

Jail in Spain times of economic crisis

Abstract

In the last few years from 2009 to the present, there is no doubt that the economic crisis is hitting the penitentiary sector hard. The Ministry of the Interior has decided to interrupt the legal assistance service (SOAJ) in the prisons with the excuse that the Agreement that existed since 2008 with the Andalusian authorities has not been renewed; only in the Community of Madrid, the policy of “budgetary cuts” has led to the cessation of the delivery of new treatments to half of the prisoners with hepatitis C, within the scope of the Catalan prison administration, the repercussion Policies for budget cuts have begun to affect the social reintegration programs in which more than 35 professionals and some 160 social organizations worked, the expulsion orders of foreigners are encouraged, and all of this with a clear decrease in the population imprisoned in our country.

Volume 6 Issue 3 - 2018

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Received: June 12, 2018 | **Published:** June 18, 2018

The criminal justice system in the transition from dictatorship to democracy

The inheritance

After the death of the dictator Francisco Franco in 1975, the need and urgency to normalize various issues and hot issues of Spanish public life were notorious. The political changes that were coming, the resolution of the problems posed by the historical nationalities of the State, the unavoidable Spanish opening to the exterior,¹ the recognition and legalization of political parties and workers' unions,² the renovation, depuration and regulation of police apparatuses,³⁻⁸ the construction of a democratic magistracy,⁹ the amnesty for political prisoners and the urgency to carry out a penance reform,¹⁰⁻¹⁶ among many other issues not mentioned here, make up a picture that illustrates, precisely, to the context in which the new State-form was built, which would be reflected in the constitutional pact.

Of course, they did not lack (could not be otherwise) very hard resistance to the process indicated, which were opposed from those social, economic or military sectors that yearned for a return to the past. Suffice it to recall here only, and as a small but eloquent example, the events that took place in Madrid in 1977 (in which several labor lawyers were murdered by extreme right-wing elements), or the constant activities carried out by various “coup plot” that, encouraged by various social and political sectors committed to the restoration of the previous regime, tried to destabilize the most sincere democratic intentions of many of the managers of the “political transition” and, obviously, the events of February 23, 1981, in which the democratic legality, and with it the own social and democratic form of the State of law, staggered as it had never happened in previous years can not be silenced. Undoubtedly, this whole set of events conditioned many of the elections that affected politics in general, and the criminal and penitentiary policy in particular that would be adopted at the beginning of the democratic journey.

The constitutional reform principles for a penal system of a social and democratic state of law

In effect, the Spanish Constitution was promulgated in 1978, adopting Spain's social and democratic form-State of law: the

“social constitutionalism”, although belatedly in other areas, had been inaugurated in Spain. The Constitution established a series of principles that would guide the formation and functioning of the criminal justice system of the new State: the principles of legality and proportionality of penalties, the abolition of the death penalty and torture, the resocializing purpose attributed to prison sentences and the consecration of a broad catalog of fundamental rights and procedural guarantees for all citizens, are some examples of the incorporation in Spain of the most modern principles of action of a penal system proper to that form-State. With these inspiring principles, from the beginning of 1978, the penitentiary reform operation would be launched, which would culminate the following year with the approval of the Penitentiary Law that was promoted, basically, by the then Director General of Penitentiary Institutions, Carlos García Valdés commented later. Despite the important developments incorporated by the 1978 Constitution, the bases on which the Spanish penal system was based were constituted by legislation inherited from past eras. In effect, the criminal norms, both those of a substantive nature and the procedural ones, reflected a criminal policy guided by pre-democratic and authoritarian criteria that demanded a profound reform that adapted to the new times. Some measures taken seemed to be heading towards the expected transformation: the disappearance of the Public Order Court and the initial criminal-procedural reform carried out by the first PSOE government (in relation to preventive detention), together with others, meant encouraging decisions in that way. However, other measures taken by then showed that the initiated course-guided by legal reasons and unequivocally democratic convictions - would suffer deviations that would obey other reasons, not legal or even less democratic.

The maintenance of a jurisdiction that, like the Audiencia Nacional, questioned the constitutional principle of the natural judge¹⁷ and basically assumed the competences to prosecute behavior related to political violence phenomena; the so-called procedural counter-reform, which again extended the duration of preventive detention (a setback motivated by the construction of a public opinion alarmed and fed by the political right and its agencies, and ratified by the same Minister of Justice who had put march the same reform), all in 1983, are just some examples that illustrate the indecisions and counter-marches of the time. Along with this, the lack of a criminal reform in

depth, to maintain for twenty years the so-called Criminal Code of the Dictatorship (which will only be approved in 1995) also reveals that the law (criminal and procedural), in its The creation phase remained little more than unalterable and, consequently, with serious difficulties of adaptation to the constitutional mandates imposed by the new form-State that had been adopted in those decisive years.

The gradual penetration of the “emergency culture”

Bergalli points out (1992), that during the years of the beginning of the democratic journey, a new rationality was imposed gradually in Spain: the “reason of State”, as guiding principle of legal-criminal legal production, begins to replace the “legal reasons.” This election had its consequences on the process of creating the right. The aforementioned democratic states resorted to the creation of exceptional legislation and the establishment of jurisdictions of more or less equal nature to combat, first, against terrorist violence, then, against drug trafficking, later against the phenomenon of organized crime, later, against crimes that attempt against sexual freedom, then against the phenomenon of migration. In this way, a true “culture of emergence” is created, which has allowed the interpretation of the modes of coexistence from a tentative model to maintain social order and limit the conflict that, provoking consensus, nevertheless delegitimizes the rule of law and attacks the foundations of the “reasons” elaborated from the Criminal Illuminism through a liberal legal culture that gave support to the social organization born with industrial capitalism (Bergalli op.cit: ibidem). Spain was not alien to the processes that are being pointed out, nor are they limited to the scope of criminal policies. In effect, while the aforementioned processes were being verified, Spain began the transition towards the countries of the so-called “first world”, immersed in a deep crisis of their welfare structures.

