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**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 14 to 25 January 2008

The Portuguese Government has requested the publication of this response. The report of the CPT on its 2007 visit to Portugal is set out in document CPT/Inf (2009) 13.

Strasbourg, 19 March 2009

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INTRODUCTION

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has approved, on 11 July 2008, the report on its seventh 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 observations and recommendations 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 improve the less positive features encountered.

The Portuguese Government wishes now to convey to CPT its response. The response contains the observations to the CPT's comments, the reply to its requests for information and the action 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.

For the Ministry of
Interior,

The liaison officer,
Mariana Sotto Maior

For the Ministry of
Justice,

The liaison officer,
Inês Horta Pinto

For the Ministry of
Health,

The liaison officer,
Helena Martins Alves

ISSUES RAISED BY THE COMMITTEE

I. D. Cooperation between the CPT and the Portuguese authorities

Paragraph 5: The Portuguese Government is pleased to learn that the co-operation that the CPT received from Portuguese authorities during its visit was on the whole very good.

The CPT refers, however, that full information on places where persons, deprived of their liberty, are held (including private psychiatric hospitals and holding cells in court premises) was not provided to them.

As regards the places where people, deprived of liberty, are being held, the Ministry of Justice has given the CPT Delegation a list of all the Prison Establishments (including their location, capacity and effective occupancy rate), of all the Educational Centres (including their location, capacity and effective occupancy rate), of the detention facilities at the Judicial Police premises (location, number of cells and information on whether or not they are used and if yes, for how long) as well as of the non-prison psychiatric hospitals (within the remit of the Ministry of Health) where convicted persons are or may be institutionalized. The information provided corresponds to what was imparted to the CPT in previous visits. **There was no intention, on the part of the Portuguese authorities, to deprive the CPT of any relevant information.**

A list with all the places fit to receive persons detained in the courts' holding cells and in the Public Prosecution premises all over the country **is now enclosed** (appendix 1). For each of these premises it is referred: the total number of cells; the number of cells used for detention; the number of cells not used; the existence of other places other than cells that may be used for holding detained persons; and the average time of permanence of the detainees in these premises.

It should be highlighted that no one is accommodated or stays overnight in these holding cells. They are only used as a waiting place (where detainees await, in the Court, for the beginning of the trial or in the Public Prosecution until it is time to be present in the ongoing proceedings or where they spend the lunch hour between proceedings). Often, this waiting time is spent in waiting rooms, in witnesses' rooms or in the corridor or in the court's entrance hall; the resort to these cells only takes place if they exist, if they have the necessary conditions and for security reasons.

As regards the information supplied by the Ministry of Health, information on Mental Health legislation – Mental Health Law and its respective regulations, Law 212/2006 of 27 October (new organic structure of the Ministry of Health providing the High Commissariat for Health with broad-ranging authority in Mental Health and International Relations matters), Decree Law 218/2007 of 29 May (defining the mission and attributes of the High Commissariat for Health) – in addition to the list of currently state-owned (non custodial) Psychiatric Hospitals and their corresponding capacity, in which persons have been forcibly detained, was sent to the CPT, by email.

The publication referred to as *Rede de Referência de Psiquiatria e Saúde Mental* (DGS, Lisboa, 2004) provides a summary of all of the Adult Psychiatric Units belonging to the National Health Service, social institutions of a religious nature and *Misericórdias* and the distribution thereof over the five Health Regions.

Although the CPT had been informed of the possibility of the existence of the compulsory confinement of psychiatric patients in private psychiatric units, no request for such a list was received. The following may be stated as regards this subject matter:

- No list of compulsorily confined patients in private mental health facilities was requested from the Ministry of Health's liaison officer or the Portuguese authorities present at the various meetings in preparation for the CPT visit;

- In the document ("Credencial") issued by the Minister of Health and supplied to the CPT, the fact that no mention was made of the issue of access to the medical records of patients made it more difficult for permission for the CPT to have access thereto. Although an explanation of this subject matter should be given in the future, in light of the delicacy of the subject matter and the fact that Portuguese legislation, from a deontological and ethical viewpoint, places restrictions on the supply of patients' data, this requires that a protocol be entered into with the *Ordem dos Médicos* and the National Committee for Data Protection and Health Ethics Committee.

- The *Clínica S. João de Deus*, in Funchal (Autonomous Region of Madeira), is a not-for-profit Private Social Welfare Institute (*IPSS*) which has signed a protocol with public services and is therefore covered by the Mental Health Law currently in force (Law 36/98 of 24 July). The CPT visit to this clinic and access to patients' records increased the problem's complexity and time needed to resolve it owing to the fact that the problems occurred in an Autonomous Region, on a weekend and, therefore, with most of the doctors responsible for the different patients being absent, thus forcing ethical issues upon the Clinical Director.

- However, as soon as he became aware of the fact, the Ministry of Health's liaison officer with the CPT took all of the steps required to resolve the situation, having contacted the Clinical Director of the clinic, in an endeavour to clarify the CPT's role, competencies and powers. Professor Boléo Tomé, Chairman of the Health Ethics Committee was also called upon to intervene and did his best to resolve the situation by means of an eventually successful dialogue notwithstanding the delays forced upon the CPT during its visit.

The Portuguese Authorities wish to express their will to ensure that, in a future visit of the CPT to Portugal, situations as those will not be repeated.

II. Facts found during the visit and action proposed

A. Law Enforcement agencies

Paragraph 7: The CPT would like to receive the Portuguese observations regarding the detention of a person suspected of a criminal offence for a maximum of 6 hours for the purpose of establishing his or her identity, as set forth in article 250 of the Criminal Procedure Code (rule not amended in the recent revision of the Code).

First of all, it is important to know, in-depth, the legal rule at issue (rule that is within the chapter “preventive and police measures”), which is hereinafter described:

Identification of a suspect and information request

1. *The criminal police bodies may proceed to the identification of any person found in a public place, open to the public or subject to police surveillance, whenever upon such person falls reasoned suspicions of the commission of crimes, of an extradition or deportation proceeding outstanding, of having entered or irregularly remain in the national territory or of the existence of a warrant of arrest against such person.*
2. *Prior to proceeding to the identification, the criminal police bodies must prove their capacity, inform the suspect of the circumstances that justify the obligation of identification and indicate the means pursuant to which he may identify himself.*
3. *The suspect may identify himself by showing one of the following documents:*
 - a. *Identity card or passport, in the case of a Portuguese citizen;*
 - b. *Residence title, identity card, passport or document that replaces the passport, in the case of a foreign citizen.*
4. *In the event that it is not possible to show one of the documents mentioned in the previous number, the suspect may identify himself through submission of an original document, or certified copy, which has his full name, his signature and his photograph.*
5. *If he doesn't hold any identification document, the suspect may identify himself by one of the following means:*
 - a. *Communication with a person able to submit his identification documents;*
 - b. *Travelling, accompanied by the criminal police bodies, to the place where his identification documents are;*
 - c. *Recognition of his identity by a person identified pursuant to ns. 3 and 4, who assures the truth of the personal data indicated by the person to be identified.*

6. *If the identification pursuant to the terms set out in ns. 3, 4 and 5 is not possible, the criminal police bodies may take the suspect to the closest police station and force him to remain therein **for the time strictly necessary for the identification, in no event exceeding six hours**, carrying out, if needed, fingerprints, photographic or similar evidences and requesting the person to be identified to indicate residence where he may be found and receive communications.*
7. *The identification acts carried pursuant to the previous number are always set down in a record and the identification evidences thereof are destroyed in the presence of the person being identified, at his request, if the suspicion is not confirmed.*
8. *The criminal police bodies may request the suspect, as well as any persons capable of providing useful information, and receive from them, without prejudice of article 59 in relation to the suspect, information concerning a crime and, namely, to the discovery and to the preservation of the means of evidence which could be lost before intervention of the judicial authority.*
9. *The person to be identified will always have the possibility to contact a person of his confidence.*

As one may conclude, from the reading of the whole article, the conduct of a suspect to a police station is a last resort measure: such only applies whenever there is strong evidence that a person has committed a crime or if that person is within the conditions set forth in n. 1; it may only be applied if the suspect cannot identify himself through the documents foreseen in n. 3 or by any other document specified in n. 4; even when the suspect does not submit any of these documents, he may not be taken to a police station if he can ask another person to show the documents or if he can go and get them himself or if someone else can recognise him. Only when all these means fail, the suspect may be taken to a police station.

As regards the maximum period of permanence at the police station, the law is clear when it sets up the principle of precariousness: the suspect may only stay there “for the time strictly indispensable for identification purposes” – time that cannot, in any case, exceed 6 hours.

Therefore, the law does not legitimise the use of the 6 hours in every case. The 6 hours may only be entirely used when it is not possible to make the identification in a shorter time. This is a consequence of what the Constitution of the Portuguese Republic sets forth in article 27, n. 3 g): “*detention of suspects for identification purposes occur, in such cases and for such time as may be strictly necessary*”; it then refers to the law for the definition of time and of detention conditions. Such also derives from the principle of “Prohibition of excess” to which the application of police measures is subject, namely as regards the criteria of *necessity, adequacy and proportionality* (article 272, n. 2 of the Constitution).

It must also be pointed out that this measure is subject to the judicial authorities’ control: within the meaning of article 253 of the Criminal Procedure Code, *the criminal police bodies that carry out the actions referred to in the previous articles draw up a*

report which is sent to the Public Prosecution or to the investigating judge, as applicable (...).

It should be mentioned that, in accordance with item 11.8 of the Regulation on the Material Detention Conditions at Police Premises (Order n. 8684/99 (II series) of the Minister of Interior, referred to in paragraph 16 of the CPT's report), *the persons taken to a police station for identification purposes (...) cannot be held in cells but must remain in the public service area or in a room designed for that end, without prejudice to the security measures that the circumstances may impose. After the legal detention period expires, the person must be informed that he/she is free to leave the police station.*

On this matter, a recent development has occurred.

As referred to in the Portuguese answer to the CPT's report regarding its visit in November 2003, the Minister of Interior decided to request an opinion on this subject to the Consultative Board of the Attorney-General's Office (*Conselho Consultivo da Procuradoria-Geral da República*) – the Government's highest legal advice instance.

The Opinion of the Consultative Board of the Attorney-General's Office, ratified by order of the Minister of the Interior of 13 December 2007, was published in the Official Journal on 11 January 2008 (appendix 2).

Hereunder, we transcribe some passages of that Opinion:

“The legislator [of the 1998 revision of the Criminal Procedure Code], while affirming that the detention time shall be “such time as may be strictly necessary for identification purposes”, has maintained the maximum period [of 6 hours] as set forth in the code, most likely because he has considered it more consistent with the need to collect evidence. Nevertheless, the criminal police bodies should always *reduce to the minimum the period of detention in a police station*. That duty is, given the compulsory documentation of the acts and investigations carried out (see article 250, n. 7 and article 253, n. 1 of the CPP), supervised by both the judicial authorities and the internal police control bodies”.

Among the conclusions of the Opinion, we highlight the following:

“3 – The compulsory identification before a competent authority is a police measure and its application is subject to the purposes and limits to which the police activity is conditioned and, in particular, to the principle of prohibition of excess.

4 – In compliance with this principle, the time of permanence of a suspect in a police station for identification purposes must, on the terms of the law (article 250, n. 6 of the Criminal Procedure Code), be reduced to the «time strictly necessary for the identification and, in no event, shall exceed six hours»”.

It is important to note that the Opinions of the Consultative Board, *when ratified by the entities that request them* (in this case, the Minister of Interior), *are published in the Official Journal and **take effect as the official interpretation, within the respective***

services, of the matters that they are intended to clarify (article 43 of the Public Prosecution Statute – Law n. 60/98, of 28 August).

Paragraph 10: The CPT wishes to be informed about the outcome of the IGAI investigation concerning a case of alleged ill-treatment which has occurred at the PSP station of Cacém, during its visit to Portugal.

On this case, the Portuguese authorities clarify the following. After the meeting held at the Ministry of Justice, on 25 January, where the CPT's delegation has summarised its visit and referred the alleged ill-treatment that it has encountered when visiting the PSP station of Cacém, the Minister of Interior (by order of 15 February 2008) has requested IGAI to open an inquiry; this inquiry (which has run as PND, n. 11/2008) was concluded on 6 June of the same year.

As referred to by IGAI, the investigating officer did not hear the two detainees (foreign citizens who, on the basis of the information provided by the Aliens and Borders Service, left the country immediately after the trial and are in an unknown part) nor the interpreter of the CPT's delegation (for reasons of professional immunity).

