



The “damned of inclusion”, or the normalisation of the discourses and social processes of criminalisation of young adults in Portugal: A complex set of social, legal and criminal disruptions

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Abstract

Portugal, with circa 10 million inhabitants, has almost 800 young people, aged 16-24 years, serving prison sentences. The majority comes from low-income families living in sensitive urban areas of Lisbon and Oporto, with low levels of education, and many are Afro-Portuguese or come from African Portuguese-speaking countries. These young people are thus identified with the neighbourhoods where they live, portrayed as violent and problematic. The narratives from the actors of the justice system we interviewed suggest that such depiction results from a set of plural disruptions – social, legal, and institutional – leading to the selectivity and criminalisation of this group of young people. We thus call them the “damned of inclusion” since the plurality of exclusions affecting them hasn’t been addressed holistically by the social inclusion programs created in the last decades. Since these young men are “caught under the radar”, there seems to be a criminal reaction from the law, the judicial practices and the prison system – which turns into a normalizing response.

Key words

Young adults; processes of criminalization; judicial response; disruptions; Portugal

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Resumen

Portugal, con cerca de 10 millones de habitantes, tiene casi 800 jóvenes, de edades entre 16 y 24 años, cumpliendo sentencias de prisión. La mayoría son de familias de bajos ingresos que residen en áreas urbanas sensibles de Lisboa y Oporto, con bajos niveles educativos. Muchos son afroportugueses u originarios de países lusoparlantes de África. Esos jóvenes son identificados, entonces, con los barrios donde viven, retratados como violentos y problemáticos. Las narrativas de los actores que entrevistamos del sistema judicial hacen pensar que dicha descripción resulta de un conjunto de rupturas plurales –sociales, jurídicas e institucionales– conducentes a la selección y criminalización de ese grupo de jóvenes. Así, los denominamos los “malditos de la integración”, ya que los programas de integración social de las últimas décadas no se han ocupado holísticamente de la pluralidad de exclusiones que los afectan. Dado que esos jóvenes pasan inadvertidos, parece haber una reacción penal por parte del derecho, las prácticas judiciales y el sistema de prisiones, lo cual se convierte en una respuesta normalizadora.

Palabras clave

Adultos jóvenes; procesos de criminalización; respuesta judicial; rupturas; Portugal

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La criminalità nasce dalla mancanza di qualcosa. Nessuno si sveglia la mattina e decide di essere un criminale.
(Davide Marotta)¹

1. Introduction

By the end of 2020 there were 759² young people imprisoned in Portugal, aged 16–24³ years old (704 boys/young men, and 55 girls/young women).⁴ Nearly 180 of these (male) young adults are incarcerated in a penal complex specially arranged for youngsters (the so-called “Prison-School” located in Leiria; see Secretaria-Geral do Ministério da Justiça n.d.), while the rest shares the same⁵ prison facilities with adults.

Who are these young offenders?⁶ How does the Portuguese legal and judicial system deal with them?

We claim these young adults in prison seem to be caught within a complex set of plural disruptions.⁷ A societal disruption linked, on the one hand, to the inefficacy of the programs concerned with social inclusion; and to a social process of criminalization of certain young men, on the other hand. Several studies have concluded there’s a connection between class, race and the criminalisation process, which selectively polices and criminalises the behaviour of certain youngsters and young adults, disproportionately drawn from peripheral neighbourhoods or urban zones in the metropolitan areas (in our case, from the Lisbon and Oporto metropolitan areas), usually seen as sensitive or problematic neighbourhoods (Guia and Pedroso 2016, Raposo *et al.* 2019, Bateman 2020). Moreover, these youngsters can be seen as the “damned of inclusion”,⁸ since they seem to have been left behind (or even by-passed) by the several social inclusion programs created in these last 20 to 30 years. Additionally, we observe

¹ Davide Marotta is a social educator: “Crime arises from the lack of something. Nobody wakes up in the morning and decides to be a criminal” (our translation). In *La voce dell'altra Napoli. Trapper transgender “Canto la strada senza pregiudizi”*, by Floriana Bulfon and Francesco Pistilli, in *L'Espresso*, n. 7, anno LXVII, 7th February 2021.

² This corresponds to 7.15% of the male population in prison.

³ In Portugal, criminal responsibility begins at the age of 16 years old, hence a young person gets to be criminally sentenced as an adult at that age. The Educational Guardianship Law applies to young people, between 12 and 16 years of age, who have committed crimes. Until the age of 12 years, the Law for the Promotion and Protection of Children at Risk is applied to children who commit a fact that would be punishable by penal law (we will go back to this later in the article).

⁴ The *Relatório Anual de Segurança Interna 2020* (Sistema de Segurança Interna 2020) shows a significant decrease in the numbers, due to the COVID-19's impact, and in particular to Law n.º 9/2020, from April 10th, which led to the liberation of more than 1,700 imprisoned people.

⁵ According to Carvalho (2017), what happens is that young people, between the ages of 16 and 18 years old, can serve prison sentences sharing the same prison facilities with adults, which leads to a persistent violation of the fundamental principle of separation of judicial interventions with adults and minors, according to the Convention on the Rights of the Child.

⁶ The results presented in this article do not refer exclusively to the young adults serving a prison sentence but intend to provide a wider picture of those youngsters and young adults who come into contact with the justice system.

⁷ We understand disruption as a dysfunction, with negative impacts on the lives of the young people who have committed crimes, and who have been caught in the meshes of the legal and judicial systems, thus deepening the social exclusion and inequalities they were subjected to during their life course.

⁸ We are borrowing and paraphrasing from Fanon (*Les Damnés de la Terre*, 1961) and Soumahoro (“i dannati della globalizzazione”).

a legal, judicial and criminal disruption. Since these adolescents/young men are “caught under the radar”, there seems to be a criminal reaction from the law, the judicial practices and the prison system – which turns into a normalizing response.

This article aims to explore such disruptions, by examining 1. The portrait of these young adults given by the actors of the judicial system; 2. the incapacity and inefficacy of the existing social inclusion measures and programs; 3. the Portuguese normative framework (the Educational Guardianship Law, the special penal regime for young adults, and the Penal Code), and its application; and 4. the inadequacy of the education/training programs, and the standardised protocols, while serving the prison sentence.

2. Methodological remarks

This article is the result of an ongoing research project that intends to assess the Portuguese special penal regime applicable to young offenders and its correlations with the Juvenile Law and the Criminal Law systems (Centre for Social Studies – CES – n.d.). The project uses mainly a qualitative approach combining a) an analysis of the relevant literature in the field; b) an analysis of official documents from the Portuguese Justice institutions; c) an analysis of legislation; d) an analysis of official statistical data from the Portuguese Ministry of Justice; and e) semi-structured interviews.⁹ We have conducted in-depth semi-structured interviews with 17 key stakeholders, between June 2020 and April 2021, all conducted virtually (via virtual platforms). The key stakeholders were: representatives from the Directorate-General of Reintegration and Prison Services/DGRSP (at the level of policy-making, prison-school’s governing bodies, prison educators and social reintegration personnel), judges, public prosecutors, lawyers, and police officers. This article draws principally on the narratives obtained via the conducted interviews.