In this sense, it is enough to remember the entry of Spain into the European Communities, or into NATO, its adherence to the “Schengen agreements”, or the decisions adopted by the so-called “Trevi group”. All this has led Spain, also in recent years, to the need to develop a legislative framework that is defined by the construction of that “(legal) speech of the emergency”. In effect, the criminal policy was oriented towards the criminalization (both criminal and administrative) of certain sectors of society. Suffice it to state some examples:

- i. Enactment of Anti-Terrorist Laws that, among other very serious issues, punish “opinion crimes” and allow for the shutting down of communication media;
- ii. Sanction of a Law on Foreigners that harshly represses migratory movements from geographical areas that have been, and are being, permanently plundered by the countries of the “center” (this is an “emergency” legislation that allows, for example, the deprivation of liberty of individuals who have not committed a crime and that can be agreed directly by an administrative authority);
- iii. Sanction / penalty (administrative-criminal) of the consumption of substances declared illegal, in the context of an attempt to police the urban spaces (see Organic Law on Citizen Security).

The deep cuts in social policy, together with the regressive nature of the configuration of that “emergency culture” in the field of criminal policy, paint a bleak picture in relation to social welfare and respect for fundamental rights of people. The increasingly frequent use of punitive strategies to try to alleviate a deeply critical socio-economic

situation contradicts the postulates of a liberal legal rationalism that, some two centuries ago, intended to design a criminal law with minimal intervention. Reasons of social alarm, disciplinary needs, political resistance, state obligations contracted in supranational areas and demands of neoliberal socio-economic policies, therefore, seem to have been imposed over constitutional dictates that would be proper to the new State. And all this, as can be seen, has had an impact on the process of creating the norms of criminal control in Spain in the last two decades. But also, as will be seen later, such a picture was reverberating in the processes of interpretation and application of law. And we must remember here that we are not analyzing the present yet, but the political and political criminal future of Spain in the 1980s. However, while such processes developed in the public life of Spain, the particular prison universe produced its own internal explosion, implosion that revealed the harshness of an inherited situation and to which, we believe, a failed solution let’s see.

The triumph of the reformist option in the penitentiary (1979)

It should be remembered first of all that it was verified within the dialectic represented by the binomial “reform / rupture” that was also typical of other areas of social, political, economic and cultural life from the years of the so-called “political transition” to democracy. It is evident that, within such a dialectic, the reformist option was the one that finally triumphed. Thus, and as a first question, it is necessary today to point out (as we have done on other occasions) that that reform ignored the great majority of the claims expressed by those who suffered the effects of a prison situation and heir to the previous regime of the fascist dictatorship. / Francoist This requires an explanation. Indeed, the Spanish prison reform, embodied in the approval of the LOGP, was an initiative that did not take into account the bearers of the prison claims that at that time found in the social movement of the jail an unprecedented articulation. It is alluded to, to the claims carried out by the groups, associations, etc. (both inside the jail and outside), who, faced with the discrimination that social prisoners felt for the release of politicians, began broad campaigns and strategies of various struggles, which deserve to be discussed for a better understanding of the dialectic lived by then.

Campaigns for the amnesty of political prisoners, derived, after the release of those in freedom, in important claims of social prisoners, who took the flag of the fight against prison. The anti-prison movement then passed on to the social prisoners, given that with the amnesty to the politicians, they were considered unfairly discriminated against by “not receiving a second chance”. Thus, in late 1976, the organization calling itself the “Coordinator of Prisoners in Struggle” (COPEL) was born, and in the same line, immediately, the “Association for the Study of the Problems of Prisoners” (AEPPE), the “Association of Relatives” and Friends of the Prisoners and Expectants (“AFAPE), etc. The total amnesty for social prisoners was only supported by the National Confederation of Workers (Anarcho-Syndicalist Union) and the revolutionary left. Demonstrations, university closings, proclamations, journalistic editorials, constitution of numerous solidarity groups with the claims of the prisoners, constitute only a few samples of the campaigns referred.¹⁴ The reform promoted by Carlos García Valdés, did not attend those doctrinal principles drawn up by the Senate to inspire the reform analyzed. Indeed, a review of some of the legislative options that would become the first Organic Law of the fledgling democracy, can confirm what was said. Before this analysis, we should remember the words of the driver of reform “can not be

forgotten that, at that historic moment of political transition, there was a serious conflict situation in the field of penal institutions, motivated primarily by a growing awareness of prisoners to defend their rights and the discrimination that those supposed to grant amnesty to those convicted of committing political crimes.

Reform, counter-reforms and subsequent emergencies

The beginning of the withdrawal of resocializing ideal (1989)

Everything has been briefly describing obviously produce its implications for the prison universe. It has already been said that the prison population steadily increased. Along with this, some data illustrate about the flow of events prison decade of 1980. From the point of simply Architecturally, there were two options that prevailed:

- a) the appearance of the first “maximum security prisons”, Y,
- b) prison construction plans of what came to be known “macro cárceles”.

Regarding the first initiative, it is easy to guess that its pure projection and design edificio puts in question any reassessment postulate of custodial sentences. Because it makes the second, designed in recent times of the socialist government and continued later in the Popular Party Government, difficult to understand results, from the prism of promoting the construction of small units (or even delve into the road of open prisons), that the best option is the one that gives priority to the macro-units of two thousand inmates. From the point of view of the guidelines that the Penitentiary Policy would take, it is necessary to mention two aspects that, I understand, marked the highest turning point in relation to the hardness that it was taking. I refer to the elaboration of the first “special files” to control sophisticatedly certain groups of prisoners and at the beginning of the practice of transfers and the “geographical dispersion” of others. In the first case, it is the Internal File of Special Monitoring (FIES), which consists of a computer database where -without any legal coverage the most controversial and / or claiming inmates are being introduced. The inclusion of these in the File, is the step to a drastic reduction of their living conditions: constant cell isolation, searches and systematic searches, prohibition of enjoying penitentiary benefits, censorship of correspondence, constant transfers of a penitentiary to another, etc. This “modality” of compliance with custodial sentences originates from Circular Orders (for example, No. 17/1995) that develop the closed regime provided for in art. 10 of the Penitentiary Law that García Valdés justified as a “bitter necessity” to control certain sectors of inmates. The effects that so far has provoked such a regime, constantly denounced as inhuman by the support organizations for prisoners, has consisted, in the production of mental disturbances, self-harm and suicides of the inmates affected by it.

