strategies for the eradication of homelessness or through specific actions and programmes like interventions in train stations or airports. This chapter will demonstrate that policies that support homeless people to access housing and services are far more effective than banning homeless people from certain areas. A national strategy for eradicating homelessness is the first step, and its implementation is crucial; it should be enacted in a way that fully respects the human rights of homeless people. It is necessary to avoid the "tyranny of numbers" pitfall and not let the goal of statistically reducing the numbers of homeless justify means that, in fact, penalise homeless people. This chapter will also highlight good practices and experiences in countries without integrated homelessness strategies, and point to countries that have both good and bad practices operating in the same cities or regions. Raising awareness about the impact of criminalising and penalising measures on homelessness is an important step to eliminate this policy-making at cross-purposes. The right hand might not know what the left hand is doing: penalising measures are not usually enacted by those who are responsible for social policy, and can often undermine good work that seeks to prevent or end homelessness, by aggravating the situation.

In the analysis we conducted in the first part of Chapter VIII, we tried to highlight the important role of the Human Rights-Based Approach in developing the guidelines for national strategies aimed at eradicating homelessness in Europe. We reviewed the development of case law by the Council of Europe's Committee on Social Rights specifying the implications of article 31 on the right to housing of the Revised European Social Charter of 1996, and in particular of point 31.2 on the prevention, reduction and eradication of homelessness in Europe.

Chapter XIX highlights how, through the social intervention at Barcelona Airport, actions respecting the human rights of homeless people can be carried out without national homelessness strategies in place. The most important conclusion from this example is that the only thing that evicting, expelling and penalising homeless people does is shift the problem to another place, neighborhood or city, without resolving the problems or meeting the needs of homeless people. The time and form of integration of homeless people and the gradual elimination of homelessness requires daily contact, trust and the will and the capacity of the homeless individuals themselves, as well as a sustained commitment to employing appropriate social policies that include an emphasis on prevention of homelessness as well as respect for the Housing First approach. Politicians should not try to solve the problem of homelessness by penalising it, by punitive and criminalising actions, or by discriminating when it comes to providing resources, because the goal should be eradication of homelessness –– because it is possible.

MEAN STREETS

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

Cover design : **Genaro Studio** [Lyon - France]

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ISBN: 978-2-8052-0218-6
9782805202186

FEANTSA is supported financially by the European Commission.
The views expressed herein are those of the authors and the Commission is not responsible for any use that may be made of the information contained herein.