

FEMALE PRISONER AND PRISONS FOR WOMEN. A FEMINIST LEGAL CRITICAL VIEW ACCORDING TO AN EMPIRICAL-LEGAL DESCRIPTIVE ANALYSIS OF THE RIGHT TO FORMAL EDUCATION IN PRISON

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Abstract

The present study provides an overview about the discussion of relevant issues on reflection over education and gender in prison. The education system analysed in Portugal was addressed with two approaches: gender perspective in pursuit of stereotypes that influence the social roles of women and men, and Human Rights by evaluation of legal norms and practices on education.

The State has a responsibility to promote public policies in the sense that basic human rights are guaranteed. The article we intend to describe the Portuguese prison system, with a gender perspective, to present and analyse the educational programs that are made available to female inmates in Portugal.

As a basic hypothesis for this research, it is the determination of the important role of the institutional education process in the resocialization of these women. To measure, the effectiveness of the right to education enshrined in the Constitution of the Portuguese Republic. It emphasizes the need to implement public policies that conceive education as a human right, including for people in situations of imprisonment.

The research is a qualitative approach, which uses literature and exploratory technical procedure. The sources of research include statistics and official reports, reports and projects from human rights associations, interviews and life stories, statements, reports and agreements from United Nations and other bodies, Portuguese laws, and their amendments, and jurisprudence.

Keywords: Education, Prison, Woman, Education as a Human Right, Portugal.

1 INTRODUCTION

The article is a product of an extensive research work within the Portuguese prison system. The fieldwork at the Estabelecimento Prisional Especial de Santa Cruz do Bispo¹, a female prison located in the North of Portugal, was key to drawing some of our conclusions.

Research within prison walls in Portugal is scarce and outdated. While research on the public punishment model, particularly in issues related to legislation and criminology, developed by using emerging methodologies, incarceration is a subject requiring urgent renewal of methods and sources. That would require a deconstruction of the classic legal paradigm 'must be, should be'.

One of our concerns is to understand the impact of serving sentence imprisoned in the following re-entry process, from a legal and regulatory perspective. In particular, we look at conditions for female recluse population, including mothers, within the prison space.

Although shortly, we propose a reflection on the school education system available for a Portuguese prison both in a legal and a gender perspective, as we focus on the female gender.

We base our conclusions on data collected in a wider research work, focusing on the variant "Education in prison" specifically for this article. The use of this research variant allowed us to understand the scope, impact, and limits of prison education. This is grounded on a quantitative, a qualitative and a participatory methodological basis and is anchored in previous bibliographical, documentary and field research.

¹ Referenced as EPESCB

This article proposes an analysis of school education established in the prison context from the representations of women in situations of seclusion in EPESCB. It aims to discuss the official discourse and the reality experienced by the woman recluse. All women were randomly selected according to a profile defined at the outset and post-analysis of the respective individual processes.

2 PROTECTION OF THE RIGHT TO EDUCATION IN THE PRISON SPACE - THE PORTUGUESE CASE

Public education policies find legitimacy on national and international legal provisions. The reclusive population, as any other, have the human right to education.

Within the international law, article 26th of the Universal Declaration of Human Rights establishes the right to education, whose objectives are the development of the person as a whole and the strengthening of respect for human rights.

Human rights cannot be delegated; everyone is entitled to them, regardless of their legal status. They are also interrelated and indivisible, as they can't be fractioned or partially deleted. Being part of a same package, none is of greater importance than the other. Finally, human rights are chargeable to the State.

The human right to education is simultaneously an economic, social and cultural right. It sits at the heart of policies for various jurisdictions. The right to education can be invoked as a means to enable and enhance the security of others. Furthermore, the right to education is also foreseen in an international setting through international binding documents² to which the State entails.

At the national level, the Portuguese State is required to promote the democratization of education and to contributing to equal opportunities and inequalities' reduction, as defined by Article 73th of the Portuguese Constitution³.

The creation of material conditions ensuring the effective exercise of the right to education is therefore a State responsibility. Inclusion of the prisons in the system is part of the fundamental right to education, as it must be available to all persons without distinction, according to the principle of universality and equality.

The creation and implementation of public policies to design education as a human right for the people in reclusion should consider that incarceration is just a moment in their lives. It can in fact be regarded as a perfect moment to learning and increasing their competences, hence contributing to an effective resocialization.

Therefore, education programs should be developed towards the social, cultural and economic inclusion of the population imprisoned.

The constitutional provisions on the institute of education are implemented by legal tools such as Código de Execução das Penas e Medidas de Segurança⁴, a portuguese code for regulating penitentiary law, and by Regulamento Geral dos Estabelecimentos Prisionais⁵, the regulation statute for implementation and administration of the penitentiary law inside the prison.

