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## **Report**

**to the Portuguese Government  
on the visit to Portugal  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 27 September to 7 October 2016**

The Portuguese Government has requested the publication of this report and of its response. The response is set out in document CPT/Inf (2018) 7.

Strasbourg, 27 January 2018

**CONTENTS**

<b>Copy of the letter transmitting the CPT's report.....</b>	<b>4</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>I. INTRODUCTION.....</b>	<b>9</b>
<b>A. Dates of the visit and composition of the delegation .....</b>	<b>9</b>
<b>B. Establishments visited.....</b>	<b>9</b>
<b>C. Consultations held by the delegation and co-operation encountered.....</b>	<b>10</b>
<b>D. National Preventive Mechanism .....</b>	<b>11</b>
<b>II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED .....</b>	<b>12</b>
<b>A. Law enforcement agencies.....</b>	<b>12</b>
1. Preliminary remarks .....	12
2. Ill-treatment .....	13
3. Effective investigations of ill-treatment .....	16
4. Safeguards against ill-treatment .....	20
5. Conditions of detention .....	22
<b>B. Prison establishments .....</b>	<b>24</b>
1. Preliminary remarks .....	24
a. recent developments.....	24
b. prisons visited.....	25
2. Ill-treatment .....	26
3. Conditions of detention .....	30
a. material conditions .....	30
b. regime.....	33
4. Staff matters.....	35
5. Health care services .....	36
a. introduction .....	36
b. staff and facilities .....	37

c.	medical screening on admission and recording of injuries .....	39
d.	medical confidentiality .....	40
e.	use of chemical restraint in prisons .....	41
f.	deaths in prison and prevention of suicide (and self-harm) .....	41
6.	Other issues.....	43
a.	discipline .....	43
b.	contact with the outside world .....	46
c.	complaints and inspection procedures .....	47
7.	Monsanto High Security Prison.....	47
<b>C.</b>	<b>Forensic psychiatric institutions under the Directorate General for Prisons and Rehabilitation Services (DGPRS) .....</b>	<b>54</b>
1.	Preliminary remarks .....	54
2.	Ill-treatment .....	55
3.	Patients' living conditions and activities .....	56
a.	psychiatric unit of Caxias Prison Hospital .....	56
b.	Psychiatric Hospital of Santa Cruz do Bispo Prison .....	58
4.	Treatment.....	59
5.	Staff .....	60
a.	psychiatric unit of Caxias Prison Hospital .....	60
b.	psychiatric Hospital of Santa Cruz do Bispo Prison .....	61
6.	Seclusion and means of restraint .....	63
a.	guidelines on the use of restraint.....	63
b.	psychiatric unit of Caxias Prison Hospital .....	63
c.	Psychiatric Hospital of Santa Cruz do Bispo Prison .....	64
7.	Safeguards .....	67
a.	placement and discharge .....	67
b.	safeguards during placement.....	67
	<b>Appendix: List of the national authorities and non-governmental organisations with which the delegation held consultations .....</b>	<b>69</b>

**Copy of the letter transmitting the CPT's report**

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Strasbourg, 20 March 2017

Dear Ms Ávila,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Portuguese Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Portugal from 27 September to 7 October 2016. The report was adopted by the CPT at its 92<sup>nd</sup> meeting, held from 6 to 10 March 2017.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Portuguese authorities to provide within **six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Portuguese authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

As regards the recommendations in paragraphs 45, 49, 50, 95 and 128 the CPT requests a response within **two months**.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mykola Gnatovskyy  
President of the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment

## EXECUTIVE SUMMARY

In the course of the 2016 periodic visit, the CPT's delegation reviewed the treatment of persons detained by law enforcement agencies and examined the system of investigating allegations of ill-treatment by law enforcement officials. The delegation also visited a number of prisons, focusing on the conditions of detention and the treatment of various categories of prisoners notably those held on remand and in disciplinary segregation as well as juveniles and vulnerable prisoners. The situation of patients held in two forensic psychiatric units was also examined.

The co-operation received by the delegation throughout the visit was, on the whole, excellent. However, the principle of co-operation set out in Article 3 of the Convention also requires that decisive steps be taken to improve the situation in the light of the Committee's key recommendations. In this context, the CPT trusts that the Portuguese authorities will take concrete measures to address long-standing recommendations such as those concerning the regime for prisoners at Monsanto High Security Prison and the conditions of detention for inmates in certain areas of Lisbon Central Prison. Further, the Psychiatric Hospital of Santo Cruz do Bispo Prison remains unsuitable for the care and treatment of forensic psychiatric patients.

### Law enforcement agencies

The majority of persons met by the CPT's delegation during the visit stated that they had been treated correctly whilst in police custody. However, a considerable number of allegations were received from detained persons of ill-treatment at the time of apprehension, after the persons concerned had been brought under control, and prior to arrival at police detention facilities as well as during the time spent in police stations. The alleged ill-treatment consisted primarily of slaps, punches and kicks to the body and/or head as well as, on occasion, the use of batons or sticks.

From the evidence gathered by the CPT's delegation through interviews with detained persons in different police and prison establishments, it appears that resort to the infliction of ill-treatment particularly against foreign nationals, including for the purpose of obtaining confessions, is not infrequent. Increased efforts and determined action are needed to combat police ill-treatment.

In the course of the visit, the CPT's delegation examined a number of cases of ill-treatment investigated by the Inspectorate General of Home Affairs (IGAI), the GNR and the Judicial Police. In respect of the IGAI, the report makes some positive comments but also raises concerns in relation to the promptness with which investigations are carried out and its inability to order forensic medical examinations; securing reliable medical evidence was a problem which affected the investigation of most cases of alleged ill-treatment. Further, in the CPT's view, steps should be taken to speed up the criminal investigation and court procedures and the disciplinary process should be allowed to run in parallel with the criminal investigation. More fundamentally, the CPT recommends that the Portuguese authorities consider the possibility of transforming the IGAI into a completely independent body charged with undertaking criminal investigations into all complaints of ill-treatment by law enforcement officials, with a view to providing the outcome of these investigations to the public prosecutor.

As regards safeguards against ill-treatment, the rights of detained persons to notify a family member or a person of confidence about their situation and to have access to a doctor generally operated satisfactorily. However, the majority of persons interviewed stated that they only met an *ex officio* lawyer at the court hearing before a judge, which could take place up to 48 hours after the moment of apprehension by the police. The CPT reiterates that persons detained by the police should have the right of access to a lawyer as from the very outset of the deprivation of liberty.

### Prisons

Many prisoners met by the delegation in the establishments visited stated that they were treated correctly by prison officers. Nevertheless, a number of allegations of ill-treatment of inmates by prison officers were received at Caxias, Lisbon Central and Montijo Prisons, as well as a few at Leiria Juvenile Prison. The ill-treatment was said to consist of slaps, punches, kicks and blows with truncheons to the body and/or head.

The high level of overcrowding within the Portuguese prison system remains a serious problem. The extreme overcrowding in certain establishments (operating at 140% or more of their official capacity) undermined the way in which the prisons operated, affecting not only the material conditions, but also the regime, staff-inmate relations and good order in the establishments. The proposed 10-year plan to upgrade conditions in existing establishments and to build several new prisons should be accompanied by measures to limit the number of persons being sent to prison.

The CPT further found that the living conditions within parts of the establishments visited notably at Caxias, Lisbon Central and Setúbal Prisons, were totally unsuitable to hold prisoners and may amount to inhuman and degrading treatment. For instance, in the basement areas of Lisbon Central Prison, the cells were cold, dark and damp with crumbling plaster and rats were entering the cells via the floor-level toilets. Other parts of the prison remained in a state of advanced dilapidation. The conditions for certain vulnerable prisoners at both Caxias and Setúbal Prisons were particular poor, with less than 3m<sup>2</sup> of living space per prisoner and inmates confined to their cells for up to 23 hours per day. The authorities are urged to provide all prisoners with a minimum of 4m<sup>2</sup> of living space in multiple-occupancy cells and urgently to renovate the above-mentioned deficiencies. At Lisbon Central Prison, prisoners should be transferred out of the basement areas of B, C, D and E Wings until such time as they have been properly renovated.

The regime offered to inmates at most of the prisons visited was impoverished, with insufficient opportunities to work or to engage in education or other purposeful activities. The overall aim should be to offer all prisoners (including those on remand) a normal regime of at least eight hours out of cell engaged in purposeful activities.

As regards health care in prisons, there is a need to put in place robust oversight of private contractors and to ensure greater continuity of health care staff. The report further emphasises the importance of ensuring that a thorough medical examination following a violent incident or use of force within a prison as well as of newly arrived prisoners is carried out and any injuries properly recorded. The findings showed that this was not always the case at the time of the visit. Doctors working in prisons should be provided with the necessary training.

Disciplinary procedures were generally satisfactory, although the safeguards could be strengthened. As regards solitary confinement as a disciplinary punishment, pending the amendment of Law 115/2009 on the Execution of Criminal Sanctions, the CPT considers that the Portuguese Prison Administration should refrain from imposing disciplinary punishments of solitary confinement of more than 14 days on adults and should not impose such sanctions on juveniles at all. Contacts with the outside world are generally positive, whereas there is a need to introduce a uniform internal complaints system in which prisoners have confidence.

The situation at Monsanto High Security Prison has not changed since the CPT's 2013 visit. The vast majority of prisoners are confined alone in their cells for 21 to 22 hours per day, which in the CPT's view is akin to solitary confinement. Urgent steps should be taken to provide inmates with more time out of their cells, engaged in purposeful activities and meaningful human contact. In particular, a programme of purposeful activities should be put in place for each inmate, elaborated upon arrival at the establishment by a multi-disciplinary team and allowing progressively more out-of-cell time in the event of the inmate engaging in a positive manner with the regime. The CPT also recommends that all prisoners be able to receive visits from their family members without physical separation once a week, except in individual cases where there may be a clear security concern, as such contacts are likely to facilitate their reintegration into an ordinary regime.

An examination of the use of the padded safe cell at Monsanto Prison in which agitated prisoners could be held for up to 10 days revealed a number of abuses. More robust procedures to regulate the use of this cell should be introduced. The safe cell should only be used when all alternative interventions to manage a prisoner's unsafe behaviour would fail to satisfactorily prevent harm, and never for disciplinary or good order reasons. The authority to place a prisoner in the safe cell should be irrevocably delegated to health care staff and there should be constant supervision of the measure by health-care staff, as well as additional safeguards to ensure that the need for continued placement in the safe cell is regularly reviewed.

The CPT is also critical of the use of *pro re nata* medication in prisons (i.e. medication prescribed in advance that is administered as the circumstances require), notably at Lisbon Central and Monsanto Prisons, and recommends that its use should be exceptional and surrounded by the proper safeguards set out in the report.

#### Forensic psychiatric institutions under the Ministry of Justice

At the Psychiatric Hospital of Santa Cruz do Bispo Prison, the CPT's delegation was appalled by the conditions in which patients were held and the prison-like atmosphere that prevailed. The establishment cannot provide a therapeutic environment for the care and treatment of psychiatric patients and the CPT recommends that it be closed down and the patients relocated to an appropriate hospital facility.

The Committee is further concerned about the allegations of ill-treatment by prison officers received from patients at the Psychiatric Hospital of Santa Cruz do Bispo Prison (slaps and truncheon blows).

As regards the regime, a large number of patients at both hospitals visited were not engaged in any meaningful activity for most of the time. At the psychiatric unit of Caxias Prison Hospital, the situation for male patients was exacerbated by their very restricted access to the outdoor yard.

At both establishments there was an evident lack of structured therapeutic and rehabilitative activities for patients and the treatment consisted essentially of pharmacotherapy. Moreover, many patients at both establishments showed clear signs of overmedication such as blurred speech, psychomotor retardation and drowsiness during daytime. The range and number of therapeutic and psycho-social rehabilitative activities available to patients should be developed and clear procedures put in place to ensure that there is no overuse of medication.

At both hospitals, the CPT's delegation met competent health-care staff. However, at the Psychiatric Hospital of Santa Cruz do Bispo Prison, it remained the case that health-care staff usually did not visit the accommodation wards and only saw the patients when they came to the medical unit to take their medication. Uniformed prison officers were still responsible for the management of patients on the accommodation wards. Such a state of affairs is unacceptable for a hospital facility. The CPT reiterates that prison officers assigned to the Psychiatric Hospital of Santa Cruz do Bispo Prison should be replaced with trained nursing staff. Prison officers called upon to intervene in security related incidents should be specifically selected and trained and always work under the supervision of the health care staff.

The CPT has repeatedly recommended that guidelines on restraint in psychiatric institutions under the Ministry of Justice be adopted, which should, inter alia, define which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. At neither of the two institutions visited did such guidelines exist. As regards resort to means of restraint, the CPT is particularly worried about the use of seclusion at the Psychiatric Hospital of Santa Cruz do Bispo Prison. Patients could be kept in seclusion for prolonged periods and allegedly the practice of keeping a patient naked in a seclusion cell had not been abandoned. Such a degrading practice should be abolished immediately. Further, the four seclusion cells should be taken out of service until properly refurbished.

More generally, the CPT recommends that steps be taken to ensure that every patient capable of discernment is given the opportunity to refuse treatment or any other medical intervention, which also means that medication should not be hidden in the patient's food without his/her knowledge, as was the case at the Psychiatric Hospital of Santa Cruz do Bispo Prison. As part of the safeguards surrounding forced treatment, an external psychiatric opinion should be sought and the possibility to appeal to an independent authority introduced.



## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Portugal from 27 September to 7 October 2016. The visit formed part of the CPT’s programme of periodic visits for 2016 and was the Committee’s eighth visit to Portugal since 1992.<sup>1</sup>

2. The visit was carried out by the following members of the CPT:

- Julia Kozma (Head of the delegation)
- María José García Galán San Miguel
- Georg Høyer
- Dubravka Salčić
- Anton Van Kalmthout
- Elisabetta Zamparutti.

They were supported by Hugh Chetwynd (Head of Division) and Almut Schröder of the CPT's Secretariat, and assisted by Alan Mitchell, medical doctor and Chair of the Independent Prisons Monitoring Advisory Group, Scotland, United Kingdom (expert).

### B. Establishments visited

3. The delegation visited the following places of detention:

#### Establishments under the authority of the Ministry of the Interior

##### *Public Security Police*

- Amadora, 60th Police Station, Av. Movimento das Forças Armada
- Leiria, Command Headquarters, St. Pedro Square
- Lisbon, Command Headquarters, Moscavide Avenue
- Lisbon, 3rd Police Division, Benfica/André de Resende Street
- Pontinha-Loures, 73rd Police Division, Rua Infante D. Henrique
- Porto, Belavista Holding Facilities, Agostinho José Freire Street,
- Sintra, 89th Police Station, Rio de Mouro/Gil Eanes Avenue
- Sintra, 86th Police Station, Casal de Cambra/Moçambique Street
- Sintra, 69th Police Station, Algueirão-Mem Martins/Capitães de Abril Avenue

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<sup>1</sup> The reports on previous CPT visits to Portugal and related Government responses are available on the Committee’s website: <http://www.coe.int/en/web/cpt/portugal>

*Republican National Guard*

- Vialonga, Calouste Gulbenkian Street

**Establishments under the authority of the Ministry of Justice**

- Caxias Prison
- Caxias Prison Hospital (psychiatric unit)
- Leiria Juvenile Prison
- Lisbon Central Prison
- Lisbon Judicial Police Prison\*
- Monsanto Prison
- Montijo Regional Prison\*
- Porto Judicial Police Prison\*
- Psychiatric Clinic of Santa Cruz do Bispo Prison
- Setúbal Prison
- Tires Prison\*

\* Targeted visit primarily to interview remand prisoners

**C. Consultations held by the delegation and co-operation encountered**

4. In the course of the visit, the delegation met Constança Urbano de Sousa, Minister of Internal Administration and Francisca Van Dunem, Minister of Justice. It also held consultations with Isabel Oneto, Deputy Minister of Internal Administration and Helena Mesquita Ribeiro, Deputy Minister of Justice, as well as with Celso das Neves Manata, Director General of Reintegration and Prison Services, Luis Peça Farinha, National Director of the Public Security Police (PSP), Luís Botelho Miguel, Second Commander of the Republican National Guard (GNR), Pedro do Carmo, Deputy National Director of the Judiciary Police, and senior officials from the Ministries of Internal Administration, Justice and Foreign Affairs. Discussions were also held with Margarida Blasco, Inspector-General of Home Affairs (IGAI).

The delegation also met representatives of the Office of the Ombudsman responsible for the operation of the National Preventive Mechanism, set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT).

A list of the national authorities and organisations met by the delegation is set out in the Appendix to this report.

5. The co-operation provided by the national authorities in facilitating the visit was, on the whole, excellent. The delegation was granted immediate access to the detention facilities it wished to visit and to the persons it wanted to interview, and most of the information required to carry out its task was promptly provided. In particular, the delegation would like to thank the CPT liaison officers for the assistance provided during the visit.

6. The principle of co-operation set out in Article 3 of the Convention is not limited to steps taken to facilitate the task of visiting delegations. It also requires that decisive action be taken to improve the situation in the light of the Committee's key recommendations. In this respect, the CPT is concerned to note that little or no action has been taken in respect of certain recommendations made in previous reports, in particular as regards the regime for prisoners at Monsanto High Security Prison and the conditions of detention for inmates in certain areas of Lisbon Central Prison and for patients in the psychiatric clinic of Santo Cruz do Bispo Prison.

**The CPT trusts that the Portuguese authorities will take concrete measures to address the recommendations in this report, including as regards the specific issues highlighted above, in accordance with the principle of co-operation set out in Article 3 of the Convention.**

#### **D. National Preventive Mechanism**

7. Portugal ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in January 2013. The Council of Ministers' Resolution (No. 32/2012) of 20 May 2013 designated the Ombudsman's Office as the National Preventive Mechanism (hereafter referred to as the NPM), and it started operating as from August 2014. The NPM visiting team, consisting of nine staff members, carries out unannounced monitoring visits to places of deprivation of liberty throughout Portugal.

That said, it is regrettable that all staff members assigned to the NPM department are also charged by the Ombudsman's Office with tasks other than those deriving from its NPM function as the Ombudsman's Office did not obtain the three additional staff members it had requested. The CPT is not convinced that this is the best way to ensure an optimal functioning of the NPM. In this connection, reference is made to paragraph 32 of the Guidelines on national preventive mechanisms adopted by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in November 2010, according to which: "Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff [...]".

**The CPT trusts that the Ombudsman's Office will be provided with sufficient resources to fulfil its NPM mandate properly.**

## **II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED**

### **A. Law enforcement agencies**

#### **1. Preliminary remarks**

8. In the course of the 2016 visit, the CPT's delegation visited six Public Security Police (PSP) stations in the Lisbon metropolitan area and one station in each of the districts of Leiria and Porto. One National Republican Guard (GNR) station was visited. It also interviewed a number of persons in prison, both sentenced and on remand, who had been apprehended and detained in the recent past by either the PSP or the GNR, both of which come under the responsibility of the Ministry of the Interior. In addition, the delegation examined the treatment of persons detained by the Judicial Police (PJ), which is subordinate to the Ministry of Justice.

The legal framework governing the deprivation of liberty by law enforcement officials remains the same as that in place at the time of the 2008 visit. In brief, Article 28(1) of the Constitution and section 254 of the Code of Criminal Procedure (CCP) limit the time for which a person suspected of a criminal offence may be detained in a police station to 48 hours. In practice, other than at the weekends, persons are rarely kept longer than 24 hours in detention and the vast majority are released on police bail after a few hours.

9. At the outset, the CPT wishes to acknowledge the response of the Portuguese Ministry of Interior to its delegation's preliminary observations which it received on 15 February 2017. The preliminary observations are a means for the CPT's delegation to convey certain findings to the authorities based upon its findings to enable them to initiate action prior to receiving the written report.