From the outcome of this investigation the following evidence was found: one of the detainees already showed injuries when he entered the cell; nonetheless, the police officer in charge did not inquire about such wounds nor has reported them in the "detention report" and in the "detainee's personal file", as is laid down by law; after the CPT's delegation has left the police station, the police urged the detainee to receive medical assistance, which he has denied; the following day, the two detainees were tried and convicted for libel by final decision of the County Court of Sintra.

By order of the Minister of Interior, of 6 June 2008, a disciplinary procedure was initiated, by IGAI, against the police officer in charge, as the omission of inspection and recording of injuries is in clear breach of the law, and as such violates the duties of zeal and obedience. The case (running as PND n. 42/2008) is still ongoing.

The CPT requests information on the investigation carried out, in 2007, by IGAI concerning a case of alleged ill-treatment of adolescents, by four GNR officers, reported to the CPT during its visit to the GNR Headquarters in Aveiro.

Unfortunately, the elements referred to by the CPT's report were not sufficient to identify the alleged incident; moreover, there is not - according to the information provided by IGAI and by GNR within the scope of this response - any notice nor any record of these facts. The Portuguese authorities are however willing to provide the CPT with all the information needed on this particular case, if more detailed elements, able to identify this incident, are given.

Paragraph 11: As informed (and as already included in the CPT's report), regarding the objects found at the Judicial Police premises, the Minister of Justice, as soon as he knew of the CPT's preliminary conclusions, has ordered the storing and labeling of all unauthorized objects in every Judicial Police station, within a month (appendix 3).

The order was complied with and the National Director of the Judicial Police has instructed all those responsible for criminal investigation units or departments to label, record and store the objects in proper places, in line with the rules laid down by the Order n. 12/2007, of 11 December 2007 (order of the National Director of PJ containing instructions regarding the seizure of drugs, money and other values, as well as the keeping and storage of assets and their security mechanisms – see appendix 4. There, it is expressly forbidden the keeping of objects, money and other seized assets in lockers or individual drawers).

As concerns the PSP, following the CPT's preliminary conclusions, the National Director of PSP has immediately issued (on 20 February 2008) a circular-letter determining that all objects, seized or gathered, be labeled and stored in proper rooms and, in no event, left at sight next or in the interrogation rooms of police stations.

On the other hand, there already are rules and procedures on storage, safekeeping and custody of objects and weapons at GNR police stations. Such rules also require that seized or collected objects be stored in specific places and labeled. Hence, for example: Order n. 366 of 16 January 1986, on storage of objects at GNR stations, Note 11621 of 21 December 1990, on safekeeping of arms and Order n. 734, of 26 January 1995 on the storage of objects and arms at such stations. Besides the above-mentioned rules, there are clear guidelines on storage, stowing, identification, labeling and on what documents must be filled for keeping such objects safe.

In short, both PSP and GNR already follow procedures aimed at ensuring that seized or collected objects be stored in appropriate locations, duly labelled and in no circumstance be exposed next to rooms where suspects or witnesses are heard.

Paragraph 12: The CPT recommends that a thorough, comprehensive and independent study into the prevalence of ill-treatment by law enforcement officials be carried out.

It should be noted that the IGSJ, within the scope of its intervention, has requested the services subject to the Ministry of Justice to provide it knowledge of all the internal disciplinary procedures and of all the investigations carried out as well as its conclusions. Hence, on 28 July 2008, the Directorate-General for the Prison Services was requested to always forward these data to IGSJ. The Judicial Police shall also be requested to adopt a similar proceeding. (This is a proceeding already implemented, as regards the supervision and disciplinary procedures carried out by the Inspection and Disciplinary Sector of the Registry and Notary Institute).

As concerns the comprehensive and independent study into the prevalence of ill-treatment of detainees, and with respect to the Judicial Police intervention, the IGSJ is planning an inspection¹ for 2009, which (together with the procedure regarding the communication of the data above referred to) shall provide information able to better quantify the trend that the CPT refers to in this last visit to Portugal.

As soon as the data obtained through these procedures are analysed, the IGSJ shall decide on the need of a more in-depth study.

¹ See the reply given in paragraphs 28 to 30.

Among the Law Enforcement Agencies and Services that are supervised by the Ministry of Interior, the Inspectorate-General of Home Affairs has played a particularly noteworthy role ever since 1995. The Inspectorate-General of Home Affairs is independent at technical and administrative level and its mission is to audit, inspect and supervise at a high level in the sphere of home affairs so as to ensure effective compliance with the law, the protection of lawful and legitimate interests of citizens and that any breaches to the law are repaired.

In fact, a body already exists that is responsible for “studies” - the Inspectorate-General of Home Affairs, whose powers are laid down in Article 3 of Law-Decree No. 227/95 of 11 September as modified by Law Decrees No. 154/96 and No. 3/99, of 31 August and 4 January, respectively, which include the production of studies and opinions on any matters within its remit.

Hence, while carrying out its mission, the Inspectorate-General of Home Affairs performs studies – that sometimes may have public access – on how its services operate so as to prevent abuse or ill-treatment in units or stations and to ensure the detainees’ dignity, and prevent (by means of recommendations or opinions) any unlawful actions or actions against the citizens’ basic rights by the Law Enforcement Forces and Services.

Besides, the independence of Inspectorate-General of Home Affairs as set out in the law is reinforced by the legal requirement under which Inspectorate-General of Home Affairs must be headed by a senior magistrate – the minimum requirement being a Judge of Appeal or a Chief Public Prosecutor.

Furthermore, the Inspectorate-General of Home Affairs has the power to submit proposals that must be sanctioned by an order of the Minister of Interior.

Paragraph 13: The CPT recommends that the Portuguese authorities install a close-circuit television (*CCTV*) in the public area, cell blocks and interrogation rooms of police stations.

As the Portuguese authorities have informed the CPT’s Delegation – during the meeting held in Lisbon on 25 January 2008 –, the installation of close-circuit television cameras in the detention premises of police stations is a quite complex matter, bearing in mind the Portuguese legal framework on data protection and taking into account the restrictions on the rights, freedoms and guarantees that the general principle of video-surveillance entails. On this matter and, in the absence of specific legislation on video-surveillance (there is a specific law for the activity of private security or for the organization of sport competitions), the Law n. 67/98, of 26 October, on data protection applies.

As such, the Portuguese authorities shall consider and evaluate the introduction of video-surveillance devices, taking into account the adequate and necessary balance between private issues and other measures that involve the treatment of personal data. Any action taken thereupon necessarily entails the opinion and inquiry of the Portuguese Data Protection Authority that shall consider the legal conditions and stipulate the rules and requirements related to the use of such devices.

It should be noted that IGSJ is closely following this matter, and has been carrying out inspections in the prison system. Following these inspections, proposals on good practices regarding the viewing, keeping and erasing of the images taken, on the control of these operations and on the protection of personal data have been drafted.

Paragraph 14: The police forces are permanently made aware of the use of force and of the constitutional and legal principles of necessity, adequacy and proportionality.

In what concerns the Ministry of Justice, these matters are comprised, on a regular basis, in the training curricula ministered by the High Institute of the Judicial Police and Criminal Sciences (either in the initial course for the trainees-officers, or in the upgrading courses of the criminal investigation career, or even in the continuous training of the PJ inspectors). Human rights matters are an integral part of the evaluation of candidates within the recruitment for the PJ. In the last recruitment, these matters were part of the written exam and of the candidates' interview.

The programs on the seminar "Criminal Investigation and Human Rights" are enclosed (appendix 5). These programs are part of the initial and continuous training of police officers and are usually held on a yearly basis. The Portuguese Judge of the European Court of Human Rights and the Agent of the Portuguese Government next to the ECHR are, as one can see, among the instructors.

The training of the police forces of the Ministry of Interior has always focused on human rights issues and in particular on the rights, freedoms and guarantees. This may be ascertained by the subjects and courses given, and is always present in the initial and continuous training courses, in the upgrading and expertise actions as well as in certain pinpointed activities, like seminars (appendix 6 and 7, where a list of training courses for the GNR and PSP officers may be consulted). One example was the seminar that took place on the 10th December, to commemorate the 60.th anniversary of the Universal Declaration of Human Rights, concerning "Human Rights and Police Practices" (appendix 8).

It should also be noted that the police forces of the Ministry of Interior have their own vocational training schools.

Thus, at the PSP there is a Superior Institute of Police Sciences and Internal Security (ISCPSI), a Superior Teaching Police Institute which has the purpose to train police officers and promote their continuous improvement, able to confer academic degrees within its scientific scope, and the Police Practical School (EPP), which is a police teaching establishment that offers professional training courses on the upgrading and updating of police officers and on expertise to all PSP personnel (articles 50 and 51 of the Law n. 53/2007, of 31 August).

At GNR, the Police School, *Escola Prática da Guarda* (EG) is a unit specially designed to train the GNR forces and to also promote the updating, expertise and valuation of their knowledge (article 45 of Law 63/2007, of 6 November). It should also be referred that, within the context of the GNR training, the first four years of the officials' training course are taught by the Military Academy and the upgrading course for the senior officers is provided by the Military Institute of High Studies, both subject

to the Ministry of National Defence. It must be highlighted that this training, which has the purpose to guarantee the respect for the fundamental rights, is in line with the CPT's recommendations, abides by the legal rules and practical orders conveyed at all levels, and is based on the principle of proportionality, adequacy and necessity that must preside over any police activity.

Nevertheless, the curricula of these Schools are permanently updated and improved: as such, the CPT's recommendations shall be deemed to be considered by the police forces in future training programs.

Paragraph 16: The CPT recommends that a formal regulation be adopted governing conditions in detention facilities run by the Judicial Police and in holding facilities at criminal courts.

The Portuguese authorities agree with the need to adopt such a formal regulation. Thus, the Minister of Justice has decided to set up a work-group to prepare the formal regulation on detention conditions at the Judicial Police and court premises, drawn upon the Regulation of the PSP and GNR and encompassing the CPT's recommendations (appendix 9).

Paragraph 17: As regards the incident occurred at Brandoa PSP Police Station: this police station was visited on 17 July 2008 by a team of IGAI inspectors "without pre-notice". On that date, the deficiencies mentioned had already been set right (the detention area had good artificial lightening and call-bells in good condition).

It must be noted that, in general, both the internal inspection services of the police forces and the IGAI carry out inspections and have developed the mechanisms considered necessary to prevent and repair the deficiencies as those verified or even to close places that do not have proper required conditions. With respect to the use of cells at the Judicial Police: in general, the several criminal investigation units of PJ do not have holding cells in their premises. As such, whenever necessary, the detainees are held in the PSP and GNR cells or in prison establishments. Only in exceptional cases, when it is not possible the immediate appearance of the detainee before the competent court, does he remain in those cells for a period longer than 24 hours (in any case, it must never exceed 48 hours). The Prison Establishment next to the PJ of Lisbon (at Rua Gomes Freire) has a courtyard that may be used by the detainee to exercise and stay outdoors. The future formal regulation on detention conditions in the Judicial Police and court premises (as referred to in paragraph 16) shall also cover this matter.

It should be referred that a study carried out together with the National Laboratory for Civil Engineering (LNEC) issued Technical Recommendations for the police forces' facilities (RTIF) that shall be taken into account in 2009, in line with the Law on the Program establishing the facilities and equipment of the police forces. Such reveals the effort that has been made regarding the planning and improvement of facilities, with specific budgets allocated, with the purpose to set up the new model of the "21.st Century police station".

The objectives of such model are:

- To modernise the police forces' facilities, in order to guarantee high levels of daily working conditions as well as the conditions regarding situations of catastrophe or calamity which require a public response.
- To rationalise the costs of the design and building projects, through the construction of modular-structures able to be adapted to specific grounds or plots of land.
- To incorporate new services which accrue to the new challenges the police forces face, and to prepare for the future bearing in mind the improvement of the building in accordance with a change of functions.
- To include working devices with resort to the intensive use of information technologies.
- To establish friendly environment facilities, by implementing mechanisms of energy preservation, resorting, whenever possible, to alternative means of energy.
- To establish a logotype easily identifiable by the citizen.
- To humanise the public service areas (hall), by making them cosy and inviting, with a common design as regards the material, the furniture and equipment used.
- To guarantee the access to persons with reduced mobility.

Paragraphs 19 to 24: The CPT places particular emphasis on the right of detained persons to inform a close relative or another third party of their choice and on the right of access to a lawyer.

