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Key aspects of the Prison System and Regime: Comparison between Europe and USA

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Abstract: This chapter offers a comparative analysis of some aspects of the prison systems and regimes of the different countries that have been studied, first, several European countries - Spain, Italy, the United Kingdom, Germany, Poland, Finland, Romania, France and Portugal – along with some key US states, New York, California, Texas and Florida. The aim is to identify similarities and differences in some of the main key aspects that characterize the prison systems of the European and North American regions, taking as a starting point the incarceration rate (item 37), the percentage of inmates serving sentences in closed prisons (item 38), the existence or not of a specific prison regime for young adults (item 55), the legal provision or lack thereof for inmates´ legal assistance (item 62) and the legal obligation or not to pay fees by the inmates before claiming judicial review of penitentiary decisions (item 64). Results highlight not only quantitative differences in terms of incarceration rates or the predominant use of closed institutions, but also much deeper divergences of a political, criminal-policy, and even philosophical nature between USA and European countries[2].

Keywords: *Social Exclusion, Rimes, Prison System, Europe, USA*

1. Introduction

This chapter analyses some of the main aspects of the prison systems and regimes of Spain, Italy, the United Kingdom, Germany, Poland, Finland, Romania, France, and Portugal, as well as of several major states in the United States, such as New York, Texas, California, and Florida. This analysis is conducted on the basis of the results obtained from the application of specific items of the RIMES instrument, belonging to Pool 3, "Sentencing and sanctions systems," and Pool 5, "Prison rules". All the items measure highly diverse and specific aspects related to the social exclusion generated by criminal policy in the field of custodial sentences and prison regimes. Furthermore, they are theoretically grounded in accordance with the existing literature on the subject (Díez-Ripollés, 2011, 2013, 2017, and 2019).

Despite the marked differences in incarceration rates across countries, imprisonment has become an increasingly widespread penal practice. In addition, there has been an expansion of the maximum limits of custodial sentences for an ever-growing catalogue of offences. At the same time, short-term prison sentences—despite their well-documented criminogenic effects on offender resocialization—are beginning to regain credibility (Díez-Ripollés, 2019; Izco-Rincón, 2023).

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According to Díez-Ripollés (2017), the regime governing the enforcement of prison sentences throughout the final third of the twentieth century was shaped around two core principles. First, ensuring conditions of sentence execution that safeguard as many of the inmate's rights as possible. Second, guaranteeing prisoners' access to resocialization and social reintegration programs during the execution of the sentence, notwithstanding the abandonment of the previously prevailing resocialization model. However, over the past two decades, this regime has shifted toward different approaches. On the one hand, social segregation and the incapacitation of inmates have gained significant prominence, alongside a renewed emphasis on the retributive and deterrent components of imprisonment. These trends are reflected in the rise of private prisons—often weakly committed to inmate reintegration and limited primarily to custodial functions—the increased capacity of newly constructed penal institutions, and the normalization of high- (or super□ maximum□) security prisons (Díez-Ripollés, 2017, pp. 16–17). On the other hand, there has been a marginalization of resocialization-oriented measures, a hardening of living conditions within prisons, and growing obstacles to access parole and to appeal penitentiary decisions affecting inmates, etc.

The following pages aim to address not only incarceration rates—which undoubtedly constitute a marker of social exclusion—but also the level of confinement in closed prisons. In general, incarceration rates are an appropriate indicator for comparing the degree of punitiveness across legal systems, however, some authors have questioned whether these rates should include the pre-trial population, the sentenced prison population, or both (Hörnle, 2025). As will be explained in the following pages, the RIMES instrument includes both groups when measuring incarceration rates.

In addition, other issues related to prison life and the respect for prisoners' rights are also examined, such as inmates' access to legal aid in penitentiary matters and the existence—or absence—of a legal obligation to pay court fees when seeking judicial review of penitentiary decisions. With regard to the prison regime, the analysis also explores whether a specific regime for young adults exists in these countries, which is a legal requirement in many legal systems. This is done through an in-depth examination of the descriptions provided by the RIMES research team for each of the five items under study, as well as through the application of these items and the results obtained for the nine countries and three U.S. states considered.

2. Items under analysis

First, the descriptions developed for items 37, 38, 55, 62, and 64 are presented, based on the information generated during the various meetings of the research group and compiled in the corresponding manual and meeting minutes. Items 37 and 38 (both practices) belong to Pool 3, entitled "Sentencing and sanctions systems," while items 55, 62, and 64 (all rules) form part of Pool 5, "Prison rules".