However, it appears from the response to the preliminary findings that there is a fundamental misunderstanding of the CPT's role and concerns. In the course of the visit, the delegation talked to a great number of inmates, in order to provide a quantitative assessment of the occurrence of ill-treatment by police forces in the country. The cases raised by the CPT are but an illustration of its findings and, unless specifically stated, do not require the authorities to commence individual investigations. CPT delegations are always careful to triangulate information before raising specific cases of ill-treatment (credible allegations, witnesses, medical evidence, documentation). See for example the case highlighted in paragraph 11i below. At the same time, the CPT receives credible allegations of ill-treatment from persons who do not wish to have their names disclosed or to make an official complaint as they are fearful of the consequences of making a complaint or have no trust in the complaints system.

The CPT is aware of the measures put in place by the Portuguese authorities to combat ill-treatment by law enforcement officials. These are positive measures. It also very much appreciates the long-standing cooperation it has had with the Ministry of Interior and with the GNR and PSP. Nevertheless, the CPT wishes to convey its concern that ill-treatment by law enforcement officials is not infrequent and it trusts that the Portuguese authorities will, as usual, have a constructive approach when considering the recommendations laid out below with regard to improving the effectiveness of investigations, strengthening the safeguards surrounding deprivation of liberty and pursuing their efforts to eradicate ill-treatment by law enforcement officials.

## 2. Ill-treatment

10. As was the case in 2012, the majority of persons met by the delegation stated that they had been correctly treated by law enforcement officials both at the time of their apprehension and while in police custody. However, the CPT's delegation received a considerable number of allegations of ill-treatment. The alleged ill-treatment related to the time of apprehension, after the persons concerned had been brought under control, and prior to arrival at police detention facilities as well as to the time spent in the police station, apparently as a means to make the suspects confess to particular crimes or in order to punish them for the alleged crime committed.

The ill-treatment consisted primarily of slaps, punches and kicks to the body and/or head as well as, on occasion, the use of batons or sticks. The delegation also observed a number of cases of excessively tight handcuffing with detainees still bearing clear marks on their wrists from the cuffs several weeks after they had been arrested. It should be noted that the delegation heard in particular many allegations of ill-treatment made by persons of colour, both Portuguese citizens and foreign nationals; in addition to physical violence, they alleged that police officers (PSP and GNR) insulted them verbally.

11. The CPT wishes to highlight the following cases of alleged ill-treatment.

- i. On 2 October 2016, a Georgian national alleged that after being arrested and taken to the Pontinha-Loures PSP station his left wrist was cuffed to a chair<sup>2</sup> while he was interrogated. During the interrogation he was hit over the head with a baton twice and received several baton blows to the back. One of the CPT delegation's doctors examined the injuries to his head and back which were clearly consistent with baton blows as was the injury to his right hand which the detained person had used to protect his head from the second baton blow. On examination, he had a lacerated wound on the right parietal area of the head which was freshly encrusted with blood. The fifth finger of the right hand was bruised and swollen. On the back there was a diffuse area of red coloured tram-line bruising measuring approximately 8cm by 5cm which had two sets of parallel bruises therein each of which measured approximately 2cm in length. The tram-line bruises are in keeping with having been hit with a cylinder-like instrument.

The delegation also examined the arrest report which made no mention of any violence by the detainee at the moment of apprehension. This case is now being investigated by the Inspectorate General of Home Affairs (IGAI)<sup>3</sup> and the public prosecutor. **The CPT would like to be kept informed of the outcome of the investigation by the IGAI and Public Prosecutor's Office and of any subsequent actions taken in respect of this case.**

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<sup>2</sup> Given that the police station has no holding cells and that he was held from 4 a.m. to 3 p.m. on 2 October in the police station, it is highly plausible that he was handcuffed to the chair.

<sup>3</sup> IGAI is a distinct body under the Ministry of the Interior with oversight of police activities, including undertaking investigations into cases of alleged police ill-treatment (see paragraph 16 below).

- ii. Another person alleged that late on 25 August 2016 he was stopped by a plain clothes officer and told to lie on the ground and that subsequently he was hit with an object on the back of his head and subjected to multiple kicks by four officers while on the ground. He stated that he was pushed into a car and the officers continued to hit him until his arrival at the GNR Poceirao station in Palmela. Apparently, the commander in the station berated the officers for bringing him to the station in such a state and provided the suspect with a glass of water with sugar. He was then transferred to San Bernardo Hospital in Setúbal where “maxillofacial chest and lumbosacral (back) bruising as well as bruising of the lips” were noted. He alleges that he told the doctor he had been beaten but that the officers accompanying him interjected that he had in fact fallen down the stairs.

The person told the delegation that he informed the judge he had been beaten and that his bloodied clothes and bruised face were clearly visible but that the judge had said it was “not her business” and that he could make a complaint if he wished. On 27 August, a nurse at Setúbal Prison noted: “mentioned injuries before being admitted to this prison. Light bilateral eye oedema. Small injuries oral mucosa. Intense headaches. Missing teeth. On the chest several bruises.” On 31 August, the person tried to hang himself and was sent to San Bernardo Hospital again where the doctor also noted the same injuries and his face was photographed.

- iii. An 18 year old met by the delegation alleged that one week earlier he had been apprehended on the street by PSP plain clothes officers, put on the ground, handcuffed and subsequently kicked and subjected to several baton blows. He was transported to the PSP Benfica station where he allegedly received a few punches to the body. He claimed that he bled from his mouth and nose which explained the multiple bloodstains on his white tracksuit top that he showed the delegation. He still bore visible marks on his wrists from the handcuffs. He had not been examined by a health care professional since his arrival in the Judicial Police Prison and stated that his ex officio lawyer was not interested in raising the injuries before the court.
- iv. A foreign national apprehended on the street in Sines by GNR officers claimed that when he was lying on the ground they had whacked his backside several times with a stick, kicked him in the head and stood on his legs. Subsequently, he had been handcuffed around a tree with his back scraping the tree whenever he moved, and his shoulder was still sore a week later. The ill-treatment had apparently been inflicted to force the detainee to reveal where certain drugs had been hidden. At court, his lawyer advised him not to make a complaint as the prosecution file included an allegation that he had himself punched a police officer, which he denied. The marks on his head, back and wrists were consistent with his allegations.
- v. A Bangladeshi national, held in Caxias Prison, made a detailed allegation about being slapped and punched by four PSP officers when arrested on 23 February 2016. He stated that he was handcuffed to a chair overnight and not provided with any food, and that one officer had pulled out a gun, pointed it at his head and stated “you deserve to die”. The person was taken to Amadora hospital but said that he had not been provided with a copy of the medical report.

- vi. A person apprehended by the Judicial Police in Porto on 20 June 2016 while exiting from his car alleged that he was punched and kicked all over his body by three or four officers and that one officer hit him over the head with a pistol, causing him to lose consciousness momentarily. Despite bleeding from his head wounds and in pain, he did not receive any medical assistance until two days later when he was transferred to the Judicial Police Prison and referred immediately to hospital for a number of examinations (CT scan, x-rays of chest). The treating doctor at the hospital submitted a complaint to the Public Prosecutor's Office by whom the detained person was later asked to provide a statement about the alleged ill-treatment. **The CPT would like to be informed of the outcome of this case.**

12. A number of other cases of alleged ill-treatment were described to the delegation by persons in remand detention some of whom had been photographed upon entry to prison and whose cases were forwarded to the Director General of Prisons. In some of these cases the lawyers had lodged a complaint; for example, in the case of a person apprehended on the main road in the Algarve by a PSP intervention unit (GOE) on 4 August 2016, who alleged that he was punched, kicked and stamped on by the police officers after he was brought under control and whose injuries were recorded both at the hospital following the arrest and later upon arrival at Setúbal Prison, the lawyer had raised the case before the judge. The problem of ill-treatment by PSP and GNR officers is also evident from the number of cases of alleged ill-treatment that the IGAI and the internal control units of the GNR and PSP have received. In the CPT's view, the number of reported cases would appear to represent only a fraction of the cases of ill-treatment by the police.

In sum, from the evidence gathered by the delegation through interviews with detained persons in different police and prison establishments, it appears that infliction of ill-treatment particularly against foreign nationals, including for the purpose of obtaining confessions, cannot be considered an infrequent practice. This indicates the need for increased efforts and determined action by the Portuguese authorities to tackle the problem of ill-treatment by the police.

**The CPT recommends that the Portuguese authorities actively promote a clear and firm message of zero tolerance of ill-treatment of persons deprived of their liberty. It should be reiterated to law enforcement officials, including from the highest political level and through appropriate training, that any form of ill-treatment of detained persons constitutes a criminal offence and will be prosecuted accordingly.**

**The Committee would also like to be informed of the investigative steps taken in relation to the case referred to in this paragraph.**

13. The CPT recognises that the arrest of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers. In light of the information gathered during the 2016 visit, **the CPT recommends that police officers be regularly reminded of these basic principles, including through practical training exercises. Further, every use of force by law enforcement officials should be properly documented (description of facts; any injuries sustained; whether the detained person was brought to hospital, etc.).**

### 3. Effective investigations of ill-treatment

14. The effectiveness of action taken when ill-treatment may have occurred constitutes an integral part of the CPT's preventive mandate, given the implications that such action has for future conduct. The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated.

15. In the report on the February 2012 visit, the CPT described a serious allegation of ill-treatment of a person by a National Republican Guard (GNR) officer.<sup>4</sup> As it appeared that no effective investigation had been carried out into this case,<sup>5</sup> the Committee decided to examine for itself the manner in which the investigation was carried out and to look more generally at the system in place to investigate allegations of ill-treatment by law enforcement officials during its May 2013 visit.<sup>6</sup> On 15 May 2013, the Public Prosecutor's Office was provided with the case file and the CPT's delegation was informed that a criminal investigation would be opened. On 13 March 2015, the CPT was informed by the Portuguese authorities that "no further investigative steps had been taken in the context of the Inquiry File 300/13.OT3.ST3C apart from those already made during the GNR internal proceedings." Consequently, the case was dismissed.

Given that the CPT had clearly demonstrated that the internal GNR inquiry had not been thorough,<sup>7</sup> that the witnesses had not been interviewed, the medical and photographic evidence not examined and the allegations of beating with a "*piche de boi*" not considered, the CPT was disappointed by the apparent lack of action from the public prosecutor to carry out an effective investigation into the case.

16. In the course of the 2016 visit, the CPT wished to re-examine the system of investigating allegations of ill-treatment and to see whether it met the criteria of effectiveness. That is, are the persons responsible for carrying out such an investigation *independent* and *impartial* of those implicated in the events, and are the investigations carried out *promptly* and *thoroughly* (i.e. have all reasonable steps been taken to secure evidence concerning the incident?). The CPT's delegation held a series of meetings with the Inspectorate General of Home Affairs (IGAI) and examined several cases of investigations into allegations of ill-treatment undertaken by the IGAI as well as by the internal units of the GNR and Judicial Police. The co-operation of these bodies in enabling the delegation to examine the various files and to conduct an open and frank dialogue, notably with the IGAI, was highly appreciated by the CPT's delegation.

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<sup>4</sup> See the report on the CPT's 2012 periodic visit - CPT/Inf (2013) 4, paragraph 10.

<sup>5</sup> See the Portuguese authorities' response to the report on the 2012 visit - CPT/Inf (2013) 5, pages 7 and 8.

<sup>6</sup> See the report on the CPT's 2013 ad hoc visit - CPT/Inf (2013) 35, paragraphs 54 to 60.

<sup>7</sup> This was acknowledged in the response of the Portuguese authorities to the CPT's 2013 report on page 34; "The investigation conducted by the GNR during the inquiry procedure was far from being complete, sufficient and objective."



The CPT recalls that, in parallel with the powers of public prosecutors to institute criminal procedures, the investigation of complaints relating to alleged ill-treatment by the police is carried out by the internal investigation services of the PSP and GNR, respectively, or by the IGAI. In principle, whenever an action of the police results in allegations of grievous bodily harm or death, the facts should be communicated to the Minister of Internal Affairs who will request the IGAI to carry out an investigation. The IGAI may also take up cases *ex officio*. The delegation was informed that all cases of criminal conduct should be reported to the public prosecutor who is thereafter in charge of investigating and bringing charges. Also, only the prosecutor may at present order a forensic medical examination to be performed.

17. According to the statistics provided to the CPT, in 2015 the IGAI supervised *inter alia* 248 cases of “physical offences” of which 164 related to the PSP and 81 to the GNR.<sup>8</sup> The IGAI also directly carried out 19 investigations and 24 disciplinary proceedings. Separately, in 2015 GNR reported that it had opened 33 disciplinary proceedings, 33 enquiry proceedings and 33 criminal proceedings concerning alleged ill-treatment cases by GNR officers. The PSP reported only three cases for 2015.

In order for the CPT to gain a complete picture of the number of cases of alleged ill-treatment by law enforcement officials, and of the outcome of investigations into such allegations, **the Committee would very much appreciate receiving statistics concerning the Public Prosecutor’s Office for the years 2013, 2014, 2015 and 2016 regarding:**

- **the number of complaints that have been registered with the Public Prosecutor’s Office (PPO) concerning (serious) bodily harm allegedly inflicted by members of the GNR, PSP, SEF, JP, or prison guards;**
- **the number of indictments brought by the PPO in the above-mentioned cases;**
- **the number of sentences handed down by the courts in these cases, including information on the punishment awarded in each of these cases.**

18. As regards the internal investigations undertaken by the GNR, the files examined concerning the 14 cases in the Setúbal area in 2015 showed that the public prosecutor was always informed about cases of alleged ill-treatment, whereas IGAI was not always informed. Steps were taken by the investigators to interview all relevant witnesses. The disciplinary investigations were usually suspended until the public prosecutor had determined that criminal proceedings would not follow and, generally speaking, it appeared that the disciplinary proceedings would thereafter also be closed. The primary reason was that in most cases there was no medical evidence or poorly recorded medical evidence from a public hospital and, at the end of the process, the investigator had to determine whether to believe the police officer(s) or the alleged victim.

From the disciplinary cases examined, a slight bias could be detected as the version of events recounted by the GNR officers was believed over and above that of the witnesses and victims without any explanation as to why the witnesses were less credible. It also appeared that the prosecutor responsible for the criminal investigation of alleged ill-treatment by the GNR officer(s) was the same prosecutor charged with the criminal investigation against the alleged victim, which raises a problem of impartiality.

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<sup>8</sup> Three cases concerned the Immigration and Border Service (SEF).

The CPT recognises that the IGAI does not possess the personnel to deal with all the cases of disciplinary infringements committed by police officers directly and that therefore a number of cases are left in the hands of the internal control bodies of the PSP, GNR and SEF to investigate. However, it appeared from a number of the GNR files examined that the internal police bodies continued to investigate cases of severe allegations of ill-treatment, despite the IGAI stating that all such cases would be investigated by it. Further, the delegation was informed by a GNR investigator that there was no obligation to report all cases to the IGAI and in the 14 cases referred to above there was no evidence that any of the cases had been communicated to the IGAI.

**The CPT would appreciate the observations of the Portuguese authorities on the points raised in this paragraph.**

19. An examination of a sample of the IGAI cases showed that the files were meticulously maintained, the decisions well-argued and elaborate, and many necessary investigative steps were undertaken to determine the truth. It is also positive that the IGAI shares all allegations of ill-treatment of a more severe nature with the Public Prosecutor's Office. However, there are two serious concerns relating to the work of IGAI, these being the promptness with which investigations are carried out and the inability to order forensic medical examinations; securing reliable medical evidence is a key factor in any case of alleged ill-treatment.

For example, in case PND-39/2010, a male student, together with his female friend, was arrested by PSP officers for public disturbances and taken to Bairro Alto police station on 24 May 2010 where he was allegedly ill-treated. When he was released from the station, he went to the emergency unit of the local hospital where a craniofacial trauma with aligned fracture of the left jaw, bleeding head wounds and excoriations in the face were diagnosed; he had to undergo surgery. On 28 May 2010, the IGAI commenced the investigation; at the beginning of November 2010, the Minister of Interior approved the opening of a disciplinary procedure. At the same time, the suspension of the disciplinary procedure for the time of the ongoing criminal procedure was pronounced; it was lifted at the beginning of June 2015, when the criminal case was concluded. On 3 March 2016 (i.e. almost six years after the facts), the IGAI proposed a disciplinary punishment of 75 days' suspension, which was subsequently appealed and was still pending at the time of the October 2016 visit.

Given the existence of the medical evidence from the outset of the investigation, it is not clear why this case was not investigated in a more prompt manner; it took five years for a court decision and even after more than six and a half years, no disciplinary punishment has yet been imposed on the law enforcement officials concerned. As far the CPT was informed, the persons responsible for the ill-treatment continued to work as police officers interacting with the public throughout the period instead of being suspended or transferred to another service. This was by no means a unique case.<sup>9</sup>

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<sup>9</sup> See for example PND-10/2009 and PND-11/2009.

20. In the CPT's view, to avoid a situation of *de facto* impunity, steps should be taken to speed up the criminal investigation and court procedures, as is the case when members of the public commit acts of violence against other persons. Further, the disciplinary process should be allowed to run in parallel with the criminal investigation. The level of proof required for a disciplinary sanction is lower than that for a criminal conviction, and it is important that the authorities be seen to be acting to punish acts of ill-treatment within a reasonable period of the events taking place. Further, from the files examined by the CPT's delegation it did not appear that the Public Prosecutor undertook further investigative steps to obtain evidence but rather relied on the evidence gathered by the IGAI.<sup>10</sup>

In many of the cases, the lack of medical evidence was a main factor in not being able to pursue alleged cases of ill-treatment by law enforcement officials. The effectiveness of the IGAI could be improved if it was able to order itself timely forensic medical examinations of persons alleging ill-treatment by law enforcement officials. Moreover, the CPT considers that the very fact that the Minister of the Interior has to approve the opening a disciplinary procedure undermines the independence of the IGAI and while in practice this might only be a formality, such a requirement should not exist. Further, there is a need to ensure that all the posts (particularly those reserved for seconded judges and prosecutors) allocated to the IGAI are filled to ensure that the body can operate effectively.

**The CPT also recommends that the IGAI be granted the same powers as the Public Prosecutor's Office to order forensic medical examinations. It would like to be informed whether all the posts (particularly those reserved for seconded judges and prosecutors) allocated to the IGAI have now been filled to ensure that the body can operate effectively. Further, to bolster the independence of the IGAI, it should not have to rely on the formal approval of the Minister of Interior to open a disciplinary procedure.**

21. More fundamentally, the CPT is of the view that every alleged case of ill-treatment by law enforcement officials should be criminally investigated thoroughly and promptly, and transmitted to the Public Prosecutor's Office with a recommendation either to prosecute or dismiss the case. To this end, building on the findings of the visit, one approach to reinforce the capability and effectiveness of investigations into allegations of ill-treatment by law enforcement officials would be to make IGAI a fully independent body outside of the Ministry of Interior, with certain additional competences to investigate all cases of alleged ill-treatment and to provide the outcome of these investigations to the PPO.

**The CPT recommends that the Portuguese authorities consider the possibility of transforming the IGAI into a completely independent body charged with undertaking investigations into all complaints of ill-treatment by law enforcement officials, including complaints which may constitute a criminal offence. The CPT considers that with these increased competences the IGAI would be in a position to provide support to the Public Prosecutor's Office to ensure effective investigations and it would send an even stronger message on the determination of the Portuguese authorities to combat impunity. The Committee recognises that this proposal represents an important re-evaluation of the current approach and to this end would be ready to pursue this matter through an exchange of views should the Portuguese authorities so wish.**

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<sup>10</sup> Interestingly, in one case where the Public Prosecutor's Office came across an allegation of ill-treatment by a police officer in the course of an investigation into corruption, it referred the issue of alleged ill-treatment to the IGAI to investigate.

#### 4. Safeguards against ill-treatment

22. In the course of this visit, the CPT's delegation reviewed the safeguards afforded to persons deprived of their liberty by the PSP, GNR and JP; namely, the rights of such persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor. It also examined whether such persons were informed without delay of all their rights and whether the custody records were properly filled out.

The legal safeguards for detained persons are provided for in the Criminal Procedure Code (CCP), and supplemented by Order 5863/2015 of the Minister of Interior on Material Conditions in Police Premises, which applies to both the GNR and the PSP, and by Order no. 12786/2009 regulating the Conditions of Detention in Judicial Police facilities and in the Courts and Public Prosecution Services.

23. The right of detained persons to notify a family member or a person of confidence of their situation is clearly provided for in law. The vast majority of persons met by the CPT stated that they had been given an opportunity to contact someone about their detention. A few persons stated that they had not been afforded such an opportunity.

**The CPT recommends that the Portuguese authorities continue to be vigilant in ensuring that the right of persons deprived of their liberty by law enforcement officials to notify their detention to a third party, as from the outset of custody, is effective in practice.**

24. As the CPT has stated in the past, its objective of guaranteeing an effective right of access to a lawyer during police custody is not primarily linked to issues of due process or the right to a defence; it is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty - and, *a fortiori*, when the individual is subjected to police questioning - that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty. The right of access to a lawyer must include the right to talk to him/her in private; the detained person should also in principle be entitled to have the lawyer present during any interview with law enforcement officials.

25. The right of access to a lawyer is guaranteed in the Portuguese Code of Criminal Procedure (CCP) to a person once he or she has formally become the subject of an investigation by law enforcement officials by being declared an "*arguido*". On the basis of both Order 5863/2015 on Material Conditions in Police Premises and Decision no. 10717/2000 of the Minister of the Interior the right of access to a lawyer as from the outset of the deprivation of liberty is extended to all persons deprived of their liberty.<sup>11</sup>

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<sup>11</sup> As regards the Judicial Police, Article 5 of Order no. 12786/2009 states that the detained person has the right to immediately contact a lawyer.

However, the findings of the visit in 2016 indicate once again that the right of access to a lawyer within the first few hours following deprivation of liberty by PSP or GNR depends on whether a detained person can afford a private lawyer. The majority of persons met did not have access to a private lawyer and they only had access to an ex officio lawyer at the court hearing before a judge, which could take place up to 48 hours after the moment of apprehension.

**The CPT reiterates its recommendation that the Portuguese authorities ensure that the right of access to a lawyer, including the right to talk to the lawyer in private, is enjoyed by all persons obliged to remain with the police, as from the very outset of the deprivation of liberty. From a practical point of view, this will require putting in place an arrangement with the Portuguese Bar Association to ensure that there is a duty roster of ex officio lawyers who can visit police stations when required.**

26. Article 21 of Order 5863/2015 relating to the PSP and GNR provides for the right of access to a doctor, including a doctor of one's own choice at the detained person's expense. Article 29 of Order no. 12786/2009 provides for an analogous provision in relation to persons deprived of their liberty by the Judicial Police. In general, the CPT's delegation received very few complaints about access to a doctor by persons deprived of their liberty by the police. Two instances concern the cases described in paragraph 11 above, where in case i the person concerned had not been seen by a doctor at either Pontinha-Loures PSP station or at PSP Central Command Lisbon, with officers at each station informing the detainee that the other station was responsible and, in case vi, the person stated he had received no medical treatment while held in the Judicial Police Station in Porto. Clearly, the PSP Central Command Lisbon must ensure that all persons taken into its custody have been fully apprised of their rights and, if they display injuries or request to see a doctor appropriate steps should be taken to ensure that they are examined by a health care professional. The confidentiality of medical consultations must also be respected (see paragraph 11ii).

Moreover, there was still no register in the police stations visited of persons who had been taken to hospital for treatment; such a register should contain information such as the date and time the detained person was examined, the name of the hospital or health care service providing the treatment and a reference to the detention/criminal file (the name of the person would not need to be recorded). Nor were detained persons provided with a copy of the medical information from the hospital or doctor's consultation.

**The CPT recommends that the Portuguese authorities are vigilant in ensuring that the right of access to a doctor is effective in practice and that the confidentiality of medical consultations are respected. Further, a register of all medical interventions concerning detained persons should be kept in each police station and a copy of any medical documentation should be made available to the detained person.**

27. The CPT's delegation noted that, in accordance with Order 5863/2015 on Material Conditions in Police Premises, a notice explaining the rights and duties as contained in Article 61 of the CCP was displayed in the police stations visited and a leaflet laying out these rights, in several languages, was available. Further, it could verify that detained persons signed a statement indicating that they had been informed of their rights. However, a few persons met by the delegation claimed that they had not been informed of their rights in a language they could understand. Further, some detained persons stated that they had been told they could call either a lawyer or a family member.

**The CPT recommends that law enforcement officials are reminded of their obligation to immediately inform detained persons of all their rights in a language they understand and that such information is accurately transmitted.**

28. Custody records examined by the delegation in the police establishments visited were generally well kept and contained information on the date and time of arrest, time of arrival at the police station and date and hour of release, as well as the signature of the responsible officer. Information on whether or not they had notified a third person of their detention or contacted a lawyer or been taken to hospital was also recorded.

## **5. Conditions of detention**

29. In the course of the 2016 visit, the CPT's delegation visited eight PSP stations and one GNR station. As was the case during the previous visit, it was clear from interviews with staff and detainees and from consulting the relevant registers that overnight detention in most police stations remains a relatively infrequent occurrence, the exception being the Lisbon PSP Command Headquarters.

The material conditions in the GNR and PSP stations are governed by Regulation 5863/2015 and regularly inspected by the IGAI, and also visited by the NPM.

30. The Lisbon PSP Command Headquarters was opened in 2013 and comprised 13 cells with a capacity to hold 20 men and seven women. It acts as the central holding facility for the Lisbon area with PSP stations transferring suspects to the Command Headquarters following their arrest and upon completion of being interviewed in order for them to be taken to court the following day. Persons usually spent less than 24 hours in the facility except on weekends when those persons apprehended after 4 p.m. on Saturdays had to be held till Monday morning before going to court. An examination of the registers showed that the facility was never fully occupied; in the first nine months of 2016, a total of 1,179 persons had been held at the establishment.

The single and multiple-occupancy cells were equipped with plinths, a toilet and a basin and all detainees were provided with a blanket. The cells were in a good state of repair. However, access to natural light was poor and the artificial lighting was insufficient, making it extremely difficult to read. There is also no exercise yard for persons spending longer than 24 hours in detention.

31. The two single-occupancy cells (7.5 to 9m<sup>2</sup>) located in each of the three PSP Sintra Division stations, the Benfica station and the GNR station of Vialonga were all in an adequate state of repair. They were mostly suitably equipped with a plinth, mattress and blanket, a toilet and basin and a functioning call bell. However, the lighting in the cells at the PSP Sintra Division station of Rio Moura and the GNR station of Vialonga was poor, and the cells in the PSP Benfica station were not equipped with mattresses and had no ventilation.

At Leiria Command Headquarters, the two single occupancy cells (6m<sup>2</sup>) and the double occupancy cell (8m<sup>2</sup>), including a toilet and basin, were suitably equipped but rather small. Also, access to natural light and the artificial lighting were poor. However, of the 79 persons detained in the station in the first nine months of 2016, only very few were held overnight.

At the Porto Belavista Holding Facility, the 10 single-occupancy (7-8m<sup>2</sup>) and three double-occupancy cells (11m<sup>2</sup>) in operation were suitably equipped. However, access to natural light and the artificial lighting were very poor and the cells were cold. Also, in none of the facilities visited was there an outdoor exercise yard for persons held longer than 24 hours.

32. **The CPT recommends that the Portuguese authorities ensure that the lighting in all police detention cells is sufficient for reading purposes. Further, the cells in the PSP Benfica station should be equipped with mattresses and the ventilation improved. Also, all persons detained longer than 24 hours in the PSP Command Headquarter in Lisbon and other police stations should be offered access to fresh air.**

33. The CPT's delegation noted that police officers entering the detention area at the PSP Command Headquarters in Lisbon continued to wear their sidearm and that the custodial officers at the Porto Belavista Holding facility were equipped with pepper spray and a pistol; officers should not carry weapons within the custody area. **Steps should be taken to store safely all firearms outside the detention areas.**

## **B. Prison establishments**

### **1. Preliminary remarks**

#### **a. recent developments**

34. At the time of the visit, the prison population in Portugal stood at 14,007 prisoners for an official capacity of 12,600. However, the overall level of overcrowding within the system (i.e. 110%) masks the fact that certain prison establishments are operating way above their official capacity such as Caxias (160%), Lisbon Central (150%), Porto (180%) and Setúbal (200%). Further, some 13 smaller regional prisons were operating at 140% or more of their official capacity and three at over 200%. The CPT found that the living conditions within parts of those establishments visited by its delegation could be considered as amounting to inhuman and degrading treatment (see paragraphs 45 and 49 to 50 below). The extreme overcrowding in certain prisons undermined the way in which the prisons operated affecting not only the material conditions but also the regime, staff-inmate relations and good order in the establishments. It also provides fertile ground for cases of ill-treatment by staff and inter-prisoner violence.<sup>12</sup>

The Portuguese authorities are well aware of the situation and are in the process of putting together a 10 year plan to upgrade conditions in existing establishments and to build several new prisons, notably Sintra II Prison to replace Lisbon Central Prison. However, as Sintra II will not be constructed within the next five years, it is recognised that considerable investment to improve the material conditions at Lisbon Central Prison will be required. To this end, the Portuguese authorities stated that 15m Euros would be allocated for the refurbishment of Lisbon Central Prison.

The building of additional accommodation is unlikely in itself to provide a lasting solution to the challenge of prison overcrowding. Instead, the promotion of policies to limit the number of persons being sent to prison such as alternatives to imprisonment can have a positive effect in maintaining the prison population at a manageable level or even lowering it. For example, the *Por Dias Livres* (PDL) system<sup>13</sup> (i.e. persons committed to prison during weekends only) has still not been abolished and continues to use up scarce resources, as observed by the CPT's delegation; alternatives to imprisonment for this category of offender should be introduced if they do not exist in Portugal.

**The CPT reiterates its recommendation that the Portuguese authorities pursue a multi-pronged approach towards eradicating prison overcrowding, having regard inter alia to the principles set out in Recommendations Rec (99) 22 concerning prison population inflation and Rec (2006) 13 on the use of remand in custody as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers.<sup>14</sup> The Committee would like to receive updated information on the measures being taken.**

**Further, the Committee would like to receive details on the funding to be allocated to upgrade Lisbon Central Prison for the years 2017 to 2019.**

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<sup>12</sup> See, inter alia, the decisions of the European Court of Human Rights in the cases of *Vasilescu v. Belgium* (18 March 2014) and *Torregiani and Others v. Italy* (8 January 2013).

<sup>13</sup> See Article 45 of the Criminal Code.

<sup>14</sup> See, for example, Recommendation Rec (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole) and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules.



35. The legal framework governing the prison system remains the same as that in force at the time of the 2012 visit: namely, Law 115/2009 on the Code on Execution of Criminal Sanctions and Measures and, subsequently, the entry into force on 10 June 2011 of the new General Prison Regulations (legislative decree 51/2011).

b. prisons visited

36. The CPT's delegation visited for the first time Caxias and Setúbal Prisons and the regional prison of Montijo, and carried out follow-up visits to Lisbon Central and Monsanto Prisons and to Leiria Juvenile Prison; this last prison had not been visited by the Committee since 1999. Visits to the Judicial Police Prisons of Lisbon and Porto<sup>15</sup> and Tires Women's Prison were also carried out to interview persons on remand.

37. **Caxias Prison**, situated just west of Lisbon, is sited on a former military compound. The prison is composed of two distinct sections (North and South). The North section consists of a four-storey building with most prisoners accommodated on the second floor on wings either side of the central staircase; there were also four dormitories on the ground floor. The wing on the first floor was in the process of being renovated. The South section, located some 200 metres away with its own entrance and standing atop the cliffs overlooking the Atlantic ocean consisted of a two-storey building containing some 20 dormitories. The administration of the prison is located in the North as is the common kitchen. On the day of the visit, the North was accommodating 295 prisoners for an official capacity of 139 and the South 227 inmates for an official capacity of 195; that is 522 inmates for an official capacity of 334.

**Leiria Juvenile Prison** is Portugal's main detention centre for young male prisoners, in principle aged 16 to 25.<sup>16</sup> Despite its name, only five inmates were under 18 years old at the time of the visit.<sup>17</sup> The prison is located in an attractive setting at the site of an ancient estate on a hilltop and includes vineyards, cropland and farm buildings. Three two-storey pavilions<sup>18</sup> accommodate inmates under the closed regime and a fourth accommodation block houses prisoners under the open regime. Two schools (one of them for professional training), the administration building and the common kitchen are located in separate buildings. The pavilions currently used for accommodating prisoners have a capacity of 221 and, at the time of the visit, accommodated 178 inmates, 48 of them on remand and 130 sentenced; inmates were under the open regime. The vast majority of inmates were sentenced to two to ten years of imprisonment.

**Lisbon Central Prison**, located in the city centre, has been in service since 1895. The building was sold to private developers in 2007 as the authorities intended to build a new establishment for the Lisbon area. However, no such establishment has been built and the infrastructure of the prison has deteriorated even further. The Portuguese authorities are now renting the prison, with an intention to buy it back and to invest in its refurbishment. The prison consists of two separate blocks. The main prison block consists of six wings (A-F) set out in a radial pattern, and a smaller block of two wings (G-H) for sentenced prisoners benefiting from a semi-open regime. At the time of the visit, 1,253 male prisoners were being held – including around 390 on remand – for an official capacity of 886.

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<sup>15</sup> See CPT/Inf (2013)4, paragraph 32 for a brief description of these two facilities.

<sup>16</sup> That said, the prison is authorised to exceptionally hold up to 14 older prisoners if their professional qualifications and/or experience are indispensable for the prison's activities (mainly agriculture and painting).

<sup>17</sup> Four inmates were 17 years old and one was 16 years old.

<sup>18</sup> *Observation* (mainly for new arrivals), *Simple* and *No.1*.

**Monsanto High Security Prison**, located on the outskirts of Lisbon, is the only high security prison in Portugal. The establishment, which was totally renovated in 2007, consists of two concentric three-storey buildings. The official design capacity is 142 but the operational capacity is limited to 60 and on the day of the visit 58 inmates were being held, of whom 10 were on remand (of these, three were being held on a European Arrest Warrant).

The **regional prison of Montijo** was built in 1955 and consists of a central two-storey accommodation block of cells and dormitories; it is encircled by a high perimeter wall which was recently constructed to improve security. On the day of the visit, the prison was accommodating 191 prisoners for an official capacity of 141. In addition, it housed some 30 PDLs every weekend.

**Setúbal Prison**, located at the entrance to the town, consists of a three-storey accommodation block of cells and dormitories, and a small annexe where it held around 20 PDLs every weekend. On the day of the visit (a weekday) the prison was accommodating 268 prisoners for an official capacity of around 160 as several cells were under renovation. The numbers had decreased from 338 in mid-June 2016.

## 2. Ill-treatment

38. Many prisoners met by the delegation in the establishments visited stated that they were treated correctly by prison officers and that relations were based upon reciprocity (i.e. if they showed respect to prison officers, they would be accorded respect in return). Nevertheless, a number of allegations of ill-treatment of inmates by prison officers were received at Caxias, Lisbon Central and Montijo Prisons and a few at Leiria Juvenile Prison. The ill-treatment was said to consist of slaps, punches, kicks and blows with truncheons to the body and/or head.

39. At Lisbon Central Prison, several juveniles and young adults, held in individual cells in D Wing, stated that they had been subjected to slaps, punches and kicks in their cell by two or more prison officers at lock-up time (in the morning or in the evening), apparently because they had spoken during meal time, had provoked staff verbally or because staff wanted them to confess to having committed an offence (e.g. stealing from other inmates).

The delegation received similar allegations of physical ill-treatment from prisoners detained in other wings of the prison. As was the case during the CPT's 2012 and 2013 visits, a number of inmates alleged that they had been taken to "room 80" (*Sala de spear*) on the main corridor, where they had been physically assaulted by officers. In one case, an inmate stated that a couple of days previously he had observed a juvenile inmate being slapped and had told the officer not to ill-treat children, whereupon he was himself allegedly punched on the right side of his face and placed in "room 80" for the day where he was not provided with any food or water. At the time of the visit, he displayed red bruising below the right eye which was consistent with his allegation of having been punched.

At Caxias Prison, a few allegations of ill-treatment by staff were received apparently for perceived misbehaviour or as an informal punishment. For example, in the South section an inmate stated that he had received a slap to the ear on 14 September because the officer said he was lying and that two weeks later it was still sore and he felt dizzy. The day before the CPT's visit, the doctor had seen him and had referred him to the Prison Hospital. Another inmate, in the North section, alleged that several days prior to the delegation's visit he had been kicked by a prison officer in the leg and genitals in front of a nurse for not swallowing his medication and, at the time of the visit, the visible bruising on his inner thigh was consistent with his allegation.

At Leiria Juvenile Prison, a few allegations were received of beatings and truncheon blows inflicted to inmates by prison officers as an informal punishment for disrespectful behaviour.

At Montijo Prison, the delegation received a detailed allegation concerning "welcome" beatings for persons who had apparently committed a sexual offence. An inmate described how he was taken into a lawyer's room upon arrival in the prison and subjected to repeated punches and kicks by several prison officers which resulted in multiple visible bruises on his legs. He claimed that he was slapped and kicked again by two officers at a later date in the health care centre in front of a nurse, who merely turned away.

The CPT's delegation also received a complaint from an inmate (RG) at Caxias Prison that while being transported to court by members of the Prison Security and Intervention Group (GISP) he had been slapped about the head and punched in the ribs on three separate occasions apparently to get him to provide certain information. His mother had filed a complaint about the treatment. **The CPT would like to receive information on the outcome of the investigation into this complaint.**

**40. In the light of the information gathered during the 2016 visit, the CPT recommends that the Portuguese authorities reiterate to all prison managers and custodial staff that any form of ill-treatment is not acceptable and will be the subject of appropriate sanctions. More specifically, prison officers must be made fully aware that no more force than is strictly necessary should be used to control violent and/or recalcitrant prisoners and that once prisoners have been brought under control, there can be no justification for them being struck. In this context, the authorities should ensure that all prison officers are trained in recognised control and restraint techniques (see also paragraph 54).**

**The CPT also recommends that the Prison Administration and the management of Montijo Prison monitor closely the situation of sex offenders admitted to the prison.**

41. The CPT also wishes to raise the specific case of ML, who attempted to escape from Caxias Prison on 28 September 2016.<sup>19</sup> ML had allegedly been slapped and pushed around by prison officers after arriving in the establishment and had been sexually harassed by another inmate. The attempted escape by this very vulnerable prisoner<sup>20</sup> was in the CPT delegation's view a desperate measure and his attempted suicide after the failure of the escape supports this view. There is no doubt that ML was punched and kicked by prison officers after failing to escape from the exercise yard and the injuries to his lower back and left ear were consistent with the allegations of ill-treatment.<sup>21</sup> Further, several prisoners interviewed separately in different cells told the delegation in detail that they had seen ML from their cell windows being beaten by prison officers. Prior to seeing the doctor, ML was apparently threatened that he would be beaten again if he recounted what had happened and was instructed to say that he fell down the stairs. He also claimed that the prison officers had forced him to sign a piece of paper indicating that other prisoners had helped him in his escape attempt and that he was subsequently shown the photographs of two prisoners whom he was advised he should tell the prison staff had assisted him.

After his suicide attempt by hanging with his t-shirt later that same day, he was transferred to the adjacent psychiatric unit of the Prison Hospital. When the delegation met him a few days later, he was taking inter alia 3mg daily of the anti-psychotic agent risperidone; it was not clear why it was felt necessary to treat him with antipsychotics at all - no reasoning was provided in the notes - let alone such a high dose for a young man of very slight build. At the end of the visit, the CPT's delegation welcomed the steps taken by the authorities to initiate an investigation into the alleged ill-treatment and stressed that, in its opinion, the patient was a vulnerable young man in need of care and support.

**The CPT would like to be informed of the outcome of the investigation into the alleged ill-treatment of this prisoner and to receive information on the care afforded to ML following his discharge from hospital. It would also like to receive a copy of the report on the forensic medical examination carried out on ML.**

42. Effective investigations, capable of leading to the identification and punishment of those responsible for ill-treatment, are essential to give practical meaning to the prohibition of torture and inhuman or degrading treatment or punishment. It follows that whenever there are grounds to believe that an inmate may have been ill-treated, either within the prison concerned or by law enforcement officials prior to being remanded to prison, this matter should be brought rapidly to the attention of the relevant investigatory authorities, notably the Prison Inspection and Audit Service (SAI) and the Public Prosecutor's Office.

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<sup>19</sup> Members of the CPT's delegation, visiting the adjacent Prison Hospital at the time, had observed and heard warning shots being fired by the perimeter guards during the escape.

<sup>20</sup> He was a small slight man of 20 years of age who had been in institutional care since the age of six.

<sup>21</sup> On examination by one of the delegation's doctors, ML had an 'L' shaped laceration on the right side of his forehead measuring approximately 2cm x 1cm. There was diffuse swelling beneath both eyes while the left ear was swollen with reddish bluish bruising evident across the whole ear excepting the lower part thereof. He had a linear abrasion approximately 2.5cm long above the left nipple and on the back in relation to the right shoulder region there were multiple abrasions. There was a single linear abrasion approximately 10cm in length in respect of the left side of the mid back while on the left lower back there was an area of bruising around 10cm x 8cm at its widest diameter. There were two smaller abrasions on the right lower back and a bruised area approximately 2cm x 2cm on the right lower back. There was a linear abrasion on the back of the right forearm measuring around 6cm while on the front of the right forearm were two other linear abrasions measuring approximately 6cm and 4cm respectively. Additionally on the left knee there were numerous small abrasions.

In order to promote the effectiveness of investigations, it is imperative for a thorough medical examination to be conducted on prisoners following a violent incident or use of force within an establishment as well as on all newly admitted inmates.

However, the information gathered during the 2016 visit indicated that prisoners against whom force had been used were not always examined by a doctor, and that in those cases where they were seen by a member of the health care staff, a full examination did not take place and the injuries were not properly recorded (allegations were not noted down in full and injuries observed not described in detail). The authorities should take the necessary steps to ensure that doctors are provided with the appropriate training to fulfil these specific tasks. Further, it is important to recall that all medical examinations of prisoners should be conducted out of the hearing – and unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

**The CPT reiterates its recommendation that the Portuguese authorities ensure that in the context of investigations into allegations of ill-treatment particular attention should be given to ensuring that medical examinations are carried out in accordance with the requirements set down by the Committee** (see also paragraph 64).

To this end, the CPT welcomes the recent Circular N°1/17 of 27 January 2017 by the Director General of Prisons and Rehabilitation Services reiterating the prohibition of torture and ill-treatment and laying down clear procedures for the examination and recording of injuries of all newly-admitted prisoners and of those prisoners who sustain injuries in prison. **The Committee trusts that all prison establishments will fully comply with the requirements of the Circular.**

43. As regards inter-prisoner violence, the CPT's delegation found that due to a lack of prison officers present, episodes of violence were not infrequent in the cells on the upper floors of Montijo Prison and on certain wings at Lisbon Central Prison. Prison officers on D Wing of Lisbon Prison acknowledged the existence of violence and bullying among prisoners. However, they indicated that they had limited means to prevent such acts. The number of prison officers allocated to the wing was indeed insufficient to prevent inter-prisoner violence and intimidation. Allegations of exploitation were also evident in Caxias Prison, where indigent prisoners undertook tasks for other prisoners in exchange for payment to buy articles such as cigarettes.

Addressing the phenomenon of inter-prisoner violence requires that prison staff must be alert to signs of trouble and both resolved and properly trained to intervene. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Further, prisoners need to be offered a constructive regime, with a range of purposeful activities. In addition, the prison system as a whole may need to develop the capacity to ensure that potentially incompatible categories of prisoners are not accommodated together. Reducing overcrowding and providing inmates with adequate living conditions, including an incentivised regime, will also contribute.

**The CPT recommends that the Portuguese authorities take proactive measures to tackle inter-prisoner violence and intimidation, in the light of the above remarks. This should include putting in place anti-bullying policies, reinforcing the number of prison officers and expanding the number of activities on offer to prisoners.**

44. It is also important that where evidence of inter-prisoner violence comes to light, appropriate measures are taken to put an end to such violence and to investigate the incident with a view to prosecuting or sanctioning the perpetrators. At Lisbon Central Prison, the CPT's delegation came across the case of a prisoner who complained to the prison authorities that he had been assaulted by two other inmates on 13 August 2015. The injuries noted in his medical record were consistent with his allegations, and he clearly identified one of the attackers to the chief officer on duty when shown a number of photographs. However, the case was dismissed on 21 September by the prison's legal office primarily because the assailants were apparently not identified and the prisoner was informed he could pursue the case with the Public Prosecutor's Office. On 21 January 2016, the prisoner in question was found hanging by a bed sheet from his cell window bar. His suicide note mentioned that he had wanted to be transferred to another prison.

The CPT would advocate that every instance of inter-prisoner violence resulting in an injury be communicated to the Public Prosecutor's Office. It is essential that prisons do not become places of impunity.

**The CPT recommends that the Portuguese authorities reiterate the importance for all allegations or signs of inter-prisoner violence to be thoroughly investigated by the prison itself and, where any injury is indicative of inter-prisoner violence, by the Public Prosecutor's Office.**

### 3. Conditions of detention

#### a. material conditions

45. *Caxias Prison* had a mixture of decent and poor living areas. At the time of the visit, the North section was severely overcrowded. The 65 cells (measuring less than 10m<sup>2</sup>) on the second floor would provide adequate material conditions (good access to natural light, decent state of repair, partitioned sanitary annexe, appropriately furnished) for two prisoners. However, they were accommodating mostly four prisoners, sometimes three, which rendered the conditions very cramped.

The conditions in the two dormitories on the ground floor used for admission, transfers, segregation of vulnerable prisoners and informal punishments were particularly poor. The dormitories were filthy, dark, damp and dilapidated, and equipped with five sets of bunk beds and a table and two benches. The conditions were totally unsuitable for holding prisoners. One of the persons placed in these dormitories was an 82 year-old man, remanded in custody on domestic violence, who had not received a proper induction and who felt completely disoriented and vulnerable. This prisoner inter alia was not receiving the care and support he needed. At the time of visit, the dormitories (35m<sup>2</sup> excluding the toilet and shower) were accommodating 10 persons each and had apparently held 12 in the recent past. The two rooms for workers on the same floor were in a better state of repair but overcrowded as they accommodated 12 persons in 38m<sup>2</sup>, excluding the sanitary annexe. The delegation also visited the eight dormitories being refurbished on the first floor which should provide decent additional accommodation in the near future. However, the intended capacity of the new dormitories should be reviewed to ensure each prisoner is provided with 4m<sup>2</sup> of living space, excluding the sanitary annexe.

In the South section, the dormitories were generally in a state of dilapidation, with some toilets not functioning, broken windows and damp walls. The multiple-occupancy cell used for accommodating sex offenders held 10 to 12 persons in 33m<sup>2</sup> with the 8m<sup>2</sup> sanitary annexe (basins, toilets, shower and urinals) not partitioned from the rest of the cell. There were insufficient places for inmates to eat at the table and the ventilation was particularly poor. Although the other cells visited were in a similar state, the situation for the inmates in this cell was exacerbated by the fact that they were confined to their cell for up to 22 hours a day and had no access to education, work or vocational activities. The conditions in this cell and in the two ground-floor admission cells in the North Section could be considered as amounting to inhuman and degrading treatment.

**The CPT recommends that steps be taken to reduce the overcrowding in the establishment to ensure that each and every prisoner is offered a minimum of 4m<sup>2</sup> of living space. Further, the two ground floor admission dormitories should be refurbished as a matter of urgency and the dormitories in the South section upgraded. In addition, the sanitary annexes in all multiple-occupancy cells should be fully partitioned.**

46. The CPT's delegation received many complaints about the food from prisoners and it observed for itself that the kitchen required renovation. **The CPT invites the Portuguese authorities to check the quality of the food provided at Caxias Prison and to examine the possibilities for renovating the kitchen.**

47. At *Leiria Juvenile Prison*, the material conditions were generally acceptable, although many cells needed repainting. However, inmates in pavilion "No. 1" were accommodated in cells which were furnished with only a bed and no table or chair and which measured a mere 5.5m<sup>2</sup>, including the toilet area (in some of these cells the width between the walls was only 1.5 metres). Such cells are too small for accommodating prisoners and should be taken out of service.<sup>22</sup>

In addition, besides one cell for vulnerable prisoners in pavilion "Observation", none of the cell call bells in the prison worked. The toilets in the multiple-occupancy cells were only semi-partitioned and most of the communal bathrooms were in a poor state of repair (plaster flaking from ceiling), with many water taps and toilet flushes not functioning; some in-cell toilets were in a similar state of disrepair. Several inmates also complained that their cells were very cold in winter due to the lack of any heating system.

**The CPT recommends that the above-mentioned deficiencies be remedied. Prisoners in single-occupancy cells should have at least 6m<sup>2</sup> of living space available (excluding the toilet area) and the distance between two walls should measure at least 2 metres.**

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<sup>22</sup> See Living space per prisoner in prison establishments: CPT standards - CPT/Inf (2015) 44.

48. *Lisbon Central Prison* remained in a state of advanced dilapidation, made worse by the chronic overcrowding in the establishment.<sup>23</sup> Only F Wing continued to offer acceptable conditions. In different wings, the delegation found cells with broken windows and a foul odour emanating from the toilets. The toilets in the double-occupancy cells were still not partitioned. The CPT repeats that, in its view, the benefits of greater privacy and improved hygiene offered by a partition outweigh any reduction in the space within the cell. Further, inmates stated that their cells were particularly cold during winter months due to the structural deficiencies of the building (broken windows, no heating system). The foam mattresses were generally thin, worn, dirty and falling apart. Many cells throughout the prison did not possess any artificial lighting which plunged the cells into total darkness after sundown (circa. 6.30 p.m.). In a number of other cells, inmates had manufactured their own makeshift lighting devices to replace the missing lamp socket. All cells should be provided with safe, functioning artificial lighting. Further, in general, the call bells did not function.

Material conditions remain especially poor in the basement areas of B, C, D and E Wings where cells were cold, dark and damp with crumbling plaster. Rats and other vermin continued to be present, as observed by the delegation, with rats entering the cells via the floor-level toilets. In sum, the conditions have not improved in these areas and could be considered as amounting to inhuman and degrading treatment.

49. As mentioned above, the authorities intend to buy back Lisbon Central Prison and although no action had been taken to implement the CPT's recommendations from 2012 and 2013, it was envisaged that the kitchen, laundry and power plant would be renovated before the end of 2016 and that in 2017 work on refurbishing the cells would commence. This is welcome news.

Nevertheless, **the CPT recommends that urgent action be taken to transfer prisoners out of the basement areas of B, C, D and E Wings until such time as they have been properly renovated. Further, it reiterates its recommendation that vigorous action be undertaken to renovate the different wings of the prison.**

**The Committee would like to receive a detailed timetable for the upgrading of the different areas of the prison.**

50. At *Setúbal Prison*, the material conditions throughout the establishment were generally very poor. For example, a dormitory of 23m<sup>2</sup> was accommodating nine persons in three sets of triple bunk beds and apparently at times 12 inmates were held in the room. The dormitory was dilapidated, with damp walls and ceiling, and a single non-partitioned toilet. However, sex offenders and those requiring protection were held in even worse conditions; for example, three inmates were crammed into a cell of 7m<sup>2</sup>, including a toilet and wash basin, four persons in 10m<sup>2</sup> and five or six persons in 15m<sup>2</sup>. In addition to the poor material conditions, these prisoners were confined to their cells for 23 hours a day for months on end. Such conditions could be considered as amounting to inhuman and degrading treatment.

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<sup>23</sup> See the 2012 and 2013 visit reports – CPT/Inf (2013) 4, paragraphs 50 and 51 and CPT/Inf (2013) 35, paragraphs 20 to 22.



The Director acknowledged the insalubrious conditions in the prison. She referred to a three-year programme of renovation work that had recently started on the ground floor of the establishment using prisoners. This work does not however address the problems of capacity and overcrowding, and experience shows that renovated parts of prisons will quickly deteriorate if there is persistent gross overcrowding.

The situation at Setúbal Prison is dramatic and **the CPT recommends that immediate steps be taken to decongest the prison to provide for minimum basic conditions pending the renovation of the establishment. In particular, alternative accommodation must be found for sex offenders and other prisoners requiring protection to ensure that they are offered at least 4m<sup>2</sup> of living space in multiple-occupancy cells, excluding the sanitary annexe, and preferably more given that their out-of-cell time is severely restricted.**

b. regime

51. In Caxias, Lisbon Central and Setúbal Prisons, most inmates<sup>24</sup> could spend much of the day out of their cells (i.e. around 8.5 hours) between 8 a.m. and 7 p.m.<sup>25</sup> At Caxias Prison, around 120 prisoners were involved in various work activities within the establishment (cleaning, maintenance, metal work, prison refurbishment etc.), 30 were regularly attending educational classes and 140 were enrolled to attend the relatively modern and well-equipped gym twice a week for one hour. In addition, there were a number of volunteer-run activities, a library, music hall and chapel. Inmates were offered two hours per day of outdoor exercise in the North section and four hours in the South section, where there were two yards.

At Lisbon Central Prison, only 202 prisoners were involved in a work activity (111 cleaners, 21 kitchen workers) and 167 inmates were enrolled in educational courses (sometimes for only a few hours per week). There were also various socio-cultural and sporting activities organised throughout the year. Nevertheless, more than two-thirds of the prison population spent their days with little to occupy them, other than loitering in their wings, playing board games or exercising. At Setúbal Prison, the situation was even worse with very few prisoners engaged in work or education, and minimal opportunities available for sports and socio-cultural activities. The delegation gained the impression that inmates were merely being warehoused while they served their sentences or awaited their trial.

As regards Lisbon Judicial Police Prison, the situation had not evolved since the previous visit in 2012. No purposeful activities were offered to remand prisoners at all, notwithstanding the fact that some of them had spent more than 18 months in these establishments. Prisoners spent their time watching television, playing board games or walking in the yard.

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<sup>24</sup> One exception being sex offenders in Caxias and Setúbal Prisons.

<sup>25</sup> Variations occurred within and between prisons. For example, inmates on wings A and D at Lisbon Central Prison were out of their cells on alternate days for six and eight hours respectively, whereas on wings B and C inmates were out of their cells for 11 hours a day.

Moreover, in none of the above prisons visited were there any rehabilitation programmes in place and many inmates complained that they rarely saw an educator and that when they did the educator was unable to assist them. Indeed, several educators stated that they had to deal increasingly with social welfare issues of prisoners. Clearly there is also a need for the development of offender management programmes (such as anger management, domestic abuse, drug and alcohol intervention, violence reduction, cognitive skills and behaviour, and sex offender treatment), particularly for prisoners serving longer sentences.

**The CPT reiterates its recommendation that the Portuguese authorities take the necessary steps to develop purposeful activities for remand prisoners in Lisbon Judicial Police Prison and that they pursue their efforts to offer an appropriate range of constructive activities to all prisoners in Caxias and Lisbon Central Prisons. Particular efforts need to be made at Setúbal Prison to introduce purposeful activities.** The goal should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day outside of their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education, sport; recreation/association.

In addition, **the CPT recommends that the Portuguese authorities develop offender management programmes in the prisons.**

52. At *Leiria Juvenile Prison*, the prison management made serious efforts to involve as many young offenders as possible in educational programmes. Of the inmates under the closed regime, 87 were enrolled in schooling and/or five different vocational training programmes<sup>26</sup> and 18 inmates worked (mainly maintenance, kitchen, cleaning and carpet production).<sup>27</sup> However, about a third of the inmates were involved in neither education nor work and there were very few activities on offer for them.<sup>28</sup>

In each pavilion, cell doors were opened either in the mornings or in the afternoons for four and a half hours per day, and up to six and a half hours per day in the workers' pavilion. During this time, prisoners usually had access to the inner yard of the pavilion for 2 to 2.5 hours, which was devoid of any equipment (and due to the high walls offered no horizontal view) and once or twice a week to a large football yard. Many of the young offenders were locked alone in their cells for almost 20 hours per day.

On a positive note, the CPT's delegation was impressed by the prison's project "Opera in Prison", through which some twenty inmates had over three years - together with a dance school, a professional orchestra and opera singers - rehearsed and staged the opera "Don Giovanni".<sup>29</sup> Inmates involved spoke very enthusiastically about the project, which was starting anew involving a different group of 50 prisoners. It was also positive that the prison ran a series of "Special intervention programmes" such as cognitive restructuring, emotional stabilisation and adaptation to prison life, safe driving and suicide prevention.

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<sup>26</sup> Hotel maintenance, electrics, information technology, gardening and painting, in some cases combined with studying for a school leaving certificate.

<sup>27</sup> Prisoners under the open regime also worked in the prison's agriculture, gardening and construction.

<sup>28</sup> Primarily volunteer-run activities (e.g. video screenings and games), a weekly mass and access to a library.

<sup>29</sup> The project ran between December 2013 and September 2016, and was financed by the PARTIS Project of the Calouste Gulbenkian Foundation.

**The CPT recommends that the Portuguese authorities take concrete steps to improve the regime for inmates at Leiria Juvenile Prison. The overall aim should be offer to all prisoners a normal regime of at least eight hours out of cell engaged in purposeful activities.**

#### **4. Staff matters**

53. In general, it appeared that the number of staff in the prisons visited was not sufficient to cope with the size and type of the inmate population in the establishments concerned. The CPT is aware that the Portuguese Prison Administration is in the process of recruiting staff, notably prison officers (some 400).

For example, Caxias Prison, with an inmate population of 522, had a complement of 152 prison officers which resulted in the 295 prisoners in the North section being supervised by a day shift of 15 officers (excluding perimeter security and entrance staff). At Setúbal Prison, a similar situation prevailed; there were 66 prison officers for an inmate population of 268.

At Lisbon Central Prison, the staffing situation was the most dramatic. 220 prison officers were responsible for some 1,260 prisoners, with weekday shifts of some 75 to 80 officers and some 60 officers on duty at weekends. At the time of the visit, B wing had only four officers on duty for 327 inmates and at certain times of the day there were only two officers on the wing. The lack of staff resulted in certain units having either no permanent staff presence (such as the basement of F Wing) or only a sporadic presence (such as the basement units of D and E Wings).

54. An inadequate staff/prisoner ratio generates an insecure environment for both staff and prisoners. In addition to creating a potentially dangerous situation for vulnerable prisoners, it also poses dangers for staff, whose position can be compromised by their inability to exert proper control over - and develop a constructive dialogue with - prisoners.

Further, the CPT wishes to emphasise the great importance it attaches to the adequate recruitment and training of prison staff. There is arguably no better guarantee against ill-treatment than a properly recruited and trained prison officer, who knows how to adopt the appropriate attitude in his relations with prisoners. In this regard, developed interpersonal communication skills are an essential part of the make-up of such staff. Such skills will often enable them to defuse a situation which could otherwise turn into violence. More generally, they will lead to a lowering of tension and improvement in the quality of life in the institution concerned, to the benefit of all concerned. However, from the information gathered on the ground, staff were not being offered ongoing training courses to develop such skills, and many prison officers expressed their frustration at this state of affairs.

**The CPT recommends that the Portuguese authorities make provision to recruit additional staff after carrying out a review of the current staffing levels in the prisons visited. In carrying out this review, regard should be had to the role and duties of prison staff as they relate to the purpose of sending people to prison. Further, high priority should be given to the development of prison staff training, both initial and ongoing. In addition, the CPT would like to be informed about the timetable for the current recruitment of 400 prison officers and to what extent these new recruits represent a reinforcement of existing staff numbers or merely a replacement of those officers who have recently left the service.**

55. As regards staff working with juveniles, that is, inmates of 16 and 17 years of age (or even young adults of 18 and 19 years), the CPT has emphasised in the past that the staff called upon to fulfil that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff should undergo a specific juvenile awareness training programme, with frequent follow-up courses, and benefit from appropriate external support and supervision in the exercise of their duties.

None of the staff working with juveniles at Lisbon Central Prison or the other establishments visited had received any specialised training for working with prisoners of this age-group. For as long as establishments continue to accommodate juvenile prisoners, **the CPT reiterates its recommendation that the necessary steps be taken to ensure that a rigorous selection and training programme is in place for all staff allocated to work with them.**

## 5. Health care services

### a. introduction

56. At the time of the visit, a substantial part of the provision of health care services was outsourced to a private company (24 horas), with other contractors also providing health care services in some prisons (for example, IAP in Setúbal Prison). In the prisons visited, some medical personnel were employed by the Ministry of Justice, but an increasing number were provided by the private contractors. The outsourcing may have led to cost-efficiency gains, but it has also resulted in high levels of staff fluctuation within a prison establishment as the contractor often sends different people to work the various shifts. This has led to a lack of continuity in the provision of health care, negatively impacting on information sharing and on health care staff-patient relationships. Several prison governors expressed their frustration with the current arrangements as not only was the provision of health care detrimentally affected but they also had a negative impact on the management of the prison.

Further, there are still no robust oversight and audit mechanisms in place to ensure that private contractor(s) provide a quality service to the standards required. Such oversight needs to be both qualitative and quantitative. **The CPT reiterates its recommendation that the Portuguese authorities ensure that the provision of prison health care is properly monitored, taking into account the above remarks.**

In this context, the CPT's delegation was again informed about the planned transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health. However, the process does not appear to have progressed since the initial agreement in 2009. **The Committee would like to receive more details on the proposed timing of this transfer.**

b. staff and facilities

57. The health care facilities in the prisons visited were, on the whole, of a good standard. Staffing levels, however, were not always adequate which impacted on access to care.

At *Caxias Prison*, the health care team consisted of one medical doctor (20 hours per week) and nine nurses (one nurse was on duty in the North and in the South sections every day from 8 a.m. to 1 p.m. and from 2 p.m. to 8 p.m.). The doctor took a proactive approach towards the health care of inmates which was positive but she was hindered by the high turnover of nurses. This impacted negatively on the continuity of care, and sometimes shifts were not filled. There was also a half-time psychologist and a part-time pharmacist, and a psychiatrist who visited one day per week. Inmates who need to see a psychiatrist or a dentist are referred to the Prison Hospital which is next to the prison. For an establishment of 500 or more inmates, there is a need to increase the presence of a medical doctor. Further, someone competent to provide first aid should always be present in the prison establishment when no nurse is on duty.

At *Lisbon Central Prison*, the medical unit was staffed by one full-time and one part-time general practitioner (75%); this is not sufficient for a largely remand establishment holding some 1,253 inmates. The number of nurses (14 including a coordinator) was also inadequate,<sup>30</sup> and it should be noted that there was no nursing coverage between the hours of 1 and 2 p.m. Further, in all the prisons visited where nursing staff was provided by private contractors there was a high turnover of nurses, due primarily to the low levels of pay.<sup>31</sup> Dental care was available 14 hours a week; two psychiatrists provided a total presence of 22 hours per week and three psychologists 50 hours per week, and a pharmacist was present 35 hours a week. However, as the psychologists worked primarily with inmates in the “drug-free programme”, there was a lack of counselling available for other prisoners.

In the *Judicial Police Prison* in Lisbon, a doctor was present eight hours a week and there were two nurses, one of whom worked mornings (four hours) and the other evenings (two hours), every day. This is not sufficient; an establishment with a capacity of 140 inmates and a high weekly turnover should benefit from the daily presence of a general practitioner for at least the equivalent of two days a week as well as from two full-time nurses. On a more positive note, a psychiatrist visited the establishment twice a week.

At *Setúbal Prison*, a general practitioner visited on three days a week for a total of 10 hours, which is insufficient for an establishment with an official capacity of around 160 and an actual occupancy of over 260. There was a nursing presence seven days a week between 9 a.m. and 8.30 p.m. except for two and a half hours (more at weekends) during the middle of the day, and the Director of the prison expressed concern that many of the nursing shifts went unfilled.

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<sup>30</sup> One nurse works from 8 p.m. to 8 a.m. every night; three nurses work from 8 a.m. to 1 p.m. seven days a week; three nurses work from 2 p.m. to 8 p.m. from Monday to Friday, and two on Saturday and Sunday.

<sup>31</sup> One private company provided medical doctors and one company provided nurses and other health care staff. The full-time GP was employed by the Directorate General of Prisons.

58. In the light of the above, the Committee recommends that steps be taken to reinforce health-care staffing levels in order to ensure that:

- at Caxias Prison, there is the equivalent of one full-time general practitioner;
- at Lisbon Central Prison, there are the equivalent of three full-time general practitioners and an increased complement of qualified nurses, including those with a mental health qualification;
- at Lisbon Judicial Police Prison, there is a daily presence of a general practitioner and the equivalent of two full-time nurses;
- at Setúbal Prison, there is a daily presence of a general practitioner and all nursing shifts are filled.

Further, the Committee recommends that steps be taken to ensure that a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is always present in every prison establishment, including at night and on weekends; preferably, this person should be a qualified nurse.

59. The medical units at Caxias, Leiria Juvenile and Lisbon Central Prisons need to be equipped with an ECG machine, a defibrillator and emergency equipment, such as oxygen<sup>32</sup> and a nebuliser. Further, the material conditions in the 10-bed infirmary at Lisbon Prison need to be upgraded and to be constantly cleaned and kept in a good state of hygiene. At the time of the CPT's visit, some patients were not provided with sheets or a clean pillow and the rooms were filthy.

**The CPT recommends that steps be taken to equip the medical units at Caxias, Leiria Juvenile and Lisbon Central Prisons with the necessary basic equipment, and that the conditions in the infirmary at Lisbon Prison be improved, in the light of the above remarks.**

60. As regards medication, there appeared to be an adequate supply in the prisons visited. However, the CPT's delegation found that the medication was not always appropriately stocked or properly distributed. For example, at the Lisbon Judicial Police Prison, tablets were taken out of their original packs and placed in large containers, and when the containers ran low they were simply topped up. Consequently, it was not possible to know the expiry date of the tablets. In addition, the containers and the prisoners' individual dispensers were not properly labelled which meant that there was no way to guarantee that a prisoner received the correct medication at the right time. Further, at this establishment certain medication was being distributed at four times the dose prescribed as the tablets could not be quartered (e.g. carvedilol) while sedative anti-depressants such as mirtazapine were being distributed before 6 p.m. when they ought to be distributed one hour before bed time.

**The CPT recommends that the management of the stocking and dispensation of medication at the Lisbon Judicial Police Prison be reviewed, in the light of the above remarks.**

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<sup>32</sup> The CPT's delegation also found that the oxygen bottle in the satellite health care room in F Wing had been empty for at least two weeks at the time of the visit.

61. The CPT's delegation also had some concerns over the high doses of anti-psychotic medication being administered in prisons to inmates who were mentally unwell. One prisoner who was being held in the ground floor admission dormitory of Caxias Prison moved about in a zombie-like state and appeared over-medicated<sup>33</sup> and certainly should not have been held in prison in such a state, let alone in such an environment.

**The CPT would appreciate the comments of the Portuguese authorities on this matter.**

c. medical screening on admission and recording of injuries

62. The CPT has consistently stressed the importance of medical screening of prisoners on admission - especially at establishments which represent points of entry into the prison system. Such screening is indispensable, in particular in the interests of preventing the spread of transmissible diseases, suicide prevention and the timely recording of any injuries.

63. As was the case in previous visits, the prison establishments visited in the course of the 2016 visit had policies in place to ensure that all newly admitted prisoners were screened by a nurse on the day of, or the day after, their arrival. Thereafter, prisoners would normally be seen by a doctor within 72 hours. However, apart from Leiria Juvenile Prison where the screening was quite thorough, the initial screening in the other prisons visited still consisted merely of a few oral questions and did not include a comprehensive physical examination; in addition, the results were not always fully recorded.

**The CPT recommends that the relevant authorities ensure that every newly arrived prisoner is properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor during the initial screening and that the results are recorded in full.**

64. The CPT remains concerned that injuries observed upon arrival as well as those sustained in prison were often not correctly recorded - or even not recorded at all - in the prisons visited. Specific examples were found of cases of prisoners who, in the light of information gathered from other sources, certainly would have displayed injuries on their arrival in prison but whose medical records contained no such evidence. Even in the case of the person referred to in paragraph 41 above, the record made of the injuries borne by the prisoner was superficial in the extreme. The lack of proper recording of injuries undermines the ability to investigate cases of alleged ill-treatment.

The CPT recognises that certain procedures have been put in place in certain prisons to photograph injuries and for identified cases to be transmitted to the Director General of Prisons who subsequently notified the Public Prosecutor's Office. This is positive but the procedures are not systematically followed in all prisons and the injuries are not fully recorded.

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<sup>33</sup> His medication included risperidone (3 mg twice daily), ciamanza (a sedative; 100mg nightly), valproate (500 mg twice daily), alprozalam (2mg twice daily) and haloperidol (300 mg IM monthly).

The CPT reiterates its recommendation that steps be taken to ensure that any signs of violence observed when a prisoner is medically screened upon admission or following an incident within the prison are fully recorded, and that the record contains:

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
- ii) a full account of objective medical findings based on a thorough examination, and
- iii) the health care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations, a description of treatment given for injuries and the results of any further procedures performed.

A record of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking the location of traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, which should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

The CPT recommends that procedures be in place to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. Further, dedicated registers on traumatic injuries should be introduced at all prison establishments.

Circular N°1/17 of 27 January 2017 by the DGPRS fully reflects the above recommendation and, as stated above, it is important to ensure that all prison establishments comply with the Circular.

d. medical confidentiality

65. The CPT is pleased to note that prison officers were generally not present during medical examinations in the prisons visited and that inmates did not have to write down the reason they wished to see a nurse or doctor. The exception was Lisbon Judicial Prison where prisoners had to fill out a form setting out the reason they wished to see a member of the health care staff which was processed by the prison administration. Further, a number of prisoners who made allegations of having been ill-treated by staff claimed that prison officers were present during the consultations with medical staff when their injuries were being examined (including the same officers who had allegedly inflicted the ill-treatment such as in the case of ML referred to in paragraph 41 above).

The CPT recommends that the practice of inmates having to set out the reasons for wishing to see a member of the health care staff at Lisbon Judicial Prison be ended in order to respect medical confidentiality. Further, prison officers and health care staff should be reminded that all medical examinations of prisoners must be conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers.



e. use of chemical restraint in prisons

66. At Lisbon Central Prison, the CPT's delegation met an inmate who had been restrained, handcuffed, forcibly medicated and transferred to the main infirmary from the infirmary on F Wing on 31 August 2016 at around 9 p.m. The two notes on the incident were only drawn up on 5 and 13 September and both referred to "the protocol" being applied. The CPT's delegation was informed that this meant that one of four protocols pre-authorised by the Director of the Prison and the visiting psychiatrist, each comprising a mixture of antipsychotic and anti-anxiety medicine, had been applied.<sup>34</sup> However, there was no record of which of the four protocols had been applied to the prisoner.

At the time of the visit, the patient was heavily sedated<sup>35</sup> and drooling; nonetheless, he was clear in describing what had happened to him. He remembered being forced to lie down on the floor, handcuffed tightly, an officer standing with his boot on the patient's abdomen to restrain him and an injection being administered (see the recommendation in paragraph 40).

The CPT is concerned by the whole procedure surrounding the treatment of the patient at the time of the incident and thereafter. To begin with, an agitated prisoner with a history of mental illness was restrained and forcibly medicated without the authorisation of a doctor. The pre-authorised protocol was effectively a PRN (*pro re nata*) medication to be applied to any prisoner who showed signs of psychomotor agitation or psychosis. Further, there were no nursing or medical notes on the incident or the administration of the protocol in any medical records until 5 September, when the general practitioner noted what had happened on 31 August and that the patient had suffered pain in the left side of his back and shoulder during the previous four days. The patient was not seen by a psychiatrist until 8 September. Nowhere was it set out which cocktail of medication had been administered on 31 August.

Such an approach is not acceptable. In paragraph 86 below, the CPT sets out the precepts that need to be effectively applied when administering PRN medication.

**The CPT recommends that the use of the pre-authorised protocols at Lisbon Central Prison be ended immediately and that a new protocol be drawn up that is in line with the precepts set out by the Committee in paragraph 86 below. Further, all prisoners who have a serious mental disorder should be transferred to a mental health facility.**

f. deaths in prison and prevention of suicide (and self-harm)

67. The CPT considers that every death of a prisoner should be the subject of a thorough investigation to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented. Such inquiries are necessary in order to identify possible means to improve the system of prevention in place as well as to provide the relatives of the deceased person(s) with relevant information concerning the circumstances of the death.

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<sup>34</sup> For example, the protocols for decompensated psychosis were : haldol 5 mg (2x day); diazepam 10mg (3x day); akineton 4mg (2 x day) and tercián 100 mg (1x day); or, if the patient refused the medication an intramuscular injection of haldol (1f), diazepam (1f) and akineton (1f).

<sup>35</sup> He was being prescribed haloperidol 5 mg (3x day); diazepam 10mg (3x day); akineton 4mg (2 x day); cinnarizine 100mgs (at night); olanzapine 5mgs ((2x day) and sodium valproate 500mg (2x daily).

The CPT's delegation was informed that, until the time of the visit, there had been 51 deaths in prisons in 2016 of which six were suicides. The delegation examined two recent deaths at Lisbon Central Prison. In one case, a prisoner (AMB) who weighed only 45 kg was found collapsed in his cell on 22 July 2016 three days after his admission. Despite having only a weak heartbeat when found, it is not clear why no ambulance had been called and why CPR was terminated without a medical confirmation. Instead, the prisoner was transported on a stretcher from the basement of D Wing to F Wing, during which time CPR could not have been continued, and was pronounced dead upon arrival at the infirmary on F Wing.

**The CPT recommends that the Portuguese authorities ensure that a thorough investigation is carried out into every death in prison by an authority independent of the prison system to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors and whether the death might have been prevented. Further, an analysis should be undertaken of each death in prison to consider what general lessons may be learned for the prison in which the death occurred and whether in the case of self-inflicted death there are any systemic, nationwide measures that need to be taken.**

**The Committee would also like to be informed of the outcome of the investigation into the above-mentioned case and whether it has resulted in any new procedures being introduced.**

68. The second death at Lisbon Central Prison was a suicide by hanging in January 2016 (see paragraph 44 above), and the delegation also came across a number of cases of self-harm at this and other prisons visited. However, despite the duty of care by the authorities towards prisoners requiring them to take appropriate measures to prevent instances of suicide and self-harm, there was no suicide or self-harm prevention programme in place in any of the prisons visited, with the exception of Leiria Juvenile Prison which has a suicide prevention programme.

All the prisons in Portugal and notably remand prisons such as Lisbon Central Prison need to put in place procedures for the identification of prisoners who may be at risk of suicide or self-harm and a protocol for the management of prisoners identified as presenting a risk. To begin with, medical screening on arrival, and the reception process as a whole, has an important role to play in suicide prevention; performed properly, it should assist in identifying those at risk and relieve some of the anxiety experienced by all newly arrived prisoners. The screening process should include a suicide risk assessment using an identified screening tool.<sup>36</sup> Moreover, it is essential that the prevention of suicide, including the identification of those at risk, should not rest with the health care service alone. All prison staff coming into contact with inmates – and, as a priority, staff who work in the reception and admissions units – should be trained in recognising indications of suicidal risk. The sharing of information concerning suicidal tendencies with prison staff should be based on the consent of the prisoner but if there is an imminent threat of harm to the inmate such information may be shared with staff. In this connection, it should be noted that the periods immediately following admission to prison as well as before and after trial and, in some cases, the pre-release period, are associated with an increased risk of suicide.<sup>37</sup>

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<sup>36</sup> Including a checklist of standard questions, e.g. the Viennese Instrument for Suicidality in Correctional Institutions, or "VISCI".

<sup>37</sup> See also the 2007 World Health Organisation publication [Preventing Suicide in Prisons and Jails](#).

Upon identification of prisoners potentially at risk, steps should be taken to ensure a proper flow of information within the establishment. All persons identified as presenting a suicide risk should as a first step benefit from counselling, appropriate support and association. Further, if required, such persons should be subject to special precautions (placement in a ligature-free room and provision of suicide-proof clothing) and, where there is a high risk of suicide, the prisoner should be under constant observation by a member of staff who should engage in a dialogue with the prisoner. The need for enhanced contacts (i.e. family visits and telephone calls) should be individually assessed.<sup>38</sup>

**The CPT recommends that the Portuguese authorities ensure that a comprehensive suicide prevention and management approach is introduced at Lisbon Central Prison and other prisons, taking into account the above remarks.**

## **6. Other issues**

### **a. discipline**

69. The delegation was informed that a new disciplinary procedure was being drafted to improve the current approach. However, at the time of the visit, the disciplinary system remained the same as that described in the reports on the 2012 and 2013 visits. Following an apparent breach of discipline, the prison's lawyer hears the prisoner and other concerned persons and, if he deems it appropriate, proposes a disciplinary sanction to the Director. The prisoner is provided with a document notifying him/her of the decision and its reasoning and of the fact that the decision may be appealed (which has suspensive effect).<sup>39</sup> Although the law provides for the possibility to be assisted by a lawyer, including ex officio, during the disciplinary procedures, in practice a lawyer intervenes rarely.

The findings from the files examined in the prisons visited (notably at Lisbon Central and Caxias Prisons) showed that the procedures could not be considered a mere formality as 15 to 35% of the disciplinary investigations resulted in no punishment. Further, the registers were well kept and the procedures were conducted in a professional manner. Nevertheless, with the exception of Leiria Juvenile Prison, the time for investigating and taking a decision on a possible punishment appeared too lengthy (on average about two months at Lisbon Central Prison but could be up to six months) and does not serve the needs of maintaining good order in the prison; disciplinary offences should be dealt with rapidly, through fair and transparent procedures. Further, prisoners facing disciplinary proceedings were still not given access to the statements of prison officers and so had no opportunity to challenge them.

**The CPT recommends that efforts be made to speed up the time taken to investigate and decide on a disciplinary offence. Further, prisoners should have the opportunity to challenge the statements made by prison officers in the context of disciplinary proceedings. The Committee would also like to receive a copy of the revised disciplinary procedure once it has been drafted.**

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<sup>38</sup> See WHO [suicide prevention tool](#) (2016).

<sup>39</sup> See Article 110 of Law 115/2009 on the Code on Execution of Criminal Sanctions and Articles 163, 165 and 166 of Decree 51/2011 on the General Prison Regulations.

70. In the course of the visit to Caxias Prison, it appeared that the two ground floor multi-use dormitories in the North section (see paragraph 44 above) were also being used to accommodate prisoners who had been subjected to an informal punishment. They had been transferred to the dormitories from their cells on the second floor following an altercation with a prison officer. There was no formal record of these prisoners having been disciplined or any explanation as to the reason for their transfer. Given the poor material conditions and very limited regime for prisoners in the two dormitories, the transfers were perceived as being punitive.

**The CPT recommends that the use of informal punishments at Caxias Prison be ended forthwith and that any transfers from the mainstream accommodation areas to the basement dormitories in the North section be clearly reasoned.**

71. Provisional isolation can be imposed on a prisoner suspected of having committed a disciplinary offence for a period of up to 30 days. In contrast to the findings in 2012 and 2013, the CPT's delegation found that this measure was resorted to far less at Lisbon Central Prison and for shorter periods, and rarely at other prisons visited. Nevertheless, when it was applied only between one-third and one-half of the time spent in interim confinement was deducted from any subsequent disciplinary sanction of solitary confinement, and not the full time period as should be the case.

The CPT remains of the view that placing prisoners in provisional disciplinary isolation following a suspicion that they may have committed a disciplinary offence, and prior to a formal charge being brought, should not last longer than a few hours. Isolation for longer than a few hours, in relation to an incident giving rise to a disciplinary procedure, should not occur without the prisoner being charged and being given an opportunity to be heard on the matter and to explain his/her behaviour to a senior prison officer reporting to the Director.

If it becomes clear that the provisional solitary confinement measure is likely to be required for a longer period of time, a body external to the prison holding the prisoner, for example, a senior member of headquarters staff, should become involved. A right of appeal to an independent authority should also be in place.

**The CPT recommends that the Portuguese authorities take the necessary steps to ensure that placement in provisional disciplinary isolation be brought into line with the above precepts.**

72. According to Law 115/2009 on the Execution of Criminal Sanctions (Article 105), the sanction for a given disciplinary offence may not exceed 21 days of solitary confinement or 30 days in total when it concerns more than one serious offence that has taken place at the same time.

Solitary confinement can have an extremely damaging effect on the mental, somatic and social health of those concerned. Therefore, it should only be imposed as a disciplinary sanction in exceptional cases and as a last resort, and for the shortest possible period of time. The Committee has stated that, in its view, a continuous period of up to 30 days of solitary confinement as a punishment is excessive. The Committee considers that the maximum period of solitary confinement as a punishment for an adult prisoner should be no more than 14 days for a given offence, and preferably lower.<sup>40</sup> Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of that maximum period. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

73. The Portuguese authorities responded to this issue in the report on the 2013 visit by stating that they had “no objection, in principle, to reduce the maximum duration of disciplinary confinement from 21 to 14 days.” Nevertheless, it implies legislative amendments, which have yet to be tabled.

Further, as regards juveniles (i.e. under 18 years of age), the CPT wishes to stress that any form of isolation may have an even more detrimental effect on the physical and/or mental well-being of juveniles. In this regard, the Committee observes an increasing trend at the international level to promote the abolition of solitary confinement as a disciplinary sanction in respect of juveniles. Particular reference should be made to the United Nations Standard Minimum Rules on the Treatment of Prisoners (Nelson Mandela Rules) which have recently been revised by a unanimous resolution of the General Assembly and which explicitly stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles. The CPT fully endorses this approach.

**The CPT reiterates its recommendation that Law 115/2009 be revised accordingly and that, in the meantime, the Portuguese Prison Administration adopt a policy of not imposing disciplinary punishments of solitary confinement of 14 days (or preferably less) on adults and in the case of juveniles not to impose such a sanction at all.**

74. At Lisbon Central Prison, prisoners held in disciplinary isolation or confinement to cell were still only offered half an hour of outdoor exercise every day. **The CPT reiterates its recommendation that steps be taken to ensure that every prisoner in disciplinary confinement is offered daily access to the outdoor yard for at least one hour.**

75. In the reports on the 2012 and 2013 visits, the CPT recalled that disciplinary punishment of prisoners should not involve a total prohibition of family contact. In their responses, the authorities indicated that the Code on Execution of Criminal Sanctions “foresees the possibility of contact and visits with the families, subject to the Prison Director’s authorisation. This situation is, moreover, the rule”.

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<sup>40</sup> See the 21st General Report of the CPT – CPT/Inf (2011) 28, paragraph 56 (b).

Nevertheless, prisoners subject to a disciplinary sanction of solitary confinement or confinement to cell met by the delegation in the course of the 2016 visit, notably at Lisbon Central and Caxias Prisons, stated that they were not permitted to receive visits. In the CPT's view, restrictions on family contact in the context of a disciplinary confinement should be imposed only where the offence relates to such contact and should never amount to a total prohibition of contact.<sup>41</sup>

**The Committee reiterates its recommendation that steps be taken to ensure that prisoners undergoing a disciplinary sanction are permitted to have visits.**

b. contact with the outside world

76. The CPT attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world as often as possible; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature.<sup>42</sup>

The situation observed in the prisons visited in the course of the 2016 visit was generally satisfactory. Prisoners were permitted one outside telephone call per day of five minutes, in addition to a five minute call to their lawyer. Remand prisoners were offered three visits of 45 minutes<sup>43</sup> every week and sentenced prisoners two visits of one hour's duration every week. The visits were usually of an open nature. The CPT's delegation received many complaints from prisoners about their phone calls being automatically cut off after five minutes, especially when it came to conversations with lawyers. At the time of the visit, the Director General of Prisons acknowledged that there was a problem with the phone system and that alternatives were being studied. The CPT was interested to learn that the Portuguese authorities were studying the options for introducing new technologies such as VOIP (Voice over Internet Protocol) to facilitate inmates' ability to maintain contacts with their families, especially given that so many inmates are foreign nationals or imprisoned long distances from their homes.

The information available to prisoners could however be improved through the production of information booklets specific to each prison detailing the prison regime and procedures for visits, complaints and accessing services which could be handed out to inmates upon their admission to a prison establishment.

**The CPT recommends that such booklets be developed. It would also like to be informed of the outcome of the studies to improve the current phone system and as regards the introduction of new technologies in prisons to facilitate family contacts.**

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<sup>41</sup> See also Rule 60.4 of the European Prison Rules (2006) and the commentary on that Rule.

<sup>42</sup> See also European Prison Rule 24.2.

<sup>43</sup> At Leiria Juvenile Prison, remand prisoners were entitled to four hours of visits every week.

c. complaints and inspection procedures

77. The situation regarding complaints remains the same as that observed at the time of the 2012 visit. Prisoners can address complaints to a number of outside bodies: the court responsible for the enforcement of the sentence, the Inspector-General of Judicial Services (IGJS), the Inspection and Audit Service of the Prison Administration (SAI) or the Ombudsman. The National Preventive Mechanism within the Ombudsman Office carries out visits to prisons.

However, there is a need to introduce a more integrated complaints system. While complaints concerning ill-treatment were recorded and the SAI and other bodies investigated them, there was no specific register for other complaints in the prisons and inmates expressed a great mistrust in the complaints system. Inmates met complained that a response was rarely provided to complaints and, if it was provided, it was always in an oral form.

The CPT considers that the current arrangements need to be reinforced by a uniform internal complaints machinery applied throughout the prison system of Portugal: for example, prisoners ought to be able to make written complaints at any moment and place them in a locked complaints box located in each accommodation unit (forms should be freely available); and all written complaints should be registered centrally within a prison before being allocated to a particular service for investigation or follow up. In all cases, the investigation should be carried out expeditiously (with any delays justified) and prisoners should be informed within clearly defined time periods of the action taken to address their concern or of the reasons for considering the complaint not justified. In addition, statistics on the types of complaints made should be kept as an indicator to management of areas of discontent within the prison. Prisoners should also be able to appeal any decision to an external body, which must be competent to redress the situation. All prisoners should be informed upon admission about how to lodge complaints in a manner that instils trust (for example, complaints boxes which may only be opened by certain persons).

**The CPT reiterates its recommendation that the Portuguese authorities introduce a uniform internal complaints system, taking into account the above remarks.**

## **7. Monsanto High Security Prison**

78. The reasons for the placement in a high security establishment are set out in Article 15 of the Code on Execution of Criminal Sanctions and the procedures have not changed since the 2013 visit.<sup>44</sup> At the time of the visit, 23 out of the 58 prisoners had been held in Monsanto Prison for less than one year and two had been held in the establishment since 2007 and 2008, respectively.<sup>45</sup> The remaining inmates had spent between one and five and a half years in the prison. It is also interesting to note that for three of the inmates it was their third placement in Monsanto and for another six, their second placement.

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<sup>44</sup> See CPT/Inf (2013) 35, paragraph 47.

<sup>45</sup> Both of these prisoners had been held in high-security units for longer than one year prior to being transferred to Monsanto Prison.

Prisoners met by the delegation knew that the length of their stay in the establishment depended on their behaviour as well as on the type of offence they had committed or were accused of having committed. However, they had almost no information about the assessment procedure and were only informed of the final decision of the Director General (i.e. prolongation of placement or return to an ordinary regime prison) following each six month assessment. The inmates were still not heard by the in-house technical council chaired by the Governor of Monsanto Prison which was responsible for making the proposal to the Director General on the extension of the prisoner's stay in the establishment for a further six months.

During the 2016 visit, the delegation examined a number of prisoners' files related to the assessment of their behaviour and the decision to maintain them in the establishment. The reasoning was brief and superficial and lacked a proper psychological assessment of the inmate. Further, the behaviour of the prisoner appeared to have limited importance in comparison with the seriousness of the offence committed. However, prisoners are able to challenge both the initial decision on placement in Monsanto Prison and each extension before the Court for the Enforcement of Sanctions (TEP),<sup>46</sup> and the delegation was able to verify that prisoners did avail themselves of this appeal mechanism. **The CPT recommends that inmates should have the possibility to be heard in the course of the assessment process.**

79. In addition, the CPT continues to consider that, upon placement at Monsanto Prison, every prisoner should be subjected to a risk and needs assessment, which should be periodically reviewed. Based upon this assessment, relevant programmes should be identified to address inmates' behavioural and educational needs. Further, each placement's review should take into account the assessment and the programmes developed.

**The CPT recommends that the Portuguese authorities incorporate such an approach into the current assessment and review procedures at Monsanto Prison.**

80. The regime remained extremely limited,<sup>47</sup> with the vast majority of prisoners confined alone in their cells for 21 to 22 hours per day. A few prisoners were engaged in one of two workshops (painting or assembling aluminium parts) twice a week for two hours, and three or four prisoners worked as cleaners. In addition, a very limited number of educational activities and programmes were offered from time to time. Such conditions could be considered as akin to solitary confinement and urgent steps should be taken to provide all inmates with more time out of their cells engaged in purposeful activities and meaningful human contact.<sup>48</sup>

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<sup>46</sup> See Article 200 *et seq* of Law 115/2009 on the Code on Execution of Criminal Sanctions and Measures.

<sup>47</sup> See paragraph 41 of the CPT's report on the 2013 visit - CPT/Inf (2013) 35.

<sup>48</sup> See also Rules 43 and 44 of the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules").



81. In their response to the CPT's 2013 visit report, the Portuguese authorities refer to all inmates having a specifically adapted Plan for Individual Rehabilitation (PIR) to assist them to reintegrate into society. However, the inmates met in the course of the 2016 visit had no programme designed to assist them improve their behaviour and prepare them for (re-)integration into an ordinary regime. There was no multi-disciplinary approach whereby the inmates would be provided with a clear, progressive programme of activities and behavioural goals towards which they could work and which, over time, could enable them to spend more of the day out-of-cell engaged in purposeful activities. Many prisoners expressed their frustration that they followed their limited sentence plans and yet their situation never evolved. One of the inmates met by the CPT who was not engaged in any work was due to be released from prison in early 2017 after 10 years in different prisons and a second stint of 21 months in Monsanto and yet, according to him, nothing had been done to prepare him for release into the community. There was a clear sense among inmates that the approach at Monsanto was intended to stifle their development through long periods of enforced inactivity and limited association with other people rather than enable them to channel their energies towards positive and constructive outcomes.

In the CPT's view, high-security prisoners, such as those detained at Monsanto Prison, should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility.

**The CPT reiterates its recommendation that the Portuguese authorities take urgent steps to end the almost solitary confinement-type conditions and improve the regime for inmates at Monsanto Prison in the light of the above remarks. In particular, a programme of purposeful activities should be put in place for each inmate, elaborated upon arrival at the establishment by a multi-disciplinary team and allowing progressively more out-of-cell time in the event of the inmate engaging in a positive manner with the regime.**

82. The living conditions at Monsanto High Security Prison have not changed since the CPT's previous visit in May 2013. The individual cells (12m<sup>2</sup>) are sparsely equipped and inmates are only permitted to keep a very few personal items but besides the austere environment, the material conditions are acceptable. There is nevertheless an urgent need to fix the call bell system in the prison as the layout of the cells and distance of the staff office from the cells on each floor mean that inmates cannot reach staff when there is an emergency; the delegation received many complaints about this deficiency. **The CPT recommends that the call bell system be repaired as a matter of urgency.**

83. As was the case in 2013, the provision of health care appeared to be of a high standard and the staffing levels were adequate.<sup>49</sup> Nevertheless, it would be beneficial for the health care centre to possess an ECG machine and a defibrillator in case of emergencies. The CPT's delegation noted that the door to the consultation room usually remained open with the prison officers outside and potentially within hearing distance, thus compromising medical confidentiality. **Steps should be taken to guarantee medical confidentiality and to better equip the health care centre.**

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<sup>49</sup> See paragraph 44 of the report on the 2013 visit - CPT/Inf (2013) 35.

The main concern of the CPT relates to the use of the safe cell located next to the infirmary. The cell (6m<sup>2</sup>) was used for placing prisoners who became agitated and was essentially a small cell with padded walls and furnished with a foam mattress. The cell had limited access to natural light, adequate artificial lighting and the air-conditioned temperature was controlled from outside. Adjacent to the cell was a sanitary annexe. Contrary to the rest of the prison, the call bell in this cell functioned. Prisoners could be placed in this cell for up to 10 days on the order of the Director, and every day they had to be visited by a nurse and the Director.

84. The CPT interviewed six prisoners individually who had been placed in the safe cell in the recent past for periods of four to 10 days. On two occasions, the prisoners in question were taken to the safe cell where they were restrained by prison officers while a nurse gave them a 50mg intramuscular injection haloperidol depot, following a verbal prescription given by the psychiatrist on-call.<sup>50</sup> Two of the prisoners were kept naked in the safe cell for several days and the others were only allowed to retain their underwear. All of them alleged that at times during their placement they were unable to access the toilet and had had to urinate in a cup and two of them claimed that they had had to defecate in the cell. Further, they all complained about the cold in the cell and four of them stated that they had not been provided with a blanket. In addition, one inmate stated that during the first night in the safe cell, three officers had entered the cell and proceeded to kick, punch and deliver baton blows to his body. Another inmate claimed that he had been slapped in the face by a prison officer prior to being brought to the safe cell as it was thought that he might self-harm. A third inmate claimed that prison officers used excessive force (punches, kicks and baton blows) even after bringing him under control and transferring him to the safe cell. The delegation also learned that one inmate was administered clozapine by a nurse while in the safe cell because it was noted in the prisoner's records that in the past he had been taking this medication.

**Such practices are totally unacceptable and steps should be taken immediately to put an end to them.**

The new Governor of Monsanto Prison assured the CPT's delegation at the end of the visit that these practices would end for good. This is welcome but not sufficient.

85. The CPT considers that more robust procedures should be introduced to regulate the use of the safe cell. The cell should only be used when a prisoner poses an immediate threat of serious harm to himself and/or others and when all alternative interventions to manage the prisoner's unsafe behaviour have been considered. The authority to direct that a prisoner be accommodated in the safe cell should be irrevocably delegated to medical practitioners and registered nurses only. A prisoner should not be placed in such a cell for disciplinary or good order reasons. Further, a prisoner placed in a safe cell should be under constant supervision by a health care professional. A registered nurse should review the patient at least every two hours and a medical review should be carried out by a registered medical practitioner at a minimum every 24 hours. After the initial period of 24 hours, a new order may be issued by a registered medical practitioner, following an examination, for a further period not exceeding 24 hours up to a maximum of three renewals (72 hours). Thereafter, the Director General and the Director of Health Care of the Portuguese Prison Service should be notified in writing.

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<sup>50</sup> The CPT notes that the depot form of haloperidol is slow acting and cannot be used as a rapid tranquilliser.

The procedure regulating the use of the safe cell should also require an individual risk assessment as to whether items or parts of a prisoner's clothing may be used by the prisoner to harm himself or to cause significant damage before an inmate's clothes are removed. Thus a prisoner placed in the safe cell should undergo an individual risk assessment before his clothing is removed. In the event that the clothing is removed, he should be provided with rip-proof clothing. Prisoners should never be left in the safe cell naked or only in their underwear as being in such a state is degrading for them. Further, they should be offered a blanket (rip-proof if necessary). It goes without saying that prisoners should be offered ready access to a toilet.

In the case of a disruptive or violent prisoner, he should be rapidly transferred to a special cell (such a cell would need to be designated at Monsanto Prison) and not to a safe cell or a disciplinary cell. The person concerned should only be kept in such a cell until such time as he has calmed down, whereupon he should be returned to his ordinary cell and, if appropriate, managed through the disciplinary process. Further, the prisoner's clothing should not be removed unless this is found to be justified following an individual risk assessment.

**The CPT recommends that the Portuguese authorities draw up clear operating standards for the use of the safe cell in Monsanto Prison, taking into account the above remarks.**

86. The CPT must also underline that the injection of rapidly acting tranquillisers is a form of chemical restraint which is associated with significant risks to the health of the patient, in particular life-threatening cardiac arrhythmia, low blood pressure and respiratory depression. Their use therefore requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment.

In the Committee's opinion, in the event of a prisoner presenting a state of agitation which cannot be dealt with by the nursing or custodial staff, the prisoner's psychiatrist or the duty doctor should be called immediately and intervene promptly to assess the state of the prisoner and issue instructions on the action to be taken. In principle, a mentally disturbed prisoner should be transferred to a psychiatric unit.

Only in exceptional situations, when a prisoner's agitation cannot be controlled by staff and the intervention of a medical practitioner is not possible within minutes, may the administration by a nurse of rapid tranquillisers under a "conditional" PRN ("if necessary") prescription be justified, meaning that a medical doctor must be contacted (e.g. by phone) and must confirm the prescription prior to its use. Further, a medical doctor must arrive without delay to monitor the patient's response and deal with any complications.

Moreover, the use of a PRN prescription for rapid tranquillisers must be accompanied by specific safeguards: as a minimum, any such PRN prescription should be drawn up by a doctor after having thoroughly assessed the patient's physical status, should only be valid for a limited time (i.e. weeks rather than months) and should be re-assessed each time it is used or where there is any change in the patient's medication. Further, other more general safeguards should accompany any use of rapid tranquillisers (such as the recording of the event in the prisoner's medical file and in a central register of restraint measures/use of force and a debriefing of those involved). It goes without saying that PRN medication should only be administered to prisoners with a clearly defined medical condition and cannot be justified simply because a prisoner is angry.

**The CPT recommends that Portuguese authorities ensure that these precepts are effectively implemented in practice at Monsanto Prison.**

87. As regards discipline, more than 90% of the punishments, both disciplinary solitary confinement and confinement to one's own cell (POA), served in Monsanto Prison originated in other prisons. The longest period of confinement recorded was 36 days, which far exceeds the CPT's standard of a maximum period of 14 days for a single period of solitary confinement as a disciplinary punishment; **see paragraph 73 for the recommendation.**

Further, the CPT considers that once a prisoner has undergone the observation period and is settled at Monsanto, he should not thereafter be served with new disciplinary punishments for actions he undertook prior to being transferred to Monsanto. The CPT's delegation met prisoners who had already spent longer than four months at Monsanto and who were still expecting to receive further periods of solitary confinement as a disciplinary sanction for acts committed in the prison from which they had been transferred. Transfer to Monsanto Prison is, in addition to being a security measure, clearly a punishment given the extremely restricted possibilities for association with other prisoners and the limited regime.

**The CPT recommends that prisoners serve any period of solitary confinement as a disciplinary sanction at the outset of their transfer to Monsanto Prison.**

88. Inmates continued to be systematically subjected to strip searches whenever they were in contact with any person from outside the establishment (e.g. after a conjugal visit, a hearing at a court, a medical examination at the hospital). Prisoners had to undress completely, usually in front of two prison officers.

The CPT has noted that the Portuguese authorities consider that all the inmates at Monsanto Prison are characterised by aggressive and violent behaviour and that strip searches are a preventive security tool to guarantee order.<sup>51</sup> Nevertheless, resort to strip-searches should still be based on an individual risk assessment at the outset (i.e. the mere fact of being held in Monsanto Prison should not in itself mean a prisoner needs to be systematically strip searched), be subject to rigorous criteria and supervision, and carried out in a manner respectful of human dignity.

Every reasonable effort should be made to minimise embarrassment; prisoners who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing.

**The Committee recommends that the resort to strip-searching and the manner in which it is carried out at Monsanto Prison be reviewed in the light of the above remarks.**

89. The staffing arrangements remained adequate, as was the case in 2013. However, the interaction between custodial officers and prisoners was still extremely limited; no attempts were made to develop positive relations between inmates and staff, based on the notions of dynamic security<sup>52</sup> and care.

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<sup>51</sup> See the response of the Portuguese authorities to the report on the 2013 visit - CPT/Inf (2013) 36, page 17.

<sup>52</sup> Dynamic security is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

**The CPT invites the Portuguese authorities to develop the inter-personal communication skills of custodial staff at Monsanto Prison and to encourage those officers to make use of these skills in their daily contacts with prisoners.**

90. Contact with the outside world is of great importance, particularly for prisoners who have few possibilities of association and a limited regime of activities. The situation regarding telephone calls, visits and intimate visits remains the same as described in the report on the 2013 visit.<sup>53</sup> At the time of the visit, only 10 inmates benefited from the possibility of intimate visits of two hours once a month. Ordinary visits could take place twice a week for one hour under closed conditions (i.e. with a screened separation) except for once a year when inmates were allowed open visits, in accordance with Articles 204 and 206 of the 2011 General Prison Regulations.

It is the CPT's general position that ordinary visits received by inmates should, as a rule, take place under open conditions, with closed visits being the exception based upon individual assessment. The CPT is fully aware that inmates in Monsanto Prison are deemed to require higher security. However, the visits take place in a secure environment, inmates are searched following open visits, and open visits can facilitate the process of reintegration into an ordinary regime. At least one of the two authorised weekly visits should be held under open conditions.

**The CPT recommends that all prisoners be able to receive visits from their family members without physical separation once a week, except in individual cases where there may be a clear security concern. The relevant legal provisions should be amended accordingly.**

91. As was the case in 2013, a large number of inmates held at Monsanto Prison were foreign nationals. The CPT welcomes the fact that the 2011 General Prison Regulations permit a certain flexibility when applying the rules on visits to prisoners whose families are unable to visit on a regular basis (due to cost or distance). Nevertheless, the CPT considers that more might be done, notably to permit the accumulation of visits or to use modern technology in facilitating communication (i.e. through VOIP), in order to help these prisoners to maintain contacts with their families.

**The Committee would like to receive the observations of the Portuguese authorities on these two points.**

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<sup>53</sup> See paragraph 49 of the CPT's report on the 2013 visit – CPT/Inf (2013) 35.

**C. Forensic psychiatric institutions under the Directorate General for Prisons and Rehabilitation Services (DGPRS)**

**1. Preliminary remarks**

92. The legal provisions governing the involuntary placement of persons in forensic psychiatric establishments (“*internamento*”) have remained for the most part unchanged since the CPT’s 2012 visit.<sup>54</sup>

93. The CPT’s delegation carried out follow-up visits to the two psychiatric establishments under the responsibility of the DGPRS, which together accommodate the majority of forensic psychiatric patients in Portugal: the Psychiatric and Mental Health Clinic of São João de Deus Prison Hospital in Caxias (near Lisbon) and the Psychiatric Hospital of Santa Cruz do Bispo Prison in Matosinhos (near Porto).

94. The *Psychiatric and Mental Health Clinic of São João de Deus Prison Hospital Caxias* (hereinafter referred to as “psychiatric unit of Caxias Prison Hospital”) is located in a two-storey building on the grounds of the Prison Hospital and has a total capacity of 51. It consists of an acute ward (on the upper floor) with beds for 19 male and, in a separate wing, for eight female patients, as well as a “long-term evolution ward”, opened in 2014 (on the ground floor),<sup>55</sup> which is intended for up to 24 patients who are no longer in an acute phase of psychiatric disorder but not yet ready to return to prison. The Prison Hospital has a total capacity of 185 and comprised in addition to the psychiatric unit three clinical services (internal medicine, infectious diseases and surgery<sup>56</sup>), a laboratory for clinical analyses for the larger Lisbon Region and a pharmaceutical service which supplied medicine for all prisoners in the mainland of Portugal.

At the time of the visit, the acute ward accommodated 16 men and three women, and 22 male patients stayed at the “long-term evolution ward”. Most patients on the acute ward had been admitted within the three months preceding the CPT’s visit and the patients at the “long term evolution” ward had stayed at the hospital between several months and three and a half years. Most of the patients were diagnosed as suffering from psychotic disorders. Of all patients, 16 had been declared irresponsible and ordered compulsory treatment by a criminal court while of the remainder, 11 were remand prisoners and 14 were sentenced prisoners with a mental health problem.

95. The *Psychiatric Hospital of Santa Cruz do Bispo Prison* has a capacity of 120 (male) patients and was at the time of the visit, accommodating 159 patients. Of those, 113 had been declared irresponsible and ordered to undergo compulsory treatment by a criminal court; of the remainder, 14 were remand prisoners and 32 were sentenced prisoners who had a mental health problem. The majority of patients were diagnosed as suffering from psychotic disorders. The Psychiatric Hospital is an integral part of Santa Cruz do Bispo Prison which has a total capacity of 254 male (excluding the Psychiatric Hospital) and 352 female prisoners.

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<sup>54</sup> See paragraph 86 of CPT/Inf (2013) 4.

<sup>55</sup> Previously part of the hospital’s occupational therapy department, see CPT/Inf (2009) 13, paragraph 80.

<sup>56</sup> However, the operating room had been closed due to the lack of staff (surgeons, anesthetists).

96. The CPT wishes to repeat its view, at the outset, that the Psychiatric Hospital of Santa Cruz do Bispo Prison is a hospital in name only, as it is unsuitable for providing a therapeutic environment for the care and treatment of psychiatric patients.<sup>57</sup> Due to its deplorable material conditions and its carceral and prison-like environment, it should be closed down and the patients should be relocated to an appropriate hospital facility. Indeed, the current treatment and conditions in which the patients are held in this establishment may amount to inhuman and degrading treatment.

Further, the Psychiatric Hospital of Santa Cruz do Bispo Prison was permanently operating above its official capacity while, according to the information provided by the prison administration, the number of prisoners with mental health problems in Portugal is rising. The situation is aggravated by the fact that civil psychiatric hospitals, despite having available places, usually refuse to admit forensic patients, due to the lack of payment arrangements between the Ministries of Health and Justice.

**The CPT reiterates its recommendation that the Ministries of Health and Justice devise a common approach towards the care and treatment of forensic psychiatric patients which encompasses both civil psychiatric hospitals and the prison psychiatric clinics/services.**

**Further, the CPT recommends that immediate steps are taken to close down the Psychiatric Hospital at Santa Cruz do Bispo Prison and to transfer patients to a proper therapeutic environment.**

## **2. Ill-treatment**

97. At the psychiatric unit of Caxias Prison Hospital, patients generally referred to staff as friendly and understanding. However, the CPT's delegation received two allegations of physical ill-treatment (slaps) of patients by security staff.

At the Psychiatric Hospital of Santa Cruz do Bispo Prison, the Committee is concerned by the many allegations of physical ill-treatment of patients by prison officers, consisting of slaps and blows with truncheons (for instance in reaction to inter-patient conflicts, but reportedly also for refusing to take one's medication).

While prison officers did not openly carry truncheons at the time of the visit, several allegations were received that usually some officers still openly carried truncheons at the Psychiatric Hospital of Santa Cruz do Bispo Prison, as was the case during the 2012 visit. There can be no justification for staff in a psychiatric hospital carrying truncheons.

**The CPT once again calls upon the Portuguese authorities to give a firm reminder to prison officers at the psychiatric establishments visited, that ill-treatment of patients is unacceptable and will be the subject of appropriate sanctions.**

**Further, the CPT wishes to receive confirmation that prison officers working in the Psychiatric Hospital of Santa Cruz do Bispo Prison are not equipped with truncheons in their daily work.**

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<sup>57</sup> See also the report on the 2012 visit - CPT/Inf (1013) 4.

98. The absence of a register on the use of force at the hospital made it not only impossible for the CPT to obtain an overview of the level and types of use of force, but it also prevented the management of the establishment from having such an overview, and thus from addressing any general trends. **The CPT recommends that every instance of use of force should be recorded in a dedicated register, established for that purpose. The entry should include the times at which the use of force began and ended, the circumstances of the case, the reasons for resorting to force, the type of means used, and an account of any injuries sustained by patients or staff.**

99. According to the information gathered during the visit, inter-patient violence was not a frequent occurrence at the psychiatric unit of Caxias Prison Hospital. However, at the Psychiatric Hospital of Santa Cruz do Bispo Prison, the delegation once again received several accounts from patients of violent incidents among patients. Allegedly, prison officers did not always intervene promptly to stop such acts and, in some cases, even turned a blind eye to violence between patients.

**The CPT reiterates its recommendation that the Portuguese authorities step up their efforts to combat inter-patient violence at the Psychiatric Hospital of Santa Cruz do Bispo Prison.**

100. Concerning strip searches, many patients interviewed at the Psychiatric Hospital of Santa Cruz do Bispo Prison alleged that they had been obliged to strip naked and perform one or several squats, for instance upon arrival, during a cell search or after visits. These searches often took place in a large visitor's room where staff could enter from two sides at any time.

A strip search is a very invasive – and potentially degrading – measure. Therefore, every reasonable effort should be made to minimise embarrassment; patients who are searched should not normally be required to remove all their clothes at the same time, e.g. the patient should be allowed to remove clothing above the waist and to get dressed before removing further clothing. Strip searches should further only be carried out in a place which preserves a certain degree of privacy and does not expose the patient to the sight of persons not involved in the search.

**The CPT recommends that the Portuguese authorities ensure that these precepts are respected in practice whenever it is deemed necessary, on the basis of an individual risk assessment, to resort to the strip-searching of a patient.**

### **3. Patients' living conditions and activities**

#### a. psychiatric unit of Caxias Prison Hospital

101. Living conditions at the psychiatric unit of Caxias Prison Hospital were generally good. Male patients were accommodated in large dormitory-style rooms (65m<sup>2</sup>) for 7 to 8 patients each, while the female ward consisted of three smaller rooms (15m<sup>2</sup>) with two to three beds each. All rooms were bright, well ventilated and clean.



However, patients at the acute ward were not provided with lockable spaces for their personal belongings and the windows lacked window shades or curtains which are particularly necessary in summer when the dormitories get very hot from the direct sunlight. Further, all dormitories were austere and impersonal with little or no space permitted for private decoration. There is also a need to improve the heating system in the whole psychiatric unit, as many patients complained about being very cold in winter when each dormitory is supplied with only one electric radiator.

**The CPT recommends that all patients are provided with lockable space for their personal belongings and that patients' rooms are equipped with shades and appropriate heating. Attention should also be given to the decoration of patients' rooms,** in order to give patients visual stimulation and to allow an appropriate personalisation of their living space. As regards the number of beds in the dormitories for male patients, reference is made to paragraph 104.

102. The delegation further noted that the three rooms for female patients contained ligature points (most notably in the shower annexe of one of the rooms). Given the vulnerable nature of the women held in those rooms, **the CPT recommends that the bedrooms and shower annexes for female patients be made ligature-free.**

103. As regards outdoor exercise, male patients reportedly had access to the outdoor yard for only half an hour during weekdays and not at all during weekends. Further, the outdoor yard was not equipped with any means of rest and did not provide any shelter against inclement weather.

**The CPT recommends that measures be taken to offer all patients free access to the open air in a setting which should also provide a means of rest and shelter from inclement weather.**

104. Moreover, the offer of organised purposeful activities needs to be improved. Twelve patients worked (kitchen, laundry, maintenance), but many of the other patients complained to the delegation that they had virtually nothing to do. The dormitories were unlocked from 7 a.m. until 7 p.m. and patients had access to a small library and a multi-purpose room with handicraft materials when a prison officer agreed to accompany them. Twice a day (for half an hour each), patients could go to the cafeteria and buy soft drinks/food or play billiards. Apart from occasional therapeutic, rehabilitative or cultural activities (e.g. a monthly theatre group and film screenings), patients were left to their own devices for most of the day in their rooms and the adjacent corridors.

**The CPT recommends that the Portuguese authorities pursue their efforts to establish an adequate therapeutic environment for forensic patients at the São João de Deus Prison Hospital. This should include increasing the number and variety of day-to-day organised activities offered to patients and the provision of adequate facilities for occupational and recreational activities.**

b. psychiatric Hospital of Santa Cruz do Bispo Prison

105. Material conditions at the hospital were of an extremely low standard. Patients were accommodated in single cells measuring a mere 6m<sup>2</sup> (including the toilet area) or in multiple-occupancy cells for up to ten patients, some of which were still overcrowded, with beds almost touching each other. For example, the delegation found five patients in only 18m<sup>2</sup> and two patients squeezed in 7m<sup>2</sup>, both including the toilet area. Further, the cells remained austere and impersonal.

The CPT considers that the provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and is also a key element of any policy for the psychological and social rehabilitation of patients. Structures of this type also facilitate the allocation of patients to relevant categories for therapeutic purposes.

**The CPT recommends that, pending the closure of the hospital, steps be taken throughout the establishment to reduce the number of beds in any one dormitory to no more than four beds. Further, cells of 7m<sup>2</sup> should not accommodate more than one patient and cells of 6m<sup>2</sup> should be taken out of service.**

106. Further, only very few improvements had been made since the CPT's visit in 2012: some broken windows had been repaired (and further window repair was ongoing), heating had been installed in all seclusion cells and the refectory had been refurbished.

However, there was still no heating system in the rest of the hospital and patients told the delegation that the cells were very cold in winter. Most dormitories, in particular those in wing B, were still dilapidated (e.g. stained walls, flaking plaster, mouldy and dirty) and in-cell toilets in multi-occupancy cells were not fully partitioned.

Further, the vast majority of cells were not equipped with a functioning call bell and several patients complained to the delegation that in order to be assisted by staff at night, they often had to bang on their cell doors for as long as half an hour until staff (a prison officer) would attend to them.

Almost all cells were lacking basic furniture such as tables, chairs and lockable space for each patient. Cells were devoid of any decoration, and therefore not conducive to any feeling of privacy and self-esteem or to maintaining individual identity. In the CPT's view, every patient should have, throughout his stay, and especially if hospitalised on a long-term basis, a clearly defined, personalised space, as well as, for example, a lockable bedside table on which to place a few personal belongings.

107. As regards daily activities, patients were allowed access to the outdoors for about three hours every day (from 9.30 a.m. to 11 a.m. and from 2.30 p.m. to 4 p.m.), usually in the mornings to a spacious inner courtyard and frequently in the afternoons to a large football and basketball ground. The delegation was informed that 67 patients were working (mainly in agriculture) and some 20 were involved in basic schooling (from two to four hours on weekdays). However, apart from that, the range and number of activities offered to patients was very limited, which was mainly due to inadequate numbers of socio-therapeutic staff and the lack of adequate facilities. For much of the time, a large number of patients were not engaged in any meaningful activity.

Moreover, patients were still denied access to their dormitories during the day and those who were not working were thus obliged to spend most of the time in the corridors and the yards (with the exception of one and a half hours after lunch, when patients could opt to be locked in their cells). There were no common rooms except for a cafeteria.

The CPT favours allowing patients who so wish to have access to their cell during the day, rather than obliging them to remain assembled together with other patients.

108. To sum up, the CPT's delegation found once again that the poor material conditions and very limited daily regime at the Psychiatric Hospital of Santa Cruz do Bispo Prison are totally inappropriate for providing an environment conducive to improving the mental health of patients.

**The CPT calls upon the Portuguese authorities to take urgent steps, pending the closure of the establishment, to upgrade the material conditions and to improve the range and number of purposeful activities offered to patients at the Psychiatric Hospital of Santa Cruz do Bispo Prison. The Committee would like to be informed of the precise time-line as well as the necessary budgetary provisions for addressing the most severe shortcomings.**

109. The CPT was pleased to note that the practice of addressing patients and referring to them only as numbers instead of using their names (on cell doors and when calling them over the loudspeaker) had been discontinued.

110. In contrast to the rest of the psychiatric hospital, material conditions in the newly opened "Exit House" were very good. It provided accommodation for 13 patients whose mental condition no longer required them to be detained in a psychiatric clinic but who remained at the establishment due to a lack of adequate care and/or accommodation in the outside community. Patients were accommodated in bright, spacious, well-furnished multiple-occupancy cells (and one single cell) equipped with call bells, and had access to clean sanitary facilities as well as to a pleasant common room, a terrace and a garden. The material conditions offered to patients in this "Exit House" should be replicated across the whole psychiatric establishment.

#### **4. Treatment**

111. Treatment for forensic psychiatric patients should involve a wide range of therapeutic, rehabilitative and recreational activities – including appropriate medication and medical care – and should be aimed at both controlling the symptoms of the illness and reducing the risk they might pose to society. Rehabilitative psycho-social activities should prepare patients for an independent life or return to their families; occupational therapy – as an integral part of the rehabilitation programme – should aim at raising motivation, developing learning and relationship skills, supporting the acquisition of specific competences and improving self-image.

112. At both establishments there was an evident lack of structured therapeutic and rehabilitative activities for patients and the treatment consisted essentially of pharmacotherapy. Only a few patients in both clinics benefited from individual or group therapy and many had no access to occupational or vocational training, which was a result of limited staff resources as well as a lack of adequate facilities.

113. Moreover, many patients at both establishments showed clear signs of overmedication such as blurred speech, psychomotor retardation and drowsiness during daytime.

A review of the medication charts at the Psychiatric Hospital of Santa Cruz do Bispo Prison showed that 91.5% of all patients were using neuroleptics, and 73.1 % used benzodiazepins. Almost all patients prescribed with anti-psychotic medication used two or more kinds of neuroleptics, and in some cases up to five different kinds. The overmedication in some of the cases observed was severe, and would most likely prevent the patients concerned from participating in therapeutic activities.

**The CPT reiterates its recommendation that the Portuguese authorities develop the range and number of therapeutic and psycho-social rehabilitative activities available to patients at both of the psychiatric institutions visited.**

**Further, the Portuguese authorities should put in place clear procedures to ensure that there is no overuse of medication at the forensic psychiatric clinics visited and at other forensic psychiatric services.**

114. On a positive note, the medical files were well ordered and decently kept in both establishments.

## **5. Staff**

115. The CPT must underline at the outset that at both hospitals visited, its delegation met competent, dedicated and well-trained healthcare staff who displayed considerable professionalism in their attitude towards patients. However, healthcare staff at the Psychiatric Hospital of Santa Cruz do Bispo Prison usually did not visit the accommodation wards and only saw the patients when they came to the medical unit to take their medication. For the rest of the time, patients were directly managed by prison officers. Such a state of affairs is unacceptable for a hospital facility.

### **a. psychiatric unit of Caxias Prison Hospital**

116. Five psychiatrists were responsible for the psychiatric clinic with its capacity of 51 patients. They were present during weekday mornings (from 9 to 12.30 or 1 p.m.) and in the afternoons were available on call (and one psychiatrist remained on call at night and during weekends). In addition, patients could be seen by one occupational therapist and three educators, but they were responsible for the whole prison hospital (with its capacity of 185 beds) and could therefore only devote part of their time to the psychiatric clinic.

The CPT considers that the presence of therapists and educators is insufficient for the establishment and constitutes a limiting factor in the provision of appropriate treatment to psychiatric patients. **The Committee recommends that the number of occupational therapists and educators at the psychiatric unit of the Prison Hospital be increased.**

117. Nurses and orderlies were working on a duty roster during weekdays with six nurses and three orderlies present in the mornings (8 a.m. to 4 p.m.), four nurses and three orderlies present in the afternoons (4 p.m. to 11 p.m.), and three nurses and three orderlies at night (11 p.m. to 8 a.m.). On weekends, four nurses and two orderlies were present in the mornings and in the afternoons respectively, while three nurses and two orderlies were present at night.

In the Committee's view, the number of nurses was insufficient for a psychiatric clinic with a capacity for 51 patients. The situation was further exacerbated by the instability of the nursing team and deleterious effects of the lack of experience and high turnover among contracted nurses. In this respect, reference is also made to paragraph 55 above.

**The CPT recommends that the Portuguese authorities take urgent steps to strengthen and stabilise the nursing team at the psychiatric unit of Caxias Prison Hospital.**

b. Psychiatric Hospital of Santa Cruz do Bispo Prison

118. It should be noted that the healthcare staff was also in charge of the prisoners held in the ordinary part of the prison, and therefore could not devote all of their time to the patients of the psychiatric hospital.

A mere two and a half psychiatrists' posts was woefully inadequate for about 150 patients and more than 550 prisoners. There was also only one general practitioner for the prison and psychiatric hospital. In addition, one dentist was employed by the prison and a neurologist visited the prison for three hours a week due to the increased occurrence of neurological illnesses such as dementia.

It is a positive development that one clinical psychologist, one psychomotor therapist and one occupational therapist had been recruited. However, they were all on part-time contracts only (25 hours/week). As acknowledged by the health-care staff themselves, such a complement was clearly inadequate to provide a sufficient number and variety of psycho-social rehabilitative activities to more than 150 patients.

