

FOREIGNERS WITHIN THE SPANISH PENAL SYSTEM

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Abstract

This article examines the position of foreign nationals within the Spanish penal and prison systems from a historical, legal and human-rights perspective. It analyses the interaction between immigration law, criminal law and penitentiary policy, using the concept of crimmigration as a critical framework while avoiding any automatic identification between immigration and crime. The study combines doctrinal analysis of Spanish and international legal instruments, contextual historical interpretation, critical review of official prison statistics and analysis of institutional programs. The available data show that foreign nationals are overrepresented in the prison population, but this finding cannot be read as a crime rate or as evidence of an inherent propensity to offend. Prison statistics are shaped by multiple factors, including the composition of migration flows, pre-trial detention, socioeconomic vulnerability, transnational mobility, penal and immigration policies, access to alternatives to custody, and the consequences of expulsion. Spain has a formally advanced framework centered on re-education and social reintegration and has developed programs relevant to foreign prisoners. Nevertheless, linguistic barriers, weak family and community networks, administrative insecurity and the tension between reintegration and removal may restrict equal access to rights and treatment. The article argues for a coordinated, evidence-based and intercultural policy capable of integrating prison, migration and social measures under the principles of dignity, equality and non-discrimination.

Keywords

Foreign prisoners. Crimmigration. Human rights. Spanish prison system. Social reintegration. Migration policy.

Summary

1. Introduction. 2. Methodology and theoretical framework. 3. Historical and legal development. 4. Foreign nationals in Spanish prisons. 5. Treatment, reintegration and human rights. 6. Conclusions.

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1. INTRODUCTION

The presence of foreign nationals in the criminal justice system is a particularly sensitive field of study. It is located at the intersection of migration policy, criminal law, prison administration and public debate, and it is therefore exposed to conceptual simplifications that can easily transform a statistical difference into a moral judgement about an entire population. A human-rights approach requires a different point of departure: deprivation of liberty does not remove the legal personality of the prisoner, and foreign nationality does not constitute a criminological explanation in itself.

The Spanish case is especially significant. During the last decades, Spain changed from being primarily a country of emigration into a major destination and transit country. At the same time, its prison system developed within the constitutional framework established after the dictatorship. These two historical processes converged in a legal space in which the universal vocation of fundamental rights coexists with differentiated rules on residence, expulsion and access to the national community. The situation of foreign prisoners thus reveals both the strengths of the democratic penitentiary model and the limits produced when penal and migration controls overlap.

The central thesis of this article is that the overrepresentation of foreign nationals in prison cannot be explained by nationality itself. Prison populations are the outcome of successive institutional decisions: policing, prosecution, remand, conviction, sentencing, access to non-custodial measures, classification, release and, in the case of non-citizens, immigration enforcement. Socioeconomic

conditions, transnational mobility, legal status, family networks and the availability of documentation also shape those decisions. The category ‘foreign prisoner’ is itself heterogeneous: it may include long-term residents, citizens of other European Union states, asylum seekers, persons in an irregular administrative situation, people in transit and persons involved in transnational criminal activity. Citizenship, migration and residence status must therefore not be treated as interchangeable categories².

This revised study preserves a historical and humanistic orientation while updating the original analysis. It first defines the methodology and theoretical framework; it then examines the evolution of immigration and penitentiary legislation; subsequently, it analyses the statistical presence of foreign nationals in Spanish prisons and the interpretive limits of those figures; finally, it assesses treatment, reintegration and the principal human-rights challenges. The ultimate purpose is not to deny problems linked to crime or prison management, but to examine them with conceptual precision, verified evidence and respect for human dignity.

2. METHODOLOGY AND THEORETICAL FRAMEWORK

2.1. Sources, scope and method

² Aebi, Marcelo F., and Edoardo Cocco (2026): Prisons and Prisoners in Europe 2025: Key Findings of the SPACE I Report, Series UNILCRIM 2025/1. Council of Europe and University of Lausanne.