Pool 3 examines the sentencing determination system and the system of sanctions. On the one hand, it focuses on the use of imprisonment in the countries under study, the use of closed prisons as the preferred option for the execution of custodial sentences, and,

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additionally, it explores the legally envisaged sanctions other than imprisonment, although this latter aspect is not examined in depth in the present study.

Pool 5, in turn, examines prison regimes, focusing on issues such as the existence or absence of a specific regime for the execution of prison sentences for young adults, access to free legal aid for inmates, the requirement to pay court fees in order to challenge decisions adopted by prison authorities, and the regime governing the exercise of family visits and intimate visits.

2.1. Description of the items under analysis

Item 37, "The incarceration rate is higher than 120 inmates per 100,000 inhabitants," is a practice aimed at determining the prison population rate, including both the sentenced prison population and the population held in pre-trial detention.

Item 38, "At least three quarters of the inmates are serving their sentences in closed prisons," is, in turn, another practice whose objective is to identify the percentage of inmates serving custodial sentences in closed prison facilities, considering those classified under first-degree and second-degree prison regimes. Accordingly, the scope of analysis does not include inmates in pre-trial detention held in open institutions, those serving prison sentences under a third-degree regime (or semi-liberty), or those placed in detention or internment centres for foreign nationals (Minutes of the RIMES Meeting No. 72, 06 June 2018).

Following the analysis of Pool 5 "Prison Rules" carried out by Arenas-García (2023), item 55, "The system lacks a specific prison regime for young adults," is a rule whose description clarifies that the criminal justice system does not provide for a specific prison regime for young adults, understanding young adults as individuals aged between 18 and 21 years of age. The description also highlights the importance of considering the equivalent age ranges contemplated in penitentiary legislation in each of the countries analysed. The item seeks to identify individuals who, notwithstanding their subjection to the adult criminal justice system by virtue of having reached the age of criminal majority, are nonetheless placed under a specific prison regime. Ultimately, the purpose is to assess whether, in the countries under study, young adults are subject to a regime different from that applicable to minors and to adults, regardless of whether this occurs in juvenile detention facilities or in adult prison institutions.

Item 62, "The law lacks statutory provisions regulating inmates' legal assistance for penitentiary matters," is also a rule aimed at examining the existence of statutory provisions concerning access to free legal assistance for inmates in relation to penitentiary matters. The research team agreed that such matters include, among others, issues related to parole, disciplinary procedures, temporary leaves, or regime progressions.

Item 64, "The law requires payment of fees by the inmate before claiming judicial review of penitentiary decisions," refers to the existence of legal provisions requiring inmates to pay court fees to seek judicial review of decisions adopted by penitentiary authorities. This item does not include legal assistance provided by defence counsel, nor does it cover costs associated with police detention. The research team approved an important interpretative criterion: where payment is required but a free system exists exclusively for inmates with financial hardship, this does not mean that the item is not met, since court fees do in fact

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exist. Furthermore, it was agreed that where differences exist between the territorial units of the country under analysis, court fees will be considered to exist if they are provided for in more than 50% of those territories (Arenas-García, 2023).

2.2. Methodology used for the assessment of the items

Items 37 and 38 (practices)[3]

For the assessment of item 37 (practice), it was necessary to consult official data on the national prison population for each country, as well as data on the total national population. The data sources used for each of the countries under study are listed below.

Regarding the European countries analysed, in the case of Spain, data were obtained from the National Statistics Institute for demographic information, together with monthly statistics published by the Spanish prison authorities. The concept of prison population used included both remand prisoners and sentenced inmates. In Germany, data were drawn from the Council of Europe Annual Penal Statistics – SPACE I 2018, which was also the source used for Poland and Italy (Aebi & Tiago, 2018). The same source was used for Romania, France, and Portugal, but referring to the year 2023 (Aebi & Cocco, 2023). In the case of the United Kingdom, data were obtained from the Office for National Statistics and the Ministry of Justice. In Finland, the item was resolved using data provided by the Criminal Sanctions Agency.

With regard to the U.S. states included in order to provide an overview of the American context, in California data were obtained from the California Department of Corrections and Rehabilitation and the United States Census Bureau. In New York, the item was assessed using data provided by the New York State Department of Corrections and Community Supervision and the United States Census Bureau. In Texas, the item was resolved using data from the Texas Department of Criminal Justice, while in Florida reference was made to the annual reports on prison population published by the Bureau of Justice Statistics.