The Portuguese Constitution lays down (in article 27, n. 4) that *every person who is deprived of his liberty shall immediately be informed in an understandable manner of the reasons for his arrest, imprisonment or detention and of his rights.*

The Criminal Procedure Code sets forth, in article 61, the procedural rights of the defendants. They are, among others:

- e) To constitute a defence attorney or to request the appointment of a defence counsel;*
- f) To be assisted by a defence counsel in all procedural acts in which he participates and, when arrested, to communicate, even privately, with such counsel.*

2 – The communication in private mentioned in paragraph f) of the previous number occurs in sight when safety reasons so justifies, but in conditions where such communication may not be heard by the person in charge of surveillance.

Article 194, n. 8 (on provisional custody) states that:

In the event of provisional custody, the order [to apply provisional custody] is immediately communicated to the defence counsel and, whenever the defendant so wishes, to a relative or person of his confidence.

These rules of the Criminal Procedure Code are applicable to defendants, but relating it to article 27 of the Constitution, it is considered to apply to everyone who is arrested or detained.

On this matter, it should also be mentioned that the recent review of the Criminal Procedure Code has extended the obligation to be assisted by a defence counsel: in effect, the previous Code only set forth such obligation in the “first judicial examination of the person detained”; that obligation has now been extended to all the defendant’s examinations carried out at the inquest phase, by the Public Prosecution, and in all the remaining phases of the procedure, by the judge (see articles 64, n. 1, a) and 144, n. 3 and 4).

Paragraph 20: The IGAI reports do not mention that the inspection activity specifically concerns “the information about access to rights from the moment of the formal detention (i. e. once a person has been declared an “*arguido*”)”. For instance, the IGAI report of 2006 specifically refers to the situation of the detainees, stating as follows:

*“ 9. Panel containing the rights of **the detainee** – In the majority of the facilities that were visited these panels are affixed in the detention or public service areas, in a way visible to the public;*

*10. Document containing the rights and duties of the “**arguidos**” in a foreign language – In all the inspected places there was a document containing the rights of the “**arguido**”/detainee in a foreign language, usually in three different languages – Spanish, French and English – and in some cases also in Russian and/or German”.*

In this regard, one must stress out that Regulation 8684/99, of the Ministry of Interior, approving the Regulation on the Material Detention Conditions in Police Premises and which applies to the PSP and to the GNR (RCMDEP), and to all the detention places of the police forces, applies **to all the detained persons** and not only to the “*arguidos*”, namely to persons undergoing an identification procedure.

We call the attention not only to the Regulation on the Material Detention Conditions in Police Premises but also to article 4 of the Deontological Code of the Police Service, approved by Resolution of the Council of Ministers n. 37/2002 (published in the Official Journal, I series B, n. 50, of 28 February 2002), on fundamental rights of the detained person, which foresees that: “*the members of the police forces have the special duty of insuring the respect for the life, the physical and psychological integrity, the honour and the dignity of persons under their custody; the members of the police forces must watch over the health of the persons at their guard and must take immediate measures to insure that they be given the necessary medical care*”.

Regarding the above mentioned we clarify as follows:

- The deprivation of liberty and subsequent conduct to a police station may be made for identification purposes (art. 250 of the CPP) or in case of “detention” (articles 254 and forth of the CPP);
- Under the Portuguese Criminal Procedure Code (CPP), the first case is not considered as “detention” but an application of a “police measure”; in the second case there is in fact a “detention”. Hence, only regarding the second case can a person be considered as an “*arguido*”; as a rule the identified person is not “detained” nor is considered as an “*arguido*”: he is identified and is released;
- To the effects of the RCMDEP, a “detained person” is both the person undergoing identification (article 250 of the CPP) and the “detained person” himself (article 254 and forth of the CPP); thus, the identified person has all the rights set forth under the Regulation, although he is never considered as an “*arguido*” – as is the rule. The Regulation is a “plus”.
- The rights of the “*arguido*”, as defined by the CPP, are of a procedural nature and are not related to his well-being; for detention conditions purposes, the difference between “detained person” and “*arguido*” is not relevant;
- The inspection carried out without previous warning of the IGAI focuses on the enforcement of the RCMDEP by the police forces, that is, on the “detainees” condition, in the sense given by the Regulation, which includes all citizens conducted to a police station for identification purposes.

Paragraphs 21 and 22: The Regulation on the Material Detention Conditions in Police Premises (RCMDEP), applicable to PSP and to GNR, lays down specific rules on this subject. We must stress out that these rules are also applicable to any person under detention, and not only to “*arguidos*” as well as to persons undergoing an identification process.

Concerning the contacts with persons of the detainee’s confidence, the RCMDEP specifically establishes that the detainee must be allowed to inform his family of his situation and shall be given reasonable conditions to do so, such as access to the police station’s telephone whenever a public telephone is not available. Contact with family members shall be recorded in the detainee’s individual file.

We confirm that, in cases of detention by the Judicial Police, any person who is deprived of liberty has the right to notify a person of confidence immediately after being detained (“*arguido*” or not); such contacts are eased. Such matter is to be ruled under the new formal regulation on the detention conditions in the Judicial Police Premises (see reply to paragraph 16).

Paragraphs 23 and 24: Concerning access to a lawyer, which is a right protected under the Portuguese Constitution, we must refer, regarding detention facilities run by the Ministry of Interior, not only the Regulation (RCMDEP), but also the Decision n.

10717/2000 of the Minister of Interior (published in the Official Journal, II series, n. 121, of 25 May 2000):

“Rules to observe by the police forces concerning the contacts within police stations:

1. The “arguido” detained in a police station by a police force has the right to communicate, orally or in writing, with his lawyer, such contact being eased by the use of the police station’s telephone whenever there is no public telephone available at the station.

2. The visitation permits may be requested and granted orally, without prejudice to the necessary recordings.

3. The lawyers’ visit shall be authorized by the senior police officer present at the station and it may take place at any time of the day or night, immediately after the carrying out of the required measures and the drafting of the necessary papers.

4. While the police stations are not endowed with specific rooms to that effect, lawyers shall be given all the necessary conditions to meet with their constituents, with dignity and in safety. In exceptional circumstances, namely due to the great number of detainees and to the lack of material conditions, measures shall be adopted in accordance with the cases at stake, without prejudice to safety rules and order in the police station.

5. No control shall be made as to the contents of the written texts and documents the lawyer carries with him.

6. The lawyers’ visit shall take place in such manner as to avoid that the conversations be heard by the surveillance officer.

7. The visits may be discontinued by obvious safety reasons.

Regarding the detentions made by the Judicial Police, we confirm that any person deprived of liberty has the right to contact a lawyer as from the outset of the deprivation of liberty (being or not an “arguido”); such contacts shall be eased. This matter shall be ruled under the new formal regulation on the detention conditions in the Judicial Police Premises (see reply to paragraph 16).

Paragraph 25: Concerning the right of access to a doctor, the RCMDEP stipulates as follows: measures shall be taken to protect the life and health of the detained person; at his expenses, the detained person may always consult a doctor; even if there are no signs of disease, the detainee must be submitted to a medical examination, as soon as possible, should he exhibit injuries or should his medical condition so require, in order to diagnose any possible disease or so that he can be transferred to a health facility, if necessary.

As regards the Judicial Police, whenever the detained persons are ill or by any motive need medical care they shall be immediately transported to a hospital or health unit, for

assistance. The regulation on the detention conditions in the Judicial Police premises (which shall be drafted shortly, as mentioned in the answer to paragraph 16) shall address this matter in a clear way, according to the CPT's recommendations.

A note on the practical enforcement of the RCMDEP. Paragraph 22 of the Regulation stipulates that detention locations shall be object of systematic supervision by IGAI, unannounced visits at any time of the day or night, and inspectors must be able to communicate freely, and in absolute confidentiality, with the detained persons.

On the other hand, the inspection services of the police forces are watchful and, in case they know of any situation that does not comply with the law, they shall immediately initiate a disciplinary proceeding or any other procedure to that effect.

According to IGAI's information, during last year's and this year's visits to PSP and GNR stations, when asked about these subjects, the stations' officers in charge always stated:

- The station has got a telephone;
- The telephone is always made available to the detained person thus allowing free contact, when desired, with family members, a third party, a lawyer or a doctor;
- The detained person doesn't always, by choice, use such possibility;
- The detained person may talk in private, inside the police station, with family members, a third party, a lawyer or a doctor (without prejudice of being under surveillance, for security reasons).

On the other hand, in order to ascertain as to the complaints made on the access to medical care, the Portuguese Medical Association (*Ordem dos Médicos*) has informed IGAI (in July 2008) that it has not received any complaints regarding such matter.

Paragraphs 26 and 27: As to the information of a person deprived of liberty on his rights, the Constitution of the Portuguese Republic sets forth, in article 27 (4), that *any person deprived of liberty must immediately and clearly be informed of the reason of the arrest or detention and of their rights*.

Further to the provisions of the Constitution and of the Criminal Procedure Code on the information of the “*arguidos*” rights, we draw the attention to paragraph 14 of the RCMDEP, on the information of the “*arguidos*” rights:

Hence, every police station shall possess a notice board, in a visible place and at the detention areas, containing information on the rights and duties of the *detained persons*, with the full transcription of article 61 of the CPP. There shall also be a leaflet containing concise information on the rights and duties of the detained person, in several languages (appendix 10). According to paragraph 14.2 of the Regulation, this information, as well as the delivery of the leaflet, shall be duly documented. There is also the detainee’s file where all circumstances and measures concerning the detainee are to be registered, namely the time in which he was informed of his rights, which must be signed by the police officers involved in the detention and by the detainee. As verified by the CPT, the detention areas of the PSP and GNR stations posted leaflets with information on the rights of the detainees (and not only of the “*arguido*”). The leaflets are distributed to the detained persons.

It should be pointed out that paragraph 1 of the Regulation defines the concept of detention, for the purposes of its application, detention being all the deprivation of liberty for a period of less than 48 hours, as well as the condition of the person subject to a compulsory identification. The definition is broad and includes “*arguidos*” and persons subject to “detention”.

This matter shall also be addressed in the future regulation of the detention conditions in Judicial Police premises (referred to in the reply to paragraph 16).

Paragraph 30: The CPT recommends that the Inspectorate-General of the Justice Services focuses its activity on the visits – frequent and unannounced – to Judicial Police premises.

Similarly to the remaining areas reserved to the deprivation of liberty in charge of the Ministry of Justice, also those located in the Judicial Police facilities and on the Departments of Investigation and Penal Action (Public Prosecution’s premises) are also concerns of the IGSJ. If, until now, the performance of the Inspectorate-General has focused mainly on the services under the jurisdiction of the Directorate-General for the Prison Services, the activities plan for 2009 foresees an analysis of the detention conditions in other places, such as the special establishments located near the Judicial Police.

Paragraph 31: The CPT wants to understand the division of tasks between the IGSJ and the DDI, the internal investigation service of the Judicial Police (now Unit of Discipline and Inspection).

The IGSJ' mission consists mainly of processing the complaints brought to its knowledge concerning the functioning of the services under the jurisdiction of the MJ; performing audits and inspections to the services; and on initiating disciplinary procedures. Its conclusions are reported to the services (in some cases directly, in other cases after ratification by the Minister of Justice) with the proposals that the IGSJ sees fit (e.g., to improve proceedings, to initiate disciplinary cases, or even to apply disciplinary measures).

Hence, its intervention occurs either case by case (according to the citizens' needs – the complaints – or the requests of the Ministry of Justice), or by following up on actions previously defined on the annual plan of activities (proposed by the IGSJ and approved by the Ministry of Justice).

In any case, the IGSJ is not competent to determine the opening of any disciplinary case concerning other services (only the IGSJ hierarchy has jurisdiction on its subordinates). In other words, in the disciplinary scope, the IGSJ's intervention is only possible when determined by the Ministry of Justice².

