

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 13 to 17 May 2013

The Portuguese Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2013) 36.

Strasbourg, 26 November 2013

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Copy of the letter transmitting the CPT's report

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Strasbourg, 19 July 2013

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 Government of Portugal 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 13 to 17 May 2013. The report was adopted by the CPT at its 81st meeting, held from 1 to 5 July 2013.

The recommendations, comments and requests for information formulated by the CPT are listed in the Appendix of the report. The CPT requests the authorities of Portugal to provide within **three months** a response giving a full account of action taken to implement the Committee's recommendations as well as reactions and replies to the comments and requests for information.

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

Yours sincerely,

Lətif Hüseyinov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

A. Dates of the visit, composition of the delegation and establishments visited

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 13 to 17 May 2013. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

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

- Wolfgang HEINZ, Head of delegation
- Marzena KSEL, 1st Vice-President of the CPT
- Haritini DIPLA
- Vincent THEIS.

They were supported by Hugh CHETWYND (Head of Division) and Julien ATTUIL-KAYSER of the CPT’s Secretariat and assisted by Helle GULSETH (Investigative Prosecutor, Norwegian Bureau for the Investigation of Police Affairs), as well as the following interpreters: Lara DUARTE, Sophie ENDERLIN, Louis KEIL and Manuel SANT’IAGO RIBEIRO.

3. One of the main purposes of the visit was to review the situation at Lisbon Central Prison. During the CPT’s 2012 periodic visit to Portugal, the material conditions of detention in that establishment had been found to be very poor; moreover, a number of allegations of ill-treatment of inmates by prison staff were received. The delegation also carried out a follow-up visit to Monsanto High Security Prison (hereafter “Monsanto Prison”), which had previously been visited by the Committee in 2008. In addition, discussions were held with the General Prosecutor’s Office and Inspectorate General of Internal Administration (IGAI) on investigating allegations of ill-treatment by law enforcement officials and several cases were examined.

B. Consultations held by the delegation and co-operation encountered

4. In the course of the visit, the delegation had discussions with Fernando Santo, State Secretary of the Ministry of Justice, Fernando Alexandre, Assistant Secretary of State of the Ministry of Internal Administration and Rui Sá Gomes, Director General of Probation and Prison Services, as well as with other senior officials from the relevant Ministries. Talks were also held with Margarida Blasco, Inspector-General of Internal Administration (IGAI), and Carlos Lobato Ferreira, Head of cabinet of the Prosecutor General. Further, the delegation met Alfredo José de Sousa, *Provedor de Justiça* (Ombudsman).

5. The co-operation received by the CPT's delegation during the visit, both from the national authorities and from staff at the establishments visited, was excellent. The delegation enjoyed rapid access to all the places it visited, was provided with the information necessary for carrying out its task and was able to speak in private with persons deprived of their liberty. In this context, the delegation would like to thank the CPT liaison officer for the assistance provided during the visit.

However, the principle of co-operation between a State Party and the CPT is not limited to facilitating the work of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. Regrettably, the 2013 visit brought to light the very limited progress that had been made in certain areas, in particular as regards the situation found at Lisbon Central Prison in terms of both material conditions and the treatment of inmates by prison staff.

The CPT calls upon the Portuguese authorities to take decisive steps to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

Further, it is important that the Portuguese authorities provide the CPT with accurate and reliable responses (see paragraph 59 below).

C. Monitoring of places of deprivation of liberty

6. In December 2012, Portugal ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) and deposited the instrument of ratification in January 2013. On 9 May 2013, the Portuguese Government adopted a resolution designating the *Provedoria de Justiça* as National Preventive Mechanism (NPM).

The Committee welcomes this ratification and notes the subsequent designation of the Ombudsman's Office as NPM. The NPMs are natural partners for the CPT. In fact, the effectiveness of efforts to assist States in Europe to prevent torture and other forms of ill-treatment will in future depend to a large extent on the quality of the interaction between the Committee and these mechanisms.¹

7. In the recent past, the *Provedor de Justiça* has played an active role in monitoring places of deprivation of liberty, particularly prisons and police establishments. However, financial limitations have not allowed the institution to undertake visits on a regular basis. Adequate resources (staffing and financial) are essential for the functioning of the NPM. Further, in the light of the Guidelines adopted by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)², consideration might be given to setting up a separate unit or department, within the Ombudsman's Office, to be responsible for the NPM functions. **The CPT would like to receive relevant information in relation the above remarks.**

¹ See the 22nd General Report on the CPT's activities (CPT/Inf (2012) 25), paragraph 29.

² See paragraph 32 of the Guidelines on national preventive mechanisms drawn up by the SPT. Document CAT/OP/12/5 of 9 December 2010.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Prison establishments

1. Preliminary remarks

8. At the time of the visit, the prison population in Portugal had reached almost 14,000 prisoners for an official capacity of 12,077 places. Recognising the necessity to address the challenges of a burgeoning prison population, a number of measures have been taken by the authorities. In particular, work is currently being carried out in several establishments to increase their capacity and a new establishment should be opened in the Azores in the course of 2013, with the aim of creating 1,129 more places in 2013. In addition to the renovation/construction of new premises, the authorities indicated, in their response to the report on the CPT's 2012 visit, that the legal framework had been amended to limit pre-trial detention and facilitate alternatives to imprisonment (house arrest, suspension of prison sentences and community work).³ The delegation noted that despite the financial difficulties currently being experienced in Portugal, the budget of the Directorate General of Probation and Prison Services (DGSP) had been increased by 1% in 2013.

However, notwithstanding the announced measures, the prison population has increased by more than 1,000 inmates in the 15 months since the February 2012 visit.⁴ Further, the delegation was informed that the number of persons detained for being unable to pay their fines had recently escalated. It is clear that, to date, the measures taken to reduce the prison population have had little impact.

The CPT recommends that the Portuguese authorities vigorously pursue their efforts to combat prison overcrowding, by placing further emphasis on non-custodial measures in the period before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty. In this context, they should be guided by the relevant Recommendations of the Committee of Ministers of the Council of Europe: Recommendation Rec (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole), Recommendation (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules.

³ CPT/Inf (2013) 5, page 19.

⁴ The Prison population was of 14,116 on 1 June 2013 according to information published by the DGSP on its website <http://www.dgsp.mj.pt>.

9. The Portuguese prison system has been affected by several strikes of prison officers in the course of 2013, including immediately before the delegation's visit.⁵ The CPT notes that a prolonged strike subsequently took place from 21 May to 1 June 2013 and that further action might take place in the future. According to the information received by the delegation, activities/work, visits from lawyers and relatives (including the opportunity to exchange clothing), possibility to buy goods, and external transfers (for medical purposes or to courts⁶) were not possible during the industrial action. Prisoners were offered one hour of daily outdoor exercise – as well as access to a shower – and were provided with food. As for health-care services, they were limited to distribution of prescribed medicines and urgent medical care. The Director of the Lisbon Central Prison indicated that it was not possible to compensate for the visits that had not taken place as the prison did not have sufficient visiting booths.

The Committee understands that previous rules regulating strikes in prisons and prisoners' rights are no longer applicable.⁷ As a consequence, the "minimum service" (i.e. work organisation and the number of staff present) for each instance of industrial action was determined by an arbitration panel.⁸ The number of staff present was equal to the number of staff present during weekends plus 20%.

It is essential that every step be taken to ensure that prisoners' rights are upheld and that their physical and psychological integrity is guaranteed whenever there is a strike by prison staff. In particular, prisoners should be offered at least one hour of outdoor exercise, access to medical care, regular meals and access to a shower as well as continued contacts with the outside world (especially visits, including by a lawyer).