It is particularly relevant to examine the methodology used for the assessment of item 38 across the different countries. Beginning with the European countries, in Spain data from the General Directorate of Penitentiary Institutions for the period 2013–2017 were used, assuming that the closed prisons referred to in the item correspond to what are known domestically as *ordinary regime prison establishments*, as these entail a mode of sentence execution in which inmates do not leave the institution unless they are granted leave permits. In Germany, data were obtained from the periodic statistics produced by the Prison System for the year 2019, in a manner similar to the case of Poland, where it was possible to rely directly on the national Prison Statistics providing data on the prison population held in closed prisons.

The application of item 38 proved to be particularly complex in the case of the United Kingdom, due to the security categories used for the classification of male prisoners. Specifically, four categories exist: Category A, for highly dangerous prisoners; Category B,

[3] For more detailed information on the methodology followed in the assessment of items 37 and 38 in Germany, California, Spain, Italy, New York, Poland, and England and Wales, see, Izco Rincón, 2023.

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for prisoners who, while not considered particularly dangerous, must nevertheless be subject to a regime preventing escape; Category C, for prisoners who cannot yet be trusted under open conditions; and Category D, for prisoners held in open conditions. For female prisoners, four comparable levels also exist (Garton, 2015). Accordingly, for the purposes of resolving the item, only Categories A, B, and C were taken into account for male prisoners, and Category A, restricted status, and closed conditions in the case of female prisoners. On this basis, the research team examined data from each of the 121 prisons in the United Kingdom, verifying the number of inmates falling within each category. Finally, since prisons housing women did not provide disaggregated information on classification, the analysis had to be limited to the male prison population.

In Italy, Article 48 of the Prison Law (26 July 1975, No. 354) regulates the *semi-liberty* regime. Disaggregated data are provided in the statistics published by the Ministry of Justice; therefore, for the assessment of the item it was necessary to rely on official data and to consider only inmates held under a closed regime. The application of the item in Finland was also straightforward, as the Statistical Yearbook published by the Finnish Criminal Sanctions Agency provides disaggregated data on prisoners held in open and closed prisons. In Romania, the classification regimes that match the description targeted by the item are the Maximum safety regime, the closed regime, and the semi-open regime. Data on individuals placed under these classifications can be found in the Reports elaborated by Romanian Government (Administrația Națională a Penitenciarelor, 2023).

In France, attention was paid to the closed regime situation, including convicted and pre-trial detainees as well as prisoners without parole nor external house detention, using data provided by the *Direction de l'Administration Pénitentiaire – Bureau de la donnée, de la recherche et de l'évaluation* (2024). Finally, in Portugal, data relating to inmates held in closed regime and in Security Regime were extracted from the Annual Internal Security Report (2024).

With regard to the U.S. states, data from the period 2015–2019 were used to determine whether the item applied in California, relying on information provided by the *Report of the Legislative Analyst's Office* and the *California Code of Regulations*. In New York, the procedure involved combining the concepts of *jail population* and *prison population* as applied in the United States; however, the research team encountered a significant limitation due to the impossibility of obtaining a homogeneous dataset that would allow the aggregation of information for the same time period. The need to rely on estimations therefore represents a relevant limitation in the application of item 38 in New York. In the case of Texas, the assessment required the team to use, as a distinguishing criterion for determining the number of prisoners held under open or closed regimes, whether inmates were allowed to work outside the prison facility without being subject to continuous supervision. Accordingly, the team consulted data on prisoners classified under regime types G1 (*Level 1 at the Institutional Offender Custody Levels – Custody Designation for Prison Offenders*), J1 (*Level 1 at the State Jail Offenders Custody Levels – Custody Designation for Jail Offenders*), or OT (*Other Custody*) and excluded them from the scope of the item under analysis (Texas Department of Criminal Justice, 2004)[4]. A

[4] With no public information offered by Texas Department of Criminal Justice concerning inmates serving prison sentence in G1, J1 and OT level, the research team asked to advisor designed for this country to get

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similar approach was followed in the case of Florida, where the research team focused on the prison population serving their sentences under *maximum, close, and medium custody regimes*, insofar as these fit the description of the item. Data were obtained from the Office of Program Policy Analysis and Government Accountability (2019), referring to the year 2018.

Items 55, 62 and 64 (rules)[5]

In general terms, the rules in Pool 5 required their resolution through a method based on consultation of secondary sources, either by analyzing national legislative texts—regulations, codes, etc.—or through scholarly works, official websites, or reports.

With regard to item 55, only in the cases of California, Florida and New York, Spain, and Portugal was a method based exclusively on the analysis of legal texts used, whereas in the remaining cases it was also necessary to resort to different secondary sources.

Focusing specifically on the European countries, in the case of Spain the item was resolved on the basis of Organic Law 10/1995, of 23 November, Spanish Criminal Code, Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors, Organic Law 1/1979, of 26 September, General Penitentiary Law, and the Royal Decree 190/1996, of 9 February, approving the Penitentiary Regulations.