In particular, regarding the right to education, the ministerial order 7262/ 2009 of 10 March instituted the Centros de Competências para a Gestão do Acompanhamento Individual de Recluso⁶, skills centers for the implementation and management of activities and monitoring the individual education process of the prisoners.

² Such as, the World Declaration on Education for All, the International Convention on the Rights of the Child, Convention against discrimination in education, the Declaration and the Vienna Action Plan, 21 Agenda, the Copenhagen Declaration, the Beijing Platform for Action, Statement of Aman and plan of action for the United Nations decade for education in the scope of human rights. The international document entitled minimum rules for the treatment of prisoners, adopted by the UN Economic and Social Council in 1957 also provides for access to education by persons incarcerated.

³ Referenced as CRP

⁴ Instituted by law 115/2009 of October 12th, referenced as CEP.

⁵ Instituted by decree-law 51/2011 of April 11th, referenced as Regulamento.

⁶ Referenced as CCGAIR.

The Portuguese prison system is under the Ministry of Justice which develops its action through different units. The unit responsible for prisons was Direção-Geral dos Serviços Prisionais⁷, but in 2012 the government merged several institutions, prison services and reintegration services, creating the Direção-Geral de Reinserção e Serviços Prisionais⁸. According to the legislator, it should allow for a more focused intervention on the individual reclusive, integrating crime prevention policies, enforcement of penalties and measures for social reintegration.

In a joint decree of the ministers of justice and education⁹, each prison is associated with a school responsible for assigning teachers and organising the individual education process for the imprisoned students. By associating the supervised education system and the prison system, it should ensure the creation of conditions compatible with human dignity while contributing to the defence of order and social peace.

This is complemented by considerable provision of education and training for adults by the private sector, some of which is of vocational nature. The particular features of the prisoner population, namely the low levels of schooling, makes the Portuguese prison system a special setting for the promotion of education and training of adults¹⁰ carried out by the private sector, although mostly financed by the European Union funds.

The execution of sentences aggregates custodial measures with programs targeted for the treatment of specific issues. This allows for learning and strengthening personal and social skills, promoting peaceful and regulated coexistence of inmates within prison. Such an approach is especially targeting the adoption of socially responsible behaviour to promote the social reintegration of crime offenders.

These programs are custom-made, considering age, gender, ethnic and cultural origin, vulnerability and criminal records. It seeks to address specific needs of social rehabilitation of the person in seclusion. Crime enhancing factors, namely addictive behaviour, also take particular relevance in penitentiary treatment¹¹.

The CEP states, in Article 38th, that compulsory education should be ensured as a matter of priority for uneducated inmates. This is regarded as a fundamental element of prison treatment targeting the reduction of recidivism and a facilitation of access to schooling and skills training, within the framework of national policies for education, training and employment for adults.

To such endeavour, the prison system must promote prisoners' attainment of forward education steps, namely through tools and methods of distance learning. Also, recluses with special education needs must be granted access to education and to appropriate support, allowing for a promotion of equal opportunities compared with other reclusive people.

In the special cases of foreigners, included those from other Portuguese-speaking countries, the education system must ensure access to Portuguese language courses. This is an entitlement of the reclusive once subject to 1 year or longer incarceration.

These programs must be organized in alignment with vocational training within prison walls to promote employability and conditions for social reintegration. In this area, as foreseen in Article 40th of CEP, initiatives of further training should be arranged concerning the needs and skills of the prisoner population, privileging the creation of future conditions of employment of the prisoner person.

The sociocultural, recreational and sporting activities are foreseen in Article 49th of the CEP and are part of the prison treatment activities. These activities include the creation of libraries, reading services, video libraries and diverse cultural animation programs, which prisoners enjoy to improve their welfare and develop their skills.

⁷ Instituted by decree-law 125/2007 of April 27th (abrogated) which defined its mission, nature, purpose, organs and internal organisation.

⁸ Instituted by decree-law 215/2012 of September 28th, and set its structure by ministerial order 118/2013, March 25th 2013, and, in addition, the powers of the respective organic units, supporting them and establishing concise guidelines to guide the process of acting on the part of the professionals working in this area.

⁹ Joint ministerial order 451/99 of June 1st, where it establishes that it is the responsibility of the Ministry of education to educational practice in the prison context.

¹⁰ The EFA courses.

¹¹ In order to the report, Relatório de Atividades e Autoavaliação 2014. Lisboa: DGRSP, p. 60, were implemented in the prison system eight different education programs.

Particular emphasis is put on sports' activities organized by staff, promoting the physical and psychological welfare of the reclusive population and enhancing the spirit of social coexistence. Active involvement of the population, with large participation in the organization or even reclusive self-organized sociocultural and sporting activities, is also possible, as long as it doesn't threaten order and security within walls.