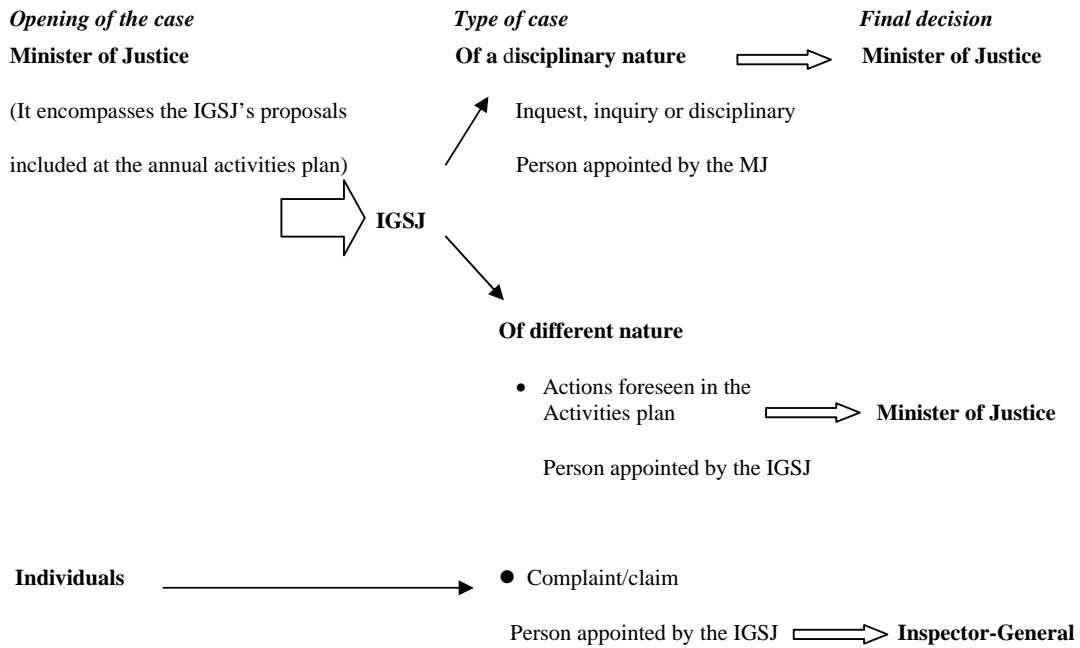
At the same time, each one of such entities has, as a rule, its own disciplinary body, or legal service, qualified to watch over the legality, regularity and adequacy of the conduct of its officials. Thus, the first intervention at the service level usually occurs internally, but there are especially complex situations sent to the IGSJ by the MJ, and occasionally even at the request of the service itself.

On the other hand, the IGSJ' action may be exercised (and it frequently is) *on* the internal inspection services of the different entities. The measures carried out by such services may be followed up or questioned and additional measures may even be requested.

One may say that, the IGSJ' performance is often ruled by the principle of subsidiarity.

Schematically, we shall have:

² This was so both under the former regime, Decree-Law 24/84, of 16 January, and under the current regime, approved by Law 58/2008, of 9 September.



As regards the relationship between the Department of Discipline and Inspection of the Judicial Police (DDI) and the IGSI, they correspond to what was described.

We recall that the performance of the IGSI covers all services of the Ministry of Justice, with premises all over the national territory and which, in 2007, had a total of 17.259 effective officials (this figure excludes all personnel related to the judicial system, who have their own disciplinary statute). A permanent request of the IGSI's intervention, namely on disciplinary cases, would overflow its services rendering them inoperative and incapable of complying with their duties in a strategic and planned manner.

Paragraph 33: The CPT wants to understand the division of tasks between the internal investigation services of the GNR and PSP and the Inspectorate-General of Home Affairs (IGAI).

Decree-Law 276/2007, of 31 July, has established the legal regime of the inspection, audit and supervision services, with the duty of insuring the exercise of internal or external control, among others the Inspectorate-General of Home Affairs (IGAI), by approving a regime common to all those services that establishes the general guarantees of the exercise of the inspection activities.

The Inspectorate-General of Home Affairs is a central high level body of audit, inspection and supervision of all the forces and entities of the Ministry of Interior, which covers all the national territory. It has the power to control the legality and to defend the citizens' rights and to investigate all reports brought to its knowledge on serious violation of the citizens' rights by the services or their agents. In addition it shall analyse all complaints, claims and denunciations reported concerning violations of legality, as well as to carry out inquiries and investigations and disciplinary cases

decided by the Inspector-General, and to initiate and help initiate cases within the scope of action of the services involved. Moreover, the Inspectorate-General of Home Affairs shall report to the competent criminal investigation bodies the facts with criminally relevant and shall cooperate with them, whenever requested, to obtain evidence (Decree-Law 203/2006, of 27 October, and Decree-Law 227/95, of 11 September, amended by Decree-Law 154/96, of 31 August and Decree-Law 3/99, of 4 January). In order to insure the necessary independence while carrying out their duties, the law stipulates that the positions of Inspector-General and of Deputy Inspector-General shall be filled by a senior judge (*Juiz Desembargador*) or prosecutor (*Procurador-Geral Adjunto*). Inspectors shall also be recruited from judges and public prosecutors.

. The IGAI can obtain this information by means of denouncement (by a Public Prosecution' certificate or by communication of the interested person or of a third person) or unofficially (by the media, etc).

However, according to circular-letter 4/98, issued by the Public Prosecutor, the prosecutors "communicate directly to the Inspectorate-General of Home Affairs the opening of an inquiry in which the "*arguido*" is a GNR or PSP agent, providing them with a copy of the denouncement or of the police report, or specific information on the identity and rank of the agents and of the type of crime under investigation" and, lastly, they shall send to the IGAI the "information on the reason and grounds for the decision to close the case".

The Regulation on Inspections and Supervision of the Inspectorate-General of Home Affairs (RAIF), approved by decision of the Ministry of Interior, which develops legislation issued by the IGAI (decision 10/99 of 29 April, published in the Official Journal n. 106, II Series, of 7 May) sets forth the rules of procedure in inspections and supervisions (appendix 11). The investigations carried out by the IGAI regarding disciplinary justice are initiated unofficially or by ministerial decision. According to article 2 of the RAIF, whenever law enforcement actions and omissions result in violation of personal rights, death, or grievous bodily injury, these facts must be communicated to the Minister, that shall decide on the procedure to follow, namely ask IGAI to initiate an inspection". Unofficially, upon notice of the facts, the Inspectorate-General determines that an investigation procedure be opened according to the legal criteria. In other words, whenever the facts pertaining to disciplinary matters concern "situations of greater social relevancy", namely "whenever the police officers' actions or omissions (...) result in the violation of personal assets, death or grievous bodily injury or whenever there are indications of aggravated abuse of authority or serious property damages" (article 2 RAIF).

The inspection services of the police forces are internal control entities and, therefore, have specific tasks in the administrative, financial and technical areas and report to the senior directors of the respective services (article 25 of Law 53/2007, of 31 August (PSP), and article 27 of Law 63/2007, of 6 November (GNR)).

Whenever the internal inspection services spot any situation of breach of disciplinary rules they shall forward them to the IGAI or to the relevant Deontological and Ethical Councils (article 27 of Law 53/2007, of 31 August (PSP), and article 29 of Law 63/2007, of 6 November). These Councils are the consultative bodies of the senior directors of the police forces, which are empowered to issue opinions on ethics and

disciplinary matters. Regarding criminal liability, the cases are sent to the Public Prosecution, in charge of the penal action.

It is important to underline that the Portuguese system applies the principle of autonomy of disciplinary proceedings *vis à vis* criminal proceedings.

Paragraph 34: To enforce its new powers of auditing the management of projects subsidized by external funds, IGAI will benefit of a improvement of humans resources, with specific qualifications; there will be no relocation of personnel, namely of inspectors working in the investigation of violation of fundamental rights, that are usually judges seconded to IGAI.

Paragraph 35: The CPT would like to receive statistical data regarding the whole of 2007 and the first half of 2008 on: the number of complaints of ill-treatment; which entity is responsible for the investigation; disciplinary and/or criminal proceedings initiated against law enforcement officials, in respect of allegations of ill-treatment; disciplinary and/or criminal sanctions imposed in such cases.

In what concerns the Judicial Police, there were 10 disciplinary proceedings for alleged ill-treatment in 2007 and 6 in 2008 (from January until the end of August). Out of these 10 cases, 7 were filed and 3 are still pending. Out of those 10 cases, 5 resulted in criminal proceedings. The 6 cases initiated in 2008 are all still pending. Until 30 June 2008, one case resulted in a criminal proceeding.

As regards complaints presented to IGSJ (or investigated by it), no complaints were filled in 2007 on ill-treatment by the Judicial Police officials and in 2008 there was one complaint on those very same grounds concerning facts occurred in 2004; the case resulted in criminal proceedings.

In what concerns the Public Security Police, a total amount of 332 disciplinary procedures on the grounds of assault were initiated in 2007. Of the 332 proceedings started in 2007, 196 were shelved with no penalty being imposed, 135 are at the enquiry stage and one resulted in a penalty (a five-day fine in accordance with the Disciplinary Regulation of PSP). During 2007, there were 76 criminal lawsuits, of which 32 were shelved and 44 are at the enquiry stage.

In the first semester of 2008, 169 disciplinary proceedings were open, out of which 37 were shelved with no penalty being imposed, 132 are at the preparatory inquiries stage. In the first semester of 2008, there were 19 criminal lawsuits, of which 5 were shelved and 14 are at the enquiry stage.

Regarding the National Republican Guard, a total amount of 304 disciplinary proceedings for assault were started from 1 January 2007 to 30 June 2008, out of which 192 were shelved, 73 are ongoing or were stayed, 14 were punished. There were 153 criminal lawsuits.

In what concerns complaints lodged at the Inspectorate General of Home Affairs a total amount of 16 enquiry proceedings on the grounds of assault were started in 2007, out of which 7 gave rise to criminal investigation and 10 to disciplinary proceedings. Of the 16 proceedings that have been initiated, 11 are now shelved and 3 are ongoing. Of the disciplinary proceedings, one resulted in a penalty (severe written reprimand). In the first semester of 2008, a total amount of 6 enquiry proceedings on the grounds of assault was started, out of which 2 gave rise to criminal investigations and 2 to disciplinary proceedings. Of the 6 enquiry proceeding, 1 is with the Cabinet of the Minister of Interior, 4 have been shelved and 1 is ongoing. During this time a criminal investigation and a disciplinary proceeding were also started.

According to IGAI statistics on assault, injury and death, in 2007, there were 19 cases of assault, 6 cases of injuries caused by firearms and one case of death. The 19 cases of assault gave rise to 13 enquiry proceedings, 13 criminal investigations and 9 disciplinary proceedings. Of the 19 cases, 14 were shelved and 5 are pending. The 6 cases of injuries caused by firearms gave rise to 6 criminal investigations, 4 disciplinary proceedings, one penalty, 5 have been shelved and 2 are pending. The death case gave rise to a criminal investigation that is pending under a court ruling.

As to the 2008 statistics concerning assault, injury and death, there were 8 cases of assault, 2 cases of injury caused by firearms and 5 deaths. Of the assault cases, there were 7 inquiry proceedings and 3 disciplinary proceedings. Dos casos por agressão houve 7 processos de averiguação, 5 processos de inquérito e 3 processos disciplinares. Also, as regards assault, 4 cases are pending and 4 have been shelved. Of the cases of injury with firearms there were 2 inquiry proceedings and an enquiry; one is pending and the other has been shelved. In what concerns the 5 cases that resulted in death, there was an inquiry proceeding, 4 inquiries, two disciplinary proceeding and 5 cases are pending.

As regards the punishment orders, issued by the Minister of Interior in 2007 and in the first semester of 2008, 16 orders were issued, ordering days of suspension, fines, verbal admonitions and severe written reprimand.

B. Establishments under the authority of the Ministry of Justice

1. Preliminary remarks

Paragraph 41: The Portuguese authorities are also pleased with the decrease in the imprisonment rate in Portugal. In fact, the 2007 reform of the Criminal Code and the Criminal Procedure Code (by increasing the scope of application of alternative measures to imprisonment, by setting up the in-house electronic surveillance, by reducing the possibilities to apply the pre-trial detention as well as by reducing its maximum duration and by streamlining the system on conditional release) has humanized the system, reinforcing the *ultima ratio* regarding the privation of liberty.

By the time of the visit of the CPT's delegation, in January 2008, there were 11 675 inmates in the prison system; on 31 December 2008, that number was 10 648.

Nowadays, there is no overcrowding in the prison system (considered as a whole), given that the full occupancy rate is 87,1 %. However, albeit this total rate, there are some pinpointed situations of overcrowding, namely in the regional prison establishments at the Autonomous Regions. These situations occur, often because the relationship with the detainees' family is favoured. They are also justified because some of the prison premises are undergoing improvements. With the conclusion of these renovations, (namely, the renovations at Paços de Ferreira prison were concluded at the end of 2008; and the renovations at Linhó prison are soon to be concluded), the situation shall be significantly improved. As concerns the problem of overcrowding at the Prison Establishment of Angra do Heroísmo (Azores), referred to by the CPT, it has already been launched a tender notice for the construction of a new prison. A new prison at Ponta Delgada is also foreseen.