In Germany, the German Juvenile Courts Act and the report by Matthews, Schiraldy and Chester (2018) were analyzed. In Poland, the Polish Criminal Code, the Polish Executive Criminal Code, and the report of the Helsinki Foundation for Human Rights (2018) were examined. In Italy, the research team reviewed penitentiary legislation and regulations concerning the execution of custodial measures, as well as official data available on the Prison Insider website for 2019.

In the United Kingdom, reference was made to the Young Offender Institution Rules 2000, the Prison Service Instruction PSI 41/2011, and several reports, including Allen (2013, 2016), McGuire and Arriaza Conde (2016), and Ministry of Justice (2013). In Finland, sources included the Finnish Criminal Code, the Finnish Act on the Enforcement of Community Sanctions, the Finnish Imprisonment Act, the website of the Prison and Probation Service of Finland, and academic literature (Lappi-Seppala, 2012; Lappi-Seppälä & Nuotio, 2019). In Romania, the sources consulted were Law No. 254 of July 19, 2013 on the execution of sentences and custodial measures ordered by judicial authorities during criminal proceedings, Decision No. 157/2016 of March 10, 2016 for the approval of the Regulation for the implementation of Law No. 254/2013 on the execution of sentences and custodial measures ordered by judicial authorities during criminal proceedings, the Annual Activity Report (2021) of the National Administration of Penitentiaries (NAP 2022), and academic literature (Raiu, 2023). In France, reference was made to the Penitentiary Code, the Code of Criminal Procedure, the Juvenile Criminal Justice Code, and the report "Prison conditions in France" (Crétenot & Liaras, 2013).

disaggregated data. She made a request through FOIA, and this institution facilitated her the data that solve the item.

[5] For a more detailed account of the methodology applied in the assessment of items 55, 62, and 64 in Germany, California, Spain, Italy, New York, Poland, and England and Wales, see Arenas-García (2023).

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Finally, in the case of Portugal, several legal sources were analyzed: Decree-Law No. 401/82 of 23 September – Special regime applicable to young offenders; Law No. 166/99 of 14 September – Educational Guardianship Law; Law No. 115/2009 of 12 October – Code for the Execution of Sentences and Measures Depriving Liberty; Decree-Law No. 51/2011 of 11 April – General Regulation of Prison Establishments; and the Portuguese Penal Code (Decree-Law No. 400/82 of 23 September, and subsequent amendments).

With regard to U.S. states, item 55 was resolved in New York on the basis of the Correction Law from New York State, information from the Vera Institute of Justice, and the Rules of the City of New York. In California, reference was made to the California Welfare and Institutions Code and the official website of the California Division of Juvenile Justice (DJJ). In Texas, sources included the Family Code, the Administrative Code, websites such as those of the Juvenile Justice Department, the Department of Criminal Justice, the Commission on Jail Standards, and legislative sources (Constitution and Statutes), as well as scholarly materials such as the Offender Orientation Handbook (2017) and the report by Dawson (2018). In Florida, reference was made to the Florida Statutes

Turning to the methodology used for resolving item 62, in most cases only the analysis of legal texts was employed: Germany, Italy, New York, the United Kingdom, Spain, Finland, Romania, and Portugal. In the remaining cases, this analysis was complemented by a review of other documents, as in the case of California or Poland.

With regard to European countries, in Spain the resolution of the item in 2018 was based on a review of the legislation in force: Law 1/1996, of 10 January, on free legal aid; Royal Decree 996/2003, of 2 December, approving the Regulation on free legal aid; Royal Decree 1455/2005, of 2 December, on free legal assistance for victims of gender-based violence; Royal Decree-Law 3/2013, of 22 February, on court fees in the Administration of Justice and free legal aid; regulations on free legal aid at the level of the Autonomous Communities; and cooperation agreements between the General Directorate of Penitentiary Institutions and bar associations. For the review of the resolution of the item carried out in 2025, the analysis also included Organic Law 1/1979, of 26 September, General Penitentiary Law; Royal Decree 190/1996. of 9 February, approving the Penitentiary Regulations; and Royal Decree 658/2001, of 22 June, approving the General Statute of the Spanish Legal Profession.

In Germany, the German Act on the Execution of Prison Sentences and Measures of Reform and Prevention involving deprivation of liberty (Federal Prison Act) and the German Code of Civil Procedure were analysed. In the United Kingdom, The Criminal Legal Aid 2013 was reviewed, together with several documents produced by official bodies that assisted in its interpretation. In Italy, the legal framework analysed for the resolution of the item was the same as that used for item 55, as developed above. In Poland, it was necessary to refer to the Polish Constitution and the Polish Executive Penal Code, as well as to secondary sources from the European Prison Observatory (Ktadoczny & Wolny, 2013) and the Helsinki Foundation for Human Rights.