The inclusion of private institutions and voluntary organizations, in coordination with other entities, is foreseen by Article 55th of the CEP as well as by the Regulamento. It may relate to the development of cultural activities and leisure, as well as social and economic support for the inmate population and their families. It may also include, in the case of organisations of volunteers, an important role in activities relevant to the process of social reintegration, including support for employment and accommodation.

3 THE RIGHT TO EDUCATION AND THE ARRESTED WOMAN AND MOTHER WITHIN THE PRISON WALLS

Very seldomly, the term "male prisons" is used when we address prisons for men. The expression emerges mostly in opposition to "women's prison". On the opposite, "women's prison" is unavoidable when addressing female prison establishments¹².

In Portugal, the spaces of reclusion, especially those dedicated to the female reclusive, are little explored and debated in the community, reinforcing a general opacity and ignorance on the issues related to it. Such a context strengthens the hiddenness, segregation and social marginalization of female prisoners.

This is why research about female prisons is essential. In particular, research focusing on the life experiences of women incarcerated and the consequences of prison in a legal perspective.

Our research is based on 41 cases of female recluses, selected among a wider population, following an analysis of their individual processes.

This sample breaks down in two separate groups. The first is composed of 20 women prisoners directly asked for or volunteered for interviewing. These interviews took place in two different settings: 18 of them in the EPESCB; 2 others were held outside the walls, facing a parole status.

The remaining 21 cases included could only be addressed by an analysis of the individual processes without interviews. The authors received permission to collect data by the institution holding these inmates. The data made available was strictly limited to elements relevant to the focus of our research project.

The average age of our sample is 38 years old. The youngest is 23 years old and the oldest 48 years. Throughout our fieldwork period, EPESCB housed 7 children with their mothers, ageing from 5 months to 4 years old.

Generally speaking, the interviewed agreed that the natural place for children is outside the prison walls, provided such freedom is matched with the availability of appropriate care takers. Despite this, all prisoners interviewed were very favourable to the regime allowing them to keep their children in prison.

In 2015¹³, 62.280 convictions involved 55.053 crime offenders were registered in Portugal. Within this group, 89% are males, predominantly in the 17-30 age cohort (33%). Only 11% (6.082) of these convictions targeted women.

Data shows that only 11.176 recluses hold some type of qualification. Most of them, about 3,821 people arrested, hold only the 1st cycle of basic education.

In general, access to school education in the context of a prison sentence was perceived as a benefit and as an opportunity for personal growth by women addressed in our research. The motivation for taking this opportunity may vary greatly among individuals. In several cases, their decision is

¹² We follow the original idea of CUNHA, Manuela Ivone Pereira da. *A Prisão segundo o género*. In *Educar o Outro – As questões de género, dos Direitos Humanos e da Educação nas Prisões Portuguesas*. Lisboa: Humana Global, 2007, p. 17.

¹³ The data presented, are published on report: *Relatório Estatístico Anual 2015*. DGRSP: Lisboa, p. 3.

conditioned by the benefits they access to by their allegiance to the normative individual behaviour required by the prison system.

On the other hand, access to education may be affected by the immediate economic difficulties of the inmates, making them prioritise work and paid activities rather than studying.

Access to education in prison, rather than being subject to a logic of benefit for the inmates and part of their penalties, allowing them to progress while being in the prison system, is dependent on other conditions. On one hand, it lies on the individual conduct of each prisoner. On the other hand, in a game of luck and chance, between the hours of training and the need to work, this right, which should belong to all, is turned into an individual benefit, something to be conquered.

We note that women interviewed don't see education as a general and abstract right, legally established, or a duty of the state, facilitating the re-entry process¹⁴. In our sample results, about 72% of women surveyed tend to undervalue education.

Even though access to and continuing education is established as a right by law, institutional practices seem to mitigate its execution. Only a minority of these women, about 35% of the population in reclusion, attended sessions or training cycles within the prison. This finding corroborates the impressions registered in interviews of inmates stating that the system itself doesn't offer conditions for continuing studies.

This reality seems to reveal that, among the various stakeholders, there may be a crystalized idea that people deprived of their liberty are also deprived of other rights. It may underline the institutional performance, implementing inadvertently non-written rules translating into a suspension of rights de facto.

In this sense, in general terms, as regards the design of the participants in our research on the school education, we can highlight the difficulties faced in prison environment for inclusion in the school activities. On the other side, this seems to represent a possibility of learning and occupation of time in prison, but, above all, an important aspect of individual and social point of view.