The second example of the “emergency” mentioned is constituted by the implementation of the so-called “penitentiary policy of dispersion”, an anti-terrorist penitentiary policy that criminalizes the relatives of ETA prisoners, and other groups, by forcing them to sometimes move to more than 1000 km. away to maintain a “communication” with the inmates. It is also important to point out that this “penitentiary policy of dispersion” lacks any documentary basis to articulate it, as well as a flagrant infringement of prison legislation which, in any case, stands out in relation to the place of compliance with sentences, that such a circumstance must avoid

“social uprooting”. It should also be noted that, both examples, are measures adopted ten years after the approval of that LOGP (exactly in 1989) and are examples that illustrate the penitentiary discourse of the years following the start of the prison reform and accredit the gradual penetration into Spain of the “culture of emergency or exceptionality” in penitentiary matters.

The reform of the penal code (1995)

Meanwhile, in the last times of the last PSOE government, parliamentary debates began that would lead to the approval of the new Criminal Code of Democracy (nCP), as it has been baptized. The claims for overcoming the previous Penal Code of the Dictatorship (aCP) were at this point (in 1995) unanimous: twenty years of democratic regime with a penal code of the dictatorship! Thus, although in a moment of political weakness of the aforementioned Government, and contemporaneously with the most important revelations about the “State terrorism” that surfaced at that time, the nCP was approved by the Plenary of the Congress of Deputies, on the 8th of November 1995, although it would not enter into force until May 24 of the following year, as 10/1995 of November 23. The parliamentary discussions were marked by a hard debate between the parliamentary groups that were in favor of the official project and the only party that refused to vote in favor of it (Partido Popular) to which, paradoxically, it has corresponded after its execution. That hard confrontation, for what is now of interest here, was staged by an emblematic issue: the so-called “effective enforcement of custodial sentences. Now, it is important to remember today, when some years have passed since that debate, that it was always traversed by new emergencies that would condition the final result: a) the elections of criminal policy on terrorism; b) the memory of sadly famous criminal events that shocked the social conscience (and involved the collection of more than 3 million signatures that requested deep restrictions of penitentiary benefits for crimes against sexual freedom); and, c) the electoral commitments that the political parties had acquired (at a time immediately before the general elections).

It can not be denied that the nCP has meant an important modernization in many issues that required a long time reform. The elevation of the criminal age of majority or the repeal of the Law of Dangerousness and Social Rehabilitation (although it was already practically reduced to ashes by a jurisprudence of the Constitutional Court), are examples of what has been said. It is now important to highlight some aspects related to the custodial sentence, so that the reformist course described here can be followed. It would be worth mentioning some of the following innovations of the nCP:

- i. Repeal of the institution of the remission of penalties for work;
- ii. Introduction of exceptional regimes for the enforcement of prison sentences, together with the general compliance regime. This “penetration of penitentiary exceptionality” can be seen through several examples, among which the following could be cited:
 - a. the paradigmatic art. 78 nCP which, now served the “dangerousness” of the offender, allows to calculate its possible prison benefits (exit permits, conditional release), on the total sum of sentences, instead of applying the ordinary rules of legal accumulation of the same.
 - b. The new system for conditional release can also be mentioned. In fact, in the face of the general regime that provides for its concession when the convicted person has extinguished $\frac{3}{4}$ parts of the sentence (besides being in the

third degree of classification, having good conduct and a favorable prognosis of reinsertion), it is now established that, “exceptionally” (Article 91 nCP), conditional freedom may be granted to those who have completed 2/3 of the sentence” provided they have continuously developed labor, cultural or occupational activities. “

This new compliance system, briefly described, already allowed, as Muñagorri highlighted, “to reach a maximum compliance time of thirty years (Article 76.1.b), which can also be effective based on the provisions of art. 78 “(1997: 4). Such duration of punishment, adds the aforementioned author, “was, with the repealed legislation, practically unattainable” (ibidem). In addition, this author, through analyzing the examples concerning the new penalty of the crimes of robbery with violence and intimidation and against public health -precisely, the two categories that provide the prison clientele-, demonstrates that “certain assertions vanish on the generalized benignity of the new legal regulation “, which leads him to conclude that the nCP produces a” regressive increase in criminal complexity “(ibidem). Two questions were already posed then:

- i. Has a historical opportunity to advance towards an overcoming (or at least a limitation) in the use of the custodial option been lost ?; Y,
- ii. Is it possible then to conclude thinking that the Criminal Code of Democracy is, from the point of view of compliance with custodial sentences, notoriously harder than the Penal Code of the Dictatorship?

As will be seen later, other penal reforms would still harden much more than just said.

The reform of the penitentiary regulation (1996)

Before concluding this section, it is necessary to mention the approval in 1996 of the new Penitentiary Regulation. This has repealed in its entirety to the previous one, being therefore a completely new regulation and that must be adapted, of course, to the nCP; not in vain have entered into force, both normative bodies, the same day. In the first place, attention must be drawn to a very serious fact: the vast majority of matters that affect the regulation of the deprivation of a fundamental right such as freedom, continues to be regulated in Spain in norms that lack legal status. The question that arises is obvious: where is the respect for the executive guarantee derived from the principle of legality? (which requires - as a requirement of the rule of law - that the form, the manner in which the sentences of deprivation of liberty are fulfilled, complies with what is established by norms of legal rank). Secondly, it is necessary to question (also in this chapter of objections to the “legislative” technique) the lack of foresight in the classification of actions that may give rise to disciplinary offenses. It continues this way, twenty years later, the curious “legislative technique” to regulate -by Law- the sanctions that can be imposed for the commission of some faults that are regulated -by Regulation- in a repealed text (such as the Prison Regulations of 1981 reformed in 1984). The “attention” that the penitentiary problem has deserved, can not be more sadly eloquent. Beyond these objections, others can be pointed out as much or more serious. In order not to cover a whole series of subjects, we will mention only two that are particularly serious.