The study follows a qualitative legal and historical methodology supported by descriptive statistics. Its normative corpus comprises the Spanish Constitution, Organic Law 1/1979 on the General Penitentiary System, Organic Law 10/1995 on the Criminal Code, Organic Law 4/2000 on the rights and freedoms of foreigners and their social integration, Royal Decree 190/1996 approving the Prison Regulations, and Royal Decree 1155/2024 approving the current Regulation of Organic Law 4/2000. These rules are interpreted together with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the European Prison Rules and Recommendation CM/Rec (2012)12 of the Committee of Ministers of the Council of Europe concerning foreign prisoners.

The statistical analysis draws on official Spanish prison statistics and the Council of Europe Annual Penal Statistics (SPACE I). The comparison concentrates on stock data, that is, the number and characteristics of persons held on a given date. Such data describe the composition of the prison population but do not measure the incidence of crime. They also cannot, by themselves, identify causal mechanisms. This limitation is decisive: the proportion of foreign nationals in prison is not equivalent to the crime rate among the foreign population, because imprisonment occurs after a chain of selective legal and institutional decisions and because the

denominators and populations being compared are not necessarily equivalent³.

The historical component is used to explain how the democratic penitentiary model and the contemporary immigration regime were formed. The critical dimension does not consist of attributing a hidden intention to every rule, but of examining the effects produced by the interaction of formally distinct systems. The period analysed extends from the democratic transition and the General Penitentiary Organic Law of 1979 to the legal and statistical information available in 2025-2026. Older data are retained only when they permit a transparent diachronic comparison.

2.2. Crimmigration and structural vulnerability

The concept of crimmigration describes the growing convergence between immigration control and criminal justice. Stumpf used the term to explain how immigration and criminal law increasingly share enforcement techniques, institutional logics and exclusionary consequences. In the European and Spanish contexts, this approach has been developed through analyses of the use of penal mechanisms in migration control and the specific forms of vulnerability experienced by non-citizens. It is useful here not as a

³ The statistical sources used are the Spanish Ministry of the Interior, Anuario estadístico del Ministerio del Interior 2018 (2019) and Anuario estadístico del Ministerio del Interior 2023 (2024), together with the Council of Europe Annual Penal Statistics (SPACE I). Stock figures describe the prison population at a given time and should not be read as crime or offending rates.

slogan, but as a lens through which to examine the coexistence of punishment, administrative status and possible expulsion⁴.

Crimmigration does not mean that immigration law and criminal law have become identical. Their legal nature, guarantees and purposes remain different. The concept instead draws attention to areas of contact: the use of criminal convictions in immigration decisions, the replacement of prison sentences by expulsion in certain cases, the impact of irregular status on release prospects and the possibility that rehabilitation is overshadowed by removal. These intersections can create a double condition of vulnerability: the individual is subject to the restrictions inherent in imprisonment and, simultaneously, to uncertainty concerning residence, family life and future presence in the country⁵.

A human-rights analysis must also avoid treating vulnerability as an inherent quality of foreign nationals. Vulnerability is relational and institutional: it is produced or intensified when a person cannot understand proceedings, lacks consular or family support, faces discrimination, cannot document a viable release plan or is excluded

⁴ See: Monclús Masó, Marta (2008): *La gestión penal de la inmigración: el recurso al sistema penal para el control de los flujos migratorios*. Editores del Puerto; and Bosworth, Mary, Alpa Parmar and Yolanda Vázquez (eds.) (2018): *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*. Oxford University Press. In addition: Stumpf, Juliet P. (2006): "The Cirmmigration Crisis: Immigrants, Crime, and Sovereign Power". *American University Law Review*, 56(2), pp. 367-419.

⁵ Chetail, Vincent (2019): *International Migration Law*. Oxford University Press.

in practice from resources available to prisoners with stronger local ties. The relevant question is therefore not whether foreign prisoners are vulnerable by definition, but under which legal and social conditions unequal effects arise.