The Committee recommends that the Portuguese authorities establish a protocol for a "guaranteed service" for inmates, applicable whenever there is a strike by prison staff, taking into account the above remarks.

10. Regarding the health-care service in prisons, the CPT notes that, according to the Code on Execution of Criminal Sanctions⁹, the National Health Service is responsible for prisoners. Several regulations were adopted in 2011 and 2012 to clarify a number of issues, in particular as regards financial costs.¹⁰ However, the transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health appears to be blocked. At the time of the visit, the Ministry of Justice remained competent for providing health-care to prisoners. As an illustration, the medical doctor who was heading the health-care service at Lisbon Central Prison was employed by the Ministry of Justice. Therefore, **the Committee would like to receive updated information on the current institutional arrangements for the provision and supervision of health care in prisons, as well as on the transfer process.**

⁵ From 24 until 30 April and from 6 until 11 May 2013.

⁶ Except in the case of medical emergency or if the court hearing would be determinant for the detention/freedom of the prisoner.

⁷ See in particular the Opinion No 52/98 of the Republic General Prosecutor's Office validated by the Ministry of Justice on 10 September 1998, Official Journal, series II, No. 229 of 3 October 1998, pages 14066 – 14084.

⁸ The role, composition and mandate of the arbitration panel are defined by the Law on contractual relations for civil servants, 11 September 2008, law No. 59/2008.

⁹ Articles 32 (2) and 53 (6) of the *Código da Execução das Penas e Medidas Privativas da Liberdade*, 12 October 2009, law No. 115/2009.

¹⁰ See the response of the Portuguese authorities to the CPT's 2012 report, CPT/Inf (2013) 5, page 30.

11. As was the case in 2012, a number of medical services were provided by private entities and the report on the 2012 visit recommended establishing robust oversight and audit mechanisms to control the outsourced services. In their response, the Portuguese authorities merely indicated that contracts with private companies providing health-care services contained a specific clause aimed at ensuring staff stability. This does not, however, address the central issue of the quality of services provided. The CPT considers that the necessary oversight measures should be taken to ensure the quality of service is upheld and to control the respect by private contractors of their obligations; to this end, it **reiterates its previous recommendation**.

2. Lisbon Central Prison

12. Lisbon Central Prison, located in the city centre, has been in service for 127 years. 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 Portuguese authorities are now renting the prison, with an intention to buy it back. At the time of the visit, 1,310 male prisoners were being held – including 616 on remand and four minors – for an official capacity of 886; i.e. an occupancy rate of almost 150%.

a. ill-treatment

13. The delegation received a number of credible allegations of ill-treatment of inmates by prison officers. The ill-treatment was said to consist of slaps, punches, kicks and blows with truncheons to the body and/or head. In some cases, the delegation gathered medical evidence – records of haematomas on the head, the back or the thighs – which were consistent with the allegations made.

14. 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 visit, a number of inmates alleged that they had been taken to “room 80” (*sala de espera*) on the main corridor, where they had been physically assaulted by officers.

A number of inmates in D Wing also made reference to an incident on the eve of New Year 2013 when they had refused to return to their cells as they did not want to be alone on that particular evening. As a punishment for this refusal, they were apparently forced to pass between a double-line of some 15 prison officers who punched and struck them with batons as they filed through this “corridor”. The inmates concerned were then placed in provisional isolation¹¹ for several days and were subjected to disciplinary sanctions for their refusal to obey an order. They had not complained about this event as they considered it “a common practice”.

¹¹ Provisional isolation may be imposed on a prisoner suspected of being implicated in a disciplinary offence for a period of up to 30 days (see further paragraph 32).

From the information gathered in the course of the 2013 visit, it is clear that effective measures have not yet been taken to tackle the problem of ill-treatment by staff at Lisbon Central Prison. The authorities must take concerted action to stamp it out.

Once again, the CPT recommends that the Portuguese authorities ensure that all prison staff are made to understand that resort to ill-treatment is unacceptable and will result in severe disciplinary sanctions and/or criminal prosecution.

15. Effective investigations, capable of leading to the identification and punishment of those responsible for ill-treatment, will have a strong deterrent effect. In this regard, the CPT wishes to highlight the following specific cases of alleged ill-treatment.

A prisoner from D Wing alleged that, on 2 December 2012, he was punched and struck with a truncheon in his cell by three prison officers because he had noisily complained about “yet another power cut” in his cell. A few hours after the incident, he informed his lawyer and family and was then interviewed by the prison lawyer and the Head of Security who took pictures of his injuries. The medical report established after the incident indicated “a bruise on the back, a big hematoma on the head and a scratch on the buttocks”. The delegation was informed that the case had been transmitted to the Prison Inspection and Audit Service (SAI).

In another case, a prisoner alleged that, on 4 May 2013, following a verbal altercation with a staff member in the basement of E Wing, several prison officers came into his cell and proceeded to deliver multiple blows with a baton to his head, arms, legs and back. Later that day, he saw his lawyer who lodged an official complaint. Photographs of the injuries to his back, head, upper legs and arms were taken by the Head of Security and the SAI was informed. The injuries were still visible at the time of the CPT’s visit; according to the medical member of the CPT’s delegation, they were consistent with the allegation of having been hit repeatedly with a baton.

The CPT would like to be kept informed of the outcome of the investigation by the SAI and of any subsequent actions taken in respect of these cases. Further, it would like to be informed of whether – and if so, exactly when – the Public Prosecutor’s Office was informed of these incidents of alleged ill-treatment by prison officers.

16. More generally, and as indicated in the CPT’s report on the 2012 visit, 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 rapidly and systematically brought to the attention of the relevant investigatory authorities, notably the SAI and the Public Prosecutor’s Office. **The CPT recommends that the necessary steps be taken to ensure that this requirement is met (see also paragraph 27, last sub-paragraph).**

17. Most of the prison officers on the wings of Lisbon Central Prison were openly carrying truncheons; the truncheon is considered to be part of the uniform and each prison officer can decide whether or not to carry one. As indicated in the 2012 report, the CPT considers that the open display of batons is not conducive to developing positive relations between staff and inmates. In fact, the visible wearing of batons in a prison setting could well be seen as a sign of weakness rather than one of strength, demonstrating a lack of confidence in the ability of prison officers to control a situation without possible recourse to such a means.

The CPT invites the Portuguese authorities to phase out the carrying of truncheons by custodial staff in detention areas.

In parallel, the CPT recommends that appropriate measures be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing regular training in ways of averting crises and defusing tension and in the use of safe methods of manual control and restraint.

