

DIARIO DE LISBOA¹

OFFICIAL GOVERNMENT JOURNAL

MINISTRY OF ECCLESIASTICAL AFFAIRS AND JUSTICE

Secretary of State for Ecclesiastical Affairs and Justice

General Directorate of Justice

2nd Division

[...]

DOM LUIZ, by the grace of God, King of Portugal and of the Algarves etc. Let it be known to all our subjects that the Côrtes Geraes [Parliament] has decreed and that we desire the following law:

Article 1 Penal and prison reform, which shall accompany this law, and is a part thereof.

Art. 2 All contrary legislation is hereby repealed. We therefore decree to all authorities, to whom knowledge and implementation of the Act applies, that they shall comply, safeguard, enforce and maintain this legislation as fully as is contained therein.

The Minister and Secretary of State for Ecclesiastical Affairs and Justice shall print, publish and distribute this act Proclaimed at the Palace of Ajuda, on 1 July 1867. = THE KING, with signature and seal. = Augusto Cesar Barjona de Freitas.- Grand Seal of the Royal Coat of Arms.

Charter of law by which Your Majesty has sanctioned the Decree of Parliament of 26 June last, which shall approve penal and prison reform, which is part of this law; enforce compliance and safeguard this same Decree in the manner above stated.

For Your Majesty's eyes = done by Joaquim Pedro de Seabra Junior.

¹ Order published in the Diário de Lisboa No. 153, on 12 July 1867

Penal and prison reform, which is part of the law of 1 July, 1867

TITLE I

The abolition of the death penalty and of public works, and the replacement of one and the other of these penalties for civil offences.

Article 1. The death penalty is hereby abolished.

Art. 2. The penalty of public works is also abolished.

Art. 3. For crimes to which the penal code was applicable by the death penalty, imprisonment in perpetuity shall be applied.

Art. 4. For crimes to which under the same code the penalty of public works in perpetuity was applicable, an eight year prison sentence, followed by exile in Africa for a period of 12 years, shall also be applied.

§ sole paragraph. The Government shall divide into categories, by means of a special regulation, the different ways in which the latter of these penalties shall be served, and the sentence shall solely state the category for the particular penalty.

Art. 5. For crimes to which the penalty of public works was applicable under the previous legislation, imprisonment for three years shall be applicable, followed by exile in Africa of between three and ten years, in accordance with the sole paragraph of the preceding article.

TITLE II

The longest prison sentences and exile, and the application of these penalties

Art. 6. The sentence of imprisonment in perpetuity is abolished.

Art. 7. For crimes to which the longest prison sentence was applicable under the penal code, a prison sentence of six years shall be applicable, followed by ten of exile, in accordance with the sole paragraph of Article 4.

Art. 8. For crimes to which the longest temporary imprisonment was applicable under the penal code, imprisonment of two to eight years shall be applicable.

§ sole paragraph. The same penalty shall be applicable to crimes to which temporary exile was applicable under the aforementioned code.

Art. 9. For crimes to which under the penal code the penalty of perpetual exile was applicable, exile for eight years shall be applicable, preceded by imprisonment for four.

Art. 10. For the penalty of exile, imposed in accordance with the previous article, that which is given in the sole paragraph of Article 4 shall be applicable.

TITLE III
**The application of prison sentences and exile, in cases of aggravating or
extenuating circumstances**

Art. 11. In cases where the penalties outlined in Articles 4, 7 and 9 were applicable, if aggravating or extenuating circumstances apply, under Articles 77 and 80 of the penal code the aggravating or attenuating circumstance shall only pertain with regard to the duration of imprisonment, which may be augmented or reduced by two years.

Art. 12. For crimes to which under Article 5 a term of imprisonment greater than three years is applicable, followed by exile for a period of three to 10 years, if the aggravating or extenuating circumstances referred to in the preceding article apply, the longest term of imprisonment shall, in the first case, be aggravated with regard to the duration, which may nevertheless not be augmented by more than one more year, and in the second case is also attenuated with regard to duration, which however may not be reduced by less than two years.

Art. 13. The penalty established in the sole paragraph of Article 8 shall be aggravated and attenuated within the maximum and minimum.