Paragraph 42: The situation identified by the CPT at the Regional Prison Establishment of Funchal regards a minor of 17 years old, under a pre-trial custody. Given the absence of a proper space for juvenile at the Autonomous Region of Madeira, the youth, at his own request, has been accommodated in a dormitory, together with a relative of his. Given the situation, it was deemed more adequate that he be accommodated together with a relative instead of transferring him to another prison establishment in the Mainland.

The guidelines of the Directorate-General for the Prison Services are to accommodate the minors in an establishment or section especially designed for holding youngsters – as recommended by the CPT. As such, besides the Prison Establishment of Leiria – which is a Special Establishment for young adults – other establishments are being adapted, as is the case of the prison of Lisbon, with proper wings exclusively designed for holding youngsters.

In the draft-law regarding the review of legislation on enforcement of sanctions (which is expected to be approved by the Government in January 2009 and submitted to the Assembly of the Republic), the instructions related to the separation of detainees shall be enhanced. In effect, in the chapter related to the organization of the prison establishments, it is foreseen that these “*may consist on one or several units, differentiated by the following factors: (...) criminal-legal situation, sex, age, physical and mental health and other specialized and individualised custody plans regarding the detainees’ treatment; enforcement regimes; available programs*”. Another precept even refers that “*it should exist prison establishments or units specially devised for the enforcement of sanctions and other deprivation measures applied (...) to detainees in pre-trial custody; to the detainees that are held in custody for the first time; to youngsters up to 21 years of age or up to 25 years of age, whenever such is considered more adequate to their treatment*”.

The compliance with these rules shall be enhanced through the Project “Model of Prison Establishment”, conceived within the scope of the Reform of the Penitentiary Setting. It is a project-model that shall manage the construction of new Prison Establishments, and which foresees a modular-structure, in which each unit encompasses an autonomous accommodation unit for certain category of prisoners (taking into account namely the age issue).

2. Ill-treatment

Paragraphs 43-44: The Portuguese authorities are pleased with the CPT’s observations as regards the identified good level of relationship between the prison staff and the inmates. Such derives from the efforts which, throughout these last years, have been developed and of which the CPT has been informed in previous reports.

Nonetheless, and as it was previously referred to, all the ill-treatment allegations are investigated and, being the case, those responsible are punished.

Thus, as concerns the case referred to in paragraph 44 of the Report, it must be informed that the Inspectorate-General for Judicial Services has made a comprehensive analysis of the complaints of alleged ill-treatment of prisoners by the prison staff at the Monsanto Prison. It has however concluded that most of the complaints were manifestly unfounded. In accordance with the report of the Inspectorate-General, one may not conclude that any ill-treatment, offence or abuse of authority has been committed, the truth of these complaints pointing to alleged violation of the prisoners’ rights has not been confirmed and it is reported that the Prison Establishment comprises the minimum functioning conditions compatible with a dignified penitentiary treatment.

Only one suspected case has been identified – the one reported by the CPT: this case has been initially filed in the Prison Establishment; later on, the case was transferred to the DGSP Audit and Inspection Service (“S.A.I.”), in order to carry out a better analysis of the situation. The investigation is still ongoing. As concerns this case, the criminal procedure n. 6059/07.2TDLSB04 running at the 4th section of the Criminal Investigation Department, at the Lisbon Public Prosecution, is still underway.

It must be referred that, besides the investigation and the punishment of those responsible for acts of ill-treatment, the DGSP still continues to give the utmost consideration to the training of personnel.

Hence, in all the initial and continuous training courses of the prison staff, subjects related to the enforcement of imprisonment measures and human rights, to the main national and international mechanisms to protect the rights of the persons deprived of liberty, as well as the behavioural issues are included, namely those related to conflict management and interpersonal relationship.

Paragraph 45: The Monsanto Prison was the first Prison Establishment in Portugal classified as of maximum security. After 2 or 3 months of being operational, it was inspected several times either by the Inspectorate-General of the Judicial Services or by the Audit and Inspection Services (“S.A.I.”) of DGSP. Such visits show the national authorities’ concern as regards the monitoring of proceedings in the prison as well as the concern with its functioning.

Strip-searching was, effectively, considered excessive. Currently, such only occurs when the inmates go outside, when they return from intimate visits, whenever they have contact with third parties or whenever there is strong evidence that the inmates have on them illicit objects or objects which may be deemed dangerous.

In all the prison establishments, the strip searches are carried out in a reserved place, by an element of the surveillance staff of the same gender than that of the inmate, and are compulsory communicated to the Central Services of DGSP for control and supervision.

Paragraph 46: As concerns the CPT’s recommendation regarding the need to eradicate, as soon as possible, the use of buckets for discharging human waste: the Portuguese authorities have conveyed, in previous reports, the measures designed to improve the hygienic conditions, namely through in-cell sanitation.

Presently, the plan to eradicate the “bucket” is under conclusion, with the interventions at the prison premises Paços de Ferreira (intervention concluded in December 2008) and Linhó (under conclusion – the inmates correspondent to the remaining cells being temporarily installed in other cells or other prisons, with in-cell sanitation).

At the moment, it can be affirmed that there are no inmates without in-cell sanitation, except for the Pinheiro da Cruz Prison. Respect to Pinheiro da Cruz, although this prison is going to be closed, it was decided to carry out repairs to install in-cell sanitation. The proceedings have started and the repairs shall be concluded by the end of the first semester of 2009.

The situation referred to by the CPT at the Central Prison of Coimbra has been surpassed: since July 2008, the facilities of the old psychiatric wing do not hold any prisoners and the basement was closed by order of the Director-General for the Prison Services, dated 19 March 2008, following an order issued by the Minister of Justice on 18 February 2008 (Appendix 3 and 12).

3. The management of drug-related problems in prison

Paragraph 49: As regards the three custodial staff members at Funchal recently convicted of introducing drugs into the establishments: effectively, those two custodial staff members, following judicial conviction of drug trafficking, were recently dismissed by order issued by the Minister of Justice. The reference to a third prison guard may be due to the fact that a co-defendant in that criminal proceeding was an ex-prison guard, previously withdrawn from the service for that very same reason.

The Portuguese authorities, and in special the Directorate-General for the Prison Services, make permanent efforts to fight against the entering and circulation of drugs in the prison premises. Thus, in order to reinforce what has already been done, the following objectives of DGSP, for the year 2008, were established:

a) To increase by 10% the number of inspections and searches in all the prison establishments; *b)* to set up in each Prison Establishment a minimum of 1 training session in order to improve the prison staff intervention in the fight against the entering and circulation of drugs and other illicit goods; *c)* To draw up an updated report on the occurrence and features of the drug phenomenon and other illicit goods in the Prison System; *d)* To approve the “Integrated Plan on the Fight against the Entering and Circulation of Drugs and Other Illicit Goods in the Prison Premises”.

At the end of September 2008, a very significant increase of inspections and searches had taken place, and the above mentioned report in *c)* has been drawn up.

Presently, and following the mentioned report, it is also being prepared the Integrated Plan of Intervention for 2009, which shall enhance the measures to fight the entering and circulation of drugs as well as the measures designed to increase the offer of treatment programs.

Paragraphs 50-51: The CPT’s recommendation is within the concerns and courses of actions that have been developed by the Prison Services. On this matter, it should be referred that offers on treatment have increased and that the number of inmates who are benefiting from these programs were, at the end of 2005, 1116; at the end of 2007 they were already 1398.

As regards the Drug-Free Therapy Units, and as recommended by the CPT, it is foreseen, in a short time, such a Unit at the Coimbra Prison.

It is also foreseen that conditions be developed so as to render more useful the already existent Units, in order to increase the prison system capacity to answer in this scope.

Paragraph 52: The CPT requests updated information on the plan to combat infectious diseases in the prison premises and in special on the implementation of the pilot-program regarding “needle exchange”.

The implementation of the Pilot-Program on Needle Exchange has occurred, on the whole, as programmed: it has included the disclosure and dissemination of information and enlightenment sessions directed to prison staff and prisoners. The Regulation of the Program was approved and, in each Prison Establishment involved, the respective Internal Rules of Procedure were endorsed.

The monitoring and evaluation proceedings are being ensured, encompassing the drafting of questionnaires to prisoners and prison staff.

The main evaluation indicator to bear in mind is that no prisoner has adhered to the program, despite its implementation, within the framework of the Plan to Fight against Infectious Diseases in the Prison Premises, being recognised as representing a substantial investment that basically brings closer the prisoners to the health services.

The program shall be maintained until the end of this experimental period and the actions considered most important and necessary to its continuity shall be developed, in an articulated and integrated form.

After the end of this experimental period, the results obtained shall be evaluated, and a decision will be reached on whether to end, continue, extend or re-adjust this program.

In the meantime, the application of Opinion Questionnaires shall be reformulated, so as to get to the root of the reasons and the circumstances why prisoners do not request or exchange injection material.

4. Material conditions

Paragraph 53: As the CPT Report already refers, the Minister of Justice, following the CPT preliminary conclusions conveyed on the last day of its visit, has issued an order stating that “the DGSP has to ensure that the wings of the Central Prison of Coimbra that were referred by the CPT as having unacceptable living conditions be closed within a month and that all the inmates be transferred to other wings in that or another prison establishment once, if possible, the prisoners to be relocated are heard” (see appendix 3).

The basement was in fact closed in March.

As concerns the Coimbra Regional Prison, such shall be possible once all the repair works actually occurring at Central Prison are concluded, which is foreseen in a brief delay. The present facilities of the Regional Prison shall be reconverted into occupational spaces to develop educational and professional programs that may better serve all the prison population at the Central Prison. A new Drug-Free Therapy Unit shall also be provided.

Most of the inmates shall be transferred to the Central Prison. However, in order to comply with the criteria to separate the pre-trial detainees from the convicted ones, some of those held in preventive custody may have to be relocated in the Regional Prisons geographically closer – Aveiro, Leiria and Viseu. If this situation occurs, it shall be a temporary one, given the fact that the construction of a new Prison for the Coimbra

area is foreseen; such is already programmed within the scope of the Reform of the Prison Setting (2008-2013).

Paragraph 54-58: The CPT makes several observations and recommendations on the material conditions found in certain Prison Establishments.

The Portuguese authorities agree with the observations made by the CPT regarding the living conditions in the cells at the Coimbra Judicial Police premises. These are, in effect, facilities which, by their own nature, should only be used for short periods of time.

The presence of prisoners in these premises occurs, as a rule, for criminal investigation purposes.

However, given the proximity of the Coimbra Prison, instructions shall be given in order to comply with the CPT's recommendation.

As concerns the defects of Monsanto prison, identified in paragraph 55, it should be referred that the repair works done at that Prison Establishment are still under warranty and as such the construction company has been carrying out the necessary reparations. At the moment, there are no problems of in-cell plumbing that may cause showers or toilets to overflow.

As regards the Oporto Judicial Police prison, shelters in the recreation yard have been installed, allowing thus the inmates to remain outdoors, protected from bad weather.

Whenever defects in the call-bells or in the showers are detected, they are repaired, insofar as the budget allows it.

With regard to the recommendation stated in paragraph 57, related to the Oporto Central Prison, repair works have been carried out to improve the living, sanitary and security conditions. As such, the showers facilities and the cells at Pavilion A have been remodelled in all floors and, in Pavilion B, the repair works are being concluded. This renovation encompasses the replacement of existing materials and their painting, as well as the implementation of the "model-cell", with a table, shelves and coat-hangers. Within the scope of this project regarding the renovation of the cells, it was also implemented a collective antenna system in the 4 prison pavilions, providing access to the 4 national television channels on open signal. As regards the prison's observation unit, it should be referred that the space has already been increased and that it may now hold 22 prisoners; it is equipped with 2 televisions, DVD and music equipment. The prisoners may also benefit from other types of activities, namely yoga.

The question raised in paragraph 58, regarding the absence of pyjamas in the Monsanto prison, is not correct. The pyjamas are part of the set of clothes distributed to all the inmates in that Prison.

As concerns the gloves or hats, those are not allowed for security reasons. Nonetheless, it should be referred that this Prison has recently acquired more winter clothing, of a warmer fabric, to distribute among the prisoners.