18. The delegation gained the clear impression that inter-prisoner violence was an issue on certain wings, notably D Wing. In this wing, where minors, young adults and persons serving short sentences were held, violence among different groups of youths occurred on a regular basis. As an illustration, some 20 young adults were placed in provisional isolation in their cell at the time of the visit due to a violent inter-gang incident which had happened a few days prior to the visit. Prison officers on this wing 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. **The CPT recommends that proactive measures be taken to address this situation and that consideration be given to reinforcing the number of prison officers allocated to D Wing.**

19. By contrast, inter-prisoner violence in the basement of F Wing was no longer an issue at the time of the 2013 visit. The Director indicated that a number of measures had been taken including the transfer of certain prisoners to other establishments. The CPT welcomes these improvements. However, it is regrettable that there was still no permanent presence of prison officers in the unit, leaving prisoners unsupervised for most of the day. As access to the unit was particularly difficult, officers only visited the unit on a limited number of occasions throughout the day. **Once again, the Committee recommends that there be a permanent staff presence in the basement unit of F Wing whenever inmates are unlocked from their cells.**

b. conditions of detention

20. As regards material conditions, the delegation noted that a number of the inmates had new or clean bedclothes and mattresses. Further, following the CPT's recommendation in the report on the 2012 visit, a maximum of two prisoners were now being held in the standard 9m² cells in the establishment's main building. According to information gathered by the delegation, this last measure was only implemented a few days before the CPT's visit. The Committee welcomes these improvements and **trusts that they will be maintained.**

However, the mattresses in certain wings – in particular in the basement of C wing – were dirty, very thin and falling apart. Moreover, the material conditions in general had not improved since the 2012 visit. The establishment continued to be in an advanced state of dilapidation. In different wings, the delegation found cells with broken windows and a foul odour emanating from the toilets. 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).

21. In their response to the 2012 report, the Portuguese authorities indicated that reviews were regularly carried out in the establishment to identify deficiencies and rectify the most urgent ones, including changing light bulbs. However, many cells in the prison continued to be deprived of any artificial lighting, which plunged the cells into total darkness after sundown and left them gloomy on cloudy days. As an illustration, the delegation visited a cell where the prisoner used his television to illuminate his cell at night. 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, the delegation again noted that toilets in multi-occupancy cells were still not partitioned. The CPT considers that the benefits of greater privacy and improved hygiene offered by a partition outweigh any reduction in the space within the cell.¹²

Material conditions remain especially poor in the basement areas of B, C, D and E Wings¹³ where cells were damp with crumbling plaster. Inmates held in these cells indicated the presence of rats. In sum, the conditions have not improved in these areas and could be considered as amounting to inhuman and degrading treatment. These cells should not be used until they have been properly refurbished.

22. As mentioned above, the authorities stated that they were considering the possibility of buying back the Lisbon Central Prison and had no intention of closing the establishment in the near future. Therefore, **the CPT reiterates its recommendation that vigorous action be undertaken to renovate the different wings, starting with the basement units mentioned above. In this context, priority should be given to repairing broken windows, providing artificial lighting in every cell as well as fully partitioning the toilets in all the cells used by more than one person.**

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

¹² See the Portuguese response to the report on the 2012 CPT visit, CPT/Inf (2013) 5, page 26.

¹³ Only the basement unit of F Wing, which had been renovated in 1999, offered decent material conditions.

23. As regards activities, the situation had in fact deteriorated since the 2012 visit. At the time of the 2013 visit, only 187 prisoners were involved in a work activity and 232 inmates were enrolled in educational courses (sometimes for only a few hours per week). Educational activities were reserved for sentenced prisoners and registration for the different courses was only possible at the beginning of the academic year (i.e. September). Consequently, remand prisoners and persons who were sentenced or arrived in the course of the year were prevented from accessing education courses. Therefore, almost 900 inmates spent their days with little to occupy them, other than loitering in their wings, playing board games or exercising.

As stated in the European Prison Rules, deprivation of liberty must be executed within the framework of a plan ultimately leading to preparation for release.¹⁴ To this end, prisons must, within the framework of sentence plans, be able to offer sentenced prisoners satisfactory regime activities. In view of the often long periods of pre-trial detention as well as the respect for the presumption of innocence, activities are just as important for the well-being of remand prisoners. **The CPT recommends that the Portuguese authorities take the necessary steps to develop purposeful activities for remand and sentenced prisoners. Employment opportunities, equitably remunerated,¹⁵ for many inmates could be found in the context of the renovation work referred to in paragraph 22.**

24. Regarding the particular situation of juveniles detained in the establishment (four at the time of the visit), their safety was clearly at risk in view of the level of violence in D Wing.

Minors had no access to any purposeful activity; in particular, the establishment required inmates to be over 18 years of age to be able to work or attend training/education. Moreover, they received no particular attention or support from prison staff. In the CPT's view, the care of juveniles in custody requires special efforts to reduce the risks of long-term social maladjustment. This calls for a multidisciplinary approach, drawing upon the skills of a range of professionals (including teachers, trainers and psychologists), in order to respond to the individual needs of juveniles within a secure educative and socio-therapeutic environment.¹⁶

Further, as provided by the Convention on the Rights of the Child, "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".¹⁷ At Lisbon Central Prison, juveniles were mixed with young adults as well as other prisoners and it is noteworthy that prison staff had difficulty indicating to the delegation which prisoners were minors.

Considering these elements, the CPT is of the view that the Lisbon Central Prison is not a suitable place for holding juveniles. **It recommends that the necessary steps be taken without delay to transfer all juveniles currently detained in Lisbon Central Prison to another establishment offering both an appropriate environment and a tailor-made regime which responds to the individual needs of the inmates concerned.**

¹⁴ Rule 103.2.

¹⁵ See Rule 26.10 of the European Prison Rules.

¹⁶ See the 9th General Report on the CPT's activities, CPT/Inf (99) 12, paragraph 28.

¹⁷ Article 37 c) of the Convention on the Rights of the Child. See also General Comment of the Committee on the Rights of the Child No. 10 (2007) "Children's rights in juvenile justice", CRC/C/GC/10, paragraph 85.

c. health-care services

25. In the report on the 2012 visit, the CPT recommended that the presence of the health-care staff at Lisbon Central Prison be increased (i.e. to the equivalent of at least three full-time general practitioners, together with the recruitment of additional nurses and the provision of psychological counselling). In their response, the authorities indicated that, despite financial constraints, there had been an increase in the presence of general practitioners, nurses and psychologists. The presence of the pharmacist had also been increased to almost a full-time equivalent post (i.e. 35 hours per week).

However, at the time of the visit, health-care staff resources in terms of general practitioners and nurses remained far from sufficient for a population of some 1,300 inmates. The only full-time general practitioner, who headed the health-care service, was absent and, in fact, had been on sick leave for a month. Apart from that, three part-time doctors were present for a total of 26 hours per week. Twelve nurses were employed for a total of 320 hours per week, i.e. the equivalent of some nine full-time posts. In the CPT's view, the staffing level of nurses should be of 15 full-time posts for such establishment. **The Committee reiterates its recommendation that steps be taken to increase the presence of general practitioners at Lisbon Central Prison to the equivalent of at least three full-time posts. Further, the presence of nurses should be increased, in the light of the above remark.**

The CPT is also concerned to note that the number of hours spent by a dentist had been reduced by 33% within one year (from 21 hours per week to 14 hours). Given the size of the inmate population, **the Committee recommends that the presence of a dentist be increased to the equivalent of at least a half-time post.**

26. Regarding medical screening on admission, newly-arrived prisoners indicated that they were usually seen by a nurse within 48 hours of their admission. However, the initial screening was limited to a few oral questions and there was no systematic physical examination.

Once again, the CPT recommends that every newly-arrived prisoner be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial screening. Such screening should take place within 24 hours of a person's admission to the establishment.

27. Physical injuries observed on admission or following a violent incident inside the establishment were recorded by health-care staff in the medical files of the prisoners concerned, together with any statements from prisoners regarding the causes of the injuries. However, the description of the injuries lacked detail and no observations were made by the doctor as regards the consistency between the inmate's statement and the injuries observed.

The CPT recommends that steps be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in the prison – contains:

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

Recording 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 traumatic injuries that will be kept in the medical file of the detainee. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor’s opinions/observations, should be made available to the prisoner and to his lawyer.