In France, reference was made to national legislation such as the Penitentiary Code, the Judicial Organization Code, the Code of Criminal Procedure, Law No. 91-647 of July 10, 1991, on legal aid, and Decree No. 2020-1717 of December 28, 2020, implementing Law No. 91-647 of July 10, 1991, on legal aid and regulating legal aid and access to a lawyer in

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non-judicial proceedings. These legal texts were complemented by information obtained from websites such as the European e-Justice Portal. For the resolution of the item in Finland, it was necessary to refer to the Finnish Imprisonment Act and the Legal Aid Act. In the case of Romania, the analysis was also based exclusively on legal provisions, specifically Law No. 254 of July 19, 2013, on the execution of sentences and measures depriving of liberty issued by judicial bodies during criminal proceedings, and Decision No. 157 of March 10, 2016 for the approval of the Regulation on the implementation of Law No. 254/2013 on the execution of sentences and measures of deprivation of liberty ordered by judicial bodies in the course of criminal proceedings. In Portugal, reference was made to Law No. 34/2004 of July 29 and to the Code for the Enforcement of Sentences and Measures Depriving Liberty (Law No. 115/2009).

With regard to the United States, in California reference was made to The Constitution of the United States, the website of the California Judicial Branch, and California Legislative Information. In New York, the Vera Institute of Justice and the Rules of the City of New York were consulted again. In Texas, the resolution required the analysis of official websites of state penitentiary authorities: State Counsel for Offenders, Texas State Law Library, and State Bar of Texas. In Florida, it was also necessary to resort to information from websites such as the official site of Florida Institutional Legal Services, together with legal texts: the US Code, Florida Statutes, and the Florida Rules of Criminal Procedure.

Finally, with regard to item 64, in most countries it was resolved exclusively on the basis of legislation, without the need to consult additional secondary sources. Thus, in Spain, the initial resolution relied on Law 10/2012 on Court Fees, as amended by Royal Decree-Law 3/2013 of February 22; however, in the 2025 revision, the legal sources used for the resolution were Law 10/2012 of November 20 on Fees in the Administration of Justice and the National Institute of Toxicology and Forensic Sciences. In the United Kingdom, the same legislation used to address item 62 was applied. In Germany, reference was made to the Act on the execution of prison sentences and measures of reform and prevention involving deprivation of liberty and the Criminal Procedure Code.

In Italy, it was necessary to complement the analysis of legal texts with secondary sources in order to deepen and contextualize their content, namely: the Italian Prison Rules (2000), Presidential Decree No. 115 of May 30, 2002, the Italian Code of Criminal Procedure, and secondary sources (Arena, 2000; Perego, 2017; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2019). In Poland, an in-depth review was conducted of the Polish Constitution, the Executive Procedure Code, the Criminal Procedure Code, and the Act on fees in criminal proceedings (1973).

With regard to Finland, the Imprisonment Act (including the 2022 amendments), the Administrative Judicial Procedure Act (808/2019), and the official website of the Finnish Courts were analyzed. In Romania, consultation of two legal texts was sufficient to determine the occurrence or absence of the item: Law No. 254 of July 19, 2013 on the execution of sentences and custodial measures ordered by judicial authorities during criminal proceedings, and Ordinance No. 80 of June 26, 2013. In France, the analysis was based exclusively on legal texts: the Penitentiary Code, the Code of Criminal Procedure, and the General Tax Code, as was also the case in Portugal, where the Regulation of Procedural Costs

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(Decree-Law No. 34/2008 of February 26), the Code for the Execution of Sentences and Measures Depriving Liberty (Law No. 115/2009 of October 12), and Law No. 34/2004 of July 29 on Access to Law and to the Courts were examined

With regard to the United States, in New York it was sufficient to refer to the New York Civil Practice Law and Rules (2006), whereas in California the Prison Litigation Reform Act (1996) was reviewed. The resolution of the item in Texas required the research team to consult a larger number of sources: the Prison Litigation Reform Act of 1995, the Jailhouse Lawyer's Manual, the website of the Texas Department of Criminal Justice, and bibliographic sources (Kruzel, 2023). In Florida, the resolution was also complex, as it required consultation of numerous secondary sources, both legal and non-legal, including the Florida Administrative Code (F.A.C.), Florida Administrative Rules and Prison Legal News, the official website of the Office of the Secretary (Florida Department of State) and the Office of the General Counsel, managed by the Chief of Policy Management and Inmate Appeals, the 2023 Florida Statutes, and the Prison Litigation Reform Act.