5. Regime

Paragraphs 59-63:

Since the visit of the CPT, the offer of activities at Monsanto Prison has considerably increased. In the sport activities, volleyball and squash were introduced, the period in the gymnasium was extended from 2 to 3 times per week, for 50 minutes a period, for those prisoners who do not work, and the use of the play field was allowed 2 times per week to groups of 5 or 6 inmates or even 8 prisoners whenever a football game occurs.

With respect to cultural activities and besides those already mentioned by the CPT, it was introduced a special training within the scope of the program “New opportunities” (program set up by the Government, so that adults may complete their school studies); the library has gained a new dynamic and the books and the editorials (newspapers and magazines) can now be consulted *in loco* by a maximum of three prisoners simultaneously for an hour – they may also request books and other editorials to read in their cells; the installation of video collection is also foreseen.

In addition, activities such as painting souvenir toys, cutting of towels and labelling have been implemented, increasing thus the range of work offers.

At the Coimbra Prison the situation has also improved since the CPT’s visit. Throughout the year, professional training courses have occurred in the painting, construction, computer installation and repair areas, as well as in the scope of special decoration systems, pavements and alignment of streets, public works carpentry and the recognition and validation of knowledge and skills, involving a total of 49 inmates. Up to the end of the year 2008, courses on electricity, mechanics and installation of computer networks were foreseen; the first one had already 13 inmates inscribed by October 2008. At the same time, 263 inmates have remunerated activities at the Prison. With respect to education, 129 are enrolled in the school year 2008/2009.

In general, and bearing in mind the whole of the prison system, it must be highlighted that around 8200 inmates (which corresponds to 75% of the prison population) are within school and professional training programs (3100 inmates) and in work programs (5100 inmates).

In addition, there are also organised and regular sport activities in most of the Prison Establishments. In 2007, about 43,5% of the inmates were involved, on a regular basis, in sport activities (in 2006, that proportion was only 34,9%).

In some of the Prison Establishments, regular activities within the field of music, theatre, plastic or manual arts take place. There are also numerous socio-cultural initiatives, such as theatre and musical shows, literary programs and so on.

One of the strategies that have been carried out in order to increase the offer of jobs is the signing of protocols with private companies. Among the Prison Services' objectives for 2008, was the signing of 37 new protocols; this objective was exceeded, 42 protocols having been signed.

In addition, it shall be launched, in a short term, a project to set up a new dynamic as regards voluntary work in the prison premises, with which we hope to increase the inmates' activity in purposeful projects aimed at their social rehabilitation.

It must also be referred that, within the above mentioned project of new legislation on enforcement of sanctions, amendments in the enforcement regime for the pre-trial prisoners are foreseen. For example: the evaluation of a pre-trial prisoner is made not only to decide which prison establishment and which enforcement regime is more adequate to him but also to bring about his adhesion – always voluntary – to activities and programs; the outcome of this evaluation is conveyed to the court that has delivered the decision, bearing in mind the likely alteration of the pre-trial measure; the pre-trial prisoner shall be able to receive visits, everyday if possible, except if the court has otherwise imposed restriction measures.

The same project shall also foresee, among the criteria of prisoner allocation, the need to participate in certain programs and activities.

Paragraph 64: The Portuguese authorities are investing in individualised custody plans of re-adaption, considered as a very useful device for the re-socialization of the prisoners, especially those serving long sentences.

As a result, in the Coimbra Prison, 121 prisoners actually serve their sentences within the framework of an Individual Plan for Re-adaptation (which corresponds to around 32% of the prison population in that Establishment).

As regards the whole prison system, on 31 December 2007, there were 577 prisoners serving their sentences in accordance with this Individual Plan for Re-adaptation.

To increase by 5% this number was an objective of the Prison Services for the year 2008, which was attained and went beyond.

As concerns long-term prisoners, the Portuguese authorities welcome the CPT's recommendation and encompass it in the above mentioned effort to develop the planning of enforcement of sanctions and the increase in regime activities referred to in the previous paragraph.

It must be referred that the Portuguese authorities are engaged in the implementation of specific programs addressed to certain groups of prisoners or to specific criminal problems. In effect, it is already being implemented, at an experimental level, programs regarding sexual crimes and road crimes. An intervention bearing mainly in mind the long-term sentences shall also occur.

Paragraph 65: Over the last years, the Portuguese prison system has registered quite a significant increase of foreign inmates.

Thus, in order to prevent the exclusion of these prisoners, it is underway a Project to Support Foreign Inmates, carried out in close articulation with the diplomatic and consular entities of the countries which, in the prison system, have the greatest number of persons detained (Cape Verde, Brazil, Spain, Venezuela, Netherlands, Guinea-Bissau, Romania, Ukraine and Mozambique); the aim is to help them during their term of imprisonment and after they are released, mainly by making books available, by the occurrence of socio-cultural events and by individual support.

In addition, it is being prepared a protocol with the Aliens and Borders Service (“*Serviço de Estrangeiros e Fronteiras*”), which aims to streamline procedures bearing in mind the legalisation of their stay in Portugal after they have been released.

The concern with the language barrier has enabled, in the last school-term, 17 Portuguese language courses for foreign prisoners to be ministered, which has involved around 250 prisoners.

6. Health-care services

Paragraph 66: The CPT requests information on the timing of the transfer of health care services from the Ministry of Justice to the Ministry of Health; it also asks for detailed information on the manner in which the provision of health care in prisons will be organised.

It is premature, at the moment, to give an exact date for the transfer of health care in prisons from the Ministry of Justice to the Ministry of Health.

Nonetheless, the following provision of health-care services to the prisoners is foreseen:

a) All the prison population has access to health-care services through the National Health Service (according to the Constitution of the Portuguese Republic, “everyone shall possess the right to health protection” and “by means of a national health service that shall be universal and general and, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge”). The foreign inmates, including those in an irregular situation in the light of the Portuguese legislation, are also considered as being part of the National Health Service.

b) All the prison establishments must have basic health-care services (doctors and nurses); these are ensured by the national health unit belonging to the area. The time of permanence of this staff shall depend upon the dimension of the prison establishment

and on the evaluation of the local reality made by the prison's Board of Directors and by the respective Regional Health Administration.

c) The team that ensures basic health care is responsible for all the tasks related to it and is especially entrusted to:

- Make the first medical screening on admission to new prisoners in the 72 hours following their entry in the prison establishment;
- Visit the prisoners detained in a special regime of imprisonment and those who are on a food or drink strike;
- Coordinate and articulate services such as those related to Contagious Diseases, to Psychiatric and Mental Health, Drug Dependence, Gynaecologic/Obstetrician Services, Dental Health and others;
- Define the organisation of health-care services, in close articulation with the prison's Board of Directors;
- Set up proceedings for urgent/emergency cases.

d) In order to ensure that convalescent or chronic health situations be properly taken care of, there shall exist a Unit for continuous health-care in the prison context, by Region (North, Centre, Lisbon and Vale do Tejo) and one unit for Alentejo and Algarve. In these units, permanent nursing shall be provided, and the 110 beds available will be distributed in the following way:

- North: 30 beds at the Oporto Prison Establishment;
- Centre: 20 beds at Leiria Prison Establishment;
- Lisbon and Vale do Tejo: 50 beds, being 30 in the New Lisbon and Vale do Tejo Prison Establishment and 20 at the Alcoentre Prison;
- Alentejo/Algarve: 10 beds.

e) Mainly in the biggest prison establishments, there is the need to ensure medical and nursing support, from 8 p.m. to 8 a.m., for urgent but non emergent situations.

In order to make this instruction effective and efficient, some prison establishments have to be grouped together, so as to ensure, at least, one team for each group of prison establishments; the team will be preferably installed in those prisons with continuous care accommodation.

f) To respond to the inmates' acute/emergent situations, the country shall be equipped with security wards in hospitals adequately differentiated. These clinical situations are partially taken care of, today, at the Prison Hospital São João de Deus. There are however many situations which require that prisoners be transferred to other general hospitals of the Ministry of Health; such means quite an overburden for the prison

services in view of the fact that each prisoner that is sent to hospital has to be kept under custody 24 hours per day.

We reckon that 42 beds, distributed by 4 Units (North – 12, Centre – 5, Lisbon and V. Tejo – 20 and Alentejo/Algarve – 5) shall be needed. These wards shall have their own security, within the remit of the Ministry of Justice, and, from a clinical point of view, shall be managed as normal hospital beds.

Until such time as the country does have these security wards, and in order to enhance the ability to respond to acute situations, the Prison Hospital of São João de Deus shall, in articulation with the Central Hospital of West Lisbon, answer, at least, to those needs.

The implementation of these Units shall help define the fate of the Prison Hospital of São João de Deus; for now, all points to its inclusion in the National Health Service.

g) Those considered mentally impaired, including those at the Autonomous Regions, shall be, as of now, followed up in just three units in the Country (Coimbra, Lisbon and Oporto) – in line with the National Plan for Mental Health for 2007-2016, as approved by the Resolution of the Council of Ministers n. 645/2007, of 2 October.

Paragraph 67: The Portuguese authorities agree and welcome the CPT's Recommendation on this matter. The Directorate-General for the Prison Services shall soon approve the proceedings to be implemented in all prison establishments, so as to guarantee the access to the health professionals without any prior screening of the requests or evaluation of the reasons and complaints made by the prisoners.

Paragraph 68-69: The CPT recommends that health-care staffing levels be strengthened in the Prison Establishments. The Portuguese authorities agree with this need and all is and shall continue to be done in that way. Notwithstanding, this effort is strongly conditioned by budget restrictions, and all the situations described in the following paragraphs, regarding health-care, are able to be improved in direct proportion to a likely increase in the budget.

On the terms of the international public health-care tender to be awarded to the prison population, all Prison Establishments shall be provided with the minimum conditions, and the asymmetries registered in the various structures corrected; as such, a more accurate and fair redistribution of resources shall occur, being those, as a rule, more focused in the Prison Establishments with bigger dimension.

The means to allocate to each Prison Establishment, in accordance with the several fixed lots, depend upon the respective capacity and occupancy rate, bearing in mind a global management of a system with a high number of Prison Establishments with a reduced dimension, which in some cases, ends by making difficult a correct and complete allocation of resources.

In the smaller Prison Establishments it is only foreseen the presence of a doctor three times per week and of a nurse two hours per day, in order to ensure the care considered necessary as well as the preparation and distribution of medication.

In the bigger Prison Establishments, it is foreseen the daily presence of a doctor and of nursing care, from 8 a.m. to 10 p.m. and of doctors holding different specialities, such as dental care, infectious diseases, psychiatric or gynaecologic care (in the feminine establishments) and also psychological care in direct proportion to the number of inmates at stake.

The inmates of the Prison Establishments that do not have all these resources may be followed up in the Prison Establishments that have them.

As regards the situations verified by the CPT at the Funchal and Coimbra Prisons: the Coimbra Prison shall have daily nursing services from 8 a.m. to 1 p. m. and from 2 to 9 p.m., in a total of 193 hours per week. The Funchal Prison shall have 168 hours of nursing care per week, which allows the daily follow up of the inmates in similar conditions to those of a pattern-service provided in the entire prison system. The Funchal Prison shall have a general clinical doctor for 15 hours per week and a dentist 9 hours per week.

Paragraph 71: In what regards psychiatric and psychological care at the Oporto Judicial Police detention facilities, we inform that the psychiatric care to the prisoners at this establishment is provided by the Psychiatry and Mental Health Clinic of Santa Cruz do Bispo Central Prison.

Paragraph 72: At Funchal Central and Regional Prisons, the psychological follow-up shall be insured within the scope of the existing cooperation agreement with the Regional Government. The speciality of Psychiatry shall be reinforced by 6 hours per week, taking in consideration the above referred limitations.

Paragraph 73: The Portuguese authorities bear in mind the pertinence of this recommendation. However, the response regarding the psychological support, at the Coimbra Central Prison, shall only be given by one Psychologist, belonging to the staff board of the DGSP, for 35 hours per week, in accordance with the above mentioned rules on staff distribution. The budget available for health care does not allow further expenses in this field without penalizing other inmates at other Prisons.

Paragraphs 74-75: In accordance with the rules of the Portuguese Prison System, the time established for the first medical screening of an inmate is of 72 hours.

Such does not, however, preclude other medical personnel from screening the inmates within a shorter time or in urgent circumstances. The questions concerning the attribution of means and resources, as well as the budget limitations, already referred to, impose such a solution.

However, taking into account the CPT's Recommendation and its intent – to do the medical screening as soon as possible after the inmates' admission – the Directorate-General for the Prison Services shall issue specific instructions to all Central and Regional Prisons that dispose of the means and resources to do so, in order that the first medical screening takes place in a shorter time.