The first refers to the attempt to “legalize” (observe well, by regulatory means) the regime of the so-called Internal File System of

Special Monitoring (FIES), which allows the application over time of a harsh regime of isolation. The second question relates to the thorny issue of parole for the terminally ill prisoners. On the one hand, art. 92 nCP states that it may be granted for whom, “according to medical report, are classified as very serious patients with incurable diseases.” But it has to take into account now by regulation that a bonus is added to the requirements for such freedom: indeed, as established in the art. 104.4 RP, it must also appreciate a “difficulty offending” and “low hazard” subject. This is an attempt, again, to give naturalization to what until now euphemistically some judges prison supervision termed as “functional autonomy” of the prisoner. Such expression meant -in practice the medical examiner as the deteriorating health of sick prisoners had not reached a certain stage (measured on their ability to move by itself, make their minimum living and sanitary needs, etc.), no the release occurred. Only when the progress of the disease would cause significant impairment that prevented the prisoner their capacity for autonomy, the release was set in motion. Now, such variables have been elevated to the status of standard, yes, regulation. Only when the progress of the disease would cause significant impairment that prevented the prisoner their capacity for autonomy, the release was set in motion. Now, such variables have been elevated to the status of standard, yes, regulation. Only when the progress of the disease would cause significant impairment that prevented the prisoner their capacity for autonomy, the release was set in motion. Now, such variables have been elevated to the status of standard, yes, regulation.

The counter-reform criminal, judicial and prison (2003)

To conclude this section should, from the point of criminal politically mention at least the trend marking the reforms undertaken by the Government of the People’s Party in Espanya in 2003, especially the one made by the Organic Law (LO) 7 / 2003 of June 30, also known as “reform measures for full compliance and effective penalties”, which amends the Penal Code, the LO of the Judiciary, the LO General Penitentiary and Procedure Act Criminal. Among the various reforms are the following:

- a. Elevation of imprisonment up to 40 years arguing that “there are certain crimes which by their particularly serious nature of the legal injured, recidivism that commit their authors, as well as the fact that they can be carried out by organized solely for the purpose of subverting the constitutional order bands, seriously disturb the public peace or terrorizing these purposes the inhabitants of a population or members of a social, political or professional group, demanded a stronger response from the criminal justice system. “(preamble to the LO 7/2003). This measure resulted in a disguised form of consecrating a perpetual penalty or life imprisonment, not accepted constitutionally in Spain, although it is proposing new penal reform that the so-called “revisable life imprisonment” would be introduced at the time this text is written. It also calls into question the principle of resocializing imprisonment, sole purpose of punishment authorized by Article 25.2 of the Spanish Constitution. With the proposed reform is thus affected the substantive law.
- b. Cut in implementing prison benefits for certain categories of crimes, as it is directly opposed to the principle of “scientific individualization” enshrined in the Prisons Act which requires that prison treatment is personal, case by case, prohibiting any consideration that uses “categories” or typologies “of people or crimes. The so-called “security period” (in article 36 of the

