



Real Conditions for Unrealistic Obligations: The Case of Judicial Obligations in the Homeless Population

Jacqueline Marques

University Lusófona, Portugal
jacqueline.marques@ulusofona.pt

Ana Maria Piedade

Social Service and Social Policy at Lusófona University, Portugal

Preciosa Veríssimo

Social Reinsertion and Prison Services, Portugal

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Abstract

This qualitative study aimed to analyse the suitability of the living conditions of the homeless population for fulfilling their judicial obligations. To this end, three categories of analysis were constructed: i) characterisation of the population; ii) perception of homeless people, which includes their view of the conditions for fulfilling judicial obligations and their impact on their lives; iii) perception of professionals, namely the suitability of judicial obligations and suggestions. The data was collected by interviewing: i) all the homeless people complying with judicial obligations monitored by a DGRSP team who came to the services between November and March 2024; ii) the professionals who monitor these situations. All the homeless people and professionals interviewed agree that their conditions are not suitable for them to fulfil their legal obligations imposed by the court. For homeless people, the cause of this difficulty is centred on the lack of housing. Another reason was the need for more sensitivity and suitability of the services to their real needs. It is interesting to realise that for professionals, housing is not directly mentioned as the main reason for the inadequacy of the obligations imposed. For them, the main difficulty centres on this population's personal and social characteristics, namely their instability and multiplicity of problems. They believe intervention with this population should be systematic and personalised (rather than generalised) to create the necessary conditions for

compliance with any obligation. Only one individual considers that the fulfilment of obligations positively impacts their life, while the rest consider that it has no positive impact, so they see it only in its punitive aspect. This disparity in perceptions highlights a crucial question about the effectiveness and nature of judicial measures regarding the goal of social reintegration. The research highlights the fact that judicial requirements often ignore the context and living conditions of homeless people and emphasises the significant impact of housing, economic and health conditions on the ability of homeless people to comply with judicial measures.

Keywords: homelessness; judicial obligations; social intervention in justice; human rights

Introduction

This article analyses the suitability of homeless person living conditions for fulfilling their legal obligations. To this end, the perceptions of homeless people and the professionals accompanying them were considered.

The existence of homeless people, like inequalities, is a phenomenon that has remained or persisted throughout human history. In the last decade, there has been a 70 per cent increase in homeless people (Fondation et al., 2023). This increase has occurred in almost every European Union country; in 2022, according to the 8th edition of the Fondation Abbé Pierre report, there will be approximately 895,000 homeless people. The reality in Portugal is no different, with, according to ENIPSSA (2022), 10,773 people experiencing homelessness on 31 December 2022, of which 5,975 were homeless and 4,798 were homeless.

People experiencing homelessness

There is no single concept of homelessness, as it is a problem that encompasses factors that go far beyond homelessness (Anderson & Snow, 1993; Rossi & Wright, 1987; Bento & Barreto, 2002). In Portugal, homelessness is considered, according to Council of Ministers Resolution no. 107/2017 of 25 July, "those who, regardless of their nationality, racial or ethnic origin, religion, age, gender, sexual orientation, socioeconomic status and physical and mental health condition" are homeless, i.e. "living in a public space, housed in an emergency shelter or with their whereabouts in a precarious place" or homeless, i.e. "in temporary accommodation designated for this purpose" (ENIPSSA, 2024).

The lack of housing is undoubtedly at the centre of the problem. Paton (2014) considers that the experience of gentrification among the working class, the result of global capital restructuring processes, poses severe problems of access to housing, which he sees as a violation of human rights. In the same vein, Harvey (2008) considers that the organisation of cities marginalises vulnerable groups by denying

them access to urban spaces and essential services. For the author, the right to the city is a human right, and the absence of housing is an exclusion from this right.

International organisations such as the UN (2008) recognise the right to adequate housing as an essential component of the right to a decent standard of living: "The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent" (art.º 11º, n.º 1).