Paragraph 76: The recording of injuries on an inmate or of his complaint on having sustained an aggression, when entering a Prison, after the compulsory medical screening, entails the recording of the inmate's statement, as stipulated by Internal Order n. 10, of 14 May 1992, in compliance with Internal Order n. 7/GDG/99, of 17 March 1999 (see Appendix 13).

On the other hand, under article 242, n. 1, b), of the Portuguese Criminal Procedure Code, the knowledge of situations of alleged assault, either with a public or semi-public nature (that is, whether the criminal procedure depends or not on a complaint from the victim), also leads to the compulsory communication to the Public Prosecution Services.

In any case, when the matter at stake is liable of constituting a semi-public offense (that is, an offence where a criminal procedure depends on a complaint from the victim), the Prison shall, at the time of recording the inmate's statement, ask him whether he wants to file a criminal procedure and, if so, a certificate with his declarations shall be issued and sent to the Public Prosecutor with territorial jurisdiction.

Paragraph 77: All incidents that feature violent situations are registered. Endorsing the Recommendation of the CPT and given that such situations aren't always communicated to the medical services, the Directorate-General for the Prison Services will issue guidelines to all the prison system in order to implement a systematic register by the medical services.

Paragraph 78: The Portuguese authorities agree with the Recommendation of the CPT. Furthermore, the distribution of medication has been made, in most cases, by health-care staff, as observed by the CPT in some prison establishments.

We believe it is possible to definitely overcome the cases where that doesn't yet occur, by the reinforcement and better allocation of the means and resources in all the prison system (which is being prepared, as above mentioned). At the bigger prison establishments, Diagnosis and Therapeutic services are foreseen in order to prepare the medication for the inmates.

Paragraph 79: Following this Recommendation from the CPT, instructions were given and it is foreseen that, in a brief delay, a single clinic file, stored in a single and adequate place, be set up.

Paragraph 81: The lack of hot water resulted from an occasional breakdown, resolved last March.

Paragraph 82: We inform that the occupational therapy activities were already resumed in the Psychiatric Clinic of the Prison Hospital. Regarding the remaining changes, we generally agree with the contents of the Recommendation of the CPT. However, some of these changes can only be implemented after the transfer of the health care services to the jurisdiction of the Ministry of Health, which shall define the future of the Prison Hospital itself.

Paragraph 83: First of all, regarding the number of weekly hours provided by the psychiatrists, we must note that there must have been some misunderstanding, since they work 35 hours per week, distributed by the emergency services, working days and weekends (and not 19 hours per week, as referred to in the report).

Nevertheless, the organization and work routines at the Prison Hospital shall be reviewed, so as to insure a longer presence of psychiatrists in the Psychiatric Clinic, as well as the activity of the psychologists, in view of the Recommendation of the CPT.

As to the occupational therapy: as previously mentioned, these activities were already resumed in the Psychiatric Clinic of the Prison Hospital. On the terms of the International Tender and bearing in mind the budget limitation previously mentioned, it can only be insured the full-time presence of one occupational therapist.

Paragraph 84: Concerning the statement of paragraph 84, we inform that concealing medication in the patients' food is not allowed.

However, given the importance of the question at stake, and fully agreeing with the Report, the Directorate-General for the Prison Services shall formally establish the interdiction of such practices by the Prison Establishments and shall adopt the adequate mechanisms of surveillance and control.

Paragraph 85: At the Psychiatric Clinic of the Prison Hospital, the SOS medication is always prescribed by the doctors; the nurses are not allowed to administer any medication without medical prescription.

In any case, approving the CPT's Recommendation, and so that no doubts may subsist on the matters at stake, the current instructions shall be re-analysed and control mechanisms and procedures shall be adopted in order to insure their fulfilment.

Paragraph 86: We agree with the Recommendation as to the specific register regarding the seclusion of agitated patients, and in that sense, instructions and mechanisms shall be established to insure the effective recording, in a specific register - other than the medical file - of the placement of patients in seclusion.

Paragraphs 87-88: The use of means of restraint regarding psychiatric patients is always made with the doctor's knowledge and under the supervision of the medical staff.

In any case, orientations and procedures shall be adopted to regulate the use of means of restraint in psychiatric patients, in the light of the CPT's Recommendation.

7. Other issues of relevance to the CPT's mandate

Paragraph 89: The recommendation contained in this paragraph, concerning the call-bells or the presence of prison officers in the unit housing prisoners at the Coimbra Central Prison does no longer apply since this part of the Prison Establishment was closed.

Paragraph 90: Concerning the coercive means used in the Prison System and the rules for their use, we inform that the use of guns and other coercive means is legally based on the Decree-Law n. 265/79, of 1 August ("Law on the Enforcement of Sanctions which involve deprivation of liberty"), establishing the general rules and principles on the use of coercive means (article 122 and followings).

The CPT also requests information on "Taser" equipments. The Directorate-General for the Prison Services acquired 26 "Taser" equipments on December 2006. However, they

were distributed to some Prison Establishments with the indication that they shouldn't be used until the criteria were defined and until the training of personnel took place. And, in fact, they were never used.

The CPT refers having received information on the use of non-authorized coercive means, such as "telescopic batons". We confirm that the existence of "ASP" batons, commonly known as extendible and/or retractable batons, was detected. As a consequence, the Director-General for the Prison Services has forbidden the use and possession of such batons, as well as of all other instruments not comprised in the current Uniform Regulation for Prison Officers (Order of the Director-General for the Prison Services of 11 March 2008 – Appendix 14).

The same Order determined the constitution of a work group for the drafting of specific regulations on the distribution, use and employment of non-lethal defense and security equipment, including, among others, Taser guns.

Moreover, the draft penitentiary law, after legally establishing the general principles concerning the types of coercive means and their use, foresees that "the types and conditions of use of coercive means are specified under the Regulation for the Use of Coercive Means in the Prison Services". The above mentioned work group has already concluded a first version of this Regulation, which shall soon be approved.

Paragraph 91: Regarding the display of batons at the Monsanto High Security Prison and within the Prison Hospital's Psychiatric Unit: the batons referred to in the Report are models approved by the Directorate-General for the Prison Services (are a part of the uniforms of the prison officers), and their dimensions don't allow them to be hidden from view. However, this matter is also being evaluated by the work group mentioned in the previous paragraph.

Paragraph 92: The use of tear gas, identified by the CPT, has originated the opening of an inquest procedure (n. 312/A/07) and the prisoner was taken to the local Delegation of the National Institute for Forensic Medicine (DC-INML). We must point out that the substance at issue was pepper spray, an authorised resource made available to the surveillance and security services to intervene on the situations foreseen under article 126 of Decree-Law n. 265/79, of 1 August ("Law on the Enforcement of Sanctions").

The use of such means is highly exceptional and, in this particular case, it was justified by the particularly violent behaviour of the prisoner – who, from his cell, prevented the prison officers from entering it by throwing objects and pieces of iron at them, making it impossible for the prison officers to control him in any other way.

In accordance with the report of the exam performed at the DC-INML, on 20 July 2007 (identified as case n. 2007/001313/CR-C-PN1), "in the sequence of the events [the prisoner] was assisted by a doctor of the Prison Establishment and by a nurse, about one or two hours later, where some of his injuries were taken care of".

Lastly, we point out that the use of neutralizing gas shall also be ruled in the future Regulation for the Use of Coercive Means in the Prison Services, the question being already under consideration by the aforementioned work group.

Paragraph 93: With respect to the escape of two prisoners from the S. João de Deus Prison Hospital, on 23 November 2007, the case was dealt with by the Internal Audit and Inspection Service (“S.A.I.”) and includes (page 53 of the file) a written information by a deputy chief of the prison guard that states: “I felt the need of firing some intimidation shots from a Tommy-gun (“*pistola metralhadora*”) HK M. P. 5 A3 into the air, so that the escaping prisoners wouldn’t get away”, reason why we cannot say that there was an omission of facts or that the facts have failed to be reported.

We inform that all the shots fired, even accidentally, are investigated and the weapons are examined by experts. There are recent situations of prison officers being subject to disciplinary punishment by the accidental firing of a weapon.

Paragraph 94: The Portuguese authorities agree with the observations and recommendation made by the CPT, in the sense of reinforcing procedural guaranties in the disciplinary inquest, thus rendering it fairer.

We point out that the disciplinary jurisdiction is one of the subjects that undergo more amendments in the draft new penitentiary Law. The reformulation of all the disciplinary procedure and a substantial reinforcement of the guarantees of the inmates are foreseen (for example: the application of the disciplinary measure is preceded by a written procedure – except in the case of a simple reprehension – and the disciplinary procedure is considered urgent and must be concluded in ten work days, the maximum; the right to appeal is enlarged and the prisoner has now the right to appeal, before the Enforcement of Sanctions Court (supervisory judge), over the application of disciplinary measures such as the compulsory confinement and commitment to a disciplinary cell – no longer existing the restriction to isolation for over 8 days).

In any case, and in the framework of the current legislation, the prisoners already have the right (and make use of it often) to file a complaint to the Audit and Inspection Service (S.A.I.) of the DGSP, to the Ombudsman’s Office, to the IGSI, to the Ministry of Justice, to the Bar Association and to NGOs, which originates investigations on the motives for disciplinary action, frequently carried out by independent bodies.

The Portuguese authorities have no notice of prisoners being discouraged from filing complaints since the even anonymous denunciations coming from Prisons are, in principle, investigated.

Paragraph 95: We agree with the recommendation of the CPT, laid down in paragraph 95.

The cases detected at Monsanto Prison do not refer to the application of a disciplinary sanction for attempted suicide but to the placement of those prisoners in an adequate cell for their own protection.

Likewise, the presentation of a complaint is not liable to cause the application of a disciplinary sanction, unless it configures instigation to acts that endanger the order and safety at the establishment.

Paragraph 96: The CPT requests a comment of the Portuguese authorities as to the view of the Inspectorate-General of Judicial Services on matters where no clear distinction occurs, in practice, between special security measures and disciplinary measures.

The Portuguese authorities agree with the observations made. These are, in fact, major concerns of the Directorate-General for the Prison Services and object of Internal Order n. 1/GDG/2003 (see Appendix 15). The need to draft this Order was precisely the awareness of a fading between the application and enforcement of special security measures and the disciplinary ones and the fact that the situation needed to be immediately addressed.

This Circular letter clearly states the purposes and rulings specific to each one of the measures at stake and establishes a set of precautionary procedures in order to better insure their enforcement.

However, we recognize that, notwithstanding the dispositions of Circular letter n. 1/GDG/2003, and mostly due to the inexistence of other legal means to prevent a serious danger of commitment of infractions to continue, the security measure is used for the duration of the finding of facts of the case.

This is why, in the draft Penitentiary Law, new rules are included to prevent such situations.

Paragraph 97: The cells at the Funchal Central Prison are subject to disinfections for rats and cockroaches, once or twice per year and, exceptionally, whenever it is needed.

As to the basement of the Coimbra Central Prison, and as it was already referred to, it was closed as lodging space for prisoners. However, the disciplinary and security cells are still used, since they had already been object of renovations and have sanitary facilities.

Paragraph 98: Regarding the recommendation of the CPT, as to the improvement of the conditions in which visits take place at the Coimbra Central Prison, we inform that the visits room had been improved. We recognize that the present conditions are not yet the ideal ones. However, given the future closing of that prison establishment, we do not find it reasonable to make any further investment in that location.

Paragraph 99: As regards the conditions in which the visits to prisoners take place at the Monsanto High Security Prison, we inform that the Regulation of that establishment is currently being reviewed, this being one of the aspects under consideration.

Paragraph 100: In the above mentioned review of the Monsanto Prison's Regulation, it is also being considered to increase the duration of the phone calls. At the Coimbra Central Prison an additional line was set up in the wing with the greater number of inmates.

Paragraph 102: The CPT shows interest in receiving detailed information on the nature, frequency and average duration of the visits carried out by the Ombudsman's Office to prison establishments. The Committee would also like to know what type of articulation is there between the Ombudsman's Office and other entities with jurisdiction to supervise over the enforcement of sanctions, such as the Inspectorate-General of Judicial Services, the supervisory judge or others.

In 1996, 1998 and 2002 a series of visits to all prison establishments took place, their methodology and results being described in the respective reports, available at <http://www.provedor-jus.pt/relatoriosesp.php>.