- Criminal Code) is introduced in our order, whereby, in certain crimes of a certain gravity, the convicted person can not access the third degree of prison treatment until he has completed half of the sentence. the penalty imposed. On the other hand, this reform establishes that the calculation of penitentiary benefits, exit permits, classification in the third degree and for conditional release will take into account the totality of the sentences imposed in sentences, especially serious crimes. Through this reform is thus affected the penitentiary legislation.
- c. Creation of Central Courts of Penitentiary Surveillance in the headquarters of the National Court, with the purpose that these are in charge of monitoring the sentences imposed on those condemned by the Court, establishing, in addition, that in any case, the competence of these Central Courts shall be preferential and exclusive when the prisoner also complies with other sentences that have not been imposed by the National Court. This reform poses serious problems:
- i. It means a clear “distrust” towards a key piece of the Judicial Power: towards the Judges of Penitentiary Surveillance. A question that was already raised, in addition, at the XVIII Congress of Judges for Democracy, held in the city of Benicàssim in the first days of the month of July 2003. The very secretariat of Judges for Democracy, dated September 15, 2003, publishes the death of the State pact for the reform of Justice. In this text, stands out of this new reform that “A judicial body can not be born because the decisions of a judge do not like” (<http://www.elpais.es>, consulted November 21, 2008).
 - ii. Poses an impossibility of application of the General Penitentiary Law infringing the “principle of immediacy” that presides over its actions, how can a Judge of Vigilance of the National Court comply with this principle, if from Madrid it has to monitor the fulfillment of a penalty in prisons very far from its judicial headquarters?
 - iii. Impossibility to comply with the obligations imposed by both the Criminal Procedure Act and the General Penitentiary Law, specifically the obligation to visit penitentiary centers weekly. The reform announced thus affects the Organic Law of the Judiciary.
 - d. Hardening in the legal forecast and in the application of preventive detention, establishing a minimum limit to agree on it. Thus, as a general rule, this measure was excluded in cases in which the penalty provided did not exceed two years in prison. It was intended to objectify the purposes that justify its imposition, but the justifications of the previous regulation continued to be maintained: background of the accused - today police record of the accused, social alarm, frequency of this type of crime, circumstances of the event, that is, incidentally they help in generating the social alarm. This configuration provokes, because it is maintained at present, a frontal opposition with the doctrine settled jurisprudentially by the Constitutional Court in the matter of preventive detention, going from being an exceptional measure to becoming a general rule. The reform meant a significant increase in prison presences. The application of such a drastic measure supposes an attack to principles and fundamental rights consecrated in the Constitution of 1978, the right to freedom, article 17, and the right to the presumption of innocence of article 24. Thus, the procedural legislation is substantially affected.
 - e. Expulsion from Spanish territory of all foreigners who commit crimes, this measure has led to a deepening of the criminalization of extra-community immigration, contributing to the creation of the “fortress Europe” and assuming a violation of the principle of equality and prohibition of discrimination based on origin, enshrined in the 1978 Constitution. Legislation on immigration matters is thus affected by the reform.
- It is evident that these reforms involve the affectation of the five great pillars of a penal system proper to a social and democratic State of law; in effect, the criminal, procedural, judicial, penitentiary and immigration legislation is reformed.
- ### The government of the prison in times of economic crisis
- By the end of 2011, it can be seen that Spain is the third European country with the highest overcrowding in its prisons with almost 142 prisoners for every 100 places, second only to Cyprus (150) and Serbia (146). Already in mid-April 2012 an overpopulation of 134.18% on average was determined in Catalonia, compared to 127.90% in the rest of the State. However, the rates of incarceration are decreasing not only in Spain, an issue that will be addressed later. In the context of what is being described, in recent years from 2009 to the present, there is no doubt that the economic crisis is hitting the penitentiary sector hard. If we consider only some aspects or sectors of prison life, we can illustrate what has been said with the following examples.
- a. The completion of the service of legal assistance and defense of prisoners in Andalusia. The Ministry of the Interior has decided to interrupt the legal assistance service (SOAJP) in the prisons with the excuse that the Agreement that existed since 2008 with the Andalusian authorities has not been renewed. Practically, some 20,000 people imprisoned in thirteen prisons and six centers of social integration in Andalusia since May 2012 are thus abandoned by the authorities, meaning the end of a very important penitentiary defense service created many years ago.
 - b. The fall of various health care services. Only in the Community of Madrid, the policy of “budget cuts” has led to the cessation of the delivery of new treatments to half of the prisoners with hepatitis C. We can affirm that, currently, approximately the percentage of detainees affected by this disease in the Spanish prisons is 22.4%, about ten times more than in life in freedom; the problem as you can see the really worrying. Thus, some experts warn that the elimination of the access of the population to treatment may involve the creation of a space of patients in a marginality without access to prison resources in health care (see Servimedia, November 16, 2012).
 - i. The cuts of treatment programs in various prisons in Catalonia. In the area of the Catalan Prison Administration, the impact of budget cuts policies have begun to affect social reintegration programs in which more than 35 professionals worked and some 160 social organizations for a group of about 6,000 prisoners. Several professionals claim to have received a communication from the Department of Justice announcing the end of various types of economic subsidies with immediate effect, while announcing a possible increase in recidivism.
 - ii. The incentivization of expulsion orders of foreign prisoners in Spain. These are purely ministerial orders that the Penitentiary Administrations (Spanish and Catalan) adopt in recent years

to proceed with the expulsion of thousands of foreigners imprisoned in Spain. This question will be discussed a little more immediately.

In addition to everything that is being mentioned, we are also witnessing a fall in the population imprisoned in Spain. Towards the end of 2010, Spanish prisons had about 77,000 people imprisoned. Two years later, the same facilities housed some 70,000. “Paradoxically”, in the worst years of the economic crisis, the number of inmates has fallen by 10%, and in April 2018 the total incarcerated population in Spain is 54,494, a fact that raises different interpretations that we can quickly synthesize as follows:

Those who highlight a significant number of foreign prisoners expelled from Spain^{1,18}

- i. Those that highlight a legal modification of the crime of drug trafficking that has reduced somewhat the previous penalties for this type of criminal offense;¹⁹
- ii. Those that emphasize the importance of the so-called “backdoor strategies” (backdoor strategies) that lead to prisoner emptyings, such as suspensions of the execution of the sentence, concessions of more conditional liberties and the like.²⁰
- iii. Others indicate a certain stabilization of the incarcerated population that had reached extremely high levels and that we will have to wait to see if it is merely a seasonal or conjunctural phenomenon, or not.

In attention to what you are mentioning, numerous analyzes conducted to explain the decline in the prison population coinciding with the cycle of worsening economic crisis. Interpretations revolve around two axes, antagonistic:

- a. Those who say that this is a real change of historical cycle and not a cyclical event;
- b. Those who say that it is somewhat circumstantial and some rearrangement of intra and extra-prison penalty.

Also among these analyzes can be combined interpretations claiming explanations “classic” as the political economy of punishment (Rusche and Kirchheimer of course, v. Forero and Jimenez op.cit.) Relating magnitudes labor market and demographic rates prison; with others who speak exclusively of the validity of the proposed “economic analysis of law” (Gary Becker, for example); against others who declare themselves to the culture of the exception (Agamben, for example) or the “criminal state” interpretations (Wacquant, to follow the examples;¹⁸). In other cultural contexts, also Simon²¹ & Anastasia²² discuss similar phenomena for the United States and Italy, respectively. Explanations combine global and local elements. In other cultural contexts, also Simon²¹ & Anastasia²² discuss similar phenomena for the United States and Italy, respectively. Explanations combine global and local elements. In other cultural contexts, also Simon²¹ & Anastasia²² discuss similar phenomena for the United States and Italy, respectively. Explanations combine global and local

¹Just as an example and in relation to the Autonomous Community of Galicia, as an illustration of what is being pointed out, it should be noted that on March 31, 2009 there were 5,124 people deprived of liberty in the five Galician prisons (4,829 men and 295 women). On March 31, 2012, the figure had fallen considerably to 3,688 prisoners (3,485 men and 203 women); that is, almost 1,500 inmates less. Some unions warn that the cuts also reached Spanish prisons and that there is a transfer of foreigners to their countries to reduce costs.

elements.