Despite being centred on the lack of housing, homelessness involves other needs and disruptions. It is a multifactorial and multidimensional process that includes deprivation, lack of resources and the loss of personal, family and social ties (Bento & Barreto, 2002).

Poverty, inequality and crime

The relationship between poverty and crime has always been studied in areas such as criminology and economics (Allen & Stone, 1999; Stretesky et al., 2004; Ross, 2020).

Merton (1968) analysed how social structures can lead to deviant behaviour. For the author, society defines valued cultural goals (such as wealth or success) and legitimate means to achieve them (such as work or education). However, not all individuals have equal access to these means, which can lead to deviance. In this way, the social structure creates conditions for deviance, especially for those who face structural barriers that limit their access to legitimate means. Thus, deviance is not simply the result of individual choices but a response to structural inequalities and societal tensions.

Based on structural factors, Young (1999) considers that the social exclusion caused by globalisation and economic inequality creates an environment where people are more vulnerable to criminal behaviour since limited access to legitimate resources can lead to involvement in illegal activities as a way of surviving.

Still, from a structural perspective, Wacquant (2009) analyses how the punitive turn in penal policy in the United States responds not to growing criminal insecurity but to the social insecurity generated by the fragmentation of wage labour. In this way, paternalistic programmes to penalise poverty have emerged, seeking to control the urban disorder caused by economic deregulation. According to the author, these programmes result from the combination of restrictive "workfare" and expansive "prison fare", using moralistic logic. In this scenario, a civic morality is established, where certain groups are labelled as deviant figures – teenagers, "welfare mothers", "street thugs", etc. - who are punished morally and judicially through an over-

dimensioned and intrusive penal state that manages excluded populations, transforming issues of poverty into issues of public order.

Some research seeks to understand the relationship between social inequalities and crime. Khan et al. (2015) presented a study that found a positive relationship between the crime rate and long-term poverty. Franco (2016) found that income inequality affects criminal behaviour, and from a similar perspective, Hazra's study (2019) concluded that an increase in social inequality impacts crime rates. In a recent study, Dong and Hou (2024) analysed the causal relationship between poverty reduction and crime rates in China. The study concludes that poverty reduction projects significantly reduce crime rates, with this inhibiting effect being observed mainly in property-related crimes such as theft and robbery.

The relationship between economic deprivation and crime occurs in a field where numerous variables interact, and the causality of this relationship is still controversial (Grover, 2008). Therefore, the relationship between homeless people and crime should not be viewed simply as a personal choice.

Judicial obligations

In Portuguese criminal law, a judicial imposition refers to an obligation or restriction a court imposes on an individual in criminal proceedings. For the subjects participating in the study, these obligations arise in cases of suspended sentences with probation and probation.

Probation "is based on a social reintegration plan, carried out with supervision and support, for the duration of the suspension" (art.º 53º, n.º2 of the Penal Code - PC). This social reintegration plan, drawn up by professionals from the Portuguese social reintegration services, namely the DGRSP¹, includes the re-socialisation objectives, the actions to be taken to achieve them, and the support and supervision measures to be adopted (art.º 54º, n.º2, PC). In these cases, the court can impose the "fulfilment of duties or the observance of rules of conduct" (art.º. 50º, n.º 2, PC) that "are of interest to the rehabilitation plan and the improvement of the sentenced person's sense of social responsibility" (art.º. 54º, n.º. 3, PC). It should be emphasised that the duties and the rules of conduct imposed cannot, under any circumstances, represent obligations whose fulfilment is unreasonable.

Probation can be accompanied by duties and rules of behaviour (art.º 51º and 52º). In these cases, the individual is accompanied by social reintegration services and is subject to the abovementioned social reintegration plan.

¹ The mission of the General Directorate of Social Reintegration and Prison Services is to "develop policies for crime prevention, the execution of sentences and measures and social reintegration, and the coordinated and complementary management of the educational tutelage and prison systems, ensuring conditions compatible with human dignity and contributing to the defence of social order and peace" (art.º. 2º, D-L 215/2012, 28/09).

Judicial impositions in Portuguese criminal law guarantee compliance with the law, protect society and the victim, and ensure the effectiveness of the criminal process. They also fulfil the objective of social reintegration.

Methodology

The study aimed to analyse the suitability of the living conditions of the homeless population for fulfilling their legal obligations. To this end, a set of specific objectives was outlined: to characterise the population participating in the study, to analyse the perception of homeless people about the existence of conditions for fulfilling judicial obligations; to understand the impact of these impositions on their lives; to analyse the perception of professionals about the existence of conditions for fulfilling judicial obligations.

Three categories of analysis were created: i) characterisation of the population; ii) perception of homeless people, which includes their view of the conditions for fulfilling judicial obligations and their impact on their lives; iii) perception of professionals, namely the suitability of judicial obligations and suggestions.

The population participating in the study were: i) all the homeless people fulfilling judicial obligations monitored by a DGRSP team who came to the services between November and March 2024; ii) the professionals who monitor these situations.

The study was based on a qualitative methodology, whose data collection tool was the semi-structured interview, and its analysis was done through simple categorical content analysis.

All the interviewees were informed of the study's purpose and the confidentiality and anonymity of their responses. They freely agreed to take part and signed the informed consent form.

Presentation of results

Characterisation of the study participants

We interviewed 6 homeless people who were complying with a legal obligation. All were male, with a minimum age of 27 and a maximum of 63, with an average age of 47. Three were on probation, and another three were on suspended sentences with probation. The answers quoted will be labelled E1, E2, etc.

Five professionals, four female and one male, with degrees in social work (4) and nursing (1), were interviewed. These professionals belong to the different institutions that, together with the DGRSP, deal with these situations: 1 from the DGRSP, 1 from a therapeutic flat, 1 from a forensic psychiatry unit, 1 from an emergency accommodation centre, and 1 from the doctors of the world. Quotes from the answers will be labelled Ep1, Ep2, etc.

Perception of homeless people

Regarding the conditions for complying with judicial obligations, all the participants recognise the lack of conditions for complying with their judicial measures. The individuals give several reasons, namely lack of housing (E1, E3, E4, E5 and E6) and lack of sensitivity and/or support from the services (E2, E3, E4, E5 and E6). About the lack of housing, two of the interviewees linked the absence of housing with the impossibility of integrating or remaining in the labour market: "I see my life at a standstill because if I had a house, I would have stability and I could get a job" (E5); "living in a hostel I cannot get a job as a night watchman (...) sleeping on the street is one of the obstacles" (E4).

About the lack of support from the services, mentioned by 5 the interviewees, all them referred to the lack of social or monetary support to organise their lives: "The services do not look at people (...) at the end of the imprisonment they close the door, I did not even have money for the bus ticket" (E2); "We are imprisoned and when it is over they send us out on the street as if we were animals (...) we have nowhere to go and we are abandoned" (E3); "Food is just dinner. What we get is not enough to rent a double room. How can we get back on our feet without work and home?" (E6).

Still, as a reason for the lack of support, one of the interviewees referred to the institutions' labelling of people experiencing homelessness as a homogenous mass: "Everything has the status of homelessness, and they are different situations. We are all in the same place, but I do not identify myself there". Another subject referred to the lack of professionalism on the part of the professionals: "The professionals do not know what drugs are or care about the person's real needs" (E2).

Everyone identified housing when asked about the conditions necessary for effectively fulfilling their obligations: "I suggest that there is somewhere to go. Returning to the street after imprisonment is returning to zero" (E3).

Only one interviewee interpreted the impact of the judicial obligations on their lives as positive: "It is doing me good, being here accompanied by the doctors" (E1). The others recognised this measure as punitive and harmful: "harmful in terms of getting a job because it is associated with a criminal record" (E6).

Professionals' perceptions

Regarding the conditions and suitability of judicial obligations, all the interviewees believe there are no adequate personal and social conditions for the injunctions imposed on these individuals. The interviewees consider this to be a volatile population with various problems that need more structured and regular intervention: "A homeless person is a person who is already broken, who needs a set of foundations" (Ep1); "A person who is on the street all day (...) if they do not have someone to supervise and guide them, I think it is difficult. Now, if they are in care, in a more structured reception centre, or a therapeutic flat, then I think it is possible" (Ep2); "Initially, they need to be stabilised on a physical level, in terms of food, on an

emotional level, and in terms of health. Most of them have a psychiatric condition and need to be stabilised (...) the measures that are given are not at all appropriate" (Ep3); "First, we should find a way of providing more regular monitoring. I think they are put outside, and then they have to manage. And then create opportunities for them to fulfil the measures imposed on them" (Ep4); "There is a group of individuals because of the problems associated with them, whether it is mental pathology, addiction, social exclusion (...) they do not have the conditions" (Ep5).

Four professionals add the fact that the obligations imposed by the court are generalised and not adapted to the real characteristics and conditions of this population: "You cannot be a generalist when applying these measures (...) the judge decrees rules of conduct or objectives and has no idea of the individual in their singularity" (Ep2); "you are asking for the same injunctions when they should not be the same if the conditions are not either" (Ep5).

Four professionals pointed out the need for more suitable social support measures. Three consider that the measures do not address the cause of the problems but act in a palliative way: "It is as if we were constantly working from a palliative perspective" (Ep2); all refer to the lack of programmes tailored to the needs of the individuals: "There is a lack of monitoring and programmes that are based on the real problems that exist" (Ep4).

In addition, one of the professionals mentions the mismatch in the timing of the justice system's actions, which usually do not coincide with the timing of social intervention – "The timing of the decision to pass judgment on a homeless person often takes place at a time when the citizen is already at a stage of integration into society (...) and often causes them to regress" (Ep1).

Another professional cites the lack of housing and employment as one of the central causes: "The issue of housing and economic conditions (...) I have individuals who want to work but have no way of paying for the past; their food is precarious, and they don't have adequate clothes to wear (...), and this contributes a lot to their failure to fulfil their obligations" (Ep5).

The suggestions for more effective action put forward by all the professionals was the creation of programmes and responses more suited to the needs of this population. Ep4 and Ep5 emphasise the need for responses that do not impose rigid selection criteria or conditions, allowing for more inclusive and universal access to support services – "adjusting responses to make them more welcoming and flexible, namely allowing individuals to bring their pets, drugs, drinks and medication" (Ep4). Ep1 emphasises the need to involve the recipients to increase this appropriateness: "There need to be responses and projects that meet people's needs (...) and for this to happen people need to be involved in their creation and development". Ep3 discusses the need for housing-centred responses: "The solution is not the street. This lack of response encourages recidivism in the world of crime". Finally, Ep2 believes that the responses should take place within the justice system itself: "Justice has to create its

responses, (...) if we do not have structures, houses, residences, for these people linked to justice, where they can fulfil their measures, the risk factors increase, and they go through this cycle".

In addition, two professionals emphasise the need for more excellent monitoring before and after the court decision: "Creating conditions so that these people are monitored in the measures that are imposed (...) fruitful monitoring before, during and after the trial" (Ep1); "there needs to be a reference technician, a case manager" (Ep2).

Discussion and Conclusions

All of the homeless people and professionals interviewed agree that their conditions do not adequately reflect their ability to fulfil the legal obligations imposed by the court.

The cause of this difficulty for homeless people is the lack of housing. When asked about the conditions they would need to fulfil their obligations effectively, all identified housing, and three emphasised that this was the only way to find work. Another area for fulfilling their judicial obligations was the need for more sensitivity and suitability of the services to their real needs. They perceive court rulings as impractical or inadequate demands and social support services as inadequate and ineffective in the face of their real needs and difficulties.