§ sole paragraph. The judges may, however, in considering the number and importance of the attenuating circumstances, reduce the penalty mentioned to one year.

TITLE IV
**The application of sentences of imprisonment and exile in cases of repeated
infringements, foiled crime, attempted crime, complicity and accumulation of
offences**

Art. 14. In the case of repeated infringements under Article 85 of the penal code, if the corresponding penalty is any form of imprisonment followed by exile, it shall be aggravated, and the offender shall spend half of his time in exile in prison instead.

Art. 15. If the applicable penalty is imprisonment of two to eight years, for the first reoccurrence the sentence shall never fall below two thirds of the penalty, and the maximum sentence shall necessarily be applied for the second.

Art. 16. In the case of a foiled crime the following rules shall apply:

If the penalty applicable, assuming the crime is committed, was from Article 3, Article 4 shall be applied;

If from Article 4, Article 7 shall be applied;

If from Article 7, Article 9 shall be applied;

If from Article 9, Article 5 shall be applied;

If from Article 5, the same punishment shall be applied, and exile shall vary between three and six years;

If from Article 8 and sole paragraph, the same shall be applicable, never exceeding four years.

Art. 17. For the authors of attempted crime the same punishment as fits the authors of foiled crime shall be applied, if there had been attenuating circumstances.

Art. 18. The penalty for accomplices to a crime committed shall be the same as it would be for the authors of a foiled crime.

The penalty for accomplices to a foiled crime shall be the same as it would for the authors of an attempted crime.

The penalty for accomplices of an attempted crime the same as, reduced to the minimum, it would be for authors of said crime.

Art. 19. In the case of accumulated offences the severest penalty shall apply, aggravated according to the general rules for the accumulation of crimes.

§ sole paragraph. Imprisonment in perpetuity is not subject to aggravation.

TITLE V

The execution of the prison sentence

Art. 20. A term of imprisonment shall be served with absolute and complete separation of day and night between offenders, no communication of any kind between them and with obligatory work in prison for all who are not competently declared unable to work on account of their age or state of health.

Art. 21. Prisoners shall have all the necessary and appropriate communications with prison employees, and in addition may be visited by their relatives and friends, members of associations and other people dedicated to their retraining and moral guidance; always however, and with caution and restrictions, these visits shall hasten and consolidate their moral reform, and shall never corrupt them. Everything shall be done that is established in the respective regulations.

§ sole paragraph., A visit from persons who are not employees of each of these prisons or people responsible for the retraining and moral instruction of the prisoners shall only be permitted as an exception, and mainly as a reward for the prisoners' good behaviour.

Art. 22. Prisoners shall have, as far as possible, daily outdoor exercises in yards or prison buildings, but there shall be no communication between them whatsoever, nor may they get to know each other.

Art. 23. The results of each prisoner's work shall be divided into four equal parts, one for the State, another for compensation if any, another to help the wife and children of the prisoner if they so need, and the fourth shall go into a reserve fund, which shall be delivered to him when he is released.

§ sole paragraph. When the prisoner has neither wife nor children or neither she nor they require it, nor is there compensation, or if the offender has assets from which this can be settled, the part reserved for any of these shall belong to the State.

Art. 24. Prisoners who do not know any art or craft shall receive the necessary instruction in jail relating to this work and preparation of the means of existence honestly after release, having regard to their position before the crime.

§ sole paragraph. Primary instruction shall also be taught to those that have not received it, and if possible the most necessary and useful scientific ideas for the use of their craft or profession.

Art. 25. All prisoners shall receive the necessary education and moral and religious instruction in prison, which shall be the responsibility of their chaplains and teachers, and charitable people shall be dedicated to this mission of mercy.

Art. 26. Special provisions on segregation, work, rest, professional, intellectual, moral and religious instruction, and the feeding of prisoners, health, cleanliness and neatness of prisons shall be established and carried out in government regulations, and in these same regulations the rewards and disciplinary sentences of the aforementioned prisoners shall be determined.

§ sole paragraph. Flogging, handcuffing, deprivation of essential food and any kind of torture shall never be employed as disciplinary measures.

Art. 27. Imprisonment shall be served in general penitentiaries built for this purpose.