3. HISTORICAL AND LEGAL DEVELOPMENT

3.1. The democratic penitentiary model

The Spanish penitentiary system emerged from the transition to democracy with an explicitly humanising aspiration. Article 25.2 of the Constitution establishes that custodial sentences and security measures shall be oriented towards re-education and social reintegration. Organic Law 1/1979 developed this principle at an early stage of the democratic period. Its first article identifies re-education and reintegration as central purposes, while Article 3 provides that prison activity must respect the personality and rights of inmates without distinctions other than those derived from their procedural status and sentence. This legal design represented a clear break with an authoritarian conception of imprisonment⁶.

The model was also part of Spain's reintegration into European and international systems of rights protection. The democratic state ratified the principal human-rights treaties and accepted external standards concerning torture prevention, due process and humane treatment, including the International Covenant on Civil and Political

⁶ Spanish Constitution, Article 25.2; Organic Law 1/1979, of 26 September, General Penitentiary Law, Articles 1 and 3. See also Sanz Delgado, Enrique (2004): “La reforma introducida por la regresiva Ley Orgánica 7/2003. ¿Una vuelta al siglo XIX?”. *Revista de Derecho Penal y Criminología*, extraordinary no. 2, pp. 195-211.

Rights. This internationalisation remains visible in contemporary prison law. The Nelson Mandela Rules⁷ affirm equality and non-discrimination while requiring attention to the individual needs of prisoners, and the European Prison Rules insist that prison conditions must respect human dignity and prepare prisoners for responsible life without crime⁸.

The progressive character of the formal framework should not be confused with automatic effectiveness. Reintegration requires material conditions, professional resources and continuity between prison and the community. Foreign prisoners may encounter specific obstacles at precisely this point: language difficulties, scarce family support, uncertainty about residence or expulsion and weaker links with local welfare and employment networks. Equality therefore requires both the prohibition of discrimination and reasonable measures that permit equivalent access to information, treatment and release preparation.

3.2. Immigration law: from the 2009 reform to the current framework

Organic Law 2/2009 constituted the fourth major reform of Organic Law 4/2000 and responded to constitutional case law, European Union law and the consolidation of Spain as a country of immigration. The reform broadened and clarified several rights,

⁷ United Nations General Assembly (2015): United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution 70/175; Council of Europe (2006/2020): Recommendation Rec (2006)2-rev of the Committee of Ministers to member States on the European Prison Rules.

⁸ United Nations General Assembly (1966): International Covenant on Civil and Political Rights, Resolution 2200A (XXI).

incorporated the jurisprudence of the Constitutional Court and introduced Articles 2 bis and 2 ter, which placed integration, non-discrimination and the guarantee of constitutionally and internationally recognised rights among the principles of immigration policy. It also reinforced control and sanctioning mechanisms. This combination revealed a lasting tension between integration and security that had already become visible during the economic crisis⁹.

The historical significance of 2009 remains essential, but the reform cannot be presented as the entire current legal framework. Organic Law 4/2000 has subsequently been amended, and its consolidated text must be read together with Royal Decree 1155/2024. This Regulation replaced Royal Decree 557/2011 and entered into force in May 2025. Its principal subject is the administrative regime governing entry, residence, work, family situations and regularisation; it does not replace penitentiary legislation. Nevertheless, it forms part of the legal environment to which a foreign prisoner may return and can therefore affect the feasibility of reintegration plans¹⁰.

The rights recognised by Organic Law 4/2000 are not uniform in their conditions of exercise, but Article 3 establishes equality as a general interpretive criterion and requires fundamental rights to be

⁹ Organic Law 2/2009, of 11 December, amending Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, Official State Gazette no. 299, 12 December 2009.

¹⁰ Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, consolidated text; Royal Decree 1155/2024, of 19 November, approving its Regulation, Official State Gazette no. 280, 20 November 2024. The Regulation entered into force six months after its publication.

interpreted consistently with the Universal Declaration and applicable international treaties. This principle matters in prison, where restrictions must derive from the sentence, prison law or legitimate security requirements, rather than from nationality alone¹¹.