Data collected and direct contact with the school inside the prison allows for identifying several weaknesses and aspects needing improvement, both within recluses and among those working within prison, such as teachers, guards, technicians and administration. Methods, content and approaches will require update and transformation in order to be successful.

In general, recluses recognise the transformative potential of education, both inside or outside the prison walls. However, they emphasize a pragmatic view of school education as a means for employment and reducing the prisoner stigma.

In particular, that comes with a certain ideological vision inside the prison walls, which conceive education as a right guaranteed legally, making it an option for administration and internal policy implemented in prison.

4 CONCLUSION

The current panorama of school education in prisons has shown, on the one hand, weaknesses and emerging needs; on the other hand, from the current legislation and regulatory guidelines, it reveals possibilities of implementing a public policy articulated with pedagogical criminal enforcement.

From the goals orienting this article and dissertation that inspires, it is relevant to point out that this research brings visibility to prison reality and in this context school education beyond common sense prevailing in the consensual viewpoint.

The results show that the current panorama of school education in prisons has various and specific weaknesses, including the limited number of female inmates involved in the programs. The possibility of effective action within the prison education is sustained, above all, by the personal commitment of teachers, prison staff and technicians involved in the task.

Also, it shows that a very pragmatic outlook of school education is dominant in this setting, isolating this topic from other sectoral policies and binding it strictly to getting a job or profession.

¹⁴ In this sense, cfr. PETERSILIA, Joan. *When Prisoners Come Home: Parole and Prisoner Reentry*. USA: Oxford University Press. 2003, p. 45.

We note that there is a transposition of adult education and training models for the intramural space. Schools in prisons are seen as extensions of regular schools. Inaccessible language and little belief of its relevance towards the labour market limit its attraction and the commitment of inmates.

The hurdles found by this population reduce their motivation and enhance their negative vision of old school and their willingness to face it again. It leads us to wonder about the need to make the education and training available more attractive to a population that is cynical of its own capabilities.

The specificity of the prison population justifies the development of models of education and training of adults fitted to their needs, with renewed procedures, methods and curricula. Statistical analysis following these education experiences shows limited impact of education in the lives of former inmates in the context of re-entry.

We find it of great interest for future studies to deepen the knowledge on the reality of school for recluses; their relationship with the recidency and the importance of education for the reintegration of prisoners into the labour market.

Like the above, it appears that the implementation of school education in prisons brings up numerous issues relating to the organization and the everyday life of the prison, which is confronted with the requirements of national and international standards for the sector.

Access to schooling will not, just by itself, ensure the convicted will be able to structure a life outside of crime if other conditions are not favourable. Increasing the skills and qualifications of these women is important, but it is not enough to reduce recidivism, if isolated from other factors.

To encourage women in a state of reclusion to increasing their qualifications may be crucial to a future away from crime. But it will have to be part of a process of overall support, which should include help finding a job, in the rebuilding family ties, while ensuring decent housing, with counselling and continuous follow-up if needed.

A disturbing aspect raised by women participating in our research sample was the notion that school education in prison represents for them a possibility of learning which keeps them busy but also enables compliance related benefits.

The fact is that school activity in prison is developed under the primacy of the goal of keeping order and discipline to (or "intending to") punishment. The relationship with the guards seems to affect the development of school activities, by significantly limiting the number of students or by designing the right to access in or out of jail. As such, it portrays a contradiction to the provisions of national and international regulations, which reaffirm constantly education as a right for all.

Therefore, it is important to increase joint efforts between bodies of penitentiary administration and education, in a macro-level, represented by the ministries of justice and education, and in a micro-level, through their managers and technicians. These efforts must emphasize the responsibility of all in the application of the right to education and, consequently, of national and international standards for compliance with penalty involving deprivation of liberty.

It is critical such action is not limited to the creation of new schools, mainly associated with vocational education, in order to solve the question of education for young people and adult recluses. We must enhance and put into practice a wide education concept, and articulate policies able to focus on and contribute to the formation of individuals with potentialities and powers that favour social mobility.

As verified by the analysis of representations of women prisoners, schooling every day in prison presents contradictions when compared with the basics that guide regulatory prescription.

In short, school in prison should prioritize a design and educational practice able to focus on, above all, the formation of citizens aware of their social reality and their rights. To overcome the current situation, education in prison must be articulated with an interdisciplinary orientation, fulfilling the intent laid out in the legal texts.

For this to happen, it is fundamental that the competent bodies take education as a social and inclusive policy, in association with other sectoral policies, foreseeing a collective build-up of education focused on critical and comprehensive training.

The perspective here is focused on ensuring sustained expansion of access to the right to education understood in its broad sense, related to the diffusion and transmission of knowledge historically organized within the framework of the culture and social diversity, in addition to the ideological practice of official certification.

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