119. The CPT welcomes the fact that the number of nurses and orderlies had been increased to 17 and seven respectively. The nurses worked on a shift system with two nurses present at the psychiatric clinic in the mornings (8 a.m. to 2 p.m.) and one nurse present at the psychiatric clinic in the afternoons (2 p.m. to 8 p.m.). At night (8 p.m. to 8 a.m.), only one nurse was responsible for the entire prison. In addition, two orderlies were present in the mornings (8 a.m. to 3 p.m.) and one in the afternoons (3 p.m. to 10 p.m.) and at night (10 p.m. to 8 a.m.).

In the CPT's view, the described above nursing complement is still insufficient, given the severe diagnoses of many of the patients at the psychiatric hospital.

The CPT further noted with regret that health-care and socio-therapeutic staff still did not have regular staff meetings which would promote a comprehensive therapeutic approach.

120. **The CPT calls upon the Portuguese authorities to take steps at the Psychiatric Hospital of Santa Cruz do Bispo Prison to further reinforce the staffing complement and, in particular:**

- **to increase substantially the number of psychiatrists' and of general practitioners' posts;**
- **to reinforce the presence of qualified nursing staff;**
- **to further reinforce the team of qualified specialists responsible for running therapeutic and rehabilitation activities, including at least one psychologist on a full-time basis.**

**Further, the Committee reiterates its recommendation that regular team meetings of health-care and socio-therapeutic staff be introduced.**

121. Uniformed prison officers were still responsible for the management of patients at the accommodation wards and a number of the patients interviewed indicated that communication between prison officers and patients was very limited and they spoke of poor relations with officers. Reportedly, prison officers received two to three days training on working with mentally ill patients at the beginning of their assignment, and officers proving to be unsuitable for work at the clinic were transferred to the prison part of the establishment.

The CPT wishes to reiterate that the supervision of patients in a psychiatric hospital should in principle be entrusted to health care staff and that prison officers should not be present on accommodation wards. When prison officers exceptionally perform security-related tasks inside the psychiatric prison hospital, it is of crucial importance that, due to the challenging nature of the particular tasks in a psychiatric institution, they be specifically selected and receive both appropriate training before taking up their duties as well as refresher courses and in-service training and that they always work under the control and supervision of health care staff. A few days of training on working with mentally ill patients is totally inadequate.

Further, the promotion of constructive as opposed to confrontational relations between patients and staff will serve to lower the tension in the establishment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment. A spirit of communication and care should accompany measures of control and containment. Such an approach, far from undermining security in the establishment, would help to enhance it. In the course of prison staff training, considerable emphasis should be placed on the acquisition and development of inter-personal communication skills. Measures should also be taken to upgrade the skills of custodial staff in handling problematic situations without using unnecessary force, in particular by providing training in ways of averting crises and defusing tension.

**The CPT calls upon the Portuguese authorities to replace the prison officers assigned to the Psychiatric Hospital of Santa Cruz do Bispo Prison with trained nursing staff. In cases when they are required to intervene in security-related incidents, prison officers should be specifically selected and trained to interact with mentally ill patients and always work under the control and supervision of the health care staff. This requires that nursing staff be present on the accommodation wards. Prison officers working in psychiatric hospitals should further be trained to communicate with the patients and to apply de-escalation techniques when necessary.**

## 6. Seclusion and means of restraint

### a. guidelines on the use of restraint

122. At the outset of the visit, the delegation had been informed that guidelines on restraint in psychiatric institutions under the Ministry of Justice had been adopted, as had been repeatedly recommended by the CPT. However, at neither of the two institutions visited did such guidelines exist.

**The Committee recommends that the Portuguese authorities take the necessary steps to ensure that all forensic psychiatric hospitals/services establish written guidelines on the use of means of restraint. Such guidelines should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The guidelines should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing.** In the CPT's opinion, such **guidelines are** a major support for staff and especially the debriefing is very helpful in ensuring that patients understand the rationale behind a measure of restraint that may be imposed.

### b. psychiatric unit of Caxias Prison Hospital

123. As was the case during the CPT's visit in 2008, there was no comprehensive central register or documentation of incidences of the use of restraint (seclusion, mechanical and chemical restraint) at the psychiatric unit of Caxias Prison Hospital, thereby rendering it difficult for the delegation to assess the extent of resort to such means. That said, as far as the delegation could ascertain, recourse to coercive measures was generally very rare and mechanical restraint had not been applied since 2014. This is positive.

**The CPT reiterates its recommendation that every instance of restraint of a patient should be recorded in a specific register established for this purpose.** This will enhance the oversight of the use of means of restraint for management and inspection purposes. The entry in the register should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such a measure, the type of measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry. In addition, the entry in the patient's personal medical file should indicate in greater detail the grounds for the use of means of restraint.

c. Psychiatric Hospital of Santa Cruz do Bispo Prison

124. It is positive that, as was the case in the past, there was no recourse to mechanical means of restraint. However, recourse to the use of seclusion was frequent. In the first nine months of 2016, there had been 92 instances of patients being placed in a seclusion cell for periods ranging from one to 19 days or even longer (e.g. due to consecutive placements). In one case, a patient had been accommodated in a seclusion cell from 1 July 2016 until at least 4 August 2016 and was found by the CPT's delegation to be there on 3 October 2016. It was not clear from the records whether he had been released in the meantime. In the CPT's view, a measure of seclusion should normally only be resorted to for a short period (usually hours rather than days) until such time as the reason for the placement ceases to exist.

125. The CPT's delegation again heard a number of allegations according to which the practice of keeping a patient fully naked in a seclusion cell had still not been entirely abandoned. The CPT recalls that such a practice amounts to degrading treatment.<sup>58</sup> **The Committee reiterates its recommendation that this practice be abolished immediately. In case a patient appears to be at risk of suicide, he should be offered specially adapted rip-proof clothing.**

126. In the Committee's view, any placement of a psychiatric patient in a seclusion cell should be surrounded by a series of safeguards, including the provision and appropriate documentation of regular human contact and continuous direct supervision by staff, as well as regular reviews of the need for continued seclusion. Reference is also made to the precepts outlined in paragraph 86 above.

The general prison regulations explicitly provide for continuous direct supervision by medical staff.<sup>59</sup> In the response to the CPT's 2012 report, the Portuguese authorities further stated that instructions had been made to ensure that all visits by medical staff to patients placed in seclusion cells are registered. However, according to the information received, the patients concerned were sometimes visited by a psychiatrist and a nurse only once a day (and during the night hourly by a prison officer) and the documentation examined could not clarify if regular reviews of the need for continued seclusion had been carried out.

127. Further, patients were usually neither allowed access to the outdoor yard nor to the telephone during the entire period of their placement in a seclusion cell. This is clearly punitive in nature. Patients should not be deprived of access to the telephone and should be offered access to the outdoor yard every day unless they are individually assessed as posing too high risk to themselves or to others.

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<sup>58</sup> See also the decision of the European Court of Human Rights in the case of *Hellig v Germany* of 7 July 2011, in which the Court considered that to deprive a patient of clothing during his placement in a security cell was capable of arousing feelings of fear, anguish and inferiority capable of humiliating and debasing him. The Court found a violation of Article 3 ECHR for depriving a prisoner of his clothes for the entire period of placement of seven days in a security cell.

<sup>59</sup> See Article 255 of Decree n° 51/2011, together with Article 88 paragraph 3 (f) of the 2009 Code on Execution of Criminal Sanctions and Measures.



128. The CPT wishes to stress that locking up a vulnerable mentally disordered patient alone in a room must be very carefully applied. It may produce a calming effect in the short term, but is also known to cause disorientation and anxiety, at least for certain patients. Whenever recourse to seclusion is necessary, **the CPT recommends that the Portuguese authorities should ensure that the measure of seclusion be properly regulated and subject to a number of safeguards, in particular:**

- **placement in a seclusion cell should only be used as a last resort to prevent a risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks. It should not be resorted to due to a lack of alternative strategies, staff and regime provision;**
- **the duration of the measure should be for the shortest possible time;**
- **during placement in a seclusion cell, regular human contact and constant individual staff supervision should be ensured and documented accordingly;**
- **the need for continued seclusion should be regularly reviewed and the measure should be terminated immediately when the reason for it ceases to exist;**
- **persons subject to seclusion should receive full information on the reasons for the intervention as well as on avenues to appeal against the seclusion measure and should always be debriefed after the end of the measure, in order to explain the rationale behind it;**
- **resort to seclusion should always be accurately recorded.**

129. In their response to the CPT's 2012 report, the authorities stated that patients are only placed in the seclusion cells for clinical reasons, which was also emphasised by the management of the Psychiatric Hospital during this visit. However, the reason for placement in a seclusion cell, as noted in the seclusion register, was frequently "aggression between patients" and a number of the patients interviewed during the visit alleged that placement in the seclusion cells was, at times, applied to patients as a punishment (in particular for inter-patient violence). In the Committee's view, the use of seclusion of psychiatric patients as a form of punishment would be totally unacceptable.

**The CPT therefore reiterates its recommendation that the Portuguese authorities take the necessary steps to ensure that patients at the Psychiatric Hospital of Santa Cruz do Bispo Prison are never placed in seclusion as a form of punishment. Where there is a need for a disruptive or violent patient to be rapidly transferred to a seclusion cell, he or she should only be kept in a seclusion cell until such time as he or she has calmed down.**

130. The material conditions in the hospital's four seclusion cells had only been slightly improved since the 2012 visit; all four seclusion cells were now equipped with heating/air conditioning. That said, despite being located on a different floor than the nurses' office, only one of the cells had a call button which activated a signal lamp in the nurses' office, but no sound. Access to natural and artificial lighting was still insufficient (windows were small, opaque and covered with a metal grille).

Further, it remained the case that none of the cells possessed toilets and patients were still obliged to use a bucket instead and slop out every day. This is unacceptable and could well be considered as degrading treatment. If no in-cell toilet exists, patients must be given access to a toilet without undue delay whenever they so require (including at night).

In short, the material conditions of seclusion remained unacceptable, in particular for vulnerable mentally disturbed patients.

**The CPT calls upon the Portuguese authorities to take immediate steps to take the seclusion cells at the Psychiatric Hospital of Santa Cruz do Bispo Prison out of service until properly refurbished. Patients held in these cells must have ready access to a toilet without undue delay at all times (including at night).**

131. It remained the case<sup>60</sup> that most patients' medical files included PRN prescriptions drawn up by the treating psychiatrist which authorised nurses to administer injections of antipsychotics to agitated patients. Reportedly, a psychiatrist would always be informed about the use of such PRN medication (by telephone) and would examine the patient on the ward after the administration of the medication when considered necessary. As regards additional safeguards which should accompany the use of a PRN prescription for rapid acting tranquillisers/antipsychotics, the CPT refers to the precepts outlined in paragraph 86 above.

132. Patients could on rare occasions also be subjected to formal disciplinary sanctions, such as confinement to a patient's cell (POA) or withdrawal of their TV set or other items. In this respect, the same rules applied at the Psychiatric Hospital of Santa Cruz do Bispo Prison as in ordinary prisons. As the prison director stated, the prohibition of access to the outdoor yard was also imposed as a sanction from time to time.

Furthermore, the material conditions in the cells used for implementing POA which were located in the basement near the kitchen, lacked access to natural light and were thus unsuitable for holding patients.

The CPT has general reservations about the use of disciplinary sanctions vis-à-vis psychiatric patients. Such measures aim at sanctioning patients' behaviour, which is often likely to be related to a psychiatric disorder and should be approached from a therapeutic rather than a punitive standpoint. Further, even in prisons, the prohibition of outdoor exercise should never be imposed as a disciplinary punishment.

**The Committee recommends that the Portuguese authorities abolish disciplinary sanctions for psychiatric patients. In no case should outdoor access be restricted as a form of punishment. Moreover, the cells described above which are used for implementing POA should be taken out of use immediately.**

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<sup>60</sup> See CPT/Inf (2013) 4, paragraph 118.

## 7. Safeguards

### a. placement and discharge

133. The relevant provisions governing the procedures for placement and discharge for persons deemed irresponsible under the Criminal Code have not changed since the CPT's 2012 visit and are in principle surrounded by sufficient safeguards.<sup>61</sup>

However, the information gathered by the delegation suggests that in practice, many patients were still not assisted by a lawyer during the review hearing by the court despite the existence of a legal obligation.<sup>62</sup> **The CPT would like to be informed of the steps being taken by the Portuguese authorities to ensure that Article 504 of the Code of Criminal Procedure (CCP) is implemented.**

134. The CCP and the Code on Execution of Criminal Sanctions stipulate that when reviewing the placement of a forensic patient, the competent court must seek the opinion of a psychiatrist.<sup>63</sup> This expertise is to be provided by independent forensic experts.<sup>64</sup> From their interviews with patients and an examination of the relevant documentation, the CPT's delegation gained the positive impression that this was also implemented in practice.

### b. safeguards during placement

135. The CPT is concerned by the practice at the Psychiatric Hospital of Santa Cruz do Bispo Prison of medication at times being administered against the patients' will, either by physical force or by concealing medication in patients' food (yoghurt).

The CPT wishes to stress that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis, be it in the context of civil or criminal proceedings, should not preclude seeking informed consent to treatment. Every patient capable of discernment should be given the opportunity to refuse treatment or any other medical intervention, which also means that medication should not be hidden in the patient's food without his/her knowledge.<sup>65</sup> Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. The relevant legislation should require an external psychiatric opinion in any case where a patient does not agree with the treatment proposed by the establishment's doctors; further, patients should be able to appeal against a compulsory treatment decision to an independent outside authority and should be informed in writing of this right.

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<sup>61</sup> See previous CPT reports CPT/Inf (2013) 4, paragraph 119 and CPT/Inf (2009) 13, paragraph 133.

<sup>62</sup> See Section 504 of the Code of Criminal Procedure.

<sup>63</sup> See Section 504 (1)(a) of the CCP and Section 158 (2)(a) of the Code on Execution of Criminal Sanctions.

<sup>64</sup> According to Section 2 of Law 45/2004, Section 159 of the CCP and Section 16 of the Decree Law 123/2011, all forensic expertises must be provided by the Institute for Forensic Medicine and Forensic Science (*Instituto Nacional de Medicina Legal e Ciências Forenses*) or, in exceptional cases, by experts contracted by the Institute.

<sup>65</sup> Medication should not be surreptitiously concealed in patients' food, as not only is this poor medical practice and unreliable, but above all it destroys any trust between a patient and health care staff which, given the mental condition of the patients, will impact negatively on their mental state.

**The CPT recommends that the Portuguese authorities take appropriate steps to ensure that the above-mentioned precepts are effectively implemented at the Psychiatric Hospital of Santa Cruz do Bispo Prison and at other forensic psychiatric services. If necessary, the relevant legal provisions should be amended accordingly.**

**Further, the practice of concealing medication in patient's food should be ended forthwith.**

136. As regards contact with the outside world, visiting arrangements were satisfactory at both establishments.<sup>66</sup>

Concerning access to the telephone, it is a positive development that at the Psychiatric Hospital of Santa Cruz do Bispo Prison, a telephone booth/office with a second pay telephone had been installed and which could be used by patients to receive phone calls (on one morning per week). As was the case in ordinary prisons (see paragraph 75 above), telephone calls at both clinics were automatically cut off after five minutes.

137. At the Psychiatric Hospital of Santa Cruz do Bispo Prison, a formal internal complaints system was not in place.<sup>67</sup> In the CPT's view, an internal complaints system should ensure that patients are able to make confidential written complaints at any moment and place them in a locked box destined for this purpose (to which only the establishment's Director and/or designated deputy has the key), located in each accommodation unit. They should receive, within a reasonable time, written acknowledgement of every complaint they make and reasoned answers in writing to written complaints (feedback on the outcome of their complaints in a timely manner). Further, a proper record should be maintained of every complaint.

Moreover, in both psychiatric clinics, the large majority of patients interviewed by the delegation were unaware of the avenues by which to lodge formal complaints, either within or outside the establishment.

**The CPT recommends that measures be taken to put in place a proper internal complaints system at the Psychiatric Hospital of Santa Cruz do Bispo Prison. Further, patients at both psychiatric clinics should be provided with the necessary information, in a language they understand, on all existing internal and external complaints mechanisms. In addition, all complaints should be recorded in a special register.**

138. In respect of inspections, the National Preventive Mechanism (NPM) was regularly carrying out targeted visits to psychiatric establishments in the country. Apart from that, the CPT's delegation was informed by the managements of both psychiatric clinics that neither of them had been visited by an inspectorate body since the CPT's 2012 visit. The Committee considers that both forensic psychiatric facilities should also be visited by a specialised independent outside body responsible for the inspection of patient's care, in accordance with Article 16(3) of the United Nations Convention on the Rights of Persons with Disabilities.

**The CPT recommends that the forensic psychiatric facilities under the responsibility of Ministry of Justice be regularly visited by a specialised independent outside body.**

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<sup>66</sup> At the Psychiatric Hospital of Santa Cruz do Bispo Prison, those patients deemed irresponsible could receive visitors every day, whilst those who were sentenced or on remand could receive visitors twice a week, which was also the case for patients of the psychiatric unit of Caxias Prison Hospital.

<sup>67</sup> According to the management, a box for "requests" could be used for complaints. However, patients lacked confidence in using the box.

**APPENDIX**  
**LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL**  
**ORGANISATIONS WITH WHICH THE DELEGATION HELD CONSULTATIONS**

**A. National authorities**

**Ministry of Justice**

Francisca VAN DUNEM	Minister of Justice
Helena MESQUITA RIBEIRO	Deputy Minister of Justice
Anabela PEDROSO	Secretary of State for Justice
Elisabete MATOS	Head of Cabinet of the Minister of Justice
João FREIRE	Head of Cabinet of the Deputy Minister for Justice
Luís ISIDRO	Adviser of the Cabinet of the Minister of Justice
Fátima CONSCIÊNCIA	Adviser of the Cabinet of the Deputy Minister for Justice
Celso MANATA	Director General for Rehabilitation and Prison Services
Hernâni VIEIRA	Director of the Psychiatric Clinic of Santa Cruz do Bispo
Amélia BENTES	Clinical Director of the Psychiatric Clinic of Santa Cruz do Bispo
Erica CARDOSO	Director of the Prison Hospital São João de Deus
Hugo ESTEVES	Head of Unit, Multidisciplinary Team of Competence Center for the Management of Health Care
Pedro DO CARMO	Deputy National Director of the Judiciary Police

**Ministry of Internal Affairs**

Constança URBANO DE SOUSA	Minister of Internal Affairs
Isabel ONETO	Deputy Minister for Internal Affairs
Sandra LAMEIRAS	Head of Cabinet of the Deputy Minister of Internal Affairs
Ana Paula LOURENÇO	Advisor of the Cabinet of the Minister
Carlos PALMA	Secretary General
Ricardo CARRILHO	Deputy Secretary General in charge of International Relations and Management of EU Funds
Célia CHAMIÇA	Senior Officer of the Department for International Relations
Luís BOTELHO MIGUEL	Lieutenant-General of GNR and Second Commandant General
Paulo POIARES	Major of GNR
Luís FARINHA	National Director of PSP
Hugo GUINOTE	Subintendent of PSP
Luísa MAIA GONÇALVES	Inspector Coordinator and National Director of Borders and Immigrants Service (SEF)
Luzia MEIRELES	Coordinator of the Department of International and Public Relations of SEF
Margarida BLASCO	Inspector-General for Internal Affairs (IGAI)
Paulo GUARDA	Deputy Inspector-General for Internal Affairs

**Ministry of Foreign Affairs**

Luís CABAÇO  
Vera ÁVILA

Deputy Political Director  
Director of the Department of Political Multilateral  
Organizations

Cláudia REDINHA

Legal Advisor at the Human Rights Office and CPT Liaison  
Officer

**B. National Preventive Mechanism (NPM)**

José Alfaro AFONSO  
Miguel COELHO  
Marlene NEVES  
João PORTUGAL

Coordinator, Office of the Ombudsman and NPM  
Coordinator, Office of the Ombudsman and NPM  
Advisor, Office of the Ombudsman and NPM  
Coordinator, Office of the Ombudsman and NPM

**C. Non-governmental organisation**

Ilime POTELO

Barrister, Human Rights Commission of the Portuguese Bar  
Association