3.3. Expulsion and the tension between punishment and reintegration

The clearest point of convergence between criminal and immigration law is expulsion. Article 89 of the Criminal Code regulates the substitution of prison sentences imposed on foreign citizens by expulsion in the circumstances and with the exceptions established by law. Organic Law 4/2000 also regulates expulsion as an administrative consequence in specified cases, including certain criminal convictions under Article 57. Although these mechanisms respond to different legal routes, their coexistence demonstrates how a foreign defendant may face consequences that a Spanish citizen cannot face for the same criminal conduct¹².

Expulsion raises a structural question for the penitentiary objective of reintegration. Treatment ordinarily seeks a gradual return to community life; removal, by contrast, anticipates that this community may be located outside Spain. The contradiction is not absolute, because reintegration can also be prepared in the country of

¹¹ Organic Law 4/2000, Article 3, on the rights of foreigners and their interpretation in accordance with the Universal Declaration of Human Rights and the international treaties and agreements in force in Spain.

¹² Organic Law 10/1995, of 23 November, Criminal Code, Article 89; Organic Law 4/2000, Article 57. These provisions regulate distinct criminal and administrative routes and must therefore not be treated as a single legal mechanism.

origin or lawful destination. Yet it becomes serious when expulsion is uncertain, delayed or insufficiently coordinated, or when it discourages investment in treatment, education and community ties. Recommendation CM/Rec(2012)12 therefore calls for decisions concerning foreign prisoners to be taken without discrimination and for release and resettlement preparation to begin at an early stage, regardless of whether the person will remain in the detaining state or be transferred or removed¹³.

Proportionality, individual assessment and respect for family and private life are indispensable. A human-rights approach does not exclude expulsion where the law permits it, but rejects its mechanical use and requires consideration of the person's circumstances, legal guarantees and prospects of social inclusion. The penal system cannot coherently proclaim individualised treatment while reducing foreign prisoners to a single administrative category.

4. FOREIGN NATIONALS IN SPANISH PRISONS

4.1. Updated data and their limits

Official figures confirm that foreign nationals constitute a substantial and growing share of the Spanish prison population. The data used in the earlier version of this study referred to 2018. A transparent comparison with the official figures for the end of 2023 shows that the total prison population remained relatively stable while

¹³ Council of Europe (2012): Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners, especially the provisions on sentence planning, release, transfer and expulsion.

the number and proportion of foreign prisoners increased. The figures include the prison administrations operating in Spain and describe nationality, not place of birth, migration history or residence status.

Year	Total prison population	Foreign nationals	Foreign nationals (%)
2018	59,262	16,634	28.1
2023	58,937	18,535	31.4

Table 1. Prison population by nationality, 2018 and 2023. Source: Spanish Ministry of the Interior, official prison statistics. Percentages calculated from the absolute figures¹⁴.

The increase from approximately 28.1% to 31.4% is descriptively relevant, but it is not a measure of offending among foreign residents. Prison data combine people with very different relationships to Spain and include pre-trial detainees as well as sentenced prisoners. Moreover, the probability of being in prison depends not only on offending but also on detention and charging practices, the seriousness and type of offence, criminal history, access to legal assistance, the assessment of flight risk, the availability of a stable address, sentencing choices and access to alternatives or early release. The correct

¹⁴ Spanish Ministry of the Interior (2019): Anuario estadístico del Ministerio del Interior 2018; Spanish Ministry of the Interior (2024): Anuario estadístico del Ministerio del Interior 2023. Percentages in the table are calculated from the official absolute figures.

expression is therefore statistical overrepresentation in the prison population, not a higher ‘crime rate’ inferred directly from prison stock.

The contrast with sex distribution remains useful only as a methodological illustration. Men are overwhelmingly overrepresented in prison, yet that fact does not make biological sex a sufficient explanation of individual criminal conduct. In the same way, nationality identifies a legal relationship with the state but cannot substitute for analysis of age, gender, social position, residence status, mobility, offence type and institutional selection. Statistical association must not be transformed into collective suspicion.

The 2025 SPACE I survey provides an updated European context. Across participating prison administrations, foreign nationals represented an average of 26% of prisoners, while the median was 17%; the difference reveals strong geographical variation. Western European destination and transit countries often report higher shares, whereas many Eastern European systems report very low proportions. The report expressly warns that prison indicators are shaped by migration flows, legal frameworks and geopolitical position and that cross-national data do not establish causation. Spain must therefore be studied comparatively, but comparisons must use the same concept—foreign nationality—and must not replace ‘foreign prisoners’ with ‘undocumented immigrants’¹⁵.

¹⁵ Aebi and Cocco, *Prisons and Prisoners in Europe 2025*, op. cit. The report distinguishes the mean from the median and expressly cautions against causal readings of cross-national prison indicators.

4.2. Explanatory factors and the rejection of collective criminalisation
 Research on migration and crime has repeatedly shown the inadequacy of monocausal interpretations. Foreign populations differ from national populations in age and sex structure and may be concentrated in urban areas and precarious labour markets. Some groups are more exposed to poverty, residential instability and weak institutional protection; others have stable legal and socioeconomic positions. Aggregating them under the term ‘foreigners’ conceals these internal differences and can produce an ecological fallacy, in which group-level proportions are used to attribute characteristics to individuals¹⁶.

The judicial process itself may also produce unequal outcomes. A person without a stable residence, documented employment or family support may be considered at greater risk of flight, which can influence the use of pre-trial detention. The same lack of local ties may restrict access to open conditions, temporary leave or community-based measures when authorities assess the feasibility of supervision. These decisions may be legally reasoned in individual cases, but their accumulated effect can contribute to the higher presence of non-citizens in prison.

Transnational offences add another layer. Prison statistics may include persons who were not residents in Spain before the offence and whose presence is associated with cross-border drug trafficking or other

¹⁶ Aebi, Marcelo F., and Antonia Linde (2016): “Inmigración y delincuencia”, in M. F. Aebi et al., *Aspectos esenciales de la criminología actual*, pp. 64-100. Editorial UOC; García-España, Elisa (2018): *Enfoque criminológico de las migraciones*. Editorial Síntesis.

forms of organised crime. Including them in a comparison with the legally resident foreign population distorts the denominator. Conversely, naturalised Spanish citizens with a migration background are classified as Spanish. This is another reason why nationality, migration and residence must be analytically separated.

None of these factors should be used to deny individual responsibility or the harm caused by crime. A rights-based analysis is compatible with effective public safety. Its purpose is to ensure that responsibility remains individual, that evidence is interpreted correctly and that institutional responses do not reproduce stereotypes. Stigmatising narratives are not only ethically objectionable; they can also obstruct reintegration by weakening access to employment, housing and community support after release.

5. TREATMENT, REINTEGRATION AND HUMAN RIGHTS

5.1. Equality, communication and cultural diversity

Foreign prisoners are entitled to the rights recognised by penitentiary law, subject to the restrictions inherent in custody and the sentence. Formal equality, however, is insufficient when a person cannot understand prison rules, disciplinary procedures, treatment proposals or legal consequences. Information must be communicated in a language and form that the prisoner can understand. Interpretation, translated materials and access to consular assistance are therefore

safeguards of due process and humane treatment, not optional acts of benevolence¹⁷.

The Nelson Mandela Rules prohibit discrimination on grounds including national origin while requiring prison administrations to take account of prisoners' individual needs. Recommendation CM/Rec(2012)12 develops this principle specifically for foreign prisoners: it addresses communication, legal advice, contact with the outside world, prison allocation, treatment, release and transfer. Its central insight is that equal treatment may require specific measures capable of overcoming factual disadvantage¹⁸.

Cultural and religious diversity must be approached within the common framework of fundamental rights. Intercultural policy should not essentialise cultures or assume that every person identifies with a fixed national tradition. Its function is practical: preventing misunderstanding, enabling participation, protecting freedom of religion and conscience, and creating channels of dialogue compatible with equality between women and men and the constitutional order.

5.2. Programmes and institutional responses

The Spanish prison administration has developed both general programmes and initiatives specifically relevant to foreign prisoners. The general offer includes literacy and formal education, vocational training, work, health promotion, cultural activities, reading, sport,

¹⁷ Organic Law 1/1979, especially Article 3; Council of Europe, Recommendation CM/Rec(2012)12, sections on admission, allocation, communication, legal advice and contact with the outside world.

¹⁸ Nelson Mandela Rules, Rules 2 and 55; Council of Europe, Recommendation CM/Rec(2012)12 concerning foreign prisoners.

equality programmes and cooperation with non-governmental organisations. These measures are important because the principal needs of foreign prisoners do not always require separate programmes; they frequently require effective access to ordinary services¹⁹.

Specific intervention has traditionally included language learning, basic knowledge of the Spanish legal and social environment, multicultural activities, values education and preparation for release or return. The earlier version of this article highlighted that, in 2017, a specific programme reached only 215 inmates in nine institutions. That figure showed a serious limitation of coverage at that time. It should now be interpreted historically rather than presented as evidence of current nationwide reach, because programmes and reporting categories may change and contemporary effectiveness requires updated evaluation²⁰.

The decisive issue is not the mere existence of a programme but its accessibility, continuity and measurable impact. A comprehensive policy should establish common minimum standards while allowing individualisation. It should include early identification of language and documentation needs; timely legal information on residence, transfer and expulsion; coordination with consulates and specialised

¹⁹ Secretaría General de Instituciones Penitenciarias (2018): Informe General 2017. Ministerio del Interior. The report records the general educational, occupational, cultural, sporting, equality and cooperation programmes available in the prison system.

²⁰ Secretaría General de Instituciones Penitenciarias, Informe General 2017, op. cit. The figure of 215 participants in nine prisons is retained solely as historical evidence for 2017 and is not presented as a current measure of national coverage.

civil-society organisations; equal access to education and work; family contact; and realistic release planning in Spain or abroad. Programme evaluation should publish participation, completion and outcome data disaggregated by sex, nationality, legal status and procedural situation whenever privacy and statistical reliability permit.

5.3. Reintegration under conditions of administrative uncertainty

Reintegration is especially difficult when the place in which it must occur is uncertain. A foreign prisoner may have established family and social ties in Spain but lack a secure residence status; another may expect transfer or expulsion and require preparation for a different country. In both situations, delayed decisions undermine treatment. The administration should therefore coordinate immigration and penitentiary information from the beginning of the sentence, without allowing a possible future expulsion to justify present exclusion from education, health care or rehabilitative activities.

Family life and community support are central protective factors. Foreign prisoners may be held far from relatives or face high communication and travel costs. Digital contact, flexible communication arrangements within security requirements, consular involvement and cooperation with community organisations can reduce isolation. These measures support prison order as well as human dignity²¹.

²¹ Council of Europe, Recommendation CM/Rec(2012)12, provisions concerning prison allocation, communication, visits, consular representatives and release preparation.

Women foreign prisoners may experience intersecting disadvantages associated with gender, nationality, caregiving responsibilities, trafficking or violence. Their smaller absolute number can render their needs less visible. An adequate policy must therefore combine the intercultural perspective with gender analysis and trauma-informed support, avoiding both cultural stereotypes and gender-neutral programmes that reproduce inequality.

Finally, release planning must connect prison treatment with housing, employment, health care, documentation and legal advice. If the person remains in Spain, continuity with ordinary social services is essential. If transfer or removal is lawful and finally decided, preparation should involve verified information and, where possible, coordination with services in the receiving country. Human dignity does not depend on the territory in which reintegration will take place.

6. CONCLUSIONS

The analysis developed throughout this study confirms, first of all, that the presence of foreign nationals in the Spanish penal and penitentiary systems cannot be interpreted through simplistic or reductionist associations between immigration and crime. Official figures show a clear overrepresentation in prison: foreign nationals accounted for approximately 28.1% of the prison population in 2018 and 31.4% at the end of 2023. These data are significant and require explanation, but they do not constitute a crime rate and cannot, by themselves, demonstrate a greater propensity to offend. Prison stock is the cumulative result of a long institutional process that includes policing, prosecution, pre-trial detention, conviction, sentencing, classification,

access to alternatives to custody, temporary leave and release. To convert the final proportion into a judgement about an entire population would therefore be both methodologically unsound and socially damaging²².

The comparison originally made with the overwhelming predominance of men in prison continues to possess explanatory value, provided that it is understood as a methodological warning rather than as an equivalence between sex and nationality. A statistical disparity does not explain itself. Just as the proportion of men in prison cannot dispense with analysis of socialization, age, violence, offending patterns and institutional responses, the proportion of foreign prisoners cannot be understood without examining migration trajectories, socioeconomic vulnerability, legal status, family and residential stability, transnational mobility, offence type and criminal justice decisions. Responsibility for crime is individual. Nationality is a legal status, not a criminological cause, and its use as a substitute for explanation encourages the collective suspicion that a democratic system committed to equality must reject.

This conclusion is reinforced by the heterogeneity concealed within the category of the foreign prisoner. It includes long-term residents with consolidated family ties in Spain, citizens of other European Union states, asylum seekers, persons in an irregular administrative situation, people in transit and individuals involved in transnational criminal activity. It does not include naturalized Spanish citizens with

²² Spanish Ministry of the Interior, Anuario estadístico del Ministerio del Interior 2018 and Anuario estadístico del Ministerio del Interior 2023, op. cit.

a migration background, because prison statistics classify them as Spanish nationals. Neither do official figures generally allow residence status, migration history and nationality to be combined with sufficient precision. Consequently, comparisons between the percentage of foreigners residing in Spain and the percentage of foreign nationals in prison must be approached with particular caution. The denominator is not homogeneous, and the available data do not justify replacing the expression ‘foreign prisoners’ with ‘undocumented immigrants’ or interpreting either category as synonymous with immigration as a whole.

The European comparison leads to the same conclusion. Spain does not constitute an isolated case, and the presence of non-citizens in prisons varies enormously across the continent. The 2025 SPACE I survey records an average of 26% foreign prisoners among the participating prison administrations, but a median of 17%, revealing the influence of a small number of systems with particularly high proportions. Destination and transit countries in Western Europe generally present higher figures than many Eastern European states. These differences cannot be explained solely by crime levels; they also reflect geographic position, the composition of mobility, national legal frameworks, the use of pre-trial detention, sentencing policies and the availability of non-custodial measures. Comparative statistics are indispensable, but their function is to identify patterns and questions, not to provide automatic causal answers²³.

²³ Aebi and Cocco, Prisons and Prisoners in Europe 2025, op. cit.

From a historical and legal perspective, Spain possesses a penitentiary framework of notable humanistic ambition. The Constitution of 1978 and Organic Law 1/1979 emerged from the democratic transition and placed re-education and social reintegration at the center of imprisonment. This orientation was strengthened by Spain's incorporation into European and international systems for the protection of human rights. The Nelson Mandela Rules, the European Prison Rules and the specific Council of Europe Recommendation concerning foreign prisoners reaffirm that deprivation of liberty does not deprive the individual of dignity, legal personality or the right to non-discriminatory treatment. These principles oblige the administration not only to refrain from unjustified distinctions, but also to remove linguistic, social and institutional obstacles that prevent foreign prisoners from accessing rights and treatment on genuinely equal terms²⁴.

Immigration legislation presents a more ambivalent development. Organic Law 2/2009 was an important historical reform because it incorporated constitutional case law, expanded the formal recognition of rights and placed integration, non-discrimination and respect for human rights among the guiding principles of migration policy. At the same time, it reinforced instruments of control, sanction and expulsion. The subsequent evolution of Organic Law 4/2000 and the entry into force in 2025 of the Regulation approved by Royal Decree 1155/2024 require that the 2009 reform be understood as a decisive

²⁴ Spanish Constitution, Article 25.2; Organic Law 1/1979; Nelson Mandela Rules; European Prison Rules; and Council of Europe Recommendation CM/Rec(2012)12.

stage, but not as the complete current framework. The enduring tension between integration and security is especially visible when immigration law enters the prison space and when a sentence oriented towards reintegration coexists with the possibility of transfer or expulsion²⁵.