Concurrently to such visits, dislocations to prison establishments always occur within the normal framework of the filing of a complaint or of new cases opened by the Ombudsman's Office.

However, from 2006 onwards, in alternative to a fourth round of visits in a short period of time, an unannounced visit plan to a significant number of prison establishments was decided. Thus, during 2007, 14 central prisons were visited (Alcoentre, Carregueira, Caxias, Coimbra, Izeda, Linhó, Lisboa, Monsanto, Paços de Ferreira, Pinheiro da Cruz, Porto, Santa Cruz do Bispo, Sintra and Vale de Judeus), 4 Special Prison Establishments (Leiria, Santa Cruz do Bispo, Tires and São João de Deus Prison Hospital) and 8 Regional Prisons (Bragança, Covilhã, Guarda, Montijo, Judicial Police in Lisbon, Setúbal, Viana do Castelo and Viseu). The Central and Special Establishments visited cover 96% of the inmates lodged at that type of establishment; the Regional establishments visited cover 35% of the population of Regional establishments; and the establishments visited cover 82% of the global prison population. From the universe of Central and Special establishments, only the Funchal and the Santarém prisons were not visited (the latter due to its near extinction, which

meanwhile occurred). The selection criteria in the Regional establishments were based on their population and on their specific issues.

The visits were unannounced and lasted one or two days, involving two or three elements. Besides the visit to the facilities and a food tasting, contacts were made with the Board of Directors, the officials, the prison officers, health care staff and prisoners, the latter chosen at random but allowing them to have private contact with whomever so wished it. The visit also included a random analysis of recent inquests made on prisoners giving special attention to disciplinary mechanisms.

The jurisdiction of the Ombudsman's Office does not include the courts, except in what regards the administrative aspects of their activity.

On the other hand, the conclusions drawn up and the proposals to be made are necessarily presented to the entities with power to decide: at the administrative level, the Prison' directors, the Directorate-General, the Government if necessary or convenient; at legislative level, to the Government or the Assembly of the Republic.

In this sense, no special articulation is made with the Enforcement of Sanctions Courts (supervisory judge).

Likewise, between the IGSJ, which is a means of internal control of the Ministry of Justice, and the Ombudsman, which is an independent body (that only answers to the Assembly of the Republic), there is no articulation – which could subvert the different nature and function of both entities.

Naturally, the IGSJ is subject to a duty of cooperation with the Ombudsman, as well as with the remaining public services, and its activity takes into account the reports on the prisons drafted by the Ombudsman's Office.

The very nature and purpose of the visits made by both bodies is not identical. The inspections carried out by the Ombudsman's Office, usually have a systemic and global scope. The IGSJ, searching for a resources synergy, has chosen to make sectional inspections, restraining its action to certain aspects in an attempt to reach a greater level of detail than the one that could be achieved by wide range actions in a reasonable timeframe (for example: the action regarding the application of special means of security and the functioning of security sections). In 2007 and 2008, the IGSJ has also made inspections to other prison establishments to uncover certain issues concerning the financial regularity of the procedures, matter in which the Ombudsman's Office does not, until now, intervene.

Paragraph 103: One of the purposes of the draft penitentiary legislation is to extend the jurisdiction of enforcement measures, enhancing the role of the Enforcement of Sanctions Court (supervisory judge), namely by enlarging the possibilities of appealing over decisions of the Prison Services before that court.

However, the penitentiary surveillance is to be maintained as one of the attributions of the Enforcement of Sanctions Court. It was found to be more adequate to assign to the

representative of the Public Prosecutor in the Enforcement of Sanctions Court (*Ministério Público*) a more relevant role in penitentiary surveillance. In fact, according to the Portuguese Constitution, “to uphold the democratic legality” is a task under the remit of the Public Prosecution and therefore, the draft legislation seeks to revalorize and broaden the scope the Public Prosecutor’s intervention in the jurisdictional control of the enforcement of imprisonment measures.

Thus, the Public Prosecution representative in the Enforcement of Sanctions Court shall be responsible for visiting prison establishments regularly and whenever so proves to be necessary or convenient; for the first time its participation in the Technical Council is foreseen – as upholder of the prisoners’ legal rights and interests and of the democratic legality; and it shall also have the responsibility to verify the legality of certain decisions of the penitentiary administration (which shall be, to that effect, compulsorily communicated to it) and of contesting them before the judge, whenever they are considered illegal. The Public Prosecution also has legitimacy to appeal over the decisions of the Enforcement of Sanctions Court.

Paragraph 104: In 2009 and in the future, the IGSJ aims at keeping a relevant intervention in the prisons area, whether by making unannounced visits (specially in what regards complaint cases), or by carrying out actions foreseen in the Activities Plan for 2009, which namely includes an action on the custodial conditions at the Judicial Police.

As requested by the CPT, we enclose (appendix 16) the report on case I-1/2007, which has addressed the subject of the application of special security measures (mentioned in **paragraph 96** of the CPT’s report) and of the special security sections (which includes a visit to the Coimbra Central Prison, described in a document in appendix to the final report and that meets several recommendations of the CPT in this area).

We also enclose reports on cases V-2/2007, V-1/2008 and V-2/2008, on the Monsanto High Security Prison (appendix 17³), as requested by the CPT.

As to the results of the investigations to the alleged assault by a custodial officer on an inmate at Carregueira Prison in December 2007, we inform that the IGSJ has filed the case. An internal inquiry was also opened, by decision of the Prison’s Governor. The case was filed as there was no proof that the custodial officer has committed the infraction. For the same reason the IGSJ has determined the filing of the case. However, the Audit and Inspection Service (S.A.I.) of the DGSP has an ongoing investigation on that same case and its conclusion is soon to be expected.

Regarding the CPT’s proposal to give wide publicity to the findings of the actions carried out by the IGSJ, we recall that, under article 15 of Decree-Law 276/2007, of 31 July, the IGSJ is responsible for referring its reports, after ratification by the Ministry of Justice, to the members of the Government with powers of supervision or tutelage over the inspected entities and to the chairman of the entity under inspection. There are no special provisions as to the divulgation of the activity of the inspection services. In this measure, access to the documents produced by the IGSJ has been ruled by the legal provisions applicable to the access to administration documents. However, the

³ The reports enclosed do not contain any personal elements.

Portuguese authorities put no obstacle to a wider divulgation of the work of the IGSP, within the framework of the referred legislation.

Paragraph 105: The Portuguese authorities agree with the recommendation. With the approval of the new legislation on the enforcement of deprivation measures, the current regulations of the Prison Establishments shall be replaced by a General Regulation. This Regulation is nearly concluded and foresees the drawing up of information leaflets, in the main languages, on the functioning of the Prison services, rights and duties of the inmates and additional information required to the daily life of the prison establishments.

Paragraph 106: Regarding the deaths occurred in the prison establishments, the CPT requests information on the criteria applied for deciding in which cases an autopsy is performed. Law 45/2004, of 19 August (here enclosed – appendix 18), establishes the legal provisions on the forensic expertises.

In accordance with article 16, in the case of deaths outside health institutions (applicable to “*all deaths occurred by persons under detention at a prison establishment, police stations or other facilities belonging to police forces*” - as referred in paragraph 12 of article 16), it is always necessary to: 1) carry out an inspection to the location and preserve its conditions; 2) the immediate communication of such fact to the competent judiciary authority giving account of the relevant data for the investigation of the cause and circumstances of the death; 3) that the police authority promotes the presence of the forensic expert, in case of a felony or whenever there is such a suspicion. The forensic expert shall verify the death, in case no other doctor has previously done so. He shall also examine the location, without prejudice for the legal jurisdiction of the police authorities.

These legal rules have been systematically applied to all deaths occurring within prison establishments.

The expert on duty (according to article 13, n. 2, of the same law, there is an expert on duty every day to insure urgent expertises) shall examine the body at the scene and shall inspect the scene itself, performing a careful examination of the body in search for possible traumatic lesions, signs of natural diseases, signs of death in the body (in regard to environmental conditions, position of the body, etc.), and any other signs or traces relevant to understand the circumstances in which the death occurred. The expert shall then, make a written report on his observations, which shall be immediately transmitted to the judiciary authority.

The judicial authority shall order, by routine, forensic autopsy whenever there are any signs of violent death (whether by suicide, homicide or accident), as well as in all cases in which the cause of death is unknown (that is, when it is not possible to draw any conclusion as to the cause of death from the victim’s past life or from the examination of the body or the location), the body being then removed to the closest forensic services, for autopsy (see article 18, n. 1).

We must refer that the National Institute of Legal Medicine is scientifically and technically autonomous and independent.

The CPT also requests information on the results of the inquiries carried out on the death of two inmates in 2007, in the disciplinary cells at the Coimbra and Oporto Central Prisons and on the four deaths occurred in 2005 at the Oporto Central Prison.

In what concerns the death occurred in the disciplinary sector of the Oporto Central Prison, in 2007, we inform that after the inquiry carried out at the prison establishment (case n. 350/2007), the Audit and Inspection Services (case n. 3213), requested copies of the autopsy report carried out at the National Institute of Legal Medicine – Oporto Delegation, as well as of the final decision to file the case issued by the Public Prosecution (case n. 371/07.8 GGMTS, of the Matosinhos section of the Public Prosecution). From such documents it was confirmed that the death of the inmate resulted from cardiac and pulmonary lesions which led to the filing of the case by decision of the Director-General for the Prison Services (21 September 2007).

As to the death of an inmate in a disciplinary cell of the Coimbra Central Prison, an inquiry was carried out (case n. 498/A/07–R), where it was concluded that there was no illicit practice whatsoever. Both the autopsy report and the Judicial Police report were submitted to the Public Prosecution near the Coimbra Court.

Regarding the deaths of four inmates, in December 2005, at the Oporto Central Prison an inquiry was opened by the Audit and Inspection Service (S.A.I.) - North (case n. 239-A/2005), that was eventually filed, by decision of the Director-General for the Prison Services of 28 June 2007, which concluded that no officer of the prison services had any responsibility on the death of the inmates or on the surveillance or assistance provided to them.

Such decision was based on the autopsy reports performed on the four inmates, among other elements of proof, and on the decisions to file both the inquiries carried out by the judiciary authorities (n. 886/05.2 GGMTS and n. 887/05.0 GGMTS, both by the Matosinhos section of the Public Prosecution), concluding that there was no practice of criminal conduct.

Finally, we may add that, whenever an inmate dies, the causes and the circumstances of the death are duly investigated and a file may be opened (should suspicions arise as to the situation in which the death occurred) or may take place in a less formal way (*expediente avulso*) if there are no suspicions of crime or of disciplinary responsibility. In any case, a copy of the autopsy report is always collected, for a better and more thorough elucidation on the causes of death.

C. Psychiatric Institutions

1. Preliminary Observations

Paragraph 107: The CPT visited healthcare units and psychiatric institutions in the middle of a mental health care reform, as the “2007-2016 Action Plan for the Restructuring and Development of Mental Health Services in Portugal”, published on 2 April 2007, had been approved by the Portuguese government in early 2008.

It therefore comes as no surprise that the uncertainty over the future of hospitals in this healthcare area, particularly so as regards National Health Service hospitals, was a factor of concern at the time of the CPT Visit as the implementation of the Plan and respective Programmes were to be developed from the time in question on a staged basis.

The National Mental Health Coordination of the High Commissariat for Health, whose objectives are set out in Ministerial ruling (*Despacho*) 10464/2008 of 9 April, makes reference to the request contained in the report produced by the CPT – inclusion of private psychiatric hospitals in the National Mental Health Plan – explaining that the Plan includes not-for-profit private institutions in the social sector which have entered into some form of agreement with public services, but not commercial i.e. profit-making private institutions in which there are patients who have been deprived of their freedom (e.g. private clinics).

The site <http://www.acs.min-saude.pt/pt/saudemental/plano-nacional> hosts the following summaries: “Executive Committee of the National Mental Health Plan 2007-2016”; the above referred to Action Plan Proposal, which comprises the base document for the production of the National Mental Health Plan approved by the Council of Ministers – Council of Ministers Resolution 49/2008 of 6 March.

Reference should also be made to the fact that, as regards the National Mental Health Plan, the principal measures envisaged for 2008 have either been executed or are at a very advanced implementation stage. The first community services have therefore been created, work has begun on various projects in specific areas (e.g. child and adolescent mental health, mental health for the homeless, psychosocial rehabilitation). The reorganisation of psychiatric hospitals also allowed significant improvements to be made to the quality of healthcare provided by such institutions.

Paragraph 110: The merger between the Miguel Bombