



CPT/Inf (2013) 5

## **Response**

### **of the Portuguese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Portugal**

**from 7 to 16 February 2012**

The Portuguese Government has requested the publication of this response. The report of the CPT on its February 2012 visit to Portugal is set out in document CPT/Inf (2013) 4.

Strasbourg, 24 April 2013



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The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has adopted, on 6 July 2012, the report on its visit to Portugal carried out from 14 to 25 January 2008.

The Portuguese Government has paid close attention to the CPT's report and has referred to the domestic competent entities the recommendations, comments and requests for information that it contains.

The Portuguese authorities welcome the CPT's observations, regarding the positive aspects found in its visit, and express their endeavour to maintain and improve them. The negative aspects that concern the CPT do also concern the Portuguese authorities. They hereby reaffirm their efforts to harbour, whenever possible, the CPT's recommendations and shall attempt not only to overcome the problems that still exist but also to improve the less positive features encountered.

The Portuguese Government wishes now to convey to CPT its response, which contains comments to the Report, replies to its requests for information, and actions taken in order to implement its recommendations.

The Portuguese authorities wish to express their appreciation of the CPT's work and look forward to continuing their cooperation with the CPT in the future, recognizing the fundamental role that it plays in the defense of human rights, as well as the importance that such cooperation represents in order for the Portuguese authorities to pursue its objectives. The Portuguese authorities are at the disposal of the CPT to clarify and give whatever additional information it may consider necessary.

Directorate-General for External Policy  
Ministry of Foreign Affairs of Portugal

## **I. INTRODUCTION**

### **E. Development of a National Preventive Mechanism**

Portugal ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) on 15 January 2013 and it entered into force on 14 February 2013. Portugal is currently taking the necessary steps to nominate the Portuguese Ombudsman as the National Preventive Mechanism.

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

### A. Law enforcement agencies

#### 2. Ill- treatment

##### Paragraphs 9 and 10 (pages 10 and 11)

The CPT Report at its paragraphs 9 and 10 (pages 10 and 11) refers to a specific situation of an alleged ill-treatment by a National Republican Guard (GNR) officer whose situation was the object of an internal investigation by GNR, which was discontinued based on the conclusion that the minor injuries inflicted to the detainee were caused by the handcuffs and that no intention on the part of the officer to inflict harm could be proved.

Until the CPT pointed out this case (March 2012), the Inspectorate General of Home Affairs (IGAI) had not received any information about it and after a detailed research on its database nothing was found concerning this specific case mentioned by the CPT. Nevertheless, two administrative proceedings were found, which are being investigated by the IGAI and are related to the same GNR officer who allegedly inflicted ill-treatment to the detainee in the situation known by the CPT during the last day of its visit to Portugal.

After analysing the information received from the CPT on the specific case mentioned, and considering that the information related essentially to the version of the complainant, the IGAI, respecting the adversarial principle, decided to contact GNR, aiming not only to have their perspective of the facts but also, according to article 2 of the Regulation of the Inspection and Control Actions (*Regulamento das Ações Inspetivas e de Fiscalização – RAIF*)<sup>1</sup>, to know exactly which were the procedures adopted and the results obtained.

The GNR provided all the information that has been requested, informing that the Justice Section of the corresponding Territorial Command initiated an inquiry procedure concerning the specific case, which was dismissed on March 22, 2012, based on the conclusions that the minor injuries inflicted to the detainee were caused by the handcuffs, which were necessary and to which he resisted; no criminal complaint was filed against the officer that allegedly inflicted ill-treatment, either by the detainee or by third parties in his behalf; the Department of Investigation and Criminal Action (*Departamento de Investigação e Ação Penal – DIAP*) and the General Directorate for Prison Services informed that there is no kind of complaint filed, having also informed that the detainee never requested the Prison to do so; there is no knowledge of the existence of any criminal procedure against the officer in any competent judicial court and no intention on the part of the officer to inflict harm to the detainee could be proved.

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<sup>1</sup> RAIF establishes the rules for the proceedings for the inspections, controls and other actions carried out by the IGAI, and was approved by the Minister of Home Affairs by Decision n° 10/99, dated April 29, 1999, published in the Official Gazette (*Diário da República*) no. 106, II Series, dated, 7 May 7, 1999.

In its article 2, RAIF states: "... Whenever, as a result of the action or failure to act by the security officers and other services within the scope of action of the IGAI, it ensues to anyone the violation of personal property, namely death or serious bodily harm, or there is evidence of serious abuse of authority or property damage of high value, the forces or services must immediately notify the facts, by fax, to the Minister of Home Affairs and wait for the decision concerning the investigation of disciplinary procedures.

According to the information given by the GNR, the detention took place on June 22, 2011, (page 10) and not on June 24, 2011, as most probably by lapse is mentioned in the CPT Report. Also the detainee was presented to Court on June 24, 2011, and not on June 26, 2011, as mentioned (page 11), and the facts on which is detention was based led to a criminal procedure.

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.

Complementarily, in the coming months, the IGAI will develop specific actions of an essentially preventive nature in the scope of its competences.

**Paragraphs 13 and 14 (page 12) and Appendix I (page 64)**

Based on the information given by the CPT in paragraph 13 (page 12) the IGAI searched its database to locate the alleged situation referred but as there is no detailed information about the detainee or of the police officer, especially their names, nothing was found on this subject. Nevertheless, further details received from the PSP made possible to identify the situation mentioned and a new search was made but no investigation procedure exists on the referred situation as no complaint was presented by the detainee either to the IGAI or to the PSP

Also in what concerns the situation referred in paragraph 13 (page 12) it is important to mention, as the PSP informs, that:

- (i) the person was detained due to coercion and resistance to an officer as well as for illegal immigration what was duly recorded in the Detention Notice;
- (ii) the person inflicted aggression to 2 officers being necessary, to guarantee the detention, to use the adequate, proportionate and strictly necessary force;
- (iii) As the detainee presented injuries resulting from the detention he was medically assisted in Hospital de São José;
- (iv) In result of the aggression inflicted by the detainee, 2 officers needed medical care in the same hospital;
- (v) In the Detainee's Individual Record is mentioned that the detainee has "Some injuries in the face. The detainee was assisted in Hospital de São José.", having been found that the citizen detained presented only the referred injuries (visible);
- (vi) In the summary judgment that took place in the Court (Tribunal de Pequena Instância Criminal de Lisboa), the citizen alleged that officers have inflicted him injuries, what was quickly rebated taking in consideration the Detention Notice and the injuries inflicted to the officers, reiterating that it did not occur any aggression by them towards the citizen detained;
- (vii) There is no complaint in the Reclamation Book;
- (viii) Against the citizen to whom this situation concerns it exists a criminal procedure running on the Department of Investigation and Penal Action of Lisbon, 7<sup>th</sup> Section (Departamento de Investigação e Ação Penal de Lisboa, 7<sup>a</sup> Secção).



- (ix) The PSP did not develop any disciplinary procedure in what concerns this situation because it considered that the behaviour of his officers was adequate and proportional, having been observed the legislation in force.

The remarks and comments made by the CPT in paragraph 14 (page 12) and the consequent recommendation made in Appendix I (page 64) are already a concern of the Security Forces. According to article 272, no. 2, of the Constitution of the Portuguese Republic, the use of force obeys to three fundamental principles: necessity, adequacy and prohibition of excess. They are also reflected in the internal rules of the GNR and the Public Security Police (PSP) as well as in the initial and continuous training given to military and police officers.

The GNR and the PSP, through their own internal inspection departments, investigate cases of alleged violations to these fundamental rules. The IGAI carries out autonomous visits and inspections without previous notice to the GNR posts and the PSP precincts. The investigation procedures carried out by the GNR, the PSP and the IGAI result in sanctions whenever a violation of the law is proved to have in fact occurred. In those cases, the sanctions are applied according to the violation proved and the corresponding legislation. If applied, it may also lead to a criminal procedure which, if proved true, results in the implementation of the corresponding criminal penalty.

**Paragraph 15 (page 12) and Appendix I (page 64)**

Applying handcuffs too tightly is a violation of NEP no. DEPOP/OPSEG/01/05, dated June 1<sup>st</sup>, 2004, that defines the “Rules on the limits of the use of coercive measures”. More specifically, it violates the provisions contained on Chapter 2, no. 3, subpar. j) and no. 4, which, concerning the use of handcuffs states: “ It must be ensured and verified that the handcuffs are not excessively and unnecessarily tight, in order to avoid skin injuries or difficult the blood circulation”.

There are several rules, both constitutional and legal, that foresee public officials’ and agents’ responsibility for their actions or omissions from which may result the violation of rights or legally protected citizens’ interests, namely article 271, no 1, of the Constitution of the Portuguese Republic.

Concerning the PSP, it is important to refer the “PSP Disciplinary Regulation” and the “Code of Ethics of the Police Service” annex to the Resolution of the Council of Ministers no. 37/2002, dated February 28, 2002. Not exhaustively, and merely as an example, we may point out the following points that are stated in that Code:

- Article 2, no. 3 that refers that: “In their activity, Security Forces’ agents must absolutely respect the Constitution of the Portuguese Republic, the Universal Declaration of Human Rights, the European Convention of Human Rights, and Community Law, International Conventions, National Law and this Code.”
- These rights must be respected without discrimination by the person concerned and officers have, foremost, “the duty of, in any circumstance, not inflict, instigate or tolerate any cruel, inhuman or degradation behaviour.” (Article 3, no.2).
- Article 4, referring to fundamental rights of detainee determines that:  
“1- Security Forces’ agents have the special duty to ensure the respect for life, physical and psychological integrity, honour and dignity of people under their custody or order.  
2- Security Forces’ officers should assure the health of people under their guard and immediately take all measures in order to guarantee that all necessary medical care is provided.”

- Article 5 forbids the practice of acts of abuse of authority.
- Article 10 not only refers to the agents' responsibility, either for their actions or omissions, but also establishes the duty to repair the negative effects resulting from those actions".

The legal framework above referred is very clear concerning the expected behaviour required from a police officer. Therefore, Portugal has the necessary legal instruments to face situations such as the one referred in paragraph 15 (page 12) and which, in a more general way, forbid and sanction situations as the ones referred to in paragraphs 10 (page 10), 13 and 14 (page 12) of the Report.

The specific situation referred to in paragraph 15 could not to be identified by the IGAI as there are not enough elements for the identification of the case; even so, the IGAI searched for situations of handcuffs allegedly applied too tight and identified 3 situations corresponding to enquiries opened by IGAI in what concerns the use of handcuffs, 2 in 2006 and 1 in 2007. The 2 enquiries opened in 2006 were archived following the respective criminal procedures being archived after being investigated by the Public Prosecutor (*Ministério Público*) through the respective Department of Investigation and Penal Action (*Departamento de Investigação e Ação Penal*). The enquiry opened in 2007 was archived after investigation, nevertheless this one had a reference to the handcuffs put in a detainee, but it has not been alleged that those were put tightly.

Recently, IGAI hasn't received any information or complaints related to the use of handcuffs, nevertheless, this Inspectorate General follows carefully this type of situations and eventual occurrence and will analyse the better way to include this issue in future actions to develop with the GNR and the PSP.

### **Paragraph 18 (page 13) and Appendix I (page 64)**

The IGAI recognizes that it has been necessary to face some conjunctural difficulties, which made clear the necessity to restructure this institution; that was made by the amendment to the Organic Law of the IGAI, approved by Decree-Law no. 58/2012, dated March 14, 2012, and Decree-Law no. 146/2012 of 12 July, dated July 12, 2012. This organisation, such as others under the Central Administration of the State, had to adapt to new challenges and the IGAI esteems that, with its restructuration now established, all the conditions to restore its full working capacities have been achieved.

The new Direction that took office this year, wants to reinforce the inspectors' team that in the recent years has been reduced due to retirements; this conveyed some difficulties in answering, as quickly as desirable, to the several tasks attributed to the IGAI. The Direction of the IGAI intends to progressively reinforce the inspectors' team, which will contribute to a quicker reply of IGAI in the accomplishment of its investigation, auditing and supervision actions.

According to the two precedent paragraphs of this document, the IGAI takes in consideration the first recommendation made by the CPT in paragraph 18 (page 13), repeated in Appendix I (page 64) and, in the scope of the legal provisions, of the competences ascribed to the IGAI and of this organisation restructuration, the IGAI will act with determination in pursuing its efforts to investigate alleged ill-treatments.

In what concerns the second recommendation made by the CPT in paragraph 18 (page 13), repeated in Appendix I (page 64), this is already contemplated in the Portuguese legal provisions in force: In the GNR' scope of action: in article 71, article 72 and article 88, no.1, subparagraphs c) and d) and nos. 4 and 5 of the "Regulation of Discipline of the GNR"; in the PSP's scope of action: in article 74, no. 1, subparagraph c) and no. 6 of the "Disciplinary Regulation of the PSP". And, in the cases where the infraction is not only disciplinary but also criminal, this one is foreseen in article 199 of the Code of Criminal Procedure, a measure that, in those cases, is imposed by a Judge.

**Paragraphs 20 to 24 (pages 14 to 16) and Appendix I (page 65)**

To the referred are applied the provisions of the Code of Criminal Procedure, namely article 61 and some rules of the Decision no. 8684/99, dated April 20, 1999, (published in the Official Gazette no. 102, II Series, dated May 3, 1999, at pages 6520 and following) of the Minister of Home Affairs, which approves the "Regulation on the Material Conditions of Detention in Police Premises" that is applicable both to the GNR and the PSP. This Regulation determines that to any person in detention in a GNR post or PSP precinct is recognized the access to a lawyer (as stated in no. 15), to a doctor (as stated in no. 21.1, no. 21.2 and no. 21.3) and to a close family member (as stated in no. 14.4). Concerning the access to a lawyer it is also important to mention the Decision no. 10717/2000, dated February 28, 1998, published in the Official Gazette, II Series, no. 121, dated May, 25, 2000 (page 8952).

The specific rules of the referred Regulation for the three situations (lawyer, doctor and close family member), are all applicable to any person deprived of liberty as this legal framework defines the concept of detention in a very broad way, including not only defendants but also any person that is taken to a police precincts, namely for identification proceedings.

Concerning the contacts of the persons deprived of liberty with family or friends, the Regulation specifically determines that they must be authorized to inform the respective family of their situation and all reasonable conditions must be provided for that purpose, allowing them to use the telephone of the police precincts when a public telephone does not exist. Any contact with the family must be registered in the individual file of the detainee.

According to data that the IGAI has obtained during its inspections without previous notice to the GNR posts and PSP precincts, all of them have telephone that is always made available to the person deprived of liberty allowing him/her, if he/she wants, to contact, namely, family, third persons, lawyer or doctor. They do not always use it, on their own initiative, because many of them already have their respective mobile phones. The person deprived of liberty, if he/she wants, may in private, in the police precincts, talk with family members, third persons, lawyer or doctors (when security reasons require he/she is guarded within eyesight).

In what concerns the access to medical care, the Regulation stipulates that all measures must be adopted to protect the life and health of the person deprived of liberty; at his/her own expenses, the detainee, may always consult a doctor even not presenting signals of illness. Whenever the detainee presents injuries or due to his/her health condition he/she must as soon as possible be submitted to a medical examination to diagnose any illness that requires immediate health care procedures or the transfer to a health establishment.

Also the “Deontological Code of Police Service” annex to the Resolution of the Council of Ministers no. 37/2002, states at article 4 that “officers of the Security Forces must ensure the good health of persons under police custody and take immediate action to ensure the health care they may need”.

To evaluate the concrete application and the respect for the “Regulation on the Material Conditions of Detention in Police Premises”, in its no. 22.1 it states that the detention premises are object of systematic control by the IGAI. This control occurs through visits without previous notice, at any time of the day or the night, during which the inspectors of IGAI may freely talk with the detainees in private.

In what concerns the recommendation of the CPT related to minors, it is important to say that this issue is regulated by Law no. 166/99 (General Law of the Republic) that approved the “Education Guardianship Law” (*Lei Tutelar Educativa*). This provision, in what concerns interviews with minors, states, in articles 45 and 47, all the minors’ rights and specifies the rigorous conditions to be respected in the interviews. Therefore, the concern expressed in the CPT recommendation at paragraph 23 (page 16) and repeated in Annex I (page 65) is already foreseen in the Portuguese legislation.

Concerning the Recommendation of the CPT at paragraph 24 (page 16) and repeated in Annex I (page 65) that “a record of all medical interventions concerning detainees must be kept in each police precinct and that a copy of any medical documentation be made available to the detainee” the situation is not foreseen in the “Regulation on the Material Conditions of Detention in Police Premises”.

This Recommendation raises reservations considering the Portuguese legal framework as, if well understood, it may suppose that any police precinct should have an archive containing nominative data of medical nature related to medical interventions in persons that have been detained in the precinct.

Such a rule would violate the “Fundamental Law of Health” (*Lei de Bases da Saúde*), Law no. 48/90, dated August 24, 1990, modified by Law no. 27/2002, dated November 8, 2002, which, in its Base XVI, no. 1, subpar. d) say that all persons the right to a rigorous respected for the confidentiality of their personal data.

It would also go against Decree-Law no. 60/2003, dated April 1<sup>st</sup>, 2003, which regulates primary health care, more precisely article 5, nos. 1 and 2, that lists as a persons’ rights, among others, the respect for his/her dignity and preservation of his/her private life and the rigorous secrecy, by health care personnel, concerning the facts they have knowledge of during their professional functions.

Therefore, the eventual adoption of this Recommendation would need a specialized study that allows to understand if it is viable or not in the national legal framework.

**Paragraph 22**

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

**As regards recommendation in paragraph 22**

The right of access to a lawyer in the described terms is fully guaranteed under the Portuguese legal system, both at the constitutional and ordinary law levels.

Indeed, pursuant to Article 20(1) of the Constitution of the Portuguese Republic (CPR), Article 32(3) of the same CRP stipulates that the suspects/defendants have the right to choose a defence counsel and to be assisted by him/her in all procedural acts.

Order 12786/2009, of 29 May, which approves the Regulation applicable to detention facilities of the Judicial Police and to those existing at Courts and public prosecution services, on its turn, sets forth that any person deprived of his/her liberty has the right to immediately contact a lawyer, and to immediately inform a relative or a trusted adult person of his/her situation. To further facilitate the exercise of those rights, the person deprived of his/her liberty may make use of a telephone of the service responsible for his/her arrest, where no other telephone is available.

Recognizing that there is space for improvement, amendments to internal regulations are being considered in order to prevent the repetition of irregular situations where the rights of the arrested persons are not immediately read.

**Paragraph 23**

*The CPT recommends that appropriate steps to be taken to ensure that juveniles are not required to make any statements or sign any documents concerning the offence of which they are suspected without benefiting from the presence of a lawyer and, in principle, of a trusted adult person to assist them.*

**As regards recommendation in paragraph 23**

Please refer to the comments to the previous paragraph, as the information contained therein also applies to juveniles.

As mentioned, all arrested persons have the right to remain silent, at any procedural stage. In fact, the law explicitly specifies that the assistance of a defence lawyer is compulsory for juvenile defendants and that minors between the ages of 12 and 16 are entitled, *inter alia*, to be accompanied by their parents and legal representative or guardian (Article 64 of the Code of Criminal Procedure (CPP) and Article 45(2)(e)(f) of Law 166/99, of 14 September, on Educational Guardianship, respectively).

Therefore, it is clear that under the Portuguese legal system juveniles are not required to make any statements or sign any documents concerning the offence of which they are suspected without benefiting from the presence of a lawyer. On the remaining, the recommendation will be carefully analysed.

To increase awareness and to avoid the repetition of situations as the one detailed in paragraph 12 and referred to in paragraph 23, the dissemination of the rights of suspects/offenders was reinforced by the Judicial Police (pursuant to Article 4 of the said Oder 12786/2009). Clearly visible notice boards containing information on the rights and duties of such persons, comprehensively reproducing Articles 27 to 33 of the CRP and Articles 61, 250, 192(2), 194(8) of the CPP (applicable by force of Article 260 of the said CPP) were affixed at the detention places.

The same information is available on a leaflet, in several languages. This leaflet, containing a brief description of the rights and duties of the arrested person, is to be handed over to detainees by the responsible person of the Judicial Police, of the Courts or of the Public Prosecution Services (MP), as the case may be. Information on the handing over of this leaflet as regards the time the person was arrested and the time the leaflet was handed over to him/her can be documented.

**Paragraph 25**

*The CPT recommends that law enforcement officials are reminded of their obligation to immediately inform detained persons of their rights. In addition, Regulation 8684/99 should be amended to ensure that all persons obliged to remain with the Public Security Police and National Republican Guard are requested to sign a statement indicating that they have been informed of their rights and understood them. If necessary, the absence of a signature should be duly accounted for.*

*Further, all detained persons to be provided with a written explanation of their rights.*

**As regards the last sentence of recommendation in paragraph 25**

In what concerns the Judicial Police, please refer to the comments to paragraphs 22 and 23 (final parts).

**Paragraphs 25 and 26 (page 17) and Appendix I (page 65)**

Besides the provisions of the Constitution of the Portuguese Republic, the Criminal Code and the Code of Criminal Procedure, in what concerns the rights of detainees is important to point out that no. 14 of the “Regulation on the Material Conditions of Detention in Police Premises” on information of the detainee’s rights, approved the regulation of the material conditions of the police precincts, applicable to the GNR and the PSP.

As specified in no. 14.1 of the Regulation, in each GNR post and PSP precinct must be posted, in a well visible place and in detention areas, a panel with information on the rights and duties of the detainees, transcribing in full article 61° of the Code of Criminal Procedure, as well as an informative leaflet, in several languages, containing a brief information on the rights and duties of the detainees.

According to no. 14.2 of the Regulation, it also exists a Individual Record of the Detainee, whose purpose is to register all the circumstances and measures related to him/her, namely the moment and cause of the privation of liberty; the moment of information of his/her rights; visible injuries; contacts with family, friends or lawyer; incidents occurred during the detention; moments of presentation to the judicial authority and of release. Such Record must be signed by the officers involved and also by the detainee. As determined by no. 16.2 of the Regulation, there is also a file, which must be duly filled by the officer and signed by the detainee, and that may be considered as a declaration that the detained was informed of and understood all his/her rights. Therefore, taking in consideration the legal provisions in force as well as the inspections made by IGAI we may say that there already exist the conditions to say that the Recommendation of the CPT at paragraph 25 (page 17) and repeated in Annex I (page 65) referring to this subject is already implemented.

It is also important to refer that the Regulation, in its no. 1, defines the concept of “detention” for purposes of its application, as “all deprivation of liberty for less than 48 hours, as well as the condition of the person subject to the procedure of compulsory identification”, being therefore a broad concept of detainee.

On this point, it is important to refer that the deprivation of liberty and further escort to the police precinct may be made for identification purposes (article 250 of the Code of Criminal Procedure) or “in detention” (article 254 and following). To the effects of the Code of Criminal Procedure in the first case there is no “detention”, but an application of a “police measure” and in the second case there is “detention”.

As a consequence of that distinction, only in the second case (article 254 and following) the person is ranked as a defendant and must be notified of the respective rights and duties. The person in a process of identification normally does not become a “detainee” or “defendant” so, after the conclusion of the identification procedure he/she may leave the police precinct. Only when the suspicion is confirmed, the person receives “the detention notice”, according to article 254 and following.

For the purposes of the “Regulation on the Material Conditions of Detention in Police Premises”, “detainee” is both the person escorted to the police precinct for identification and the detainee, in the *stricto sensu* of the word. The rights of the “defendant”, as defined by the Code of Criminal Procedure are of a procedural nature and not specifically centred in the person’s well-being, which is the perspective of the Regulation. Consequently, the person in a process of identification has all the rights stipulated by the Regulation, even if he/she doesn’t come to be constituted as a “defendant”.

As previously referred in this document, to investigate the compliance with the Regulation by the Security Forces the IGAI, during its visits without previous notice, also inspects the condition of the “detainee” in the sense the Regulation gives to the concept which also includes persons escorted to the police precinct for identification purposes (no. 1 of the Regulation).

During the said inspections, special care is taken regarding the control of the documents elaborated or filled, including, among others, the Detainees' Registry Book (*Livro de Registo de Detidos*), and the respective archive of documents produced or filled, following then the examination, namely of the "Detention Notice" (*Auto de Detenção*), the notification of the status of defendant and the Detainee's Individual Record (*Boletim Individual do Detido*). It is also appreciated, randomly and case by case, not only the quality of the bookkeeping, but also the adequacy of the argumentation used to make each detention and, in the case of the Detainees' Registry Book, if it is wholly filled, namely if it includes the signature of the detainee.

The inspectors of IGAI also verify the Identification Registry Book (*Livro de Registo de Identificados*) and the respective archive of the documents elaborated or filled, following the examination of the "Identification Notice" (*Auto de Identificação*) and other documentation related to this identification procedure.

It is also important to mention that it has been a practice adopted by the IGAI, during its inspective visits, to draw the attention of the officers to the necessity of keeping the elaborated or filled documents duly organised, well written (without erasures or corrector), well archived and in conditions of immediate accessibility.

Therefore, we consider that based in the existing legislation, namely the "Regulation on the Material Conditions of Detention in Police Premises" and in the inspections made by the IGAI, as above specified, the Recommendations of the CPT made in paragraphs 25 and 26 (page 17) and repeated in Annex I (page 65) are already basically implemented.

Nevertheless, the concern that ensues from the Recommendations of the CPT in the said paragraphs 25 and 26, justifies that further information is given about this subject.

Article 250 of the Code of Criminal Procedure stipulates that escorting a suspect to a police precinct is a last resource.

This can only be applied to persons in relation to whom there are grounds to believe that he/she committed a felony or that they fulfil the other conditions referred to in no. 1; only can be applied if the suspect does not identify himself/herself through the documents referred to in no. 3 or any other document with the characteristics required by no. 4; even if the suspect does not present any of these documents, he/she cannot be escorted to a police precinct if he/she can ask other person to present the documents or is in conditions to go himself/herself present them or if he/she may be recognized by other person. Only after excluding all these possibilities it is possible to escort the suspect to the police precinct.

In what concerns the maximum time of stay in the police precinct the legislation is clear, establishing the principle that the suspect only can remain there "for the time strictly necessary for the identification", and that time cannot in any case exceed 6 hours. And the 6 hours can only be fully used when it is not at all possible to make the identification in a shorter period of time. This also ensues from the principle of "prohibition of excess" to which are subject the application of the police measures, together with the principles of necessity, chargeability and proportionality.

These principles are referred in article 272, no. 2 of the Constitution of the Portuguese Republic.



The principle of necessity in the application of police measures is also referred in the Internal Security Law – Law 53/2008, dated August 29, 2008 (Lei de Segurança Interna – Lei nº 53/2008, de 29 de agosto) in article 30.

The Article 14 of Law 63/2007, dated November 6, 2007 that approves the Organic Law of the GNR (*Lei Orgânica da GNR*) refers the principle of necessity and legality in the GNR activity.

The Article 12 of Law 53/2007, dated August 31, 2007 that approves the Organic Law of PSP (*Lei Orgânica da PSP*) refers the principle of necessity and legality in the PSP activity.

The article 40 of the Criminal Code refers the proportionality of the application of the security measure according to the severity of the fact and the level of danger of the person involved. If applied a constraint measure, article 193 of the Code of Criminal Procedure imposes that the execution of constraint measures should not affect the fundamental rights that are not incompatible with the precautionary demands that the case requires.

It is important to mention that according to article 253 of the Code of Criminal Procedure, the measure referred in article 250 is submitted to the control of Judiciary Authorities. It is also important to refer that, according to no. 11.8 of the “Regulation on the Material Conditions of Detention in Police Premises”, the persons escorted to the police precinct for identification purposes cannot be put in cells. They must remain in the service area or in a specific room for that situation, without excluding possible security measures that may be required, according to the circumstances. As soon as the legal time of detention is over, the person must be informed that he/she can leave the police precinct.

Finally, and in what concerns the procedure for the identification of suspects, the IGAI, during the inspections made without previous notice, has verified that this procedure sometimes is not used in less populated areas due to the fact that all people are easily recognized, while it is more frequent in more populated areas. The IGAI also considers that article 250 of the Code of Criminal Procedure, due to its complexity, sometimes raises some doubts of interpretation. Therefore, the IGAI pays close attention to its full understanding and compliance with, drawing attention to the fact that the measure of escort of a person to a police precinct is a last resource, only legally admissible when excluded all the other possibilities referred to in nos. 3, 4 and 5 of the mentioned article.

### **Paragraph 27 (page 18) and Appendix I (page 66)**

We consider that the “Regulation on the Material Conditions of Detention in Police Premises” regulates in a very detailed way the general conditions for the detention precincts, in numbers 3 to 9.3, and, as it may be verified, the cases mentioned by the CPT in paragraph 27 (page 18) and the recommendations there made and repeated in Appendix I (page 66) are all covered by the rules contained in those legal provisions, with the exception of the recommendation related to the access of the person detainee to outdoor exercise, which is not foreseen in the Regulation.

The existence of a mattress in each cell is specified in no. 4.3 of the Regulation.

The access to natural light and to the adequate artificial lighting is regulated by no. 4.5 and no. 4.10 of the Regulation.

It is important to highlight that the detentions in Police Premises occur in the period during which the detainees wait to be present to Court, what corresponds to up to 48 hours.

It is also important to mention that the IGAI, complying with the provisions of no. 22.1 of the Regulation, in its visits without previous notice to the GNR posts and PSP precincts, whenever there are detention areas (not all premises have cells) pays special attention to those spaces. In order to make a rigorous and exhaustive supervision of the detention areas, the IGAI inspectors, during their visits, use a very useful tool that is an inspective form to be filled while inspecting the areas. This form has a specific chapter dedicated to the detailed verification of all these matters and it starts with the identification of the cells area and of the existing cells. In those inspections there is the concern and attention to verify the existence or not of suspension points, cutting surfaces, natural and artificial light, ventilation, sanitary zone, mattresses, beds' clothes, calling equipment, hatch visor, detainee vigilance, tap water safety outside, hygiene, general conditions of the cells area and of each cell. Those are some of the aspects that are exhaustively inspected concerning the conditions of the detention premises in the visits without previous notice made by the IGAI.

Taking in consideration the 3 recommendations made by the CPT in paragraph 27 (page 18) and repeated in Appendix I (page 66), IGAI will reinforce the special attention it already pays not only to the cells' area but also to the detention conditions.

## **B. Prison Establishments**

### *Preliminary remarks*

(...)

### **Paragraph 29**

*The CPT recommends that the Portuguese authorities pursue a multi-pronged approach towards eradicating prison overcrowding, having regard inter alia to the principles set out in Recommendations Rec (99) 22 concerning prison population inflation and Rec (2006) 13 on the use of remand in custody as well as other pertinent Recommendations of the Council of Europe's Committee of Ministers.*

*The Committee would like to receive updated information on the measures being taken to eradicate prison overcrowding.*

### **As regards recommendation in paragraph 29**

The Portuguese authorities are deeply committed in solving the problem of prison overcrowding, to that end a threefold strategy that comprises measures of a legal nature, renovation works and measures aimed at increasing the capacity of the prison establishments was devised.

As regards legal measures, the setting up of mechanisms that allow for the application of alternative measures to the deprivation of liberty should be underlined. According to the Criminal Code (CC) an imprisonment sentence may be replaced by such measures as the conversion of the prison sentence, house arrest by electronic surveillance and suspension of the prison sentence as well as work in favour of the community (Articles 43, 44, 50 to 57, 58 to 60 all of the said CC, respectively).

Also, the CPP limits the cases in which pre-trial detention can be applied, shortens the admissible time periods for pre-trial and extends the situations in which application of the restraining measure related to house arrest by electronic surveillance can be applied.

With respect to renovation works, it should be mentioned that the maintenance of the premises and the improvement of the detention conditions is a permanent concern of the Directorate General for Probation and Prison Services (DGRSP) and whenever malfunctions/damages are detected, their repair is made.

Moreover, a plan to improve the functioning conditions of prison establishments was drafted. This plan, which is to be financed by the Fund for the Justice Modernization, is expected to be carried out from 2013 (starting at the end of the first quarter) to 2016. Such works shall also contribute to increase the prison system capacity and to reduce the overcrowding problem.

The investment foreseen amounts to 10.424.445€ and repair works shall be carried out in eleven prison establishments: Caxias, Coimbra, Porto, Vale de Judeus, Funchal, Évora, Pinheiro da Cruz, Santa Cruz do Bispo, Special Prison Establishment of S. José do Campo, Special Prison Establishment of Leiria and Regional Prison Establishment of Montijo. Acquisition of equipment is also included in the investment plan.

In addition, a plan to increase the capacity of the prison system is ongoing. It should also be highlighted that a new prison establishment is currently being built in Angra do Heroísmo (already in advanced phase) and that renovation and expansion works are underway in the prisons establishments of São José do Campo, Viseu, Alcoentre, Caxias and Linhó.

*Ill-treatment*

(...)

**Paragraph 34**

*The CPT understands that the SAI is carrying out an inquiry into this matter and would like to receive a copy of the final report (by the Prison Inspector and Audit Service (SAI) into complaints of beatings by members of the Prison Security and Intervention Group (GISP) and certain prison officers during a search operation in Paços de Ferreira Prison on 10 July 2011.*

**As regards the request for information in paragraph 34**

Please find attached hereto a copy of the requested Auditing and Inspection Service (SAI) final report (as Appendix 1).

*Ill-treatment*

(...)

**Paragraph 35**

*The CPT recommends that the Portuguese authorities deliver a clear message to all prison managers and custodial staff that all forms of ill-treatment are not acceptable and will be the subject of severe sanctions. More specifically, prison officers must be made fully aware that no more force than is strictly necessary should be used to control violent and/or recalcitrant prisoners and that once prisoners have been brought under control, there can be no justification for them being struck. In this context, the authorities should ensure that all prison officers are provided with training in recognised control and restraint techniques (see also paragraph 57).*

*The CPT also recommends that the Prison Administration and the management of Linhó and Paços de Ferreira Prisons monitor closely the situation in the security units of these establishments.*

**As regards recommendation in paragraph 35**

Special attention is paid to the good relationship between the inmates and prison staff.

“*Order, Security and Discipline*” at the prisons have, as a legal basis, the provisions set forth in the Code on the Execution of Criminal Sanctions (CEP) and in the General Prison Regulation (which were, respectively, approved by Law 115/2009, of 12 October and Decree-Law 51/2011, of 11 April). On its turn, the use of restraining means in a prison context is subject to the provisions set out in the Regulation on the Use of Coercive Means in the Prisons (Appendix 2).

The SAI, coordinated by a magistrate from the MP, continues to develop its activity, either *ex officio* or following complaints lodged by inmates and/or their families. In the latter case an inquiry is mandatory. Crimes of a public nature must always be reported to the MP.

The DGRSP’s activity is under regular scrutiny as any prison may, at any time, be visited by sovereignty bodies, including judges, as well as by representatives of international organizations entrusted with matters related to the promotion and protection of the inmates’ rights (Article 66 of the CEP).

Furthermore, pursuant to Article 68(4) of the mentioned CEP, the inmates have the right to, without any constraint, communicate with lawyers, notaries, diplomatic and consular entities, sovereign bodies, the Ombudsman, the Justice General Inspectorate and the Bar Association.

Regarding training, it is relevant to note that Human Rights issues have been addressed throughout the initial training courses of the prison officers and in the scope of different subjects, including the one related to control and restraint techniques. As an example, it should be referred that the initial training course of the prison officers, which began in April 2012 and ended in November of that same year, besides having had 10 and a half hours on this specific issue, has counted with the participation of several lecturers of the Amnesty International that addressed Human Rights matters (Appendix 3).

Moreover, the continuous training of prison staff, including officers, covers different fields and subjects. As a rule, Human Rights matters are addressed within the study of internal and international law. In a near future, it is envisaged to carry out training courses on Human Rights with the collaboration of NGOs, such as the Amnesty International.

It should also be highlighted that, in the context of the Conference of Ministers of Justice of Ibero-American Countries (COMJIB) Portugal, through the DGRSP, is part of a Working Group entrusted with the task of conceiving a training course on Human Rights, in a system of e-learning the aim of which is to provide a better and extensive training to all prison system's staff as well as to other relevant professionals.

The last recommendation referred to in paragraph 35 is also being taken into account. Efforts to enhance the monitoring of the safety areas of the prisons of Linhó and Paços de Ferreira are being made.

#### **Paragraph 36**

***The CPT recommends that the Portuguese authorities reinforce the capabilities of the relevant bodies to investigate allegations of ill-treatment. In this context, particular attention should be given to ensuring that medical examinations are carried out in accordance with the requirements advocated by the Committee (see also paragraph 66)***

#### **As regards recommendations in paragraphs 36 and 66**

The Portuguese authorities' concerns fully concur with those of the CPT.

Every allegation of ill-treatment is investigated and those found responsible are punished. It is also noteworthy to recall the legal framework that regulates the application of "Order, Security and Discipline" of the SAI - to the scrutiny of which the prisons may, at any time, be subject - and the right of inmates to lodge complaints.

It is equally set forth in Article 37(d) of the CEP that the «*medical staff have to immediately communicate in writing (...) any evidence of physical violence*» and the Regulation on the Use of Coercive Means in Prisons, in its Article 5(7), determines that «*the inmate subject to coercive means is to be immediately assisted by a doctor (...)*».

#### **Paragraph 37**

***The CPT would like to be informed of the outcome of the investigations into the case of alleged ill-treatment of an inmate by prison staff at Paços de Ferreira Prison.***

#### **As regards the request for information in paragraph 37**

Please find attached hereto a copy of the requested report (Appendix 4).

**Paragraph 38**

*The Committee recommends that when allegations of ill-treatment by prison staff are brought to the attention of the prison management, the staff members concerned be transferred to duties not requiring day-to-day contact with prisoners, pending the results of the investigation.*

**As regards recommendation in paragraph 38**

This recommendation shall be applied within the limits foreseen in the labour legislation.

It seems important to refer that in practical terms the employees subject to investigation are normally removed from the location and withdrawn from any contact with the persons and with the circumstances that have led to such participation.

**Paragraph 39**

*The CPT recommends that there be a permanent staff presence in the basement unit of F Wing of Lisbon Central Prison whenever inmates are unlocked from their single cells.*

*The CPT would like to be informed of the outcome of the investigations into the case of inter-prisoner violence in the basement unit of F Wing of Lisbon Central Prison, referred to in paragraph 39.*

**As regards recommendation in paragraph 39**

Likewise, the recommendation on the regular presence of surveillance elements in the basements of Wing F of the Lisbon prison is accepted and, as far as possible, shall be complied with.

Please find attached hereto a copy of the requested report (Appendix 5).

***High security units***

(...)

**Paragraph 41**

*The CPT recommends that the inner barred gate be left unlocked in the two cells in the security unit of Paços de Ferreira Prison used for the disciplinary measure of solitary confinement.*

*The CPT recommends that the necessary steps be taken to ensure that the cells in the high security units (of Linhó and Paços de Ferreira Prisons) are adequately heated.*

**As regards recommendations in paragraph 41**

As to the first recommendation in the present paragraph, the response given in relation to the CPT preliminary report is reiterated. Unlocking the inner barred gates would imply the inmate's direct and immediate contact with the person that opens the door of the cell. If such should happen, it would raise serious security problems to whoever, on a daily basis, deals with the inmates that are held in these disciplinary cells for disciplinary reasons.

The two disciplinary cells on the ground-floor of the security section of the Paços de Ferreira prison have each (space until the barred gates) 4,88m<sup>2</sup>/15,53m<sup>3</sup> and the four disciplinary cells on the ground-floor of the disciplinary section have each (space until the barred gates) 6,6m<sup>2</sup>/19,27m<sup>3</sup>.

Insofar as there are no criteria to define the prisons' capacity in terms of standard indicators for imprisonment areas or any other cubic standards, the parameters followed by other countries as well as the provisions set out in Articles 9 and 10 of the Minimum Rules for the Treatment of Prisoners and points 14 to 19 of the European Prison Rules were taken into account. Taking height into account, the cells in question may be considered suitable and in line with space requirements adopted in other European countries (Appendix 6).

Regarding the second recommendation in the present paragraph, it is recognised that the mentioned cells in the security units of the Linhó and Paços de Ferreira prisons are areas where, in the coldest winter days, the temperatures are indeed low. Given that, at present, it is not considered economically feasible to install central-heating, the inmates are given adequate clothes and bed linen that allows them to face the cold, with reasonable comfort.

Specifically regarding the Paços de Ferreira prison, it should be pointed out that it has an adequate stock of blankets to provide the inmates with, in the necessary quantities, and that it is underway a tender to acquire bed linen considered adequate to the season (flannel and polar).

In the scope of voluntary work, an activity named “*Supportive Wardrobe*” where clothes, shoes and hygienic products are, on a monthly basis, given to the inmates in need of them is being implemented in the Paços de Ferreira prison. Recently, within the scope of this activity, around 200 pyjamas were distributed. For the inmates in the security section, appropriated clothes for the cold season (undershirts, socks, carded cotton sweaters) have been recently bought and a tender to acquire “polar cardigans” is underway.

Furthermore, and still regarding the Paços de Ferreira prison, an evaluation on the specific situation of every inmate is conducted by the physician that coordinates the clinical services. Weather conditions can be a determinant on the decision to modify, suspend or postpone a given measure (as it has happened in some cases).

Lastly, the feasibility of implementing alternative energies is being assessed (Biomass), and based on the results presented and taking into consideration a reduction of the costs, as compared to the energies currently used, a heating system may be installed in this prison or in some of its components.

In what concerns the Linhó prison it is important to mention the DGRSP’s willingness to reanalyze the security regimes. Though there is no formal interdisciplinary task force, the different professionals and experts - re-education, psychologist, psychiatrist, general practitioner, head of the prison officers and board of directors - coordinate among themselves the intervention to be carried out as regards the inmates. Every fortnight, at the technical council, all the cases are discussed, in particular those that concern the maintenance of or the release from the regime.

In Linhó prison, the inmates placed in the security regime benefit from physical outdoor exercise for two hours, in a place of reasonable dimensions and may go to the gym, three times a week, for one hour, although without technical orientation. Training or labour activities or the attendance of programs may be authorized, insofar as they can be done inside the accommodation space or in a physical area considered adequate and compatible with the maintenance of order and security (Article 212 of the Prison General Regulation). In practical terms, some activities such as checkers, chess and card games have been carried out in the gym and books and magazines are available at the library.

#### **Paragraph 43**

***The CPT recommends that the Portuguese authorities review the regime in the security units of Linhó and Paços de Ferreira Prisons, in the light of the above remarks. In particular, a purposeful programme of activities should be put in place for each inmate, elaborated upon arrival in the unit by a multi-disciplinary team and which is the subject of monthly reviews.***

**As regards recommendation in paragraph 43**

It must be stressed that the Centre for the Implementation and Management of Programs is preparing and testing programmes adjusted to the needs of the inmates in the security sections of the Linhó and Paços de Ferreira prisons, in order to differentiate and adapt the treatment given to the prisoners that are temporarily placed in these sections. In addition, the Paços de Ferreira prison aims at implementing multidisciplinary activities, differentiated and adequate to every inmate placed in the security section.

**Paragraph 45**

*The CPT recommends that the Portuguese authorities institute rigorous procedural safeguards regarding the placement of prisoners in the security units, and any extension thereof (including a written reasoned decision of placement/extension and the possibility to appeal the decision).*

*Further, there should be a regular multi-disciplinary review of each placement every three months.*

**As regards recommendation in paragraph 45**

The CPT's concern is shared by the Portuguese authorities as it concurs with impositions arising from the Portuguese legislation.

Leading, maintaining or removing an inmate from the security regime is governed *inter alia* by Article 15 of the CEP. The decisions of the Director General of the DGRSP are notified to the inmates and communicated to the responsible magistrate of the MP at the Court for the Enforcement of Sentences, so that their legality may be verified. The compliance with disciplinary measures is notified to the inmates in accordance with the CEP; they may object to them at the Court for the Enforcement of Sentences on the terms of the CEP.

**Paragraph 46**

*(...) the weekly visits of inmates in the high security units should, as a rule, take place under open conditions, with closed visits being the exception based upon an individual risk assessment.*

**As regards the comment in paragraph 46**

In this respect, it should be referred that visits to the inmates that are temporarily placed in the security units are strictly made in accordance with the mentioned CEP and with the General Prison Regulation.

***Conditions of detention***

(...)

**Paragraph 47**

*The CPT recommends that the Portuguese authorities pursue their plans to renovate the accommodation wings in Linhó Prison. Further, cells of 7.5 m<sup>2</sup> should cease to be used to accommodate more than one prisoner (see also recommendation in paragraph 29).*

**As regards recommendation in paragraph 47**

Please refer to the comments to paragraph 29.

The CPT's concerns expressed in this recommendation once more concur with those of the Portuguese authorities; as such, and as previously mentioned, the rehabilitation of the premises in the prison of Linhó is underway. These renovation works will enhance the prison capacity, furthering the compliance with this recommendation in what relates the cells of 7,5m<sup>2</sup>.



**Paragraph 48**

*(...) the exercise yards in Linhó and Paços de Ferreira Prisons to be equipped with a means of rest and a shelter from inclement weather;*

**As regards recommendation in paragraph 48**

The Portuguese authorities are willing to consider, to the extent possible and within the limits imposed by the security requirements and economic feasibility, the placing of seats and of some roofs in the open courtyards of the prisons of Linhó and Paços de Ferreira. Notwithstanding, it should be borne in mind that those prisons have indoor recreation areas that provide shelter to the inmates whenever the weather conditions are adverse.

**Paragraph 49**

*(...) the design of the cell windows at Porto Judicial Police Prison to be reviewed so as to allow inmates to see outside of their cells;*

*(...) the Portuguese authorities to take the necessary steps to bring cell occupancy rates in line with the requirements mentioned in paragraph 49, and to maintain cells in a proper state of repair;*

**As regards recommendations in paragraph 49**

With respect to the first recommendation in this paragraph, which is being taken into account, it is, nevertheless worth mentioning that the option for opaque glass is closely related to the inmates and police officers' privacy, as the windows give out to driveways and gardens and to the police car park.

As to the second recommendation in this paragraph, some situations of overcrowding resulting from the high number of entries are acknowledged. Though this is a transitory prison where the prisoners remain for the shortest possible time, whenever an overcrowding situation occurs, efforts are made to solve the problem expeditiously. The maintenance and upkeep of the physical spaces is a permanent concern, as testified by the positive global evaluation on the premises made by CPT.

**Paragraph 50**

*The CPT recommends that the Portuguese authorities take urgent steps to improve the material conditions in Lisbon Central Prison in the light of the above remarks, starting with the basement units. To this end, the Committee would like to receive a timetable for the upgrading of the different areas of the prison (Lisbon Central Prison).*

*Further, the number of inmates held in the prison (Lisbon Central Prison) should be reduced so as to avoid placing three prisoners in the 9m<sup>2</sup> cells; preferably, these cells should be used for single occupancy;*

*The toilet in any prison cell holding more than one prisoner should fully partitioned to the ceiling.*

**As regards recommendations in paragraph 50**

As to the recommendations and the observation in this paragraph, recognizing the relevance of the observations and recommendations regarding the physical conditions and the appearance of some of the Lisbon prison spaces, the answer previously given in the CPT Preliminary Report is reiterated.

Nevertheless, it should be borne in mind that this prison is 127 years old and that, throughout its life, it has had a large inmate population, with a great rotation, which accelerates the deterioration of the facilities and of the materials. Whenever damages and malfunctions are detected and insofar as budgetary constraints allow it, repairs take place.

The maintenance of the premises and the improvement of the detention conditions is a major constant concern. As such, it should be mentioned that the Board of Directors of the Lisbon Central Prison carries out, on a regular basis, a survey on the deficiencies found in the wings and cells and the most urgent repairs are immediately undertaken. In 2008, 2009, 2010 and 2011 the expenses related to the acquisition of the material required to improve and maintain the premises (light bulbs, paint, timber, lime, cement, taps, locks, toilets, ironmongery, among others) has been €71 047,79 (seventy one thousand, forty seven Euros and seventy nine cents).

As regards the lack of artificial lighting in some of the Lisbon prison areas (as referred, as well, in paragraph 81, regarding the cells used for disciplinary measures in the basement of C Wing), it should be recalled that these are specific situations and that, for the most part, they derive from dilapidation made by the inmates themselves. The number of complaints related to prisoners that deviate or damage goods (light bulbs, electric wire, mattresses, pallets, sinks, toilets, sheets, closets, tables, chairs, among others) has been increasing. At the moment, there are 93 (ninety three) inquiry cases related to this type of damage. There is a permanent alert to this type of situations, with a view to solving them as quickly as possible. As an example, it should be mentioned that, in the first months of 2012 and throughout the whole prison, 516 light bulbs have already been replaced.

The recommendation related to the need to partition with walls the toilets of the single cells which are lodging more than one inmate is welcomed. The solution of this problem is, however, problematic as it implies a reduction of the remaining space available in the cell, the reason why the partitioned wall has not been set up. In the Wings F, G and H, where the individual cells have a bigger area, the toilet is separated by a wall. Notwithstanding the difficulties referred to, the DGRSP is studying alternative solutions to provide a bigger privacy without diminishing the space available to the inmates.

As to the poor state of the mattresses, it should be mentioned that there has been an effort to replace the mattresses and bed linen that are in a worse condition. In 2012, 200 new mattresses and 600 sheets have been bought and one hopes to buy some more by the end of the year.

As regards the existence of cockroaches and rats in some of the areas of the Lisbon prison (as referred, as well, in paragraph 81 regarding the cells used for disciplinary measures in the basement of C Wing), it should be highlighted that there has been a concern to disinfect not only the prison zone but also the kitchen, the warehouses and the administrative areas.

In 2007 and 2008, 4 annual pest controls were carried out and in 2009, 2010 and 2011 a general intervention took place inside and outside the building, for every of the above mentioned years (for cockroaches, rats, ants and mosquitoes), two rat controls occurred in the basement and corridors of access to the cells and eleven rat controls were carried out in the prison zone (almost one every month). In 2012, a general intervention has already occurred inside and outside the building (for cockroaches, rats, ants and mosquitoes) and a procedure for a new intervention is currently underway.

**Paragraph 51**

*The CPT reiterates its recommendation that the Portuguese authorities take appropriate measures to ensure prison cells are adequately heated.*

**As regards recommendation in paragraph 51**

Please refer to the comments to paragraph 41.

**Paragraph 52**

*The CPT recommends that the Portuguese authorities take the necessary steps to develop purposeful activities for remand prisoners in the Judicial Police Prisons and to pursue their efforts to offer an appropriate range of constructive activities to all prisoners in Linhó, Lisbon Central and Paços de Ferreira Prisons.*

**As regards recommendation in paragraph 52**

As to the need to develop purposeful activities for inmates of the Judicial Police prisons of Porto and Lisbon, it should be referred that, even though these prisons have a floating population and in transit to other prisons, there is a constant concern in occupying the inmates in an integrated and purposeful manner.

Thus, in the Regional Prison Establishment next to the Judicial Police of Porto two programs were implemented last year: an *Intervention in Road Offences* and a pilot program on *Intervention on Psychic-Emotional Stability*. There are 8 remunerated jobs (bar/cantina, library and 6 cleaning posts) that are held by 17 inmates. Within the scope of the organization of the inmates' free time, and bearing in mind the interest of promoting social rehabilitation, some recreational activities were developed such as the creation of a musical band (integrated by 3 to 5 inmates) and of a theatre (integrated by 5 inmates). A movie cycle, promoted by a voluntary group from the "You came to visit me Association", takes place every fortnight; each session is followed by a debate. *The Non Smoking Day* was celebrated with an awareness raising session addressed to the inmates and presented by a health technician. Five awareness raising sessions took place on the promotion and prevention of illness, with lectures from experts on different areas - teachers, health technicians and psychologists. Christmas was celebrated and has counted with the presence of the Deputy Director and with the voluntary participation of some artists; there has also been a lunch and extended visits from relatives.

In the scope of sporting activities, this prison has table games (domino, checkers, and chess) as well as a ping pong table and a field where badminton can be played. There is also an indoor space for the practice of rowing and body building equipments in the courtyard.

On its turn, in the Regional Prison Establishment next to the Lisbon Judicial Police, although it is not associated to any official school, initiation classes of Portuguese to foreign people were voluntarily ministered by inmates, as well as English, computer and music classes. It was also ministered by former inmates a first aid course, 12 actions related to health prevention and 2 programs of adaptation to life in prison were held for preventive prisoners. In the end of last year 30 inmates were involved in labour activities, in the areas of maintenance and cleanings, kitchen, prisoners' bars, (**mess**) dining hall, barbershop, laundry and library.

In what regards the occupation of leisure times, and given the structural characteristics of the prison facilities, the investment was made on sports, by means of the daily practice of gymnastics, indoor football, volleyball and table games. Several internal tournaments/championships of checkers, domino and chess took place. The library, with a documental fund of 5133 books, registered 584 requisitions of which 176 were foreign books. An "Informative Bulletin" continues to be published every two weeks.

## *Juveniles*

(...)

### **Paragraph 54**

*The CPT recommends that the Portuguese authorities take the necessary steps to ensure that any juveniles detained in an establishment for adults are accommodated separately from adult prisoners, in a distinct unit. The medium-term goal should be to ensure that all juveniles deprived of their liberty are held in facilities specifically designed for this age group.*

### **As regards recommendation in paragraph 54**

This recommendation is accepted.

It is important to notice that there is a prison establishment (Leiria) specifically devoted to juveniles and that in the remaining prisons the policy is to separate young inmates from the other prisoners at all times.

In addition, as a rule, in the placing of inmates, the proximity between the Prison establishments and their social and family environment is a key criterion.

Moreover, the budgetary provisions for the requalification works of the Leiria Prison were already authorized by the Council of Ministers last December. The said works also aim at the enlargement of this facility for young people.

### **Paragraph 55**

*The CPT recommends that the Portuguese authorities put in place a programme of purposeful activities for all juvenile prisoners held on remand.*

### **As regards recommendation in paragraph 55**

A pilot-project has already been initiated in three prison facilities devoted to young inmates. To contemplate the specific needs of this population, the model of technical intervention in a prison environment seeks to find adequate answers to the main factors that lead to crime in this age group, in particular by the implementation of two structural specific programs, the “*Intervention Program aimed at young people up to 21 years convicted of violent crimes*” and the “*Generate Social Pathways Program*”.

These programs are sequential and complement one another, of group application (in average 10 to 12 people per group) and aim the general prevention of crime, prevention of recurrent criminal behaviour and of delinquency in young people and the promotion of positive attitudes and life styles. The first program comprises 22 sessions and aims at promoting and developing key skills towards a lasting and consistent process of social reintegration and at reinforcing interpersonal relationships of the young inmates. The second program is more intensive from an emotional point of view. It comprises 44 sessions and has therapeutic objectives, in particular the promotion of change through the cognitive restructuring of dysfunctional mental processes and schemes.

Besides these specific rehabilitation programs, young inmates also benefit from a set of educational and sports activities, orientation and professional training specially adapted to their characteristics, needs and interests.

*Staff matters*

(...)

**Paragraph 57**

*The CPT recommends that the Portuguese authorities carry out a review of the current staffing levels in the prisons visited and, in the light of that review, make provision to recruit additional staff. In carrying out this review, regard should be had to the role and duties of prison staff as they relate to the purpose of sending people to prison*

*Further high priority should be given to the development of prison staff training, both initial and ongoing*

**As regards recommendation in paragraph 57**

Portugal welcomes this recommendation and would like to inform that the recruitment of personnel and the reinforcement of its human resources is part of the state policy on this subject.

As an example, it should be referred that an Initial Training Course of the Prison Guard Body, destined to 250 new guards was successfully concluded by 238 trainee guards.

For further detail on training, please refer to the comments to recommendation 35 and to Appendix 3.

**Paragraph 58**

*(...) if it is considered necessary for prison officers to carry truncheons, the CPT recommends that they should be hidden from view.*

*The CPT recommends that training in control and restraint techniques be made widely available to prison officers.*

**As regards recommendations in paragraph 58**

The use of truncheons is governed by the Regulation for the Use of Coercive Means in Prison Facilities. The incorporation of this equipment in the uniform has to be visible and it is not meant to intimidate the inmates but solely to have a dissuasive effect.

The CPT's suggestion of training in control and restraint techniques, without the use of weapons, is welcome by the Portuguese authorities. Rules that govern the implementation of «*Order, Security and Discipline*» in prison facilities, as well as the relevant training, reflect this concern (for further detail please refer to the comments to paragraphs 35 and 36).

**Paragraph 59**

*The CPT recommends that the necessary steps be taken to ensure that a rigorous selection and training programme is in place for all staff allocated to work with them (juveniles).*

**As regards recommendation in paragraph 59**

This recommendation is accepted. Efforts will be made to introduce, both in initial training and in continuous training for staff, clusters that address specific issues related to young people deprived of their liberty.

*Health care*

(...)

**Paragraph 60**

*The CPT recommends that the Portuguese authorities ensure that the new prison health care arrangements are properly monitored, taking into account the above remarks (in paragraph 60).*

**As regards recommendation in paragraph 60**

The recommendation is being complied with.

A clause determining that the contractor must keep the central core of personnel that will render services at the prison facilities for a minimum of 6 months, being understood as such the maintenance of 50% of the initial team, is foreseen in the different tender documents of the various procedures concerning the acquisition of Health Services for the prison establishments. The same clause is also foreseen in the specifications of the public tender, approved by the Resolution of the Council of Ministers 86/2012, of 15 October.

**Paragraph 61**

*The Committee would like to receive more details on the proposed timing of the transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health and the likely impact that such a transfer will have on the provision of health care services in prison.*

**As regards request for information in paragraph 61**

With regard to the request for information in this paragraph, it should be referred that, with the entry into force of the CEP, the prisoners became, for all purposes, users of the National Health Service. Where inmates are not already registered as users of the National Health Service, the prison services promote their enrolment (Articles 32(2) and 53(6) of the CEP and of the General Prison Regulation, respectively).

Furthermore, following the issuing of internal orders by the National Health Service (Informative 22/2011/CD of 25 May 2011 on the liability for costs of health care provided to inmates in establishments of the National Health Service and the Nominative 7/2012/CD, of 19 January 2012 on the exemption from payment of user fees under the System of Administration of Justice), the Council of Ministers adopted the said Resolution 86/2012, which states that «*the assumption of the responsibility for the payment of health care rendered to the prison population (...) became a responsibility of the National Health Service that should ensure to prisoners access to health care with the same quality and continuity as those guaranteed to all citizens. Thus, it is of the responsibility of the National Health Service to ensure to the inmate population the same healthcare given to all citizens, assuming the respective financial costs (...)*», whenever they resort to hospitals and clinics of the National Health Service.

**Paragraph 62**

*The CPT recommends that steps be taken to reinforce health-care staffing levels in order to ensure:*

- *the presence of general practitioners for the equivalent of at least three full-time posts at Lisbon Central Prison, of one and a half full-time posts at Paços de Ferreira Prison, and on a daily basis at Lisbon Judicial Police Prison;*
- *the recruitment of additional qualified nurses at Linhó and Lisbon Central Prisons, as well as at Lisbon Judicial Police Prison;*
- *an increase in the provision of psychological counselling at Linhó, Lisbon Central and Paços de Ferreira Prisons;*
- *the services of a psychologist and a psychiatrist are available to remand prisoners at Porto Judicial Police.*

**As regards recommendation in paragraph 62**

The different suggestions made in the recommendation are being taken into consideration, although, given the current budget constraints, it is difficult to reinforce all the above mentioned medical specialties. Despite the budget constraints, some adjustments/reinforcements of the time allocated to each specialty have been made, as shown in the following table.

<b>Prison</b>	<b>Nr. of hours under contract (as at 06/12/2012)</b>	<b>Reinforcement</b>
Lisbon	General Practice - 61H Nursing – 320H Psychology – 60H	2H 24H 6H
Paços de Ferreira	General Practice - 45H Psychology – 35H	5H 0
Linhó	Nursing – 196H Psychology – 30H	0 0
Lisbon Judicial Police	General Practice – 8H	1H
Porto Judicial Police	--	--

*Source: DGRSP (11/1/2013)*

It should also be noted that some prisons have clinical specialties, including psychiatry, which provide coverage to the surrounding area, based on established referral network.

**Paragraph 64**

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

**As regards recommendation in paragraph 64**

The recommendation is already covered in the Handbook of Procedures for the Provision of Health Care approved by the Director General of the DGRSP on 5 June 2009, particularly in its section 5, procedures during the admission of the inmate, where it is referred that "*the entry of inmates in the Prison is communicated to the Clinical Services by attaching a copy of the health related documentation in the possession of the inmate; When the inmate enters the Prison he/she is examined by the nurse who is on duty within the first 24 hours following the entry; In the cases where the nurse considers that the inmate requires an immediate medical examination, he/she*

*proceed to its referral to the prison doctor or, when necessary, activates urgency and emergency procedures; The medical examination of the prisoner's admission is held within 72 hours after the entry of the prisoner in the prison, unless it is an urgency/emergency situation" that is naturally subject to immediate assistance.*

**Paragraph 66**

*The CPT reiterates its recommendation that steps be taken to ensure that any signs of violence observed when a prisoner is medically screened upon admission are fully recorded, together with any relevant statements by the prisoner and the doctor's assessment (namely, as to the consistency between any allegations made and the injuries observed); this information should be made available to the prisoner and to his or her lawyer. The same approach should be followed whenever a prisoner is medically examined following a violent episode in the prison.*

*Further, whenever injuries are recorded which are consistent with allegations of ill-treatment made by the prisoner concerned (or which even in the absence of an allegation, are clearly indicative of ill-treatment), the relevant form to be systematically completed and transmitted to the supervisory judge and SAI.*

**As regards recommendation in paragraph 66**

As mentioned in the comments to paragraph 36, Article 37(d) of the CEP establishes that «*clinical staff shall immediately notify, in writing (...), that there are signs indicating physical violence*». Additionally, it is also foreseen in the Handbook of Procedures for the Provision of Health Care that following complaints or suspicions of abuse or assault, the doctor examines the inmate and the injuries detected are recorded in a proper form (Appendix 27 of the said Handbook), preparing a medical report to be brought to the attention of the prison's Director. If the health personnel detect any injuries that may constitute situations of aggression or abuse, such will immediately be taken to the attention of the prison's Director, who will trigger the necessary disciplinary and legal procedures, as previously mentioned.

**Paragraph 67**

*The CPT calls upon the national authorities to take steps to ensure that all medical examinations of prisoners are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of prison officers. In this connection secure rooms for examinations/consultation should be established in outside hospitals to which prisoners are routinely sent as outlined above; this will remove any need for the systematic presence of prison officers.*

**As regards recommendation in paragraph 67**

In what concerns the prison services and, as it is implicit in the description of the visit made to some prisons, there are spaces destined to nursing and clinical acts, thus respecting the privacy of the act and the relationship between the inmate/patient and his/her doctor.



**Paragraph 68**

*The CPT recommends that steps be taken to remedy this shortcoming (to ensure the confidentiality of medical data at Lisbon Judicial Police and Setúbal Prisons).*

**As regards recommendation in paragraph 68**

The confidentiality of the inmates' clinical data of the prison facilities near the Lisbon Judicial Police and of the Setúbal Prison is guaranteed and was never at stake. Medical data are kept in a proper space reserved to the clinical staff and, should if it be necessary to transport an inmate with urgency to a hospital of the National Health Service, the medical data are removed by the clinical staff and delivered, in a sealed envelope, to the persons that accompany the inmate.

**Paragraph 69**

*The CPT recommends that Portuguese authorities introduce the use of written consent forms for the screening of infectious diseases, and all prisoners to be informed in person of the results of such testing.*

**As regards recommendation in paragraph 69**

Similarly to what happens in a free environment, the prison doctors inform on the need to undertake certain diagnostic exams and when such a decision does not deserve the acquiescence of the prisoner, he/she must declare it in a proper form, which is filed in his/her Individual Clinical Process, as provided in Appendix 12 of the said Handbook of Procedures for the Provision of Health Care.

Regarding the reporting of the results, the recommendation to undertake steps to reinforce good practices on this matter is accepted.

**Paragraph 70**

*The CPT recommends that steps be taken to ensure that HIV testing conforms to these standards (is offered together with relevant information and accompanied, where necessary, by psycho-social counselling).*

**As regards recommendation in paragraph 70**

The DGRSP complies with this recommendation, since psychological support to all inmates that are referred by the medical and clinical staff or to those who so request it is provided. The knowledge of a HIV status within the prison system may trigger a need for psychological counselling to deal with this clinic reality.

**Paragraph 72**

*The CPT recommends that all prisoners fulfilling the criteria for subscribing to methadone drug-substitution programmes at Linhó Prison be permitted to do so.*

*Further, the CPT reiterates its recommendation that more effective steps to be taken to implement a three-pronged strategy: to put an end to the supply of drugs, to reduce as far as possible the demand for drugs and to provide appropriate assistance to prisoners with drug-related problems.*

*Further, substitution and detoxification programmes should be available to all prisoners fulfilling the relevant criteria and such programmes to be accompanied by social and psychological support and educational training.*

**As regards recommendation in paragraph 72**

The recommendation is being complied with. Following the reforms occurred in the public administration, including the restructuring of several services, the Institute for Drugs and Drug Addiction (IDT) was extinct, and some of its treatment competencies were transferred to the Regional Health Administrations (ARS). There are some constraints in the functioning of the pharmacological programs, particularly in the opioid substitution. However, steps are already being taken to strengthen the coordination with the ARS's services, and to expedite the review of Protocols between the extinct IDT and the DGRSP, and of the procedures in force.

**Paragraph 74**

*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.*

**As regards recommendation in paragraph 74**

The CPT's concern is shared by the Portuguese authorities.

Nevertheless, it should be noted that the inmates are placed under security measures for the reasons provided for in Article 15 of the said CEP and never for health reasons. Those that are declared criminally non-liable are admitted either to psychiatric hospitals or to clinics.

When the mental impairment is manifested after the conviction or after the reasons that determined the implementation of the security measure, the provisions of Articles 164 and 165 of the CEP, are applicable. Following the spirit of the recommendation, these provisions establish to whom the internment in a psychiatric facility is applicable, and rules the related proceeding.

***Other issues***

(...)

**Paragraph 76**

*The CPT recommends that the disciplinary system be further improved, taking into consideration the above remarks.*

**As regards recommendation in paragraph 76**

The concerns underlying this recommendation concur with those of the Portuguese authorities. Indeed, the CEP establishes the rules of the disciplinary procedure, as well as the implementation of the disciplinary sanctions. Its Articles 110, 111 and 112 comply with the recommendation, given that the implementation of the disciplinary sanction is always preceded by a written or recorded procedure; the inmate is informed of the facts alleged against him/her and is granted the right to an attorney, to be heard and to present evidence in his/her defence.

It should be added that the inmate or the person responsible for his/her defence is notified of the final decision as well as of its grounds and such a fact is recorded in his/her personal file according to the General Prison Regulation. Lastly, it should also be noted that the implementation of the disciplinary measure is of the responsibility of the prison Director.

**Paragraph 77**

*The CPT recommends that the Portuguese authorities take the necessary steps to ensure that placement in provisional disciplinary isolation is in line with the above precepts (set out in paragraph 77).*

**As regards recommendation in paragraph 77**

On this subject matter, the law establishes that the time in which an inmate is provisionally isolated pending a decision on an appeal, is counted on the whole length of the punishment applied. A recommendation will be issued to prisons, in order to avoid some sporadic situations in which this time has not been subsequently counted upon the enforcement of the penalty.

**Paragraphs 78 and 79**

*The CPT recommends that Law 115/2009 be revised accordingly (so as to lower the maximum period of solitary confinement as a punishment (paragraph 78).*

*The CPT recommends that the Portuguese authorities take immediate steps to amend the current legal provisions in order to substantially reduce the period during which a juvenile can be placed in solitary confinement for disciplinary purposes; the CPT has already indicated its preference for a time-limit not exceeding three days (paragraph 79);*

**As regards recommendations in paragraphs 78 and 79**

Portugal takes note of the CPT's recommendation and shall carefully study it.

**Paragraph 80**

*The CPT recommends that the Portuguese authorities issue clear guidelines about the role of prison doctors in relation to disciplinary matters; in doing so, regard should be had to the Revised European Prison Rules and the comments made on this subject by the CPT in its 21<sup>st</sup> General Report.*

**As regards recommendations in paragraph 80**

This recommendation is being complied with. However, on what concerns the separation cell, it should be pointed out that Article 92(3)(4) of the CEP stipulates that "*it is mandatory the examination by a doctor or nurse within twenty-four hours after the start of the implementation of this measure*" and that "*if the inmate is under special observation or medical treatment or reveals suicidal ideation or in the case of pregnancy, postpartum period or after termination of pregnancy, it is mandatory to carry out a prior medical examination, except in the case of imminent danger and it is impossible to resort to any other means of security, in which case it shall subsequently be carried out a urgent medical examination.*"

Regarding the procedures of healthcare to be followed by the DGRSP, the same law considers, in its Article 109(1) and (2), that "*the prisoner who is to fulfil the disciplinary measures provided for in Article 105/1(f) and (g) is under medical supervision, being observed as often as necessary by the physician, pronounced in writing whenever it deems necessary to stop or change the implementation of the disciplinary measure*" and that "*the prison doctor is heard before the implementation of a disciplinary measure to an inmate that is undergoing medical or psychiatric treatment or that reveals suicidal thoughts or, in the case of pregnancy, postpartum or after termination of pregnancy in the case of disciplinary measures provided for in Article 105/1(f) and (g) and in the remaining cases, when justified by exceptional circumstances*".

**Paragraph 81**

*(...) the mattresses in the four cells on the lower floor of the disciplinary unit in Paços de Ferreira Prison were not suitable for the beds and should be replaced.*

*The CPT recommends that the Portuguese authorities take the necessary steps to improve the material conditions in the cells used for disciplinary sanctions at Lisbon Central and Santa Cruz do Bispo Prisons. Further, prisoners held in solitary confinement as a disciplinary punishment should be offered at least one hour of outdoor exercise everyday.*

**As regards recommendations and comment in paragraph 81**

With respect to the Lisbon Prison, the recommendations in paragraph 81 have already been answered when dealing with the recommendation in paragraph 50 and those concerning the Paços de Ferreira Prison were explained in the response to paragraph 41. Supplementing that information: during the current year, 78 new mattresses were acquired and the replacement policy shall be pursued during the next year.

Concerning the observation made in this same paragraph regarding the Psychiatry and Mental Health Clinic of the Santa Cruz do Bispo Prison, it worth mentioning that the existing security rooms are not destined to fulfil disciplinary measures, but to the temporary and short term lodging of inmates for clinical reasons.

The rooms have adequate lodging conditions, considering the short periods of permanence to which they are destined. They all have windows and exterior ventilation and the room that is padded with an appropriate material to avoid self-injuries is the one with the smaller windows but, still, it has exterior ventilation. Following the CPT's last visit, instructions have already been given to enlarge the window in this room.

The rooms dispose of air conditioners, as it was showed to the delegation of the CPT, which at the time of the visit were turned off because the rooms were not occupied. The rooms maintain an adequate temperature when they are being used.

Special attention was given to the recommendation made by the Committee (at the time of the visit) regarding the condition of the mattresses, and the two mattresses that were in poor conditions have already been replaced.

Regarding the physical exercise at open air by the patients that occupy the safety rooms, it should be recalled that, by order of the Prison Director, it has been confirmed the obligation of allowing access to the patients in isolation to the outdoor space for a minimum period of an hour per day, as stipulated by law and also the obligation of the attending physician to give detailed information in the event that the patient is not in physical or psychological conditions to enjoy the outdoor space.

**Paragraph 82**

*The CPT recommends that steps be taken to amend the relevant roles and practice accordingly (towards visits so that disciplinary punishment of prisoners does not involve a total prohibition of family contact and that any restrictions on family contact are imposed only where the offence relates to such contact).*

**As regards recommendations in paragraph 82**

The contacts with family members and the visits to the inmates fulfilling disciplinary sanctions are ruled by the CEP. It is relevant to stress that its Articles 107 and 108 foresees the possibility of contact and visits with the families, subject to the Prison Director's authorization. This situation is, moreover, the rule.

**Paragraph 84**

*The CPT recommends that the Portuguese authorities introduce a uniform internal complaints system, taking into account the above remarks (in paragraph 84).*

**As regards recommendations in paragraph 84**

This recommendation is welcomed.

In fact, most prisons establishments have complaint boxes which are at the free disposal of the inmates. Despite this widespread practice, the DGRSP will seek to ameliorate the situation by placing in all the prisons that do not have them yet, boxes where the inmates can leave their complaints with confidentiality.

Additionally, and as referred in response to recommendation 34, all complaints and news on unsuitable behaviours or situations are subject to investigation, which implies the registration of the facts.

Finally, and also as reported in regard to recommendation 34, inmates have the right to exchange letters, without any control, with lawyers, notaries, diplomatic and consular authorities, sovereign bodies, Ombudsman, General Inspection of Justice and chairperson of the Bar Association (Article 68(4) of the CEP).

**Paragraph 85**

**request for information**

*The CPT would like to receive, in due course, a copy of this thematic reports (produced by the Inspector General of Judicial Services concerning health care and food, the 2009 Code on Execution of Criminal Sanctions and a financial audit of prisons).*

**As regards request for information in paragraph 85**

Please find attached hereto a copy of the requested report, enclosed as Appendix 7.

**Paragraph 85**

*The CPT recommends that the Ministries of Health and Justice devise a common approach towards the care and treatment of forensic psychiatric patients which encompasses both civil psychiatric hospitals and the prison psychiatric hospital.*

**As regards the recommendations in paragraph 85**

This recommendation shall be carefully analysed.

### **Other comments related to the several issues raised in CPT Report**

We consider important to mention that the Security Forces develop an important preparatory and preventive role of their officials to contribute to guarantee that all persons deprived of their liberty are well cared for and that their rights are respected whenever contacted by the police officers.

A contribution to this main goal is the importance given to training that the GNR and the PSP proportionate to their officers. These, not only in their initial training but also in their continuous training to regularly update knowledge and practices, receive an important preparation on legislation and procedures that must be observed for the total respect of human rights and information on community and international legislation related to human rights that is in force in Portugal, since our country is a member of the European Union and a State Party in many Conventions and Protocols of the United Nations and Council of Europe.

**LEGISLATION MENTIONED**

- Constitution of the Portuguese Republic (CRP)
- Law 59/2007, of 4 September, which approves the Criminal Code (CP)
- Law 48/2007, of 29 August, which approves the Code of Criminal Procedure (CPC)
- Law 115/2009, of 12 October, which approves the Code for the Enforcement of Sentences and Deprivation of Liberty Measures (CEP)
- Law 166/99, of 14 September, on Educational Guardianship
- Decree-Law 51/2011, of 11 April, which approves the General Prison Regulation;
- Order 12786/2009, of 29 May, which regulates the Conditions of Detention in Judicial Police facilities and in the Courts and Prosecution Service
- Regulation for the Use of Coercive Means in Prison Facilities, of 3 September 2009, adopted by Order of the Directorate General for Probation and Prison Services (DGRSP)
- Resolution of the Council of Ministers 86/2012, of 15 October, on the assumption of responsibility for the payment of health care rendered to the prison population
- Informative 22/2011/CD of 25 May 2011 on the liability for costs of health care provided to inmates in establishments of the National Health Service
- Nominative 7/2012/CD, of 19 January, on the exemption from payment of user fees under the System of Administration of Justice

### **C. Psychiatric institutions for forensic patients**

#### *Psychiatric institutions for forensic patients*

##### *Ill-treatment*

##### **Paragraph 94**

*The CPT calls upon the Portuguese authorities to give a firm reminder to prison officers called on to intervene in the Psychiatric Hospital at Santa Cruz do Bispo Prison, that ill-treatment of patients is unacceptable and will be the subject of severe sanctions. Further, all use of force should be recorded and every patient against whom force is employed should be examined by a doctor. The CPT also recommends that prison officers should not openly carry truncheons in the prison psychiatric hospital; preferably they should not carry them at all.*

##### **As regards recommendations in paragraph 94**

This recommendation is being followed. Any intervention of the surveillance staff is made under the Regulation for the Use of Coercive Means in Prison Facilities. All interventions that go beyond it are object of an inquiry procedure by the Audit and Inspection Service. Since it is a crime of a public nature, a notification is always made to the MP.

##### **Paragraph 95**

*The CPT recommends that the Portuguese authorities step up their efforts to combat inter-patient violence at the Psychiatric Hospital of Santa Cruz do Bispo Prison (paragraph 95).*

##### **As regards recommendations in paragraph 95**

In fact, there have been some sporadic cases of violence among patients at the Psychiatry and Mental Health Clinic of the Santa Cruz do Bispo Prison. Nevertheless, there is always an immediate intervention to stop these situations and to prevent conflicts from emerging.

##### **Paragraph 99**

*The CTP recommends that the Portuguese authorities take urgent steps to upgrade the material conditions and to improve the range and number of purposeful activities offered to patients at the Psychiatric Hospital of Santa Cruz do Bispo Prison, with a view to fostering a truly therapeutic environment. As this would involve a major restructuring of the current building – which was designed to serve as a prison - the authorities should examine possibilities for relocating the entire hospital to more suitable premises (paragraph 99);*

##### **As regards recommendations in paragraph 99**

Indeed, there are accommodation spaces overcrowded and the building is old. There is, however, a concern of continuous intervention and maintenance, and the process of acclimatization of the Clinic is ongoing.

As regards the hygiene of spaces, an attempt is being made to increase the number of the staff assisting medical action.

Moreover, efforts are also being made to improve the occupational structure with an increase of the schedule hours of the contracted occupational therapy, psychomotor and clinical psychology service. It is believed that the problem can be mitigated through the implementation of two full schedules of occupational therapy and psychomotor activity and a second full schedule of clinical psychology.



**Paragraph 100**

*The CPT recommends that the Portuguese authorities put an end to this practice (at the Psychiatric Hospital of Santa Cruz do Bispo Prison of referring to patients by their numbers); all patients should be referred to by their names.*

**As regards recommendations in paragraph 100**

This recommendation is accepted and complied with. The identification of the rooms/cells occupants on the doors by numbers has already been replaced by their names. It should, however, be noted that, in the mentioned Clinic, patients were always treated by their names.

*Staff*

*(...)*

**Paragraph 105**

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

- *to increase substantially the number of psychiatrist posts and of nursing staff;*
- *to reinforce the team of qualified specialists responsible for running therapeutic and rehabilitation activities.*

*These measures should also make it possible to avoid prison officers and patients being involved in care-related duties.*

*Further, regular team meetings of health care and socio-therapeutic staff should be introduced at the Psychiatric Hospital of Santa Cruz do Bispo Prison*

**As regards recommendations in paragraph 105**

Portugal agrees with the recommendation and the comment on the need to strengthen specialized clinical staff, including psychiatrists and, as far as possible in terms of the available funds, it will seek to overcome the situation.

In December 2012, all inpatients had their Therapeutic Rehabilitation Plans approved, and plans approved in previous years were evaluated.

In respect of the reference of therapeutic tasks being undertaken by elements of surveillance and by patients, Portugal informs that such situations do not occur at all.

**Paragraph 106**

*The CPT recommends that for so long as prison officers continue to perform security-related tasks inside the psychiatric prison hospital, they should be specifically selected and trained to work with the mentally-ill and to always work under the control and supervision of the health care staff.*

*The CPT invites the Portuguese authorities to consider replacing the prison officers assigned to the Psychiatric Hospital of Santa Cruz do Bispo Prison with specifically trained nursing staff.*

**As regards recommendations in paragraph 106**

With regard to this recommendation, once it relates to a psychiatric prison complex it is not possible to replace the prison guards by nursing personnel, though specialized. However, it is worthwhile to inform that, in February 2012, the surveillance personnel on duty at the Psychiatric and Mental Health Clinic of the Santa Cruz do Bispo Prison Establishment received training administered by the Psychiatric Hospital Magalhães Lemos in Oporto.

*Seclusion and means of restraint*

(...)

**Paragraph 114**

*The CPT recommends that the practice of placing patients naked in a seclusion cell to be stopped immediately.*

**As regards recommendations in paragraph 114**

Agreeing with the recommendation, the Direction of the Santa Cruz do Bispo Prison repeatedly questioned the three psychiatrists on the basis of the application of the measure of nudity to patients who are placed in a separation cell. The three doctors have systematically presented as clinical reasons the need to avoid the risk of suicide.

**Paragraph 115**

*The CPT recommends that the Portuguese authorities take immediate steps to improve the material conditions in the cells used for seclusion purposes, in the light of the remarks made above (in paragraph 115).*

**As regards recommendations in paragraph 115**

The installation of heating in the above mentioned separation cells has already started.

**Paragraph 116**

*The CPT recommends that direct supervision of patients placed in the seclusion cells by nursing staff be documented.*

**As regards recommendations in paragraph 116**

This recommendation is enforced, since instructions have already been given to the nursing staff to register all visits made to the security cells.

**Paragraph 117**

*The CPT recommends that placement in a seclusion cell only occurs on the basis of a recommendation by health care staff and only for medical purposes as laid down by the 2011 general prison regulations.*

**As regards recommendations in paragraph 117**

This recommendation has been fulfilled. Patients are only placed on separation cells for clinical reasons and this procedure only takes place by order of a physician.

**Paragraph 118**

*The CPT recommends that steps be taken to ensure that the practice at the Psychiatric Hospital of Santa Cruz do Bispo Prison is in line with this requirement (that every resort to means of restraint, including chemical restraint, should expressly be ordered by a doctor or immediately brought to the attention of a doctor). Further, all instances of chemical restraint should be recorded in a central, specific register on use of means of restraint).*

**As regards recommendation in paragraph 118**

With regard to this recommendation on the administration of medication in SOS, it should be clarified that the medication is prescribed in the individual file of the patient, by a psychiatrist. Nevertheless, from now on, the administration of such medication will be properly recorded (date, time and clinical reason for the administration) in the individual clinical file of the patient.

**Paragraph 124**

*Te CPT invites the Portuguese authorities to improve access to a telephone at the Psychiatric Hospital of Santa Cruz do Bispo Prison.*

**As regards recommendation in paragraph 124**

Regarding this recommendation, access to telephone at the Psychiatric Hospital of Santa Cruz do Bispo Prison was improved; at the moment, there are two telephones for use of the inpatients and the installation of a third one is underway.

Regarding the preliminary observations done by the Committee for Prevention of Torture and Inhuman or Degrading Penalties and Treatments (CPT), and following the visit from February 2012 to Portugal, the Portuguese Government presents the following comments:

1. We acknowledge the existence of some of the pointed out insufficiencies, regarding the material conditions of the Psychiatric Hospital Centre of Lisbon (PHCL) and of the Hospital and University Centre of Coimbra / Hospital of Sobral Cid (HSC). However we should also mention the carried out efforts for improvement: the PHCL predicts the conclusion of the definitive facilities at the end of 2013 and has already initiated the regular placement of signs, like the customized identification of rooms.  
The building of the Hospital Sobral Cid, an old building constructed with focus on security, which does not currently apply, requires a profound reformation, and for that matter the Ministry of Health shall contact the Ministry of Justice (owner of the building).
2. The presented criticism on the therapeutic approach (lack of structure in the activities of rehabilitation and Therapeutics, absence of an individual plan for treatment and rehabilitation, administration of SOS medication regardless of the exceptionality of such drugs), will be solved in the definitive facilities of PHCL, taking into consideration that 2011 saw the beginning of the "elaboration of evaluation parameters regarding clinical matters, rehabilitation and re-socialization". The recent integration of the HSC within another administrative structure will also be an opportunity to improve and to redefine the context of rehabilitation and re-socialization. Until then it should be underlined that the nursing team has made an earnest effort to fill in the existing gaps, through activities regarding leisure, sport, culture and acquisition of personal qualifications, giving preference to the patients that are not integrated in rehabilitation programs.
3. There is an intention, assumed by the Administration of the National Plan for Mental Health, to monitor the periodical revision of SOS prescriptions and to guarantee the registration of the concerned administrations, with detailed written justification of such prescriptions in the corresponding clinical processes.
4. The Portuguese Law determines that within a judicial sentence a patient is subject to treatment/internment, which includes the prescription of the medication adequate to the pathology, and there is no obligation to have a previous acceptance for such matter. To compensate this situation, *which could only change through an adequate alteration to the Law*, and in order to humanize the intervention, it was verified that the PHCL considers it as possible to start a process until the end of the current month, whereas the HSC intends, within a brief time, to begin informing the patients, as soon as they are admitted, about the therapeutic plan and the rules that govern it, thus obtaining a recognition that includes all the detailed information.
5. The Ministry of Health intends to review, within a short time, the Regulating Norm no.08/DSPSM/DSPCS, from the 25.05.2007. This revision will allow the creation and effective implementation of an anonymous national record for events of physical containment, with mandatory notification in an online computer system.
6. Finally, regarding the possibility for long term patients of having perspectives of integration in community structures, we believe that these patients may be considered for admission in the vacancies of residency within the Continuous Integrated Care of Mental Health, a project about to be carried out for the whole sector. For the remaining patients (clinically unstable but not in need of extension of security measures) it seems essential to have an articulation between the Ministries of Health and of Justice, which will surely happen.

#### **D. Casa do Lago Social Care Home for Juveniles**

The Santa Casa da Misericórdia de Lisboa, in regards to the report on the visit carried out by CPT to Casa do Lago, is pleased to note the very positive evaluation made to this social response in the context of institutional care of young people in need of emergency protection.

Regarding the recommendations (Page 77):

- the evaluation of the health situation of these young people, although provided immediately in the admission, only occurs on average a week after their integration into the home.

This stems from the responsiveness of health centres, but we agree with the Committee that, in view of the situation of these young people who accumulate physical problems, mental health and addictive behavior, according to an analysis of health records and prescribed medication to which the Committee had access, it is not a response on time, and may incur on serious risks. However, the present method has showed improvements from previous practice (revised in 2005), as situations accepted within the framework of the emergency system had to pass firstly through the hospital before admission in emergency homes, which increased significantly the period mediating the health evaluation and the full integration in the home.

Until approximately 2005, the situations accepted within the framework of the emergency system passed firstly through the hospital before they were admitted in the emergency homes, a practice abandoned by Social Security for being unviable.

As for the comments:

- the situation of conflict between young people admitted may happen, but it depends on the group admitted and the particular situation of each child/juvenile and his/her background. At the time of admission, the young person learns the rules of the institution and the great majority of conflict situations are resolved internally by the team staff. Only in extreme cases of violence where other than technical intervention proves necessary the support of security forces may occur. There is no use of repressive means that may hinder freedom.
- as for the capacity of Casa do Lago, there are 14 young people in 14 rooms.

As for requests for information:

- As other social equipments managed by private organisations or public entities, independent inspections may be carried out by the General Inspectorate of the Ministry of Solidarity and Social Security to Casa do Lago. Casa do Lago has not been inspected in recent years.

### **III. APPENDICES**

(available in Portuguese)

- Appendix 1 - Copy of the Auditing and Inspection Service final report related to the operation that took place in 10 July 2010 at the prison Paços de Ferreira
- Appendix 2 - Regulation on the Use of Coercive Means in the Prisons
- Appendix 3 – Curricula of initial training courses for prison guards
- Appendix 4 - Copy of the report on the outcome of the investigations into the case of alleged ill-treatment of an inmate by prison staff at Paços de Ferreira Prison
- Appendix 5 - Copy of the report related to a request for protection made by an inmate, based on threats that were allegedly made to him by other inmates
- Appendix 6 – Documents concerning prison cells area, by prisoner, in different European Countries
- Appendix 7 - Copy of the report produced by the Inspector General of Judicial Services concerning the entering into force of the new Code on Execution of Criminal Sanctions (CEP).