3. Comparative results

Once attention has been focused on the explanation and methodology used for the application of each of the rules and practices considered, the results regarding the occurrence or non-occurrence of each of them in the countries under study are presented below. As can be seen in Table 1, item 37 did not occur in 6 of the 13 countries (or states) analysed, whereas item 38 occurred in the vast majority of cases, with only 2 exceptions, making it the indicator with the highest number of positive responses. Indicator and rule number 55, by contrast, occurred in only 4 countries, which is particularly striking given that it takes place in countries with low levels of social exclusion in terms of their prison regime and system, such as France and Finland. Item 62 was also identified in four jurisdictions, namely three U.S. states and one European country. Lastly, item 64 was identified in all four U.S. states and in the United Kingdom and Portugal.

Table 1. *Score of Items 37, 38, 55, 64, and 62 by Jurisdiction.*

Jurisdictions	Item 37	Item 38	Item 55	Item 62	Item 64
Spain	Yes	Yes			
Germany		Yes			
United Kingdom	Yes	Yes			Yes
Italy		Yes			
Poland	Yes	Yes			
California	Yes	Yes		Yes	Yes
New York	Yes	Yes	Yes	Yes	Yes
Finland			Yes		
Texas	Yes	Yes	Yes		Yes
Florida	Yes	Yes		Yes	Yes
Romania		Yes		Yes	
France			Yes		
Portugal		Yes			Yes

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At first glance, New York is the jurisdiction with the highest number of affirmative responses, as all items were identified there, whereas at the opposite end are Finland, Germany, and France, where only one of the five items analysed was identified in each case. This might initially suggest that these latter three countries present a less exclusionary prison regime and system. However, it is relevant to examine which specific items received a positive response and the reasons for this.

With regard to the results observed in each of the countries analysed, item 37 occurred in all U.S. states included in the study, additionally showing—*as can be seen in Table 2*—figures well above the reference threshold of 120 prisoners per 100,000 inhabitants established by the item. Thus, bearing in mind that the periods of analysis differ across cases, the results show, from highest to lowest, an average rate of 337.8 prisoners during the 2014–2018 period in California; 366.98 during the 2015–2019 period in New York; 431.16 in Florida for the 2016–2021 period; and 505 for the 2017–2021 period in Texas.

The situation is different in European countries, where the item occurred in only 3 of the 9 countries analysed, with figures notably lower than those reported in the United States. The item was observed in Spain, with a rate of 144.4 for the period 2010–2017; in the United Kingdom, with a rate of 148.4 during the 2010–2018 period; and in Poland, with a higher rate of 203.4 for the period 2010–2018. By contrast, in Germany, Italy, Finland, Romania, France, and Portugal, prison population rates per 100,000 inhabitants were below the threshold established by the item, the lowest being observed in Finland, with a rate of 53.5 for the 2015–2021 period.

Table 2. *Prison population rate per 100.000 inhabitants in each country for each analysed period.*

	2010-2017	2010-2018				2014-2018	2015-2019	2015-2021	2017-2021	2016-2021	2019-2023		
Country/State	Spain	Germany	United Kingdom	Italy	Poland	California	New York	Finland	Texas	Florida	Romania	France	Portugal
Prison rate / 100.000 inhabitants	144,4	82,75	148,4	101,9	203,4	337,82	366,98	53,5	505	431,16	114,4	103,12	118,58
Item 37 ois met	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No	No

Considering the results of the application of item 38 in the different countries analysed, it is found that it occurs in 7 of the 9 European countries studied—excluding France and Finland—and in all U.S. states included in the analysis, as can be seen in Table 3. It is important to highlight the difficulties faced by the research team in resolving this item, as in no country was it possible to access direct data on the percentage of prisoners serving sentences in closed institutions. Instead, it was necessary to identify the diversity of existing

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prison regimes in each country, the types of custodial institutions, and, based on this, to determine which ones were relevant for resolving item 38, which refers to the percentage of inmates in closed prisons.

Thus, although it is not possible to analyze the specific situation of each country, the case of California illustrates this difficulty. According to the Report of the Legislative Analyst's Office (Legislative Analyst's Office, 2019), the California Department of Corrections (CDCR) classifies inmates into two categories: (1) housing security level and (2) custody designation. Housing security level generally determines the type of facility where inmates are housed. CDCR categorizes its facilities that house male inmates into security levels ranging from Level I (lowest security) to Level IV (highest security). On the other hand, custody designation determines where inside the prison inmates may go during the day and the level of supervision they must be under when they are there. CDCR uses six custody designations: maximum, close, medium A, medium B, minimum A, and minimum B, depending on which areas of the prison inmates may access during the day and under what level of supervision. CDCR has the flexibility to apply different custody designations to inmates within the same housing security level.