TITLE VI

The penitentiaries

Art. 28. There shall be three general penitentiaries in the kingdom; one in the district of Lisbon, another in Oporto for male offenders and the third, which is also in the latter district, for female offenders.

§ sole paragraph. These penitentiaries shall be built on an appropriate site outside of these two cities, and as far as possible from any other populated area.

Art. 29. Both of the first two establishments shall have five hundred cells, and the third two hundred, for offenders given a prison sentence, together with a chapel for the celebration of religious acts; the necessary rooms for the prison employees; buildings for book-keeping, a pharmacy, archive, baths and provisions; and adjacent land, conveniently arranged for the prisoners to walk and exercise.

§ sole paragraph. Each of these three establishments shall be surrounded by a high wall sufficient to provide security and prevent them from being seen from the outside onto the yard and other prison buildings.

Art. 30. Both the extraordinary expense of constructing these penitentiaries and the ordinary annual cost shall be borne by the state.

Art. 31. In each coming financial year and in accordance with treasury circumstances, the budget of the Ministry of Ecclesiastical Affairs and Justice shall successively be attributed the funds necessary for the implementation of Articles 28 and 29 of this law, and the government shall be required annually to account to parliament as to the state of the building work and sums spent thereon.

TITLE VII
Employees in jails and penitentiaries

Art. 32. The table of employees in general, district and county penitentiaries shall be set by special law.

TITLE VIII
Correctional imprisonment and the application and execution of sentences

Art. 33. A correctional prison sentence shall continue to be applied to the offences applicable under the penal code, but may not exceed two years.

§ sole paragraph. A prison sentence of two to eight years shall automatically be considered superior to a correctional prison sentence where the law decrees without further declaration a penalty that is directly higher or lower.

Art. 34. The offender sentenced to a term of correctional imprisonment shall be locked inside a room or cell, with absolute and complete separation from any other prisoner, and may not have any communication with them.

§ 1. Compliance with this penalty is determined in Articles 21 and 22 of this law.

§ 2. For offenders sentenced to correctional imprisonment, visiting relatives and friends shall as a rule be authorised by the regulations in the cases and the manner indicated therein, and may only be prohibited as punishment for bad behaviour of the prisoner in jail, or other fair basis.

Art. 35. A correctional prison term does not require the prisoner to work if, as well as the amount due for his room or cell, he also pays the cost of his maintenance in jail, or supports his own maintenance costs.

§ sole paragraph. For this category of prisoner work is purely voluntary, but he shall be given it as soon as he requests, and shall keep the results of his labours.

Art. 36. For the prisoner who does not come under the preceding article, work is obligatory, and the results shall be divided into two parts, one for prison costs and the other for the prisoner.

Art. 37. Work, whether voluntary or obligatory, shall always be done in the prisoner's cell or room, and never together with other prisoners.

Art. 38. What is determined under Articles 25 and 26 of this Act for those sentenced to prison is applicable for offenders sentenced to correctional imprisonment.

Art. 39. That which in Article 24 of the same law applies to those sentenced to prison is also applicable to offenders sentenced to more than one year of correctional imprisonment.

Art. 40. Correctional imprisonment of more than three months shall be served in district prisons rebuilt or adapted for this purpose.

TITLE IX

District prisons

Art. 41. In each district of the kingdom and adjacent islands there shall be a district prison, for the purpose indicated in the preceding article.

§ sole paragraph. These prisons, in districts where the current establishments cannot adapt to the advantage of a separation system, shall be built on an appropriate site outside the capital of the district, but in the surrounding area if possible.

Art. 42. Each of these prisons shall have a chapel for the celebration of religious acts, the necessary rooms for the prison employees, buildings for book-keeping, an archive, baths and provisions and adjacent land, conveniently arranged for the prisoners to walk and exercise.

Art. 43. In each of the district prisons there shall be a sufficient number of cells for the placement of offenders sentenced over the last three years to correctional imprisonment for more than three months.

§ sole paragraph. Likewise, if the number of cells that each of the said prisons must reserve for female prisoners is calculated, this number shall not be less than one eighth of all of these cells.

Art. 44. The part of the jail reserved for female prisoners shall be absolutely separate from the rest of the prison, without any internal connection.