It is interesting to realise that, for professionals, housing is not directly mentioned as the main reason for the inadequacy of the obligations imposed. For them, the main difficulty centres on this population's personal and social characteristics, namely their instability and multiplicity of problems. They believe intervention with this population should be systematic and personalised (rather than generalised) to create the necessary conditions for compliance with any obligation. It should be noted that although only one of the interviewees referred directly to the lack of housing, they all indirectly mentioned the need for their own structured space, allowing them to create the conditions to develop any intervention with these individuals.

Access to "decent housing is universally considered one of the basic needs of the human being" (ONU, 2002, p. 6). Although Amartya Sen (2003 [1999]) does not work specifically with the concept of homelessness, his approach suggests that the lack of adequate housing limits people's essential capacities, restricting their social and economic participation.

On the other hand, the interdependent relationship between housing and employment is unquestionable: the lack of housing prevents/difficulties maintaining or obtaining employment, and the lack of employment prevents maintaining housing. This cyclical relationship reflects the complexity of individuals' difficulties in vulnerable situations. The homeless people interviewed emphasise this relationship by considering employment as a means to an end: housing.

Despite this, several studies (Aiken et al., 2021; Toros et al., 2021; Lynn et al., 2021) show that the problem cannot be analysed solely as a lack of housing; it is a more complex problem that includes, for example, the breakdown of social relationships and other forms of exclusion and limitation of fundamental rights, such as employment and health. From this perspective, being homeless is more than not having a home; it is being on the margins of society, excluded from fundamental rights. In this sense, the professionals consider that although housing is central, various structural problems in the lives of homeless people need to be addressed.

Homeless people find themselves in the process of social disqualification, which, according to Paugam (2006), occurs over time and is associated with situations of economic precariousness, prolonged unemployment and ruptures in social ties. In fact, according to the division into stages of the disqualification process proposed by the author, the homeless population finds itself at the level of greatest disqualification: rupture, in which the individual loses their connection with society. This is why the responses implemented must be structured according to the real characteristics and needs of the population, flexible, multidimensional, and regular to combat the progressive loss of status, precariousness and instability, stigmatisation and exclusion, and the rupture of social ties.

We cannot fail to highlight the professionals' agreement on the inadequacy of responses to the characteristics of the homeless population, whether due to their actions only in the consequences or due to their lack of flexibility and excessive normativity. Although presented only by a professional, the discrepancy between the moment of application of obligations and the moment of the crime is considered severe.

These reasons given by professionals justify that only one individual considers that fulfilling obligations positively impacts their life, while the rest consider that it has no positive impact, so they only see it in their lives as the punitive aspect. Considering that the intervention aims at reinsertion and, consequently, non-criminal recidivism and that the critical factor for this is the individual himself, these perceptions can influence the attitude and collaboration of individuals in the execution of the judicial measures imposed.

This disparity in perceptions highlights a crucial question about the effectiveness and nature of judicial measures regarding the objective of social reintegration. If we consider social reintegration as a process of reintegration into the community, that is, of reconnection and reconciliation of the individual with the community (Maruna, 2001); as a process of empowerment and personal transformation (Farrall, 2002); as a process of reconstructing the individual's personal and social identity, involving the reconciliation of their self-image with the perception of the community (McNeill, 2006); or as a process of social inclusion that aims to restore social ties and promote the active participation of the individual in community life (Hulsman & Celis, 2018),

then and, based on the above, the objective of social reintegration inherent in the establishment of judicial obligations is not fulfilled.

The investigation highlights that judicial demands often ignore the context and living conditions of homeless persons, such as the lack of stable housing and the need for physical and emotional stabilisation. Reports highlight the significant impact of housing, economic, and health conditions on the ability of homeless people to comply with legal measures. Considering all the data collected through interviews with intervention subjects and professionals, these can now be used in favour of the intervention, seeking to adapt its intervention to the needs/suggestions highlighted.

Several authors and international organisations widely recognise homelessness as a severe violation of human rights because it prevents access to fundamental rights that guarantee a dignified life. This violation of human rights encompasses a set of losses, namely the right to housing, a set of civil and political rights, such as the right to protection against inhuman and degrading treatment, the right to private and family life and, in some cases, the right to life (Camacho, 2022).

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