This intersection is the central crimmigration problem identified in the article. Foreign prisoners may experience the ordinary consequences of criminal punishment together with administrative uncertainty about residence, family unity and their future presence in Spain. Article 89 of the Criminal Code and Article 57 of Organic Law 4/2000 create different legal routes through which a criminal conviction may be connected with expulsion. Such measures cannot be applied as if all foreign prisoners shared the same circumstances. Proportionality, individual assessment, procedural guarantees and respect for private and family life remain essential. Furthermore, the possibility of expulsion must not become a reason for withholding education, work, health care or rehabilitative treatment. If the person remains in Spain, reintegration requires continuity with local services and community networks; if transfer or removal is finally and lawfully decided, preparation must be directed towards realistic inclusion in the receiving country. In either case, administrative uncertainty should be resolved as early as possible because prolonged indecision weakens the coherence and effectiveness of prison treatment²⁶.

²⁵ Organic Law 2/2009; consolidated text of Organic Law 4/2000; and Royal Decree 1155/2024.

²⁶ Organic Law 10/1995, Article 89; Organic Law 4/2000, Article 57; Council of Europe Recommendation CM/Rec(2012)12.

The programs developed by the Spanish prison administration deserve a balanced assessment. Literacy, formal education, vocational training, prison work, health promotion, cultural and reading activities, sport, equality measures and cooperation with civil-society organizations contribute directly to re-education and social reintegration and may respond to many needs of foreign prisoners without segregating them into separate services. Specific interventions concerning language learning, knowledge of the Spanish legal and social environment, multicultural coexistence, values and release or return preparation are likewise necessary. The original data showing that a specific program reached 215 inmates in nine institutions in 2017 revealed its limited coverage at that time. Those figures cannot be projected mechanically onto the present, but they preserve an important lesson: the existence of an institutionally valuable program does not in itself guarantee sufficient reach, equal access or measurable impact²⁷.

For this reason, the most appropriate response is not an accumulation of isolated initiatives, but a comprehensive, coordinated and sufficiently resourced strategy. Such a strategy should connect prison, migration and social policies; identify linguistic, documentary, health, educational and family needs from the beginning of custody; guarantee understandable information and qualified interpretation; facilitate consular assistance and contact with relatives; ensure equal access to ordinary programs; and provide specialized measures when

²⁷ Secretaría General de Instituciones Penitenciarias, Informe General 2017, op. cit. The program data are used as a dated historical reference and not extrapolated to the present.

factual disadvantage makes them necessary. It must also incorporate a gender perspective. Foreign women may experience intersecting disadvantages linked to nationality, caregiving, violence, trafficking or the reduced visibility that results from their smaller numbers. Interculturality must therefore be combined with gender equality and individualized, trauma-informed support, without essentializing cultures or treating foreign prisoners as a homogeneous group.

The effectiveness of this policy must be assessed through current, transparent and disaggregated evidence. Participation figures should be complemented by information on completion, access to prison work and education, progression to open conditions, continuity of health and social care, release preparation and post-release outcomes, while respecting privacy and statistical reliability. Data should distinguish, as far as possible, nationality, sex, procedural situation, residence status and the prison administration responsible. Better information would permit a more accurate diagnosis, reduce the space available for stigmatizing interpretations and allow good practices to be extended. Public safety and human rights are not opposing aims: an institution that improves communication, treatment and social support also strengthens order, reduces exclusion and creates more favorable conditions for non-reoffending.

Ultimately, the way in which a society treats people deprived of liberty, and particularly those who occupy a position of greater legal and social uncertainty, constitutes a key indicator of the democratic quality of its political and legal system. An advanced penal model cannot be measured only by the severity of its response to crime or by the formal sophistication of its rules. It must also be judged by its capacity to individualize responsibility, preserve equality, combat

discriminatory discourse and make reintegration a real possibility. Foreign prisoners stand at a boundary where punishment, migration control, membership and rights converge. Precisely for this reason, their treatment tests the consistency of the social and democratic rule of law. A genuinely humanistic policy must insist that responsibility is individual, dignity is universal and the obligation to prepare every prisoner for a lawful and socially integrated life does not disappear because the person lacks Spanish nationality.

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