Further, the existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the Public Prosecutor’s Office, regardless of the wishes of the person concerned.

28. Despite information to the contrary provided by the authorities in their response to the 2012 visit report¹⁸, the delegation found in prisoners’ disciplinary files certificates established by the prison doctor indicating that an inmate was “fit for punishment”. The Committee wishes to stress that medical practitioners working in prisons act as the personal doctors of prisoners, and ensuring that there is a positive doctor-patient relationship is a major factor in safeguarding the health and well-being of prisoners. Obliging prison doctors to certify that prisoners are fit to undergo punishment is scarcely likely to promote that relationship. This point was recognised in the Committee of Ministers’ Recommendation Rec(2006)2 on the revised European Prison Rules; indeed, the rule in the previous version of the Rules, stipulating that prison doctors must certify that a prisoner is fit to sustain the punishment of disciplinary confinement, has now been removed. **The CPT recommends that the necessary measures be taken to stop this practice at Lisbon Central Prison and in every other Portuguese prison (including at Monsanto Prison) where it may still be applied.**

On the other hand, health-care staff should be very attentive to the situation of prisoners placed in disciplinary isolation/segregation cells, and should report to the prison director whenever a prisoner’s health is being put seriously at risk by being held in disciplinary isolation/segregation. The Committee notes that prisoners in disciplinary isolation received daily visits by a nurse but that this was still not the case for prisoners in provisional isolation. **The Committee recommends that prisoners in provisional isolation be visited daily by health-care staff.**

29. At the time of the visit, eight prisoners were accommodated at the prison infirmary, mostly for cardiologic or psychiatric pathologies. The delegation was informed that the infirmary was locked at night as no prison officer was present in the building. The night duty nurse was located at the prison infirmary, but had no direct access to the patients and had to wait for the arrival of prison officers from another building to have the cell door opened. **The CPT considers that the prison infirmary should be patrolled by prison officers at night and that the night duty nurse should be able to access the cells in the infirmary without delay in case of an emergency.**

¹⁸ CPT/Inf (2013) 5, page 35.

d. prison staff

30. Staffing levels have further decreased since the CPT's previous visit. At the time of the 2013 visit, there were only 199 prison officers for some 1,300 prisoners (i.e. 22 fewer officers than in 2012). Further, the Director no longer had any deputies to assist her; she appeared to be overburdened by administrative work and, as a consequence, she had a limited control over the situation in the establishment.

Low staffing levels will inevitably generate highly stressful work conditions and increase the risk of disproportionate reactions towards challenging prisoners. An inadequate staff/prisoner ratio also generates an insecure environment for both staff and prisoners. In this context, the CPT wishes to recall the importance of ensuring that all wings have a permanent staff presence, especially whenever prisoners are out of their cells; for example, this was not the case in the admission unit in the basement. **The CPT recommends that measures be taken to ensure sufficient staffing levels – including at managerial level – at Lisbon Central Prison.**

e. discipline

31. The applicable regulations on discipline have not changed since the report on the CPT's 2012 visit. 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).¹⁹ 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. As was the case in 2012, prisoners stated that the procedures merely served to confirm whatever the prison officer had first reported.

Prisoners facing disciplinary proceedings were still not given access to the statements of prison officers and so had no opportunity to challenge them. Further, they were not offered the possibility to be heard by the Director before a sanction was imposed. **The CPT reiterates its recommendation that the disciplinary procedure be improved on these points.**

32. Provisional isolation can be imposed on a prisoner suspected of having committed a disciplinary offence for a period of up to 30 days. The prison management continued to resort to this measure on a frequent basis to have time to gather evidence with a view to bringing official charges against the individual concerned. However, contrary to the reassurances provided in the response of the Portuguese authorities to the report on the 2012 visit,²⁰ the delegation continued to find cases where time spent in provisional isolation was not fully taken into consideration when the measure of solitary confinement was imposed.

¹⁹ For further details regarding the procedure see CPT/Inf (2013) 4, paragraph 75.

²⁰ CPT/Inf (2013) 5, page 35.

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 behaviour to a senior prison officer reporting to the Director.

Once again, the CPT recommends that the Portuguese authorities take the necessary steps to ensure that placement in provisional disciplinary isolation is brought into line with the above precepts.

33. In the course of the 2013 visit, the Portuguese authorities informed the CPT's delegation of their intention to reduce the maximum duration of disciplinary confinement from 21 to 14 days.²¹ The CPT welcomes this and trusts that the amendments will also ensure that there is a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of that maximum period.²² If a prisoner has been sanctioned to disciplinary confinement for a total of more than 14 days in relation to two or more offences, there should be an interruption of several days in the disciplinary confinement at the 14-day stage. Further, the period during which a juvenile can be placed in solitary confinement for disciplinary purposes should be substantially reduced; preferably for a time-limit not exceeding three days.²³ **The Committee recommends that the above remarks be taken into account when the relevant legal provisions are amended.**

34. At Lisbon Central Prison, prisoners held in disciplinary isolation, as well as in provisional isolation, indicated to the delegation that the daily hour out of their cell had to be used not only for outdoor exercise but also for taking a shower and cleaning their cells. The actual time available for exercising in the outdoor yard was therefore often shorter than an hour. **The CPT recommends 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.**

35. In the report on the 2012 visit, the CPT recalled that disciplinary punishment of prisoners should not involve a total prohibition of family contact. In their response, 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".²⁴

Nevertheless, prisoners subject to a disciplinary sanction of solitary confinement met by the delegation in the course of the 2013 visit stated that they could not receive visits while serving their disciplinary sanction. 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.²⁵ **The Committee recommends that steps be taken to amend the relevant rules and practice accordingly.**

²¹ According to Article 105 of the Code of Execution of Criminal Sanctions, 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.

²² See the 21st General Report on the CPT's activities (CPT/Inf (2011) 28), paragraph 56.

²³ See the 18th General Report on the CPT's activities (CPT/Inf (2008)25), paragraph 26.

²⁴ CPT/Inf (2013) 5, page 36.

²⁵ See also Rule 60.4 of the European Prison Rules (2006) and the commentary on that Rule.

3. Monsanto High Security Prison

36. 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. It was designed to hold 110 prisoners but half of the cellular accommodation is unused and the current capacity is 56. At the time of the visit, 56 male prisoners were being held, of whom 13 were on remand.

a. ill-treatment

37. Most of the prisoners indicated to the delegation that staff behaved correctly. Nevertheless, the delegation did receive a few allegations of excessive use of force, particularly after inmates had been brought under control following an incident.

The CPT recognises that prison staff will on occasion have to use force to control violent and/or recalcitrant prisoners. These are nevertheless high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards. In particular, a prisoner against whom any means of force have been used should be immediately examined and, if necessary, treated by a medical doctor. The results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner, who in addition should be enabled to undergo a forensic medical examination.²⁶ Moreover, the situations in which prison officers may use physical force and truncheons should be defined precisely and detailed instructions concerning the use of such means be issued. The conscientious recording of every application of special means in a dedicated register is one of the basic safeguards against possible abuse. **The Committee recommends that the necessary steps be taken to ensure that all the above-mentioned safeguards exist in practice.**

38. At Monsanto Prison, inmates were 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 one prison officer.

A strip-search is a very invasive and potentially degrading measure. Therefore, rather than being a routine practice, resort to strip-searches should be based on an individual risk assessment, 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; detained persons 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. In addition, more than one officer should, as a rule, be present during any strip-search as a protection for detained persons and staff alike. **The Committee recommends that the practice of strip-searching at Monsanto Prison be reviewed in the light of the above remarks.**

²⁶ In this context, see also the paragraph 27 above.

b. conditions of detention

39. Material conditions were generally satisfactory at Monsanto Prison. The individual 12m² cells were furnished with a bed and table, a chair and several shelves for clothes and other belongings. The cell contained a toilet, washbasin and shower. It offered sufficient living space and appropriate access to natural light.