Around this new punitive “paradox”, we must again be very careful as in the past it must have been to try to explain absolutely inverse phenomena, I never think sufficiently explained. The temptation to combine too general elements with absolutely domestic aspects means that, again, the penology lacks a scientific substrate and reveals its explanatory incapacity. First of all, I think we should recognize that not enough time has passed yet to have a perspective that allows us to affirm whether the aforementioned population decline is a conjunctural datum or, on the contrary, we are facing a real cycle change. I believe, in the second place, that before giving up important explanatory theories of yesteryear, one should be much more cautious and think that the prison penalty can combine other extramural forms absolutely functional within their institution and should not be considered in isolation. Finally, for now, I would like to remind you that the relationship between abundance and labor shortage continues to be closely related to the growth and decline of prison demography. It will necessarily take some time to continue examining the multiplicity of elements that concur in these complex relationships. There is no doubt that there is still much to be examined before announcing that certain critical analyzes of the penal system have become obsolete.^{23–54} A decline in the penitentiary populations of recent years does not decree the end of great narrative frames, nor does it suppose diminution of suffering or the violation of rights, nor that the punitive control framework moves to other sanctioning contours.

Conclusions

The panorama described throughout this text does not seem flattering in terms of the defense of fundamental rights and dignified conditions in the strictly penitentiary, aspects that are those that still seem to be the most relevant to treat. Only with what has been reported up to this moment is it highlighted that the consequences of all this are multiple: a life is impeded in minimal development conditions, without vital space in the cells themselves, thus violating the provisions of art. 19 LOGP. This violation has already been considered by the European Court of Human Rights as an “inhuman or degrading treatment” in the judgment of July 2009, *Izet Sulejmanovic v. Italy*; the adequate development of the different activities established in the penitentiary legislation as treatment activities is impossible; precarious work situation in the productive workshops; proliferation and increase in episodes of violence that take place inside prisons, as well as the suicides of prisoners, or an increase in social maladjustment due to a predominance of discipline over treatment.^{55–70} They can not ignore the effects that this area has been, without a doubt, the economic crisis that engulfs Spain has caused not only cuts in the field of treatment (as mentioned, programs and activities to be suspended for lack of financial resources, personnel, activities...), prisons whose construction is suspended or not inaugurate, but also in terms of staff that are available to the announcement of early privatization. Examples are the latest manifestations of the current Secretary of State for Security, Ignacio Ulloa, who has it raised in the Commission within Congress “the possibility that private security guards replace not only policemen and civil guards but prison officials to the shortage of public employees and to the economic impossibility, he said, to carry out the public job that would be necessary”. (http://politica.elpais.com/politica/2012/06/28/actualidad/1340902553_444856.html, consultada on July 3, 2012).

Finally, we should highlight the new reforms introduced by the government of Spain currently framed in a package of measures to reform the Criminal Code, the Law of Criminal Procedure and the Organic Law for the Protection of Citizen Security that, very briefly, we turn to highlight: the introduction as a penal sanction of the so-called “permanent remainable prison” for certain crimes; modification of Chapter II, Title XXII CP that regulates crimes of public order, considering an aggravating circumstance of the crime of “disobedience to authority” the fact that it occurs in the development of a demonstration or concentration; the inclusion of “peaceful resistance” within the crime of “attack on authority”; introduction between “modes of attack” (violent attack directed against a police officer), threats and intimidating behavior or throwing of dangerous objects; inclusion as an “offense of integration in a criminal organization” the call for violent concentrations through the Internet; or the consideration as “offense of public disorder” the cases in which it penetrates public establishments or hinders access to them, extending the amount of damages not only to those that occur in establishments, but also to those that derive from the interruption of any public service. Worthy of mention is the excessive use that has been made from the jurisdictional scope of preventive detention, which, as it is envisioned in our criminal law, should be imposed for exceptional cases, thus materializing the principle of subsidiarity of the measure as established in our legislation current and the innumerable jurisprudence in this regard.^{71–85}

It is evident that what is merely stated in this text reveals a disturbing drift towards a State that, from the point of view of its agencies of the penal system, is showing its most authoritarian face in times of serious economic cuts, of loss of civil rights, economic and social of a citizenship, fed up with the plunder to which it is subjected, expresses a discontent that is stopped and repressed by the agencies of that penal system. For years now, criminal system scholars, university researchers, human rights organizations and groups of legal professionals have been warning about the constant recourse to an increase in the penalty that has placed Spain for the first time in the European Union. in imprisonment rates. Along with this, the reforms of the last years of the Criminal Code, procedural law, penitentiary, immigration, police and judicial, have involved the reversal of the main criminal rules agreed at the time of the “political transition to democracy.” This phenomenon is characteristic of the so-called “culture of emergency and criminal exceptionality” of sad fame and memory and that, in other areas and at other times not far away, had been used to combat manifestations of political violence and violence terrorism. This puts into question and clearly undermines the foundations of a Social and Democratic State of Law, heir to the tradition of social constitutionalism as identified in the rules to this State that is Spain.

Acknowledgements

None.

Conflict of interest

Author declares that their is no conflict of interest.