Given that the objective implicit in this item is to distinguish inmates in closed prison regimes from those in open prison regimes, the information described above makes it difficult to establish a direct correspondence between combinations of security levels and custody designations and their classification as open or closed regimes. Nevertheless, Medium A, Close, and Maximum custody designations may be considered closed prison regimes, since none of them involves being "housed and working off prison grounds" or "working outside the main security perimeter." Accordingly, for 2018, the levels assigned to a closed prison regime already represent more than three quarters (75%) of the total prison population, leading to an affirmative answer to the item (Medium A: 68%; Close: 10%; Maximum: 5%).

In light of the above, it is worth noting that the percentage of inmates in closed prisons in the European countries where the item is identified ranges between 82% and 88%, with the exception of Italy and Poland, which exceed 97%. The figures for these countries are even higher than the percentages of incarceration in closed institutions observed in some U.S. states, such as Florida and California. Particularly striking is the difference between Finland, the country with the lowest percentage of inmates in closed institutions (56.5%), and Italy, also a European country, where the percentage reaches 98.2%, a figure even higher than those observed in Texas and New York.

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Table 3. *Prison population in closed prisons in each country*[6].

	Spain[7]	Germany	United Kingdom	Italy	Poland	California	New York	Finland	Texas	Florida	Romania	France	Portugal
Inmates serving their sentence in closed prisons	83,79%	85,5%	89,72%	98,2%	97,7%	83%	96,84%	56,5%	94,3%	85,86%	82,2%	70,56%	87,2%
Item 38 is met	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes

The results obtained from the application of the three rules belonging to Pool 5 under study in the different countries are presented below. Beginning with item 55, which concerns the lack of a specific prison regime applicable to young adult inmates, it was found that the item occurs in a total of two European countries—Finland and France—and in two U.S. states—New York and Texas (see Table 3). In these cases, the rule is confirmed insofar as either the legal framework does not provide for a specific system addressing the particular needs of young adults by adapting the prison regime to their cognitive development and personal progression, as in the case of New York; or the legal system declares young adults to be a special penitentiary category in need of an appropriate regime but lacks implementing legislation developing such a regime or regulating the existence of a dedicated unit for this group, as is the case in France and Finland.

Thus, in the case of New York, although the New York City Department of Correction applies a specific regime for young people in certain cases, there is no such provision at the state level, with the result that most young adults serve their sentences under conditions and regimes identical to those applied to older adults. By contrast, in France it is particularly relevant to note that penitentiary legislation does, in fact, state that young adults between 18 and 20 years of age constitute a category subject to a *special and individualized regime*, and that this *special and individualized regime* which emphasizes education and training, so that they participate in educational, training, work, socio-cultural, sporting or recreational activities,

[6] The percentages correspond to different years for each country and are listed as follows: Spain, 2016; Germany, 2019; United Kingdom, 2019; Italy, 2020; Poland, 2020; California, 2018; New York, 2018; Finland, 2017–2021; Texas, 2023; Florida, 2017–2018; Romania, 2023; France, 2024 and Portugal, 2024.

[7] In Spain, the review of the item carried out in 2025 showed a percentage of 81.45% with reference to the immediately preceding year, 2024. This indicates a modest reduction in the closed-regime prison population in Spain over the past eight years."

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unless the magistrate in charge of the case orders otherwise. However, beyond this mere statement, the Penitentiary Code does not contain specific rules that develop this "special and individualized regime" in the specific areas mentioned.

With regard to item 62, it occurs only in New York, Florida, California, and Romania—jurisdictions in which the legislation does not provide for free legal assistance in matters arising in relation to prisoners and penitentiary issues. Thus, in the case of California, although the Constitution of the United States guarantees the right to a lawyer in criminal proceedings and the Supreme Court has established that such defence must be provided free of charge when the individual is unable to pay, this applies to the pre-trial and trial phases, but not once the individual is already serving a custodial sentence. In New York, penitentiary matters are considered civil in nature and, unlike in criminal cases, there is no right to a free lawyer, with various organizations providing legal services to inmates, such as Prisoner's Legal Services of New York.

A similar situation can be observed in Romania, where Law No. 254/2013 (art. 62) and Resolution No. 157/2016 (art. 128) recognize the right of inmates to have legal assistance, but there is no provision for such assistance to be free of charge. Inmates are not entitled to a free lawyer to prepare their complaints for the first judicial review, and with respect to appeals before the district court, Article 39(17) of Law 254/2013 expressly states that "[free] legal aid is not mandatory".

Item 64 was identified in all U.S. states analysed, as well as in the United Kingdom and Portugal. The analysis reveals a diversified casuistic framework. In California, appeal fees are required for federal prison reviews, although not for state-level reviews, without prejudice to the possibility of paying such fees in monthly payments. In New York, where inmates seeks to challenge a decision adopted by the penitentiary authorities that directly affects them—such as the denial of parole or placement in solitary confinement—this may be done through the special procedure provided for in Article 78 of the New York Civil Practice Law and Rules, which allows for the appeal of any administrative decision before the New York State Supreme Court. However, one of the mandatory requirements is the payment of a fixed fee of 190 dollars, unless the inmate submits a sworn declaration of financial insolvency.

Similarly, in the United Kingdom, the Criminal Legal Aid Act provides assistance to cover legal costs where legal representation is required, but such assistance is conditional upon the inmate's financial capacity, requiring low income and very limited savings. In Portugal, the general rule remains that judicial fees must be paid in order to request judicial review of penitentiary decisions. From a normative standpoint, therefore, the item is met despite the existence of fee exemptions, since—as in the previous cases—such exemptions are not automatic and depend on strict legal criteria, making the payment of court fees an obstacle that must be overcome by inmates seeking to challenge decisions adopted by the authorities that directly affect the execution of their prison sentences.

4. Conclusions

Items 37, 38, 55, 62, and 64, belonging to Pools 3 and 5, are capable of measuring the social exclusion generated by certain aspects of the penitentiary system, specifically with regard to incarceration rates, the predominant use of closed prisons, the existence of a specific regime

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for younger inmates, the availability of free legal assistance, and the legal requirement to pay fees for seeking review of decisions adopted by penitentiary authorities that affect prisoners. Although the issues addressed by these items are diverse, they provide an overarching view of the main features of a country's prison system and penitentiary regime. It should not be overlooked that the RIMES instrument is composed of a set of items that were selected through a lengthy process involving not only the work of the research team, but also the contribution of a large number of subject-matter experts, who—on the basis of specific criteria—considered them appropriate for evaluating and gaining deeper insight into the criminal policy systems of the countries in which the instrument is applied.

Conclusions regarding the occurrence or non-occurrence of the items analysed in the countries under study must be articulated around two main issues. The first relates to the fact that, in general terms, it is practices—rather than rules—that occur most frequently. Specifically, item 37 was identified in a total of 7 of the 13 countries (or states) under study, while the results for item 38 were even higher, being observed in 11 out of the 13 cases. This highlights how "the way in which different social agencies actually respond to behaviours or situations related to penal control, whether or not in accordance with what is legally prescribed" (García España and Díez Ripollés, 2021, p. 261), occurs far more frequently than punitive rules themselves—that is, than what penitentiary legislation, in this case, formally provides with regard to the regime governing the execution of custodial sentences.

The second conclusion relates to the fact that it is the U.S. states in which all of the items analysed occur most frequently. Overall, the comparison between the penitentiary systems of several U.S. states and a number of European countries—including Finland—highlights not only quantitative differences in terms of incarceration rates or the predominant use of closed institutions (particularly in the former), but also much deeper divergences of a political, criminal-policy, and even philosophical nature.

The greater severity of U.S. penitentiary regimes, reflected in the extensive use of closed prisons, the imposition of long custodial sentences, and the intensive reliance on imprisonment as a response to crime, is not exclusively the result of higher levels of criminality—as demonstrated by various studies—but also expresses a model historically oriented toward punishment and deterrence, with comparatively less emphasis on social reintegration and prisoner rehabilitation.

By contrast, the European penitentiary regimes and systems examined in this study, and particularly the Finnish case, reflect a more restrained and functional conception of punishment, in which deprivation of liberty is not always the primary response and where principles such as the gradual progression of treatment, attention to prisoners' individual needs, and orientation toward post-release reintegration play a more prominent role. The more frequent use of open prisons in Europe compared to the United States does not stem from institutional leniency, but rather from a conviction—supported by criminological research—that maintaining social, occupational, and community ties contributes to reducing recidivism.

Similarly, the fact that, in general terms, European countries have structured penitentiary regimes that take into account the specific needs of young adults further underscores this

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reintegrative orientation and the belief that individualized penitentiary treatment adapted to prisoners' needs can be particularly effective during the early stages of criminal trajectories.

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