However, access to artificial lighting was insufficient for reading purposes in a number of cells. Further, the cells were rather cold. Despite being provided with additional blankets, prisoners indicated that it was very cold during winter months and that they were not allowed to wear gloves. The delegation also noted an unpleasant smell emanating from the toilets in several of the cells. **The CPT recommends that appropriate measures be taken to ensure sufficient artificial lighting for reading purposes and an adequate temperature in cells at all times. Further, the plumbing of the in-cell sanitary facilities should be checked.**

It would also be desirable for the in-cell toilets to be equipped with at least a partial partition.

40. There were 21 outdoor exercise yards²⁷ none of which was equipped with shelter from the elements. Further, prisoners were not provided with waterproof clothing which they could wear during their outdoor exercise. **Once again, the CPT recommends that the yards be provided with shelter from inclement weather and prisoners be provided with waterproof clothing, when necessary.**

41. Regarding activities, 14 prisoners were engaged in work: 10 working for private companies (painting small figurines and assembling window parts) and four for the prison (cleaning and working at the library). These prisoners spent a large part of their day at work. In contrast, those who did not work spent most of the day locked up in their cell and it was not rare for them to spend 21 hours per day on their own.

Non-working prisoners – i.e. 75% of the prison population – were offered two hours of outdoor exercise every day: six days a week, it was taken alone or with up to two other prisoners in one of the small concrete yards²⁸; one day a week, up to eight prisoners were permitted to associate together in a large outdoor area (to play football or volleyball).

Prisoners were also allowed – in groups of up to four prisoners – to visit the library and attend the gym three times a week for 45 minutes. A very limited number of educational activities and programmes (e.g. anger management programme, English and Portuguese classes and IT courses) were also attended by a few inmates.

42. Inmates had no sentence plan or programme designed to assist them to improve their behaviour and prepare them for reintegration 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.

²⁷ Fourteen yards measured some 25m² and seven measured some 50m². All these yards were covered with wire mesh.

²⁸ CPT/Inf (2009) 13, paragraph 55.

In the CPT's view, long-term 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 recommends that the Portuguese authorities review 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.**

43. Article 198 2 d) of the 2011 General Prison Regulations²⁹ provides that prisoners in the high security regime are entitled to have, at their own expense, "a television, a radio and music and movie player". The delegation noted that most of the cells visited had a television and/or a radio. However, a number of prisoners indicated that their request to have a CD or DVD player had been rejected by the prison administration. **The CPT would like to receive the observations of the Portuguese authorities regarding this issue.**

c. health-care services

44. The provision of health care appeared to be of a high standard, particularly in comparison with the situation found at Lisbon Central Prison. Monsanto Prison benefited from an adequate presence of general practitioners (9 hours per week), nurses (98 hours per week), a psychologist (30 hours per week) and a psychiatrist (4 hours per week). The prison also had a well-equipped dental clinic with a dentist present one half-day per week. No complaints were received by the delegation regarding access to medical care.

However, according to health-care staff met by the delegation, all medical examinations were performed in the presence of custodial staff, who stayed by the door of the examination room. In the CPT's view, there can be no justification for custodial staff being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view.

The Committee recommends that steps be taken to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.

45. Upon admission to Monsanto Prison, every inmate was subjected to a psychological and psychiatric assessment. The delegation was informed that 15 prisoners (out of 56) had severe psychiatric disorders, such as depression, schizophrenia, and bipolar disorder, and several of them had, in the course of their stay in the establishment, spent periods in a psychiatric facility. Although they were followed by a psychiatrist and a psychologist, the CPT considers that mentally-ill prisoners should be accommodated in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system. **The Committee recommends that prisoners with severe mental disorders who require in-patient treatment be transferred without delay to an appropriate facility, where they can receive proper treatment and care.**

²⁹ Ordinance No. 51/2011, 11 April 2011.

d. prison staff

46. The Prison had an adequate custodial staff complement, with 79 prison officers for 56 prisoners. However, the interaction between custodial officers and prisoners was extremely limited; no attempts were made to develop positive relations between inmates and staff, based on the notions of dynamic security³⁰ and care. **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.**

In this context, the fact that a large number of prison officers openly carried a truncheon in detention areas is not conducive to the development of positive relations between staff and inmates. **The comment and recommendation in paragraph 17 above apply equally to Monsanto Prison.**

e. placement in a high security establishment

47. Article 15 of the Code on Execution of Criminal Sanctions sets out the reasons for placement in a high security unit/establishment.³¹ The decision to place a person in a high security unit is taken by the Director General of Prison Administration, usually upon a proposal from the director of the prison in which the inmate is located.

The initial placement is made for a period of six months (or for three months if the inmate is under 21 years of age) and may be renewed for additional periods of six months by the Director General based upon assessments made by each service working in the establishment (prison officers, educator, health-care personnel) and the Director of the establishment. Every placement and extension thereof in a high security unit is reported to the Public Prosecutor attached to the Court for the enforcement of sentences but the prisoner concerned has no possibility to appeal the decision to an independent authority.

At the time of the visit, 30 prisoners (out of 56) had been held in Monsanto Prison for less than two years and only six had been in the establishment for more than three years. The delegation was informed that the average duration of detention at Monsanto Prison was one year.³² However, not all the prisoners returned directly to an ordinary regime; at least some of them were transferred to one of the two high security units located within the prisons of Linhó and Paços de Ferreira.

48. 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).

³⁰ 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.

³¹ These reasons include evidence of links to serious organised crime or offences of a terrorist nature; for good order and security in the prison; and for serious fraud.

³² Of the 181 prisoners held in the establishment since its opening in May 2007, only 10 of them had been detained for three years or more.

In this respect, the comments made by the CPT in its report on the 2012 visit remain valid.³³ During the 2013 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.

The CPT recommends once again that the Portuguese authorities institute rigorous procedural safeguards regarding the placement of prisoners, and any extension thereof, in the high security prison estate (including a written reasoned decision of placement/extension and the possibility to appeal the decision). Further, inmates should have the possibility to be heard in the course of the assessment process.

Moreover, the CPT considers that, upon placement at Monsanto Prison, every prisoner should be subjected to a criminogenic risks and needs assessment. 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 invites the Portuguese authorities to incorporate such an approach into the current assessment and review procedures at Monsanto Prison.**

f. contact with the outside world

49. 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 CPT welcomes the fact that prisoners were now permitted to have two outside telephone calls per week of 10 minutes each³⁴, in addition to unlimited calls to their lawyer.

Regarding visits, each prisoner was entitled to two visits of one hour per week – one of them at weekends. In accordance with Article 206 of the General Prison Regulations, these visits took place in cubicles with a partition separating the inmate from his visitors and preventing any contact.

Further, married inmates (or those in a stable relationship) who have been held for more than six months at Monsanto Prison were, in principle, allowed one intimate visit per month (for up to three hours). However, the Director of the establishment could deny intimate visits in the event of inappropriate behaviour by the inmates. Of the 56 inmates at Monsanto Prison, only 10 were benefiting from these visits³⁵ at the time of the visit. The fact that only a limited number of inmates had regular physical contact with their visitors³⁶ generated frustration and several inmates complained that denial of intimate visits were used as a management tool or even as a punishment by the prison administration.

³³ See CPT/Inf (2013) 4, paragraph 45.

³⁴ At the time of the CPT's 2008 visit, phone-calls were limited to five minutes. See CPT/Inf (2009) 13, paragraph 100.

³⁵ In April 2013, six prisoners had an intimate visit.

³⁶ The General Prison Regulations also provides for one open visit of two hours every year.

50. 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. As regards, more specifically prisoners at Monsanto Prison, such open visits can facilitate the process of reintegration into an ordinary regime. **The Committee recommends that all prisoners be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern. The relevant legal provisions should be amended accordingly.**

51. A large number of inmates held at Monsanto Prison were foreign nationals (22 out of the 56 inmates). Some of them stated that the Director agreed to prolong by half an hour – sometimes even by an hour – weekly visits when the visitor had travelled a long distance. The CPT welcomes this practice as it considers that there is a need for 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). The possibility to accumulate visits, to grant them additional telephone time or to use modern technology in facilitating communication (i.e. through Voice over Internet Protocol or Skype) would further help these prisoners to maintain contacts with their families. **The Committee would like to receive the observations of the Portuguese authorities on these points.**

B. Investigation of allegations of ill-treatment

1. Preliminary remarks

52. The effectiveness of action taken when ill-treatment has 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.

53. In the report on the periodic visit of February 2012, the CPT described a serious allegation of ill-treatment of a person by a National Republican Guard (GNR) officer and requested the Portuguese authorities to carry out an investigation.³⁷ The response of the authorities appeared to indicate that no effective investigation was in fact carried out into this case.³⁸ Consequently, 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. To this end, it held a series of meetings with the Inspectorate General of Home Affairs (IGAI)³⁹ and the General Prosecutor's Office and examined several cases of investigations into allegations of ill-treatment.

2. Investigation into the case of alleged ill-treatment by a GNR officer

a. the case and investigative steps taken

54. The case of alleged ill-treatment was said to have taken place early on the morning of 22 June 2011 by the side of a road near Santiago do Cacém. A vehicle containing suspected stolen goods was stopped by a GNR patrol and the four occupants were arrested and handcuffed. After some 15 minutes a GNR officer of the rank of Captain arrived on the scene. Apparently, he was extremely angry that the four persons had carried out a burglary on "his" territory and, using a whip (known as a *piche de boi* and some 50 cm in length) proceeded to beat two of the arrested persons. Subsequently, the officer allegedly pulled out a serrated knife from his belt and stabbed one of the same persons in the right buttock. The four suspects were taken to the police station, where one of them alleged that he was again assaulted by the Captain in the car park and received several truncheon blows to the right side of his upper body and to his legs. Meanwhile, due to the profuse bleeding of the suspect who had been stabbed, the person concerned was taken to hospital where he received some ten stitches.

³⁷ See CPT/Inf (2013) 4, paragraph 10.

³⁸ See CPT/Inf (2013) 5, pages 7 and 8.

³⁹ For an overview of the IGAI's mandate, see CPT/Inf (2013) 4, paragraph 16.

On 24 June 2011, the suspects were brought before the court and remanded in custody. Upon arrival at Setúbal Prison, the duty officer in charge apparently photographed the injuries of the person who had been stabbed (as is the standard practice). Three days later, the prison health-care staff also took very cursory note of the presence of marks but without providing any description or information on their origin. On 5 July 2011, the inmate provided a statement (*auto de declarações*) to the prison lawyer on the incident which was forwarded to the Director of the Prison and thereafter to the Directorate General of Prison Services.

55. On 8 August 2011, the case was forwarded by the Directorate General of Prison Services to the GNR but it was only on 17 October that a fact-finding file was opened by the GNR and documentation requested regarding the alleged victim of ill-treatment. On 4 November, a formal statement was taken from the suspect (*visado*) accused of inflicting the stab wound, who stated that the alleged victim had resisted arrest and that he had had to use a truncheon to control him and apply handcuffs, and that in the struggle the tracksuit pants had been displaced and the alleged victim's buttock received a "light cut" from the serrated edge of the handcuff.

Between 7 and 28 November, six other GNR officers were interviewed. Four said they saw nothing as they were not present at the arrest. One said he saw the alleged victim resisting arrest and being handcuffed but that he saw no use of any other force. The sixth officer stated that he was the one who had stopped the car, found the stolen goods and immobilised the four occupants using two sets of handcuffs; according to him the *visado* only arrived afterwards with two more officers. This implies that the alleged victim was already handcuffed and under control before the *visado* arrived on the scene.

On 5 December, the alleged victim gave a statement to the GNR, the essential elements of which are related in paragraph 54 above; on the same day, a nurse from Setúbal Prison gave a statement describing the injury she had treated on the buttock of the person concerned on 26 and 27 June.

56. In the course of December 2011, the Public Prosecutor's Office was asked by the GNR whether it was conducting an investigation into the case; the response was negative. No further action was taken in January and February 2012, and on 1 March the GNR investigation report was adopted and a proposal made to file the case. In sum, it was concluded that the alleged victim had received a "light" injury (*ligero ferimento*) from the handcuffs when he resisted arrest. On 22 March 2012, the GNR closed the case.

The CPT raised this case with the Portuguese authorities by letter of 7 March 2012 and, by letter of 13 April 2012, they responded that the GNR had closed the case but that the IGAI would examine it as a matter of urgency. However, the CPT has since learned that the IGAI never examined the case because at the moment they were informed about the case in early April 2013, the three-month deadline laid down in law for initiating an investigation following a complaint had already expired.

b. assessment

57. An examination of this case reveals a number of shortcomings.

To begin with, an allegation of a law enforcement official stabbing a suspect with a knife must be considered as a potential criminal offence and therefore the Public Prosecutor's Office should have been immediately informed about the case. The General Prosecutor's Office confirmed to the CPT's delegation that the allegation of ill-treatment made by the detained person at Setúbal Prison was sufficient for launching a criminal investigation and that there was no need for a "formal" complaint to be submitted by him or on his behalf. Notification of the Public Prosecutor's Office should have been carried out by the prison service; and the GNR, when the case was transferred to them, should have verified that the Public Prosecutor's Office was aware of the matter.

58. As for the investigation itself,⁴⁰ clearly it was not *prompt*. The Directorate General of Prison Service waited almost a month before forwarding the statement to GNR, and the GNR did not start to examine the case for a further two months.

Nor can the investigation be considered to be *thorough*. The GNR did not obtain medical documentation relating to the injuries either from the prison or the hospital, nor did it seek to obtain the photographs of the injuries apparently taken by a prison officer when the alleged victim was admitted to Setúbal Prison. Moreover, the three persons apprehended with the alleged victim were not interviewed by the GNR. One of them had stated to the CPT's delegation in February 2012, when interviewed separately, that he had been handcuffed to the victim when the alleged ill-treatment had taken place and had confirmed the version of events provided by the victim. Similarly, the GNR would have been well advised to interview the lawyer who had represented the detained person at the initial court hearing on 26 June 2011.⁴¹

Further, the statements provided by the GNR officers involved in the incident were contradictory and yet they were not challenged. The arresting officer said that he immobilised the four apprehended persons with two sets of handcuffs before the arrival of the Captain (the *visado*), which raises the question of how the injury to the alleged victim could have occurred while resisting being handcuffed. Also, no critical questions were posed concerning how no officer had seen any use of force being inflicted upon the alleged victim when the *visado* himself states that he had used his truncheon. In addition, no analysis was done to see whether the wound requiring 10 stitches suffered by the alleged victim could have been received in the circumstances as described by the *visado*.

⁴⁰ For a full account of the criteria of an "effective investigation", see the 14th General Report on the CPT's activities (CPT/Inf (2004) 28, paragraphs 25 to 42).

⁴¹ They would have learned that she had photographed the injuries of the victim and another co-accused two days after the apprehension took place; the injuries displayed in the photographs were consistent with the allegations of having been subjected to blows from a long stick object (*piche de boi* or truncheon).

Finally, it is essential that the persons responsible for carrying out such an investigation are *independent* of those implicated in the events. Ideally, those entrusted with the operational conduct of such an investigation should be completely separate from the agency concerned. This latter requirement was not met, no body other the GNR having been involved.

59. The CPT must also make clear its concern about the manner in which the Portuguese authorities treated the above case once they had been informed of the findings of the CPT's delegation in February 2012. The response to the report on the 2012 visit states: "*According to the IGAI, based on the reply given by the GNR, it is possible to conclude that this Security Force took, on the whole, all the necessary steps that needed to be taken. The IGAI does not see any other measures whose implementation could be useful or necessary. The IGAI also thinks that, considering the findings resulting from the inquiry procedure, the respective conclusion is considered adequate.*"⁴² As the IGAI never examined this case, it is difficult to comprehend how such a conclusion could have been formed. **The CPT trusts that in the future, it will receive accurate and reliable responses to its visit reports in relation to such matters, in the light of the principle of co-operation in Article 3 of the Convention.**

60. 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. **The CPT would like to be informed in due course of the outcome of that investigation.**

3. Enhancing the communication of cases relating to allegations of ill-treatment by law enforcement officials

61. In the light of the information gathered during the 2013 visit, there is a clear need to clarify communication channels and responsibilities in respect of the investigation of allegations of ill-treatment. For example, in the case described above, both the GNR and the IGAI believed that they were the authority competent to investigate the case, rather than the Public Prosecutor's Office.

62. Despite the fact that the law enforcement agencies are bound by a Ministerial Order of 8 May 2009 to report directly to IGAI any action which results in grievous bodily harm or death, the CPT's delegation found from an examination of a number of cases that this was not always complied with. For example, a case of alleged physical ill-treatment (including electro-shocks) and racial abuse by GNR officers which resulted in three Roma being hospitalised was not initially communicated to IGAI⁴³ and the Public Prosecutor's Office was only informed nearly four months after the GNR had archived the case.

⁴² See CPT/Inf (2013) 5, page 7.

⁴³ IGAI Case PA 14 2012.

IGAI's role *inter alia* is to investigate cases with a view to making recommendations to the Minister of the Interior about disciplinary sanctions. Nevertheless, it should return or pass on a case to the Public Prosecutor's Office whenever it finds evidence of a criminal offence.⁴⁴ In this respect, it plays a complementary role to that of the Public Prosecutor. That said, IGAI only looks into a very small percentage of ill-treatment cases submitted to it (for example, 25 of 308 complaints received in 2012) and it remains unclear as to the criteria used to decide which cases are investigated. Moreover, there appeared to be no proper oversight by IGAI of the investigations carried out by the internal control bodies of the law enforcement agencies (notably, GNR and PSP). Further, the time-limit of three months to initiate a disciplinary investigation following the reception of a complaint appeared to hinder the ability of IGAI to examine cases which were investigated by the internal control units of the law enforcement agencies and thereafter transmitted to IGAI, as illustrated by the above-mentioned GNR case of 24 June 2011. **The CPT would appreciate the observations of the Portuguese authorities on these last three points.**

63. In the CPT's view, any case of alleged ill-treatment accompanied by a visible injury and which would constitute a criminal offence (if proven) should be notified to a prosecutor. The General Prosecutor's Office stated clearly to the CPT's delegation that if the police come across any complaint which could constitute a crime, they are duty bound to inform the relevant public prosecutor's office. In this context, it should be recalled that whenever a person raises an allegation of ill-treatment by a law enforcement official or a prison officer, for example with the prison lawyer, that statement is more than sufficient to constitute a formal complaint. No further action should be required by the persons concerned in order for an investigation into his/her allegations to be initiated.

More specifically, as regards allegations of ill-treatment by law enforcement officials made by prisoners upon entry to prison, it is not only important that any injuries are properly recorded and a statement taken but also that the allegations are communicated promptly to the appropriate body (i.e. to the Public Prosecutor's Office, with a copy to IGAI). This was still not always the case at the time of the 2013 visit. Recommendations have already been made to address this issue (see paragraphs 15 and 27).

Further, the CPT recommends that a Joint Circular from the Ministries of Justice and the Interior be sent to all law enforcement agencies (GNR, PSP, SEF, Judicial Police) and prison establishments reiterating that the Public Prosecutor's Office should be informed directly of any allegation of ill-treatment in addition to any other relevant State Entity (including IGAI, SAI, Ministries). Moreover, law enforcement agencies and the Directorate General of Prison Services should be reminded of what constitutes an official complaint in cases of alleged ill-treatment.

64. Moreover, at present, there is no information on the number of cases of alleged ill-treatment by law enforcement officials or prison officers in Portugal, nor of the outcome of investigations into such allegations. The CPT considers that a central agency should be tasked with compiling statistics on all such cases and their outcome in order to enable the authorities to obtain a clearer idea of the scope of the problem and of its evolution over time. **The Committee invites the Portuguese authorities to put in place such a record-keeping system.**

⁴⁴ For example, the *Doc Relatorio 34/2004* case, where the Public Prosecutor dropped a case of unlawful shooting by a PSP officer due to insufficient evidence but after IGAI pursued the investigation, the case was taken up again by the Public Prosecutor and went to court.

APPENDIX

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

Monitoring of places of deprivation of liberty

requests for information

- on the resources allocated to the *Provedor de Justiça* for the functioning of the NPM and the possible setting up of a separate unit or department, within the Ombudsman's Office, to be responsible for the NPM functions (paragraph 7).

Prison establishments

Preliminary remarks

recommendations

- the Portuguese authorities to vigorously pursue their efforts to combat prison overcrowding, by placing further emphasis on non-custodial measures in the period before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty. In this context, they should be guided by the relevant Recommendations of the Committee of Ministers of the Council of Europe: Recommendation Rec (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole), Recommendation (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules (paragraph 8);
- the Portuguese authorities to establish a protocol for a "guaranteed service" for inmates, applicable whenever there is a strike by prison staff, taking into account the remarks in paragraph 9 (paragraph 9);
- the Portuguese authorities to establish robust oversight and audit mechanisms to monitor the outsourced health-care services (paragraph 11).

requests for information

- updated information on the current institutional arrangements for the provision and supervision of health care in prisons, as well as on the process of transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health (paragraph 10).

Lisbon Central Prison

recommendations

- the Portuguese authorities to ensure that all prison staff are made to understand that resort to ill-treatment is unacceptable and will result in severe disciplinary sanctions and/or criminal prosecution (paragraph 14);
- the necessary steps to be taken to ensure 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 is rapidly and systematically brought to the attention of the relevant investigatory authorities, notably the Prison Inspection and Audit Service (SAI) and the Public Prosecutor's Office (paragraph 16);
- appropriate measures to be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing regular training in ways of averting crises and defusing tension and in the use of safe methods of manual control and restraint (paragraph 17);
- proactive measures to be taken to address the issue of inter-prisoner violence in D Wing and consideration to be given to reinforcing the number of prison officers allocated to this Wing (paragraph 18);
- a permanent staff presence to be ensured in the basement unit of F Wing whenever inmates are unlocked from their cells (paragraph 19);
- vigorous action to be undertaken to renovate the different wings, starting with the basement units. Priority should be given to repairing broken windows, providing artificial lighting in every cell as well as fully partitioning the toilets in all the cells used by more than one person (paragraph 22);
- the Portuguese authorities to take the necessary steps to develop purposeful activities for remand and sentenced prisoners. Employment opportunities, equitably remunerated, for many inmates could be found in the context of the renovation work of the establishment (paragraph 23);
- the necessary steps to be taken without delay to transfer all juveniles currently detained in Lisbon Central Prison to another establishment offering both an appropriate environment and a tailor-made regime which responds to the individual needs of the inmates concerned (paragraph 24);
- steps to be taken to increase the presence of general practitioners at Lisbon Central Prison to the equivalent of at least three full-time posts, as well as to increase the presence of nurses in the light of the remark in paragraph 25 (paragraph 25);
- the presence of a dentist to be increased to the equivalent of at least a half-time post (paragraph 25);
- every newly-arrived prisoner to be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial medical screening. Such screening should take place within 24 hours of a person's admission to the establishment (paragraph 26);

- steps be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in the prison – contains:
 - i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment);
 - ii) a full account of objective medical findings based on a thorough examination;
 - iii) the doctor's observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.

Recording 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 traumatic injuries that will be kept in the medical file of the detainee. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor’s opinions/observations, should be made available to the prisoner and to his lawyer.

Further, the existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the Public Prosecutor’s Office, regardless of the wishes of the person concerned (paragraph 27);

- the necessary measures to be taken to stop the practice of prison doctors establishing certificates indicating that an inmate is “fit for punishment”, at Lisbon Central Prison and in every other Portuguese prison (including at Monsanto Prison) where the practice may still be applied (paragraph 28);
- prisoners in provisional isolation to be visited daily by health-care staff (paragraph 28);
- measures to be taken to ensure sufficient staffing levels – including at managerial level – at Lisbon Central Prison (paragraph 30);
- the disciplinary procedure to be improved by giving prisoners access to the statements of prison officers with the opportunity to challenge them, and offering them the possibility to be heard by the Director before a sanction is imposed (paragraph 31);
- the Portuguese authorities to take the necessary steps to ensure that placement in provisional disciplinary isolation do not last longer than a few hours (paragraph 32);
- the remarks made in paragraph 33 to be taken into account when the legal provisions regarding disciplinary confinement are amended (paragraph 33);
- steps to be taken to ensure that every prisoner in disciplinary confinement is offered daily access to the outdoor yard for at least one hour (paragraph 34);

- steps to be taken, as regards restrictions on family contact in the context of disciplinary confinement, to amend the rules and practice in the light of the remarks in paragraph 35 (paragraph 35).

comments

- the Portuguese authorities are invited to phase out the carrying of truncheons by custodial staff in detention areas (paragraph 17);
- the CPT trusts that the improvements referred to in paragraph 20 (new or clean bedclothes and mattresses; a maximum of two prisoners per standard 9m² cell) will be maintained (paragraph 20);
- the prison infirmary should be patrolled by prison officers at night and the night duty nurse should be able to access the cells in the infirmary without delay in case of an emergency (paragraph 29).

requests for information

- in respect of the cases mentioned in paragraph 15, the outcome of the investigation by the SAI and of any subsequent actions taken. Further, it would like to be informed of whether – and if so, exactly when – the Public Prosecutor’s Office was informed of these incidents of alleged ill-treatment by prison officers (paragraph 15);
- a detailed timetable for the upgrading of the different areas of Lisbon Central Prison (paragraph 22).

Monsanto High Security Prison

recommendations

- the necessary steps to be taken to ensure that all the safeguards referred to in paragraph 37 in relation to the use of force by prison staff exist in practice (paragraph 37);
- the practice of strip-searching at Monsanto Prison to be reviewed in the light of the remarks in paragraph 38 (paragraph 38);
- appropriate measures to be taken to ensure sufficient artificial lighting for reading purposes and an adequate temperature in cells at all times. Further, the plumbing of the in-cell sanitary facilities should be checked (paragraph 39);
- the yards to be provided with shelter from inclement weather and prisoners to be provided with waterproof clothing, when necessary (paragraph 40);
- the Portuguese authorities to review the regime for inmates at Monsanto Prison, in the light of the remarks in paragraph 42. 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 (paragraph 42);

- steps to be taken to ensure that medical examinations of prisoners are conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff (paragraph 44);
- prisoners with severe mental disorders who require in-patient treatment to be transferred without delay to an appropriate facility, where they can receive proper treatment and care (paragraph 45);
- appropriate measures to be taken to upgrade the skills of prison staff in handling high-risk situations without using unnecessary force, in particular by providing regular training in ways of averting crises and defusing tension and in the use of safe methods of manual control and restraint (paragraph 46);
- the Portuguese authorities to institute rigorous procedural safeguards regarding the placement of prisoners, and any extension thereof, in the high security prison estate (including a written reasoned decision of placement/extension and the possibility to appeal the decision). Further, inmates should have the possibility to be heard in the course of the assessment process (paragraph 48);
- all prisoners to be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern. The relevant legal provisions should be amended accordingly (paragraph 50).

comments

- it would be desirable for the in-cell toilets to be equipped with at least a partial partition (paragraph 39);
- the Portuguese authorities are invited 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 (paragraph 46);
- the Portuguese authorities are invited to phase out the carrying of truncheons by custodial staff in detention areas (paragraph 46);
- the Portuguese authorities are invited to incorporate the approach described in the fourth sub-paragraph of paragraph 48 into the current assessment and review procedures at Monsanto Prison (paragraph 48).

requests for information

- observations regarding the rejection by the prison administration of the request of prisoners to have a CD or DVD player (paragraph 43);
- observations on the means to further help prisoners, whose families are unable to visit on a regular basis, to maintain contacts with their families by allowing them to accumulate visits, to have additional telephone time or to use modern technology in facilitating communication (paragraph 51).

Investigation of allegations of ill-treatment

Investigation into the case of alleged ill-treatment by a GNR officer

comments

- the CPT trusts that in the future, it will receive accurate and reliable responses to its visit reports in relation to matters such as those referred to in paragraph 59, in the light of the principle of co-operation in Article 3 of the Convention (paragraph 59).

requests for information

- the outcome of the criminal investigation referred to in paragraph 60 (paragraph 60).

Enhancing the communication of cases relating to allegations of ill-treatment by law enforcement officials

recommendations

- a Joint Circular from the Ministries of Justice and the Interior to be sent to all law enforcement agencies (GNR, PSP, SEF, Judicial Police) and prison establishments reiterating that the Public Prosecutor's Office should be informed directly of any allegation of ill-treatment in addition to any other relevant State Entity (including IGAI, SAI, Ministries). Moreover, law enforcement agencies and the Directorate General of Prison Services should be reminded of what constitutes an official complaint in cases of alleged ill-treatment (paragraph 63).

comments

- the Portuguese authorities are invited to put in place a system of record keeping by a central agency of the number of cases of alleged ill-treatment by law enforcement officials or prison officers in Portugal and of the outcome of investigations into such allegations (paragraph 64).

requests for information

- the observations of the Portuguese authorities on the last three points referred to in paragraph 62 (paragraph 62).