The fieldwork we had programmed was severely affected due to the eruption of the COVID-19 pandemic, which forced us to limit the number of the foreseen interviews. To ensure consistency, all interviews – which were recorded with the authorization of each interviewee, and later transcribed literally – were conducted following a semi-structured thematic guide, which varied slightly according to the institution and/or type of interviewee. The interviews were anonymised in accordance with the research ethics code of conduct.

3. The depiction of the young male offenders and the processes of categorization and pathologisation

In the following subsections we will address the complex set of disruptions we mentioned in the introduction. We will start by analysing, in this section, the societal disruption, which is linked to the processes of criminalisation of these young people and how they are depicted by the interviewees. In section 4 we will analyse the second disruption, linked to the incapacity and inefficacy of the programs for social inclusion. The third disruption – the legal framework applied to the young adults – will be

⁹ We’ve just finished the collection of data from a sample of files at the Prison School – we’ll then analyze such data, and proceed with some more interviews (with the young adults in prison) and focus-groups (with the institutional actors).

analysed in section 5. Finally, section 6 will deal with the disruption connected to the prison system (the inadequacy of the education/training programs, and the standardised protocols, during and after the prison sentence).

The concepts of youth delinquency, young adults offenders, and the processes of judicial intervention are closely interrelated. Delinquency is here understood as the deviant practices that are selected and sanctioned by the legal framework of each country. Youth delinquency and deviant behaviours are historically, socially and legally constructed; and, consequently, changeable in time and space (Carvalho 2003, Santos *et al.* 2010). They are also in sharp contrast with an ideal concept of good and abiding behaviours, and of submission to authority (namely familial and institutional authorities). There is also an increase in terms of the social concerns regarding the behaviours of young people, that results mainly from changes in the way certain behaviours are perceived by the police and the courts, and by the public. In this regard, the role of the media in the social construction of criminality, and particularly of youth criminality,¹⁰ cannot be overlooked, as it can lead to a misleading image about the incidence of such delinquent behaviours, whereas the proportion of serious crimes remains relatively low¹¹ and is linked to a tendency of reduction in the number of crimes in general (Gomes 2015, Raposo and Aderaldo 2019).

The results of self-reported delinquency studies developed in Portugal, by Gersão and Lisboa in the 1990s (1994), or by Mendes and Carvalho some 15 years later (2010), point towards delinquency being transversal to society – the percentage of young people who admit to having committed a crime, regardless of the offense, is practically the same for all social classes and gender. More recently, Caridade, Martins and Nunes (2019) conducted a study in the northern part of the country (Viana do Castelo), applying a survey to 80 teenagers and young adults, aged 15 to 25 years old (97% were of Portuguese nationality and 3% had other nationalities, e.g., Cape Verdean; 56% were males; and the majority was attending school/university), living in the rural area of the district. Respondents reported lack of parental supervision/control; conflicts with peers, teachers and school staff; lack of study habits and extracurricular activities. They also admitted to having adopted deviant, delinquent or even criminal behaviours (e.g., aggression towards colleagues, teachers and employees, causing intentional damage to others’ property, being involved in groups of deviant peers, invading private properties, and participating in thefts and in drug trafficking). These results again suggest that delinquent behaviours have an equivalent incidence in all socioeconomic strata, not only in the urban areas but also in the rural zones.

In spite of this, the sociographic description of the delinquent agents involved in the juvenile and penal justice systems in Portugal reveals the frequency over time of a high proportion of male youngsters coming from the poorest neighbourhoods, living in the peripheries of the Metropolitan Areas of Lisbon and Oporto, showing low levels of education and who come from families with low incomes (Pedroso *et al.* 2016). This

¹⁰ See Bateman (2020) for the United Kingdom, who reports a similar reality.

¹¹ The Opinion of the European Economic and Social Committee on the topic of Urban Spaces and Youth Violence (2009) stated that, while the phenomena of youth violence have great resonance in the national media, it is important to specify that statistics on youth delinquency in Europe do not show a significant increase but remain quite stable. See also Sistema de Segurança Interna 2020.

description was confirmed via the interviews, since all interviewees were consensual in such characterization, as you can observe from the excerpts:

They are young people disintegrated from society: they have stopped studying, dropped out from school in various cases... on the other hand, they come from many of the neighbourhoods around Lisbon, Sintra, Amadora... [Public Prosecutor1]

More and more young people from Oporto, it's something we're seeing in these last 3 to 4 years. It has always been from Lisbon, from those characteristic neighbourhoods – characterized in negative terms... but now many boys are from Oporto, from Oporto's social neighbourhoods. [DGRSP social staff3]

... the majority are young people aged 17–21 years old, who come from problematic social neighbourhoods. They are young, unemployed, they have no interests or projects for the future. They come from large households, with unstructured families that do not censor their behaviours, and sometimes even excuse them. [Judge2]

There are many young men¹² from Oporto too, but the areas with the highest incidence are those large neighbourhoods in the Lisbon area, those most peripheral neighbourhoods, either in Lisbon, or on the south bank, in Setúbal, Montijo, and so on. These kids usually come from unstructured families, many of them are from mono-parental female families. (...) [M]ost of the population in those neighbourhoods is of African origin or descent... [DGRSP social staff1]

The nationalities of African origin, namely Cape Verdean and Angolan, are also very present. [Representative from the Prison-School]

This last excerpt connects entirely to one of our main questions: who are these young offenders? From the interviews we get the following picture: a) these youngsters/young adults are described as not being integrated in the community/society; b) they belong to unstructured families; c) they show high levels of school absenteeism;¹³ d) they come from the so-called “problematic neighbourhoods”, or what are called sensitive urban areas as described in the police reports; and e) Many are African-Portuguese or of African-descent¹⁴ (from the Portuguese-speaking African countries).

Is this picture something that is particular of the Portuguese reality? Not really. Different studies coming from disciplines as varied as criminology, sociology of youth, legal sociology or social geography, to name but of few, have pointed this out in other contexts.¹⁵ What seems to catch our eye is that these narratives, backed by annual official reports and the several studies conducted (e.g. Carvalho 2019, Bateman 2020), seem to highlight a categorisation, as a sort of pathologisation,¹⁶ of a certain group of young

¹² As much as this is about racialisation, the gender variable needs to be taken into account as well, since the proportion of young black male adults in prison is quite high. See, for example, Gunter (2015).

¹³ Young people in Portugal, for this group, have a level of education below the average of EU countries, especially with regard to men (Fonseca *et al.* 2015). These young people have a complex and difficult relation with school: they don't feel attracted to the educative programs, as they feel they are left outside of those programs (Raposo *et al.* 2019).

¹⁴ See also Secretaria-Geral do Ministério da Justiça 2020. According to the annual report, almost 50% of foreign inmates are from the Portuguese-speaking African countries, mostly from Angola, Cape Verde and Guinea Bissau.

¹⁵ See, for example, Mecarozzi's article in *L'Espresso*, anno LXVI, n. 44 (2020), *Come nasce il branco. Minacce, pestaggi, droga. E i boss delle baby gang reclutano tra i banchi di scuola*, which reports on the Italian reality.

¹⁶ As Canguilhem has shown, categories of the normal and the pathological are far from being objective scientific concepts, and are imbedded in political, economic, and technological imperatives.

offenders, as described above. A category that is present in the so-called “problematic neighbourhoods” in the peripheries of large urban centres, which shows the intersection between the criminalisation of youngsters and young adults and territory (as well as the intersection of different inequalities linked to structural impingements: racism/poverty/lack of suitable male role models/lack of alternatives).

But the interviews also show something that only recently has entered the debate in Portugal: the question of the racialisation of deviant behaviours (Baganha *et al.* 2000, Seabra 2003, Raposo *et al.* 2019). As was pointed out by one of our interviewees:

... sometimes I get that impression [of the monitoring of that population], because it's strange... (...) [W]hen I look at the population in the prison-school I wonder... we look at it and more than half of them are Africans or mestizos... [...] Afro-Portuguese, or African descendants, some still have a foreign nationality¹⁷ [although they were born in Portugal]. [DGRSP social staff1].

We thus have the intersection of socioeconomic disadvantages, territory, vulnerable familial configurations¹⁸ and racialisation, that forms our first disruption, translating into a “social process” that naturalises/normalises these young men as deviant, who then come to the attention of criminal policies (and get to be selectively policed and criminalized).

In the context of this first disruption particular attention needs to be given to the question of the “problematic neighbourhoods” and the negativity that is associated to it. As was pointed out by our interviewers:

Why doesn't anyone want school x on street y? While students from [schools frequented by people coming from medium and medium-high classes] smoke their weed at home or go to 'Afonso's' house to do the smoking and sniff cocaine, students from the sensitive urban areas do not have access to cocaine because it's very expensive. These guys smoke their weed brazenly there, make their jokes there, put their foot on the wall, have a completely different way of dressing (...), so it is visible. School x has a connotation for being a school of criminals, but it has nothing to do with it, it has to do with the fact that things are done outdoors and in front of everyone. (...) [I]t's the environment they have in the neighbourhood, and they bring to school the ways they do in the neighbourhood. (...) Thus we direct our policing more to that part of Lisbon because we need public opinion to be satisfied with the 'cleanliness', so to speak, of those areas. Because to public opinion things are perfectly fine [in the schools frequented by people coming from medium and medium-high classes] in Lisbon... (...) where they are all well-behaved folks [irony]! [Police Officer2]

As Raposo *et al.* (2019) have noticed, the peripheral neighbourhoods that are described as problematic, critical or in need of priority intervention are seen as degraded, uncivil, and transgressive, which justifies the need for constant police intervention in order to

¹⁷ The interviewees also mentioned these young men have many difficulties obtaining their citizenship status (because the law is based on the criterion of the *Ius Sanguinis*), especially in obtaining the necessary documents from the Portuguese foreigners' service, which has a negative impact in many areas, particularly in what concerns their insertion in the labour market, or an active political participation.

¹⁸ In this regard, the interviewees, but also the literature, mention several times that these young people grew up on their own, in many situations without any familial or parental control, and lacking affective attention. Which is similar to the results from Caridade, Martins and Nunes' study (2019) regarding self-reported delinquent behaviours.

control and repress what is seen as urban violence.¹⁹ This discourse, however, never has questioned the racist and socioeconomic conjunctures that have led to these assumptions and stereotypes (Raposo *et al.* 2019, Raposo and Aderaldo 2019, Silva *et al.* 2019). Many of these neighbourhoods are informal in nature and were self-constructed by the residents over time, were part of diverse (complex and traumatic) processes of demolition and relocation/rehousing,²⁰ and are hence associated with this idea of the “no city” as opposed to the ideal of the city (Silva *et al.* 2019). At the same time, such representation seems to ignore the life complexities and the quotidian resilient struggles of the residents. For Malheiros²¹ there is a juxtaposition between the overrepresentation and the underrepresentation of the neighbourhoods in different contexts: a) they can be seen as invisible (there’s an absence of state intervention in several matters, like basic municipal services) and/or b) they are associated with a very negative representation, which is conveyed by the media and spreads to other sectors of society (and gives rise to frequent state control in terms of police action and intervention, as was reported). Moreover, these neighbourhoods are especially visible, surveilled and subjected to police control, as is reported in the annual official reports on internal security (and was conveyed by Police Officer2).²²

Bento (2017), in his study concerning the delinquency prevention program Safe School (Escola Segura, instituted in Portugal in 1992, and covering currently more than 4,400 schools; see Polícia de Segurança Pública 2021) asserts that these “proximity police” agents share a kind of socio-moral map of the city, in which different zones correspond to different types of population, which, in turn, are seen as requiring different types of police intervention (Police Officer2’s excerpt above was clear on this). Hence, the patrolled schools are the ones that, for one reason or another, have earned a reputation for being “problematic”, usually in “problematic” areas of the city – described as “desolate places where families can no longer be trusted to transmit moral and discipline values”.²³ By adhering to this narrative, police agents, as Bento (2017) claims, ended up implicitly invoking an ideal around the notion of community – and, more specifically, against the sense of a community in crisis – to give meaning and legitimacy to the type of police intervention they carried out in those zones. This is in line with Canguilhem’s (1991) concepts of the normal and pathologic, which serves to legitimize a process of normalization that sanctions what is regarded as a problem or as an anomaly (or as a deviation from the norm).

¹⁹ Episodes of police violence over black majority neighborhoods in the outskirts of Lisbon have been reported by Raposo and Varela (2017). See, on this, the *Relatório sobre Racismo, Xenofobia e Discriminação Étnico-racial em Portugal* (Comissão de assuntos constitucionais, direitos, liberdades e garantias 2019, p. 19). See, as well, the recent paper by the EU Agency for Fundamental Rights (FRA), that states that the perception of being subjected to ethnic profiling when stopped by the police is common among immigrants and Roma in Portugal (84%) (FRA 2021, p. 24).

²⁰ Sousa and Brito Guterres (2018) claim such processes did not permit the participation of the affected communities, created hostile architecture and segregation.

²¹ Notes taken from the seminar *Bairros e criminalidade dos jovens: relações sensíveis* (October 8th 2020). See <https://ces.uc.pt/pt/agenda-noticias/agenda-de-eventos/2020/bairros-e-criminalidade-dos-jovens> [Accessed 10 February 2021].

²² See, as well, Comissão de assuntos constitucionais, direitos, liberdades e garantias 2019.

²³ Regarding this issue on values, one of the police officers we interviewed said something similar: “...we have a [young] generation whose values in 1982 [the year the special regime was promulgated] were a bit different, but the truth is that I notice on the street that these values have fallen a bit” [Police Officer1].

Hence, the policing of certain behaviours, which will translate into the criminalisation of conducts, is directly connected, on the one hand, to a moral representation of the city as opposed to the “no city”, and on the other hand, to the ideal community as opposed to the notion of a community in crisis – that then needs to be civilised, normalised, normativised. Some more extreme views declare the need to be “cleaned or washed” from the dirtiness of delinquency/crime. As one of our interviewees said:

The young people I met were incredibly ‘dirty’. In other words, their life had been a life of delinquency or in an environment of delinquency, and the [re-educative] intervention could not be done with a normal ‘stain remover’, but with something more powerful. (...) The young people who are in the educative centres are people who, as a rule, are already at a very advanced stage of what it is to live in marginality and delinquency, due to different hardships, like the family, the neighbourhood where they live, the companies they had, a drug addiction conduit. We have to do the best we can (...) but the prognosis is often awfully negative. [Public Prosecutor2]

Young people need to be controlled for their own sake, they need to be educated towards role models that are idealized as positive; they need to be taken off the streets, where less desirable references could exercise their negative influence over them.²⁴ According to Melendro (2015), young people that were already “clients” of the child protection system for reasons that had to do with parental neglect, risk conducts or school absenteeism, are overrepresented in the social disadvantage indicators, which also helps to explain the overrepresentation of minority ethnic children/youngsters within the juvenile justice system. Moreover, as asserted by Bateman (2020), these indicators are influenced by the capacity of the families to ensure their children’s problematic behaviours get to be managed; by young peoples’ educational accomplishments and/or employment prospects; by references from what are deemed as “respectable” adult sources; and a range of other considerations that end up disadvantaging young people with lower access to social and economic capital.

These narratives were also outspoken by our interviewees. They have been incorporated into the discourse on juvenile delinquency and deviant behaviours. But they don’t seem to contest, in many cases, what is underneath (problems linked to different social exclusions that have to do with citizenship status, the education system, the socio-economic context of families, housing, mental health issues or other problems). Thus, there is a sort of paradox here, an ambiguity and a contradiction in the representations of young people. If, on the one hand, these tend to be seen as vulnerable subjects²⁵ that must be protected, on the other hand, they are still perceived as potential offenders, that must be controlled, and sanctioned (Bento 2017), which sustains a kind of “demonisation” of children and youngsters, supporting a cycle of intolerance (Bateman 2020).

²⁴ Literature has shown that children and young people living in areas of high-density housing are more likely to socialise in larger groups, in public spaces, thereby attracting attention from authorities for behaviours which might be overlooked in other settings, which distinguishes young people resident in poor communities from their better-off counterparts (Bateman 2020).

²⁵ These visions about youth underpin the way adults negotiate and control the use and experience of public space by children and adolescents. As claimed by Valentine (1996), children and young people are seen and reproduced as vulnerable and “incompetent” subjects, even in terms of how they use public spaces like the street.

4. The “damned of inclusion”: the incapacity and inefficacy of the programs for social inclusion

According to Carvalho (2019) there is, in Portugal, a phenomenon of “chronic” delinquency linked to urban territories hard hit by factors of social disadvantage and exclusion, where child poverty is quite high²⁶ (Portugal has one of the highest rates of child poverty in the EU, 22.5%; see Eurostat 2020). In such territories we find a complex spatial and familial organization, where children and youngster are often exposed to domestic violence,²⁷ in a process that may end up “normalizing” violence within social relations (Carvalho 2019, p. 82).

In these last 20 to 30 years, several programs were created in order to address diverse causes for social exclusion, linked to a set of deprivations resulting from economic inequalities, socio-territorial segregation, the precariousness of the labour market, and vulnerable familial structures (Roldão 2013). Policies for social inclusion ought to comprehend all areas of life in society, through programs, of a general nature, that improve the social protection of the population, by reducing poverty levels through income transfer and social benefits that improve access to public services, and the quality of life. Such programs must include specific features aimed at the social inclusion of young people, of which we highlight policies regarding the urban requalification of cities,²⁸ the social integration of migrants,²⁹ inclusive education and intercultural mediation with children and youth, and the prevention of juvenile delinquency. Hence the creation of the territorial programs of priority educational intervention (Direção-Geral da Educação n.d.); the social and intercultural mediation programs (Rodrigues and Karimo 2018) like *Choices*;³⁰ or the urban requalification programs in Lisbon’s (Gestão dos Bairros Municipais de Lisboa (GEBALIS), 2011), Setúbal’s (Lisboa 2020) or Oporto’s social neighbourhoods. *Safe School* is a program that was created to prevent delinquent

²⁶ Metaphorically speaking, we could invoke the image of a “whiting trussed with its tail through its mouth”: in the relation between poverty and social disadvantage we’ll find that delinquency will also be linked to educational needs because of school dropout high rates, precarious employment conditions, and a lack of expectations regarding the future. There are also issues of alcoholism, addiction behaviours, mental health problems, child trauma, parents or other family members with a history of imprisonment, which are linked to the absence of positive models. It’s a vicious cycle.

²⁷ One of our interviewees also referred to domestic violence and how it affects young people in the long run: “I think that exposure to situations of domestic violence is a very serious problem, it can have terrible consequences, which can manifest themselves in different ways. (...) [W]e often see cases that are opened and reopened regarding the same child, and initially the problem may have been domestic violence... we filed it, then it opened again because the child grew up and started to miss school, and then started to have addictive behaviours... So I think that domestic violence, being one the most flagged problems, we can see it has many negative consequences for the future of these children”. [Representative Commission for the Protection of Children at Risk].

²⁸ Sousa and Brito Guterres (2018) have made a severe critique of this type of programs, claiming that the Dedicated National Rehousing Plan, started in 1994, has not alleviated social exclusion. Much on the contrary, it has created social ghettos which became the target of heavy policing. Alves (2019) also analysed the racialised inequalities in the access to housing programs.

²⁹ According to the Migrant Integration Policy Index, Portugal is one of the countries with wider-ranging and inclusive policies, especially in what concerns integration into the labour market and family reunification policies. See MIPEX 2020.

³⁰ *Programas Escolhas*, a national program of the Portuguese government for social inclusion, created in 2001. See Alto Comissariado para as Migrações n.d.

behaviours near/inside the school precincts and is part of the proximity programs within the police forces.

Although there has been a constant decrease in terms of the number of young people in educational centres (aged between 12 and 16 years old and under the Educational Guardianship Law) and imprisoned (over 16 years old), there seems to be an increase in regard to the mechanisms of selectivity and social control related to the group of young people that come to the attention of the police forces and of the courts, and that we’ve identified earlier. We have decided to name these young people the “damned of inclusion”, since they seem to have been left outside of the several social inclusion and/or delinquency prevention programs that were created in these last two decades in Portugal. The interviewees’ narratives provide us with that scenario:

There is a group of young people who seem to have escaped these [programs]... although there has been a great investment in community programs, young people who get to court were not caught by these projects. It’s important to work on the area of inclusion and there must be a better connection between these projects and the courts. [Judge2]

The system’s responses to these young people should happen much earlier, unquestionably, especially when they were small children. [Representative Commission for the Protection of Children at Risk]

Some of our interviewees, especially the prison educators, who have a more direct contact with the young adults imprisoned, have voiced what they consider to be the problems associated to these social inclusion programs: their fragmentation, discontinuity, and incapacity to address territorial diversity, as sometimes there is a lack of knowledge about the specificities of exclusion in these territories. Duarte and colleagues (2007) had already identified the need of performing a better monitoring and adaptation of such programs, like *Choices*, to territories with specific challenges in terms of child/youth poverty and social exclusion, thus creating the conditions for effective territorial equity. As the authors have pointed out, there seems to be a greater adequacy of these programs to urban and coastal territories. Therefore, it is important to bear in mind, in this respect, the differences that exist, in terms of causes for social exclusion, between rural, urban and rural, and mixed areas³¹ (Duarte *et al.* 2007).

Moreover, the fact that these programs have a short duration in terms of their execution (2 to 4 years), are later discontinued, and aren’t holistic in what concerns the different problematic issues affecting these youngsters is seen as the principal reasons behind their inefficacy, and failure. As the excerpts show:

These organisations, some work very well, have good professionals. But the projects go on for 3, 4 years, and then the work stops there, there is no continuity, which is fundamental. And conditions everything. [DGRSP prison educator1]

Much investment has been made in social projects, money has been given to many private institutions of social solidarity, but the projects have no continuity. It all started about 20 years ago. [DGRSP prison educator2]

³¹ The same was pointed out by Police Officer2 regarding the *Safe School* program: “I think there is this need to create local working teams, because what happens in my area - central Lisbon - doesn’t happen in Loures, doesn’t happen in Santarém, and much less happens in Vila Real or Bragança” [Police Officer2].

... the social education that was carried out in the local communities was very important to perform this work of promotion and protection (...) so that we would not have so many young people now in seclusion. There were a lot of projects, a lot of things... but then the projects are cancelled, and everything is very much left up in the air... [DGRSP prison educator3]

At the same time, it seems as though these young people get to “navigate” the justice system, firstly by getting in touch with the measures from the system of child protection, then the application of measures from the juvenile law system, and finally a penal sentence. Like the excerpt highlights:

These guys often come from other instances, either from the protection or from the educational guardianship systems, some have been in an educational centre, and when they arrive here it's because they've committed crimes that are rather violent. [DGRSP social staff1]

The young people imprisoned, like we mentioned at the beginning of this text, are thus seen or identified as those individuals who can't seem to integrate in the community, in the school or in the labour market, and to take active responsibility in their lives. Even if social inclusion programs were created in the last 20 to 30 years, as the first line of social intervention with the families and in the community, under the initiative of the State and its public services, like education or social action, at the local level, or even from the civil society, such programs are sectorial in nature and weren't able to fully fulfil the promises made³² – which is why they are the “damned of inclusion”.³³ Notwithstanding the beneficial effects of such programs, the fact is that its application can be seen as contributing to an emancipatory agenda as well as to the perpetuation of a logic of social control and poverty management (Raposo and Aderaldo 2019). According to Mazzochetti (2005), the process of poverty management is based on an ideological security campaign, so that the endogenous marginality (risk behaviours) is nothing more than a deepening of the exogenous marginality (spatial, political and economic exclusion) experienced by young people³⁴ (delinquent behaviours thus often end up translating into a crisis of legitimacy before the institutions – family, school, employment – and, ultimately, as a lack of confidence in State institutions).³⁵ The *Choices* program is key here: although it promotes social inclusion, the core idea remains that of the prevention of real and potential risks for young people from socially precarious

³² According to the United Nations' *Report on the World Social Situation* (2016), “[s]ocial inclusion is defined as the process of improving the terms of participation in society, particularly for people who are disadvantaged, through enhancing opportunities, access to resources, voice and respect for rights” (UN Economic and Social Affairs 2016).

³³ António Brito Guterres uses an expression that is close to ours: he calls these young people “the prisoners of politics” (a word pun for political prisoners), since they seem to be caught within the programs but can't really access the rights. See Belanciano 2021.

³⁴ As it has been reported in the literature, the transitional period from childhood to adulthood has become prolonged in time, with people reaching key markers such as financial and practical independence later than in previous generations. Such milestones are seen as protective factors that help prevent young people, particularly young males, from delinquent paths (Matthews *et al.* 2018). Such process becomes entirely complex when young people are faced with a lack of expectations in terms of their future, and/or familial and social support is most vulnerable.

³⁵ On this matter, there is a debate or tension between criminology and zemiology, especially in regard to the question of social harms (financial, social, territorial and psychological) and how these have a profound impact over the ways the notion of crime is perceived and dealt with (Tombs and Hillyard 2004, Khare 2016).

neighbourhoods to enter the networks of crime. Raposo and Aderaldo (2019) claim that such perspective seems to underrate the effects that different social and economic policies have on the precarious lives of the young people covered by *Choices*, precisely by crystallizing the stereotypes that continue to see them as inherently “problematic and marginal”, and by not being able to address the structural inequalities that permeate their lives. The policing of certain behaviours in the marginalised territories where these social inclusion programs are implemented can hence be connected to this social control policy.

5. Deviant behaviours and criminal responses: the disruption of the Portuguese penal framework applied to young adults

Although criminal responsibility in Portugal begins at the age 16 years old, the Portuguese penal code provides a special regime, instituted in 1982, called the Penal Regime Applicable to Young Offenders (Decree-Law 401/82, Regime Penal Aplicável a Jovens Delinquentes), that is to be applied to youngsters and young adults who commit crimes, aged between 16 and 21 years old. It's a sort of intermediate penal regime, between the juvenile law system under the Educational Guardianship Law and its conception of “education towards the law” (applicable to youngsters aged between 12 and 16 years old) and the penal law code (general regime). This special regime is quite interesting, for many European countries have instituted juvenile justice systems, but do not foresee special penal systems for young adults (Pruin and Dünkel 2015).

The Penal Regime Applicable to Young Offenders must, as far as possible, connect to the principles and rules of the juvenile law system:³⁶ the general standard is that of greater flexibility in the application of corrective measures to young offenders. In the preamble of this decree, three important ideas are emphasised: a) that the young adult deserves a special penal treatment; b) the need for re-socialization, considering above all the question of his/her maturity; and c) the measures to be applied should re-educate and not simply institute a sanction.

This special regime, however, has been considered inadequate (Agra and Castro 2007) and outdated, since it was instituted in 1982, and hasn't been updated since then – especially if we consider that the juvenile justice and Educational Guardianship Law was instituted in 1999, almost 30 years after. On the other hand, its practical application is quite rare, since it's an optional regime, even though the courts must always consider the pertinence or inconvenience of its application (and if the court deems it inapplicable to the particular case, the judge must justify the reasons for such inapplicability). Nevertheless, its use has been reduced to a special attenuation of the prison sentence, when the judge has serious reasons to believe that this will have positive effects in terms

³⁶ The Educational Guardianship Law (Lei Tutelar Educativa, Lei no. 166/99). The Portuguese juvenile law system is mostly concerned with the educational and social deficit of the young offender, hence its vocation towards what it defines as “an education towards the law”. It concerns children and youngsters aged 12-16 years of age. We also need to mention another important diploma on these matters: the Law for the Promotion and Protection of Children at Risk (Lei de Promoção e Proteção das Crianças em Risco, Lei no. 147/99, which applies to children and juveniles from 0 up to 18 years old, and in some situations may be extended until the youngster reaches 21 years old).

of the social reintegration of the condemned young person (Figueiroa 2010). This was confirmed by some of our interviewees:

Judges end up suspending the prison sentence several times without applying the regime because they understand that the facts are serious (...), and in view of the severity of the punishment (of the abstract penalty, so to speak) this special regime should not apply [in their view]. [Public Prosecutor1]

... my experience is that this is a decree-law that has never been applied globally. It was never applied in its entire dimension. It is rarely used, and when it is applied it is mainly to apply a special attenuation, to justify the use of a special attenuation. I don't remember cases other than this. This is the law, period. [Public Prosecutor2]

I think it doesn't get to be applied always, but the fact that they are put in the prison-school means they get to be in a regime that is somehow different from the others. [DGRSP social staff1]

According to Figueiroa (2010), the fact that the practical application of the regime concentrates on this mitigation of the prison sentence and on the possibility of applying corrective measures makes it difficult to treat it as a proper special penal regime for young adults. Nevertheless, our interviewees consider that this special penal regime has many potentialities and should thus be applied more often.

This regime should be maintained because, in my opinion, long prison sentences are still applied to young people. [Representative from the Prison-School]

... those who read the decree-law see that it has a huge set of potentialities, namely the possibility of using the Educational Guardianship Law, which is completely neglected. It is a matter that is completely forgotten. [Public Prosecutor2]

But our interviewees' major claim is the need for the special regime to be updated³⁷ to fully articulate with the juvenile law system, as shown by the excerpts below:

... the regime is from 1982, the Educational Guardianship Law came later, but there are some changes here that I think should be met, namely the situations when a tutelary measure is applied and then the young person is sentenced to a prison term, and often there is no interaction between the magistrates in the criminal area and in the family and minors' area. [Public Prosecutor1]

This analysis calls attention to a legal disruption in the construction of the legal system, since the educational guardianship law and the juvenile justice system do not extend until the age of 18, and consequently from the age of 16 onwards the penal law of adults applies, with the early criminalization of the conducts of young people who commit crimes up to the age of 18. Based on the idea that the young adult deserves a special penal treatment the Penal Regime Applicable to Young Offenders was instituted, but is applied infrequently, as we've said. Nevertheless, not all interviewees agree with this regime, and some even feel that after the age of 18 all individuals should be covered by the general penal regime, since they have reached the age of majority. Therefore, only general mitigating factors should apply:

³⁷ One of the police officers interviewed claimed that the regime should also be updated in order to meet the current criminal reality: "Since 1982... almost 40 years have gone by, right? I think that criminal reality is different now, I believe that society, in some aspects, has evolved well, in others it has unfortunately evolved badly" [Police Officer1].

... that individual, for all intents and purposes, is an adult, is responsible for his actions. Let's see one thing: even a 30-year-old person, if he commits a crime, there are also mitigating factors, and the same can be applied to an 18-year-old. [Police Officer1]

In addition to this disruption of the legal system, there is another disruption arising from the practices of the penal judges who apply the Penal Code to young people: 1. there are differentiated practices between the different areas of law – penal and juvenile laws – which denounce a lack of communication between the two systems; and 2. these differences are connected to diverse practices by the magistrates as well. The interviewees relate this to several reasons: court location (territory), different levels of jurisdiction (courts of first and second instance), which is intimately related to the ways these young people get to mobilise legal resources (such as access to a lawyer), and training. Such issues are indicated in the following excerpts:

I have the idea that the smaller courts, perhaps due to a lack of experience from the magistrate, get to be a little harsher sometimes [in terms of sentencing]. [DGRSP social staff1]

We have the following problem: the magistrates, especially in districts with a higher caseload, sometimes begin to devalue the conducts. They are used to more serious criminal behaviours, and it seems as if this [deviant behaviour from young offenders] becomes a minor thing. [Public Prosecutor2]

The different practices here are connected to smaller and larger districts and criminal behaviours inside the territories that get to be valued or devalued in accordance. These different practices are also associated to courts of first and second instance, and to the intervention of a lawyer in the different phases of the legal proceedings, namely if these young adults have the financial resources to get access to an experienced lawyer or get, instead, to be assisted by a pro bono attorney, much less experienced. This has a major impact in how the special penal regime gets to be applied to the youngsters by the courts of first instance or when an appeal takes place:

As for the special regime, I think that the sentencing court, the court of first instance, does not apply it frequently. It is often necessary to make an appeal so that the young person can benefit from the regime. In the event of an appeal, the court [of second instance] often happens to lower the prison sentence. (...) [I]f there is a lawyer, things happen... if there is not such opportunity, the young person does not benefit from that regime. [DGRSP prison educator1]

Many times, the young man did not have the defence he should have had. With pro bono lawyers. Which does not happen in those cases lawyers are hired by the family, when the defence is done differently. [DGRSP prison educator2]

Other interviewees, moreover, connected it to a lack of training in the different areas of the law (penal and juvenile) especially concerned with young adult offenders. And also with the current studies on neurodevelopment:

I believe prison sentences required a greater sensitivity... (...) I think judges and prosecutors, during their training, should come to the streets to accompany the police forces (...) to understand the kind of crimes that happen, the reality... (...). [Police Officer2]

I think judges should be aware that are issues related to the neurological sphere, of the brain not being fully formed... which only happens at the age of 21. (...) They still aren't sensitive to that fact. [DGRSP prison educator1]

Judges too feel they need more preparation and training in this area:

... we need more training for judges and prosecutors at the national level. [Judge2]

We are thus confronted with a set of questions, posed not only by the fact that this decree-law shows some problems, but also given the interviewees' opinions and narratives: 1. there is a tension in regards to how young adults should be considered in terms of a differentiated penal system; 2. the efficacy of the systems in use and their effects on the trajectories of young people who commit crimes should be examined; and 3. the practices of the magistrates should be analysed, since the system is not compulsory, and the practices vary greatly.

At this point, however, it is important to underline an important variable: the way the magistrates get to value, or not, the social reports from the social services, and in particular how they appreciate the social context from which the youngsters come from and how this influences the measures they apply:

There are judges who show a more humanistic attitude, who pay attention to the socioeconomic context of the young person, and who get to follow the measure suggested in the social report. There are judges, however, who are more severe, more authoritarian, more legalistic, and who do not attend to any of this, limiting themselves to a literal application of the law and not taking into account the youngster's social context, or what is suggested in the social report. [DGRSP social staff2]

Some interviewees believe there is a kind of paternalistic attitude by the judges, in the sense they tend to always justify the conducts and apply less severe measures. One of the police officers emphasised the justice system is highly benevolent, implying it doesn't have a deterrent effect:

When you see a young man committing a certain type of crime, sometimes a serious one, because we are all humans there is always a tendency to think that a more serious measure may harm his harmonious development. But as he turns 16 and becomes imputable, we can arrest him or we can punish him in another way. [Public Prosecutor1]

I believe we have a justice that is too benevolent, and that certain individuals considered to be young offenders can continue to carry on with their criminal activity. [Police Officer1]

Other interviewees, therefore, claim there is a need to be less condescending and more severe, as the way to assist in the re-socialisation process. Nevertheless, this is a contested issue, and not all agree with this posture, like the excerpts show:

I do not have the perception that prison sentences are easily applied to 16-year-olds. In fact, if they were applied, they should be in imprisoned, and I don't see them there [in the prison facilities]. (...) And I think that in some cases the judge should apply a prison sentence right from the start. (...) I think it would be in the interest of the citizen. He could take advantage from the opportunity. [Public Prosecutor2]

Then there are situations where we realize that there are prison sentences... it is true that the crimes are serious, but a 16-year-old being sentenced to 21 years in prison is truly harsh. [DGRSP prison educator1]

There is thus a tension between different professional roles, which is connected to different professional cultures and how human rights and penal guarantees have been absorbed, where a more punitive and repressive ideology is manifested by the police and public prosecutors’ speeches, whereas a more educational and humanist approach is patent in the prison educators’ discourses.

6. Institutional disruptions: the inadequacy of the education/training programs, and the standardised protocols, during and after the prison sentence

As we’ve written before, there are about 800 young people between 16 and 24 years of age serving prison sentences (especially for the practice of robbery crimes) that the Portuguese Courts have convicted to imprisonment. Such conviction is partly due to the disruptions in the design of the Portuguese legal system and its judicial application, which applies the Penal Code to young people.

But in addition to the criminal law and its application to young adults, there is yet another disruption in the execution of prison sentences in the Portuguese prison system. We are thus in front of what we claim to be an institutional prison disruption. We will analyse such disruption by examining the following: a) education and training programs; b) time and rhythm; and c) vulnerable institutions and standardised protocols.

(a) Education and training programs

Our interviewees consider that the prison sentence does not have the same motivating effect as the juvenile justice educational centres in what regards the completion of schooling programs, although the possibility of young prisoners going to school and studying is one of the components of the system that is seen as “working well”:

... [T]he measure of permanence in an educational centre got to be noticed in the prison-school, as the young prisoners have more literary skills, because the educational centres managed to motivate them to study. [Representative from the Prison-School]

However, with regards to professional training programs, there is a consensus in terms of its suitability for the future prospective of these young people:

... [W]e have this problem, that activities aren’t programmed according to a reintegration plan. And if the individual wants to work with computers, we don’t get him to dig potatoes. (...) If we want the reintegration plan to give results, it is clear that if the training program is not suited to what the person is and what he wants to be, that program is just a waste of money... sure, the person will be occupied, but that’s not a completely positive occupation. And when it comes to young people, this is fundamental. Having people attending school, that is one of the things that works well. So far the agreement with the ministry of education is one of the things that works well. But when it comes to professional training, that’s where we start to slide out... [Public Prosecutor2]

It is rare to find a young man who says: ‘This training program is cool and I will benefit from it when I leave’. (...) Most do that training because they are there and are obliged to do it, right? But they don’t even talk about the future, or work prospective. [DGRSP social staff3]

(b) Time and rhythm (or doing nothing)

Young prisoners have a lot of spare time, in which they are not occupied, and consequently nothing useful is done that will help them in the future when they leave prison. The view is that they lack daily activities that give them a sense of the time and rhythm of the life outside:

In terms of the purposes of prison sentences, and especially at its end, which is reintegration, one of the biggest problems is that we are unable to occupy most people. An individual spends years doing nothing, and obviously it does not lead to positive results, and this is what happens frequently. People are doing nothing. Or they are in a set of activities, which are great for statistics, but have no practical interest. [Public Prosecutor2]

... [T]hey don't internalize many of the things because the system is difficult... to put an individual working as if he were outside... in terms of schedules, they have 3 hours of training in the morning and 3 in the afternoon, and that's it. It's a very short schedule! These kids who come here – this is my point of view and I know that this is difficult to implement for security reasons – should work with a plan as if they were outside: a time to work and a time to study. Because they have a lot of spare time. (...) I realize that occupying them as it's done keeps them calm, but on the other hand it is not educational. [DGRSP social staff1]

(c) Vulnerable institutions and standardised protocols

According to Dehaghani and Newman (2017), criminal justice evidences a cycle of vulnerability as the institutional professionals are unable to operate at their optimum level due to the combination of a number of factors, such as the consecutive cuts in resources, lack of means, an increase in the number of duties they are expected to perform and standardised routines and practices, that may serve the ideal of efficiency of the system, but do not speak of quality. The authors thus claim that such institutional vulnerability may serve to further perpetuate disadvantages.

These claims were also remarked by various of our interviewees, especially from the Directorate-General of Reintegration and Prison Services/DGRSP's social staff, either working with juveniles/young adults, be it at educational centres or at the prison-school. These interviewees have thus referred to what they perceive as obstacles to an effective re-socialisation of these young people: on the one hand, the fact that there aren't sufficient human resources, on the other, that there are no practical means to implement some of the measures applied to the youngsters, and to do follow-up routines. The prison educators also expressed the need to have more prison-schools, since the existent one, being a sole case, should be replicated, as well as intermediate centres to accompany these young people while transitioning from the prison environment towards the outside. There is, thus, a feeling they aren't doing what they should do with these young people. Like the excerpts highlight:

This prison is unique, it does an excellent job, it should be replicated. It would be very beneficial for these young people to be removed from the prisons for adults. It would also be really good to have other structures, that can accompany these young people when they leave, because they are growing, changing. (...) They enter at the age of 17, they leave at the age of 23 or 24... and this work of getting closer to the outside, the social reintegration teams do not have enough human resources... they cannot... and it would be important. [DGRSP prison educator1]

When they are in detention, sometimes for 11 years, once they get out they find themselves in a completely different society, and they are not able to absorb that difference. And that is why there is a lot of recidivism, because that transitional path is not made. [DGRSP prison educator3]

The problem arises when they return to their social environment. More means are needed for social reintegration, prevention, and re-socialization. [Judge1]

There is clearly a lack of staff! It's not possible for us to understand if that person may need some sort of reminder or a support measure, so these guys are very much left to themselves [once they are out]. I mean, we monitor the situation – they have to come here once a month, we monitor it; they have to attend doctor appointments, we monitor it, and so on... but we no longer have that thing we were used to, for we used to establish a relationship that allowed that individual to approach us and say 'I'm going through a difficult situation, what can I do, can you help me here?'. [DGRSP social staff1]

This later excerpt points towards the idea of standardised routines. The actions developed by DGRSP's social reintegration staff consist in psychosocial support, articulations with the community environment, and, above all, elaborating opinions and reports for the Courts. The elaboration of these documents is defined in Procedure Manuals and implies interviews with the individuals, with their families, direct observation of the young person's behaviour, the application of assessment instruments, contact with other sources (like schools) and the consultation of relevant documents (Cóias 2019). Since 2010, the DGRSP has been using the Inventory Youth Level of Service/Case Management Inventory^{2,38} which identifies the main risk factors. This inventory assesses the characteristics and circumstances of the young people that may constitute a risk of recidivism, and which are relevant to decisions regarding the degree of intervention, supervision, planning and case management (Cóias 2019).

These standardised and protocol routines/programs were also mentioned by DGRSP social staff1, and evaluated negatively:

... everything works the same way, the same protocols ... (...) they are made to leave you with a minimum of intervention. (...) It's a program that we have to fill in a questionnaire and then it gives us the degree of necessity of intervention and the level of risk, if it is high, low, medium. (...) [W]hich implies a level of support or monitoring, and that is all parameterized. (...) [A]nd that's how it works nowadays, it's all about the protocol, it's all about checklists... tick, tick, tick...and it's done. But that isn't enough! I don't think that's enough! [DGRSP social staff1]

This issue of an amorphous mass treatment (Dehaghani and Newman 2017) leads to an inferior service being provided to the young people by the justice system, and thus means that individual situations get the same treatment, which compromises the possibility of re-socialisation and amelioration of vulnerable conditions. The same interviewee thus put her finger on the spot, by remarking that:

We can only influence change if there is a relationship! They apparently do it all: go to the appointments, go to the follow-up interviews, if they have a program to do they do it... but how many times have they been physically present but haven't internalized anything? [DGRSP social staff1]

³⁸ This is a program developed in the United States and that has been adapted to meet the Portuguese reality.

The point regarding an increase in the number of duties that DGRSP social staff are expected to perform was also signalled, and voiced as a complaint, as the pressure felt is high and impacts on how the professionals perform their job:

People do an extraordinary job – more and more it's because they love what they do, but it's not enough. It's not enough because there are few professionals working with so many people. If I have 500 cases under my responsibility, I can't get through them all. [DGRSP social staff3]

... [T]he focus is on how many measures you have, how long you took to do it, if you did it on time. No one wants to know if you did it well, they [the hierarchies and policymakers] only worry if the person did it on time. So they are only concerned with fulfilling goals... and so sometimes to achieve goals you can't do all well, not with that amount of work. [DGRSP social staff1]

Another point to consider in terms of institutional vulnerability is directly connected to an issue we referred earlier: the disconnection between the different areas of law – penal and juvenile; and the different practices by the magistrates as well. One of the interviewees, DGRSP social staff2, also claimed that in terms of connections between the different institutions – schools, commissions for the protection of children, police forces, DGRSP and courts –these are getting to be more difficult now, as they've turned to be more formal. The interviewee sees it as a defensive attitude on the part of the various institutions, as if they were under the spotlight, and so she feels as if a lot of information is lost, which is detrimental to the good performance of the institutions.

7. Concluding remarks

Portugal, with a population of circa 10 million inhabitants, has almost 800 young people serving prison sentences. Most of them come from low-income families living in sensitive urban areas on the outskirts of Lisbon and Porto, with low levels of education, and many are Afro-Portuguese or descendants of families from African Portuguese-speaking countries. From the narratives of the actors from the judiciary and prison systems we have interviewed emerges that such representation is the result of a complex set of disruptions.

There is a social disruption, which is linked to the processes of criminalisation of these young people. These young people are identified with the neighbourhoods where they live, portrayed as violent and problematic (hence the idea of peer connection as a bad influence). These territories are invisible when it comes to State intervention in what concerns basic services (Sousa and Brito Guterres 2018, Silva *et al.* 2019), but are simultaneously visible when it comes to their monitoring and subjection to control by the police, which contributes to the selection and categorisation of these young people by the police, by the courts, and emphasised by the public opinion/media, as delinquents/criminals. Like Carvalho (2017) has claimed, the system is permeated by a culture of control, in which informal social control mechanisms (like the family and school) are seen as weak and vulnerable, which is then counter opposed to an increase in regards to the expectations in terms of how the justice systems must act, implying and demanding a stricter control and regulation of behaviours and situations related to young people. The visibility of these neighbourhoods and of the young people that come from them, in turn, obscures the fact that delinquency and criminality is also practiced by young people who come from affluent classes (like the self-reported surveys make

clear). Our interviewees also mentioned that there is a group of young people who don't have any sort of financial problems, comes from well-structured families, and who practices a type of criminality that has to do with violent crime and, more recently, with crimes practiced online, involving frauds, pornography and the acquisition of illegal arms. Such group, however, seems to escape from the justice system by making use of their social networks and by hiring good lawyers, due to their economic, cultural and symbolic capital. This was stated by Lawyer1 and Police Officer2,³⁹ as you can read from the excerpts:

Economic power greatly facilitates the practice of some crimes, like acquiring arms online. (...) [T]hese are people from well-structured families – all of them. (...) [A] youngster from a sensitive urban area, from a social neighbourhood, doesn't have a credit card, doesn't have grandparents who'll lend him/her the credit card to shop online. (...) [W]e know that when these young people get to court they get away with it because they have good lawyers, because their parents work in law firms or because they have lawyers working for them. [Police Officer2]

Those get away with it... do you know why? Their parents have money to hire good lawyers. [Lawyer1]

The young adults who get caught in the system do not have such assets.

Secondly, although it is undeniable that in the last 20 years many programs for the social inclusion of these young people were developed and implemented, particularly in terms of access to public education, and social integration of the communities in those neighbourhoods, as well as the creation of a national system for promoting the rights and protection of children at risk, such programs have shown a number of deficiencies and inefficiencies, as we examined. Notwithstanding the numerous beneficial effects of such programs, their application may contribute to the perpetuation of a logic of social control. Like Velasquez (2013) claims, in the absence of real opportunities for these young people to find a path to thriving and law-abiding lives, to address law-breaking behaviours with more punitive policies will turn out to be completely ineffective, as the process of “growing out of crime” will be compromised by contact with the criminal justice system (Bateman 2020). Moreover, it will not act in response to the several injustices felt by young people themselves⁴⁰ and their yearn for the power to change their lives: a media injustice (the negative image associated with the neighbourhood and who lives there), a school injustice (a school program and environment incapable of meeting the needs of these young people), a spatial injustice (poor housing conditions and lack of resources), and a lack of professional options, which precludes them the possibility of even aspiring to “climb the social ladder” (Soumahoro 2019). The combination of all these elements is the reason why we believe there is a disruption in what concerns the social inclusion programs, that seem to have failed these young adults.

Thirdly, we have a legal disruption in terms of the design of the legal system, resulting from an educational guardianship law that only applies to young people up to the age of 16 years. After that age they become criminally imputable, are subjected to criminal

³⁹ Along with statements from Public Prosecutor1 and DGRSP Social Staff2.

⁴⁰ Notes taken from the seminar *Bairros e criminalidade dos jovens: relações sensíveis* (October 8th 2020). See <https://ces.uc.pt/pt/agenda-noticias/agenda-de-eventos/2020/bairros-e-criminalidade-dos-jovens> [Accessed 10 February 2021].

charges, and enter the criminal justice system as adults, to whom the penal code is applied. Despite the existence of a Penal Regime Applicable to Young Offenders, such regime is considered as inadequate and is seldom applied. Moreover, such is also the result of the differentiated practices of criminal judges, as we discussed. The different practices are connected to smaller and larger districts (and how criminal behaviours inside the territories are judged); and to courts of first and second instance (where the intervention of an experienced lawyer has a major impact in how the special penal regime gets to be applied to the youngsters by the courts of first instance or when an appeal takes place).

Lastly, we have a disruption connected to the prison system, which doesn't offer educational and professional training programs suited to the needs of these young adults. Furthermore, more means are needed for social reintegration, prevention and re-socialization of these young adults, in order to avoid recidivism.

Our conclusion is that such disruptions lead to a bifurcated route: on the one hand, a process of categorization as criminals of the young male offenders coming from the poorest classes, living in the peripheries of the Metropolitan Areas of Lisbon and Oporto; on the other hand, the institutional discourses seem to normalise the social processes of criminalisation of these youngsters, and communities, but do not acknowledge the fact that they have been failed by the programs for social inclusion and damned to navigate the justice system.

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