Art. 45. The chapel shall have a distinct section for female prisoners.

Art. 46. District prisons, in districts where existing establishments cannot be accommodated within a system of separation and individual prison, shall be rebuilt at the expense of each district.

§ 1. The expenditure required for construction includes the acquisition of the necessary land.

§ 2. In the districts in which the current prisons could be accommodated to their advantage within the aforementioned system, the expense shall be incurred by those same districts.

Art. 47. The building work, both for construction of these new prisons and to accommodate them within the aforementioned system, cannot start without the plans and the number of cells they require to be approved by the Ministry of Ecclesiastical Affairs and Justice.

Art. 48. Besides the extraordinary expense, as detailed in Article 46, the districts shall also be responsible for the ordinary expenses of their prisons, which comprise:

1. Repairs to the building;
2. Maintenance, apparel and treatment of prisoners;
3. Furniture and utensils, tools and raw materials for the work to be done by the prisoners;
4. Remuneration of all superior and junior prison employees.

Art. 49. Revenue for the district prisons shall comprise;

1. The amounts paid by prisoners, in accordance with Article 35;
2. Half of the product of the prisoners' work, in accordance with Article 36;
3. The result of any donations or amounts that, by virtue of testamentary or *inter vivos* arrangement, is provided for this purpose;
4. The selling off of current prisons, pursuant to Article 62;
5. A contribution paid by the district to make up the shortfall.

§ sole paragraph. This contribution shall be voted on annually by general district councils, and charged jointly with general state taxes, under the name of district prison tax, and shall be deposited in the general district coffers, and remain there awaiting the orders of the respective administrative committees.

TITLE X

Administration of district prisons

Art. 50. In each of the district capitals and adjacent islands an administrative committee shall be created for the district prison.

§ sole paragraph. This Committee shall comprise:

1. The civil governor of the district, who shall be the chairman;
2. The mayor;
3. The director of the charity hospital;
4. The priest from the most populous parish in the district capital;
5. The municipal doctor, and in Lisbon, Oporto, Coimbra and Funchal a doctor chosen by the faculty or by the school of medicine/surgeons;
6. Three citizens appointed every two years by the municipal council from among the forty largest taxpayers.

Art. 51. The administrative committee of the district prison shall:

1. Propose to the government, after having obtained the necessary clarifications and information, in accordance with Article 43, the number of cells the district prison should have.
2. Establish a new prison, and choose, in accordance with the provisions of sole paragraph of Article 41, the most appropriate site for this purpose, if the current prison cannot be accommodated to its advantage to a system of individual and separate cells for prisoners;
3. Instead of establishing a new prison, encourage the existing prison to be accommodated most thoroughly and as quickly as possible to this system if such accommodation can be built to its advantage;
4. Supervise the construction of buildings, which must be carried out according to the plan presented by the committee and approved by the government;
5. Ensure that the cost of the land, materials and labour, while taking the soundness of the building into account, is the most economical;
6. Manage the funds belonging to the prison;
7. Pay the salaries for the director and his superior and junior employees;
8. Oversee supplies and utensils, apparel and other objects needed, and, in agreement with the director, the raw materials for the prisoners' work;
9. Arrange work for the prisoners to do and ensure the best sale of the results of their work;

10. Supervise the internal economy of the prison in all its areas, and inform the competent authority in full;
 11. Encourage the establishment of associations for individuals who have just finished serving their sentence;
 12. Propose reforms and arrangements to the government that it deems necessary or convenient for the better performance of its responsibilities.
- § sole paragraph. The functions of this committee are unpaid.

Art. 52. Correctional imprisonment of more than three months shall be served in county prisons built or adapted for this purpose.

TITLE XI

County prisons

Art. 53. There shall be a prison in each head of the county for the purpose indicated in the preceding article.

§ 1. The necessary expense to accommodate the existing prison to the system of individual cells and separation of prisoners or to build a new prison which can accommodate this system shall be made at the expense of the municipalities that make up the county.

§ 2. The respective councils may by deliberation dispense with the construction of a special prison in the county that are also district capitals and in this case county offenders shall serve their sentence in district prisons, for which extraordinary and ordinary expense the municipalities that constitute the aforementioned counties shall contribute in proportion to the number of cells in these prisons especially intended.

Art. 54. The calculation and final number of cells that each of the county prisons must have shall be regulated by the applicable part of Articles 43 and 51, and 58(1) with regard to district prisons.

§ 1. For prisons in all counties with more than thirty cells there shall be a chapel for the celebration of religious acts.

§ 2. In those which have a smaller number of cells there should also be a chapel, whenever its construction and maintenance do not become excessively onerous on the limited resources of the respective municipalities.

Art. 55. The ordinary expense of county prisons shall be met by their respective municipalities, to which the provisions of Article 48 of this law with regard to district prisons are applicable.

§ sole paragraph. The provisions of the first four paragraphs of Article 49 are also applicable to the revenue of district prisons, and the shortfall shall be met by a contribution paid by the municipalities that make up the county.

Art. 56. The provisions which apply to district prisons in Articles 43, 44 and 45 shall be extended to county prisons.

TITLE XII

Administration of county prisons

Art. 57. An administrative committee of the county prison shall be created in the capital of each county.

§ 1. This committee shall comprise:

1. The mayor who shall be the chairman of the committee;
2. The county administrator;
3. The director of the charity hospital, where one exists;
4. The priest from the most populous parish in the head of the county;
5. The municipal doctor, or if there is none, another doctor that the same county appoints, who is resident in the head of the county;
6. Two citizens appointed every two years by the municipal council from among the forty largest taxpayers.

§ 2. In the county capitals which are also district capitals, the deputy mayor shall replace the mayor and be part of the committee and its chairman; in place of the director of the charitable hospital the council shall appoint one more citizen from among the forty largest taxpayers; and in place of the priest from the most populous parish, the priest from the parish with the second largest population shall form part of the committee.

§ 3. In the counties of Lisbon and Oporto only the administrator from the most populous district shall be part of the committee.

Art. 58. The provisions of Article 51 for administrative committees of district prisons shall be extended to committee administrators of county prisons, in all aspects applicable to them.

TITLE XIII

Preventive detention

Art. 59. Preventive detention, whether retention for indicted defendants, or for offenders sentenced but not definitively, shall also exist in the county prisons, and with absolute and complete separation between prisoners.

§ 1. The provisions of § 2 of Article 34 are also applicable to these prisoners, unless something else is ordered by the competent judge before final sentencing.

§ 2. This prison does not require work; but if the prisoner so requests, he shall be given it promptly, and shall keep the results of his labours.

TITLE XIV

Inspection and governance of prisons

Art. 60. Inspection and governance of all prisons is the province of the Ministry of Ecclesiastical Affairs and Justice, which is responsible for:

1. Approving plans for the building and repair of any prison, or its appropriation into the system of individual cells and separation of prisoners, and designating the number of cells that each of the district and county prisons must have.
2. Enacting all the necessary regulations for the implementation of this law, and modifying or replacing them when necessary.

TITLE XV

General provisions

Art. 61. The government is hereby authorised with the due legal solemnities to sell off buildings from the prisons that are owned by the state, as soon as the penitentiaries have been built.

Art. 62. The districts and municipalities are also authorised in the same way to sell off buildings of prisons that are the property of these same districts or counties which they have not been able to accommodate under the new prison system, as soon as they have built the new district and county prisons in accordance with this law.

Art. 63. In the heads of municipalities, which are not county head offices, there shall be a simple police detention jail and transportation of prisoners. These prisons shall be the currently existing ones or others intended for the same purpose by the respective municipal councils, on whom falls the expense of the aforementioned prisons.

TITLE XVI

Transitional provisions

Art. 64. After the publication of this law, and while the prison system of individual cells is not yet declared to be fully functioning, the penalties established in the law shall be applied to the defendants; but alternatively for the aforementioned sentences these same defendants shall also be sentenced under the penal code to penalties that are applicable to these crimes.

§ sole paragraph. When the crime corresponds to the death penalty under the criminal code, this shall not be imposed. Instead, Article 3 of this law, or alternatively the article relating to public works in perpetuity, shall apply.

The Palace, 1 July, 1867. = *Augusto Cesar Barjona de Freitas*