References

- Carr R. Spain (1808-1975). Barcelona: Ariel Ed; 1988.
- Bergalli R. Form-State, Forms of Law and Issues of Democracy: a case for analysis, in Yearbook of Philosophy of Law. Madrid: Ministry of Justice; 1991: 169–190.
- Ballbe Y Giro M. The forces of public order. Barcelona: Dopesa; 1978.
- Dominguez Figueirido JL. The use of historical and ideological justification in the categories of Spanish Police Unionism in Sociology of Penal Control with in the framework of the Sociology of Law. Oñati: International Institute for Sociology of Law; 1991: 177–194.
- Lopez Garrido D. A Neverending Story in the country. 1988.
- Munagorri Laguia I. Review of the Organic Law 2/1986 or 13 March on Security Forces in Power and Control No. 1. Barcelona: PPU; 1987: 235–246.
- Recasen Brunet A. These waters brought this mud.: The middle class and the origin of the police apparatus. In: Bergalli R, Mari E., editors. Ideological history of social control (Spain-Argentina, nineteenth and twentieth centuries). Barcelona: PPU; 1989: 285–322.
- Recasens Brunet A. Historical and ideological approaches to the concept of police apparatus in Sociology of Penal Control. In the framework of the Sociology of Law. Oñati: International Institute for Sociology of Law; 1991: 161–175.
- Andres Ibañez P. Judges and Administration of Justice: an overview of the Spanish judicial issue. In: Bergalli R, Mari E, editors. Ideological history of social control (Spain-Argentina, 19th and 20th centuries). Barcelona: PPU; 1989: 323–347.
- Bueno Arús F. Prisons from the Civil War to the present day: evolution, current situation and necessary reforms, in History 16, Extra VII. Madrid; 1978: 113–144.
- Draper Miralles R. Franco’s Prison’s Two Prisons Democracy. Barcelona: Argos Vergara; 1984.
- Valdes Garcia C. Spanish Prison System in AA.VV.: The Common Prisoner in Spain. In: Madrid, editors. La Torre; 1977: 55–68.
- Lurra. Rebellion in prison. San Sebastián: Hordago; 1978.
- Marti O. The COPEL: History of a struggle silenced in El Viejo Topo No. 13. Barcelona; 1977: 35–38.
- Rivera Beiras I. Prison and Human Rights. A fokus på beskyttelse af de grundlæggende rettigheder for fanger. Barcelona: JM Bosch; 1992.
- Rivera Beiras, I. Prison and culture of resistance. Movements in defense of the fundamental rights of prisoners in Western Europe at No. 3. Arguments in Propostes Barcelona; 1994: 55–71.
- Moreno Catena V. Revocation right procedure, Valencia: Tirant Lo Blanch; 1990.
- Brandariz JA. Market rationality, Great Recession and penal system: Bad times for criticism? In: Rivera B, Coord I, editors. Criminology, Social Damage and Crimes of States and Markets. Themes, debates and dialogues. Barcelona; 2013.
- Forero A, Jiménez D. Crisis, cutbacks and (new) prison situation. 2013.
- Larrauri E, Rodríguez J. Economic Crisis, Crime, and Prison in Spain. ESC Newsletter. 2012.
- Simon J. Includes El Título Del Trabajo Presentado Al Convegno Di Firenze. 2013.
- Anastasia S. Metamorfofi penitenziarie. Carcere, grief and sociale mutamento. Rome: Ediesse; 2012.
- Accattatis V. The Italian prison system between repression and mystification. In: Basaglia FF, editors. The crimes of peace. Mexico: 1977.
- Alonso De Escamilla A. The Judge of Penitentiary Surveillance. Madrid: Ed. Civitas; 1985.
- Aranz Villalta E. Culture and prison. An experience and a sociocultural

- penitentiary action project. Madrid: Popular Ed; 1987.
26. Asensio Cantisan H. The Judge of Penitentiary Surveillance, in Magazine of Penitentiary Studies; 1987: 9–16.
 27. Associacio Catalana De Juristes Democrates, Penitentiary policy and official doctrine (the intolerant resistance to criticism). Barcelona. 1922.
 28. Association against Torture (1997 and 1998), Annual reports.
 29. Association against Punitive Culture and Social Exclusion (1999), Open the Prison Project.
 30. Bachs I Estany JM. The judicial control of the execution of sentences in our cultural environment In: Rivera I, editors. Prison and human rights. An approach related to the defense of the fundamental rights of inmates. Barcelona: JM. Bosch; 1922: 119–164.
 31. Baratta A. Principi dei diritto penale minimo. For a theory of the deritti umani eat oggetti e limiti della legge penale. In “Dei delitti e delle pene”; 1985: 443–474.
 32. Baratta A. Old and new strategies in the legitimation of criminal law. In “Power and Control”; 1986: 77–92.
 33. Baratta A. Resocialization or Social Control. For a critical concept of “social reintegration” of the condemned (University of Saarland, Federal Republic of Germany. 1993.
 34. Barcellona P. Introduces the alternative use of the diritto. I. Scienza giuridica and Marxist analysis. Roma-Bari: Ed. Laterza. 1973.
 35. Bergalli R. Ideology of re-socialization-Re-socialization as an ideology. The situation in Spain. In “Papers d’Estudi i Formació”; 1987: 51–66.
 36. Bergalli R. Legal Reasons and Reason of State (in Spain and Latin America). Paper presented to the 3rd. Session of the IV Spanish Congress of Sociology, Working Group No. 21, “Legal Sociology”; 1992a.
 37. Bergalli R. Resocialization and alternative measures. Conceptual missteps, sinuous policies and pious confusions in the penitentiary practices of Spain and Catalonia. Paper presented at the Conference on the Enforcement of Sentences; 1992b.
 38. Bergalli R. This is the prison we have (but we do not want)! Introduction”. In Rivera I, editors. Prison and Human Rights. An approach related to the defense of the fundamental rights of inmates. Barcelona; 1992c: 7–21.
 39. Good Arus F. Penitentiary Law Lessons. Salamanca: University of Alcalá de Henares; 1985.
 40. Bueno Arus F. The jurisprudence of the Constitutional Court in penitentiary matters, in Judicial Power; 1988: 167–177.
 41. Burton-Rose D. The Ceiling of America. An inside look at the US prison industry. Monroe, Maine: Common Courage Press; 1998.
 42. Campelli, Faccioli, Giordano, et al. Done in carcere. Bologna: Feltrinelli; 1992.
 43. CINAP Project and Project CUD. In “Crime and Society”, University Center Devoto; 1992.
 44. Christie N. The crime control industry. Will the new form of Holocaust?. Buenos Aires: Ediciones del Puerto; 1993.
 45. Cohen S. Visions of Social Control. Barcelona: PPU; 1988.
 46. Dossier Guidance Services Legal and Penitentiary in Spain (Library Bar). Defense Committee Barcelona Bar Association; 1990.
 47. Dossier of complaints of torture in Spanish prisons. Coordinator or Solidarity with the People in Prison; 1998.
 48. Ombudsman. Annual Report. 1997.
 49. Slope Arzamendi JL. A duty (no obligation) and the right of prisoners: prison labor. In “Papers d’Estudi i Formació”; 1987: 103–130.
 50. Faraldo Cabanas P. An Enemy criminal law for members of criminal organizations. Organic Law 7/2003 of 30 June, of reform measures for the full and effective enforcement of criminal penalties and penalties (I. Rivera, coord.). Barcelona: Ed Anthropos; 2005.
 51. Ferrajoli L. *Diritto e Ragione*. Garantismo penal theory. Roma-Bari: Laterza Ed; 1990.
 52. Ferrari V, Treves R. *Sociologia dei diritti umani*. Milan: Franco Angeli. 1989.
 53. Gallo E., Ruggiero V. *Il carcere immateriale*. The detention as Fabbrica di handicap. Milan: Edizioni Sonda; 1989.
 54. Garcia Bores JM. *Prison Psychology: working for whom? Analysis of institutional intervention*. In: García Ramírez M, editors. Social Psychology applied in legal and political processes. Sevilla: Eudema; 1992a.
 55. Bores García JM. *The reeducator purpose of imprisonment in Catalonia*. Doctoral Thesis: Department of Social Psychology, University of Barcelona; 1992b.
 56. Garcia Garcia J. Effects of Prison Studies: Research and Intervention (Program to Improve The Social Climate In One Of The Ocana CP-II Phases”). *Journal of Prison Studies*. 1987. 237 p.
 57. Garcia Garcia J. Prolog, in Journal of Studies Corrections Extra No. 1. 1989: 7–10.
 58. Valdes Garcia C. *Prison Law (Writings, 1982-1989)*. Madrid: Ministry of Justice; 1989.
 59. Garland D. *Punishment and Modern Society*. A study in social theory. Chicago: The University of Chicago Press; 1990.
 60. Garrido Genoves V. *The Correctional Treatment in the Crossroads*. Journal of Prison Studies; 1987. 237 p.
 61. Gonin D. *La Santé incarcérée. Médecine et de vie in dementia conditions*. Paris: L’Archipel. 2000.
 62. Lopez Barja Quiroga J. *Appeals against the decisions of Judge Prison Supervision*. Paper presented at the Fourth Meeting of Penitentiary Surveillance Judges; 1988.
 63. Lopez Tajuelo LA. *The Correctional Intervention*. Journal of Prison Studies; 1986: 236.
 64. Manzanos Bilbao C. *Prison, Drugs and AIDS*. social work against penal system. Vitoria: Salhaketa; 2000.
 65. Mapelli Caffarena B. *Fundamental Principles of the Spanish Prison System*. Barcelona: Bosch; 1983.
 66. Mathiesen Th. *The politics of abolition*. Oslo: Martin Robertson Ed. 1974.
 67. Martinez Fresneda G. *Reforming stillborn in the country*. 1992.
 68. Melossi D, Pavarini M, Fabbrica C. *All Penitenziario originates the system*. 1st edn. Bologna: Il Mulino; 1977.
 69. Munagorri Laguia I. *Criminal penalty and criminal policy*. Madrid: Ed Reus. 1977.
 70. Munagorri Laguia I. *Reflections on the prison sentence in the new CP 1995: multifunctionality and regressive increase in criminal complexity*. In: Dobón J, Rivera I, editors. Institutional Kidnapping and Human

- Rights. Prison and the madhouse as labyrinths of feigned obedience. Barcelona: MJ Bosch; 1997.
71. Munagorri La Guía I. *Intercultural crisis criminal law and principle, Criminal Policy and Penal System (I. Rivera, coord.)*. Barcelona: Ed Anthropos; 2005.
 72. Pavarini M. *Reduce prison and alternative measures?* The Italian path to the limitation of jail reconsidered in view of the historical and comparative experience. In *Crime and Society*; 1992: 75–86.
 73. Pavarini M. *L'Italian esperienza di Penitenziario riformismo*. In: Palma M, editor. *Il Vaso di Pandora. Carcere e dopo le riforme penali*. Roma: Istituto della Enciclopedia Italiana; 1997: 137–153.
 74. Pavarini M. *An abject art. Essay on the government of the penalty*. Buenos Aires: Ad-Hoc; 2006.
 75. Rios Martin JC, Cabrera Cabrera PJ. *Mil dams voices*. Madrid: Publications of the Universidad Pontificia Comillas. 1998.
 76. Rios Martin JC, Cabrera Cabrera PJ. *Prison: description of reality in Caritas*. 1998.
 77. Rios Martin JC. *Reflections on Law 7/2003: punitive increased violence*. 2003.
 78. Rivera Beiras I. *Imprisonment in the penal system. A structural analysis* (2nd revised edition under the CP 1995 and RP 1996). Barcelona: MJ Bosch; 1996.
 79. Rivera Beiras I. *The devaluation of the fundamental rights of prisoners. The legal construction of a second-class citizen*. Barcelona: JM Bosch. 1997.
 80. Rivera Beiras I. *The problem of the foundations of the criminal legal intervention. The theories of punishment*. Barcelona: 1998.
 81. Rivera Beiras I. *The Prison issue. History, epistemology, law and prison policy*. Buenos Aires: Editores del Puerto; 2009.
 82. Rivera Beiras I. *Criminología, Daño social y Crímenes de los Estados y los Mercados*. Themes, debates and diálogos. Barcelona: Anthropos; 2013.
 83. Ruiz Vadillo E. Algunas consideraciones sobre la figura del Juez de Vigilancia Penitenciaria. La misión del Fiscal sobre determinadas competencias y sobre el futuro de la institución, and Fiscales de Vigilancia Penitenciaria. Madrid: Ministry of Justice, Centro de Estudios Judiciales; 1988:81–112.
 84. Tarrío X. *Huye hombre, huye. Diario de un preso FIES*. Barcelona: Ed. Virus; 1997.
 85. Thomas PH, Moerings M. *Aids in prison*. Hampshire: Dartmouth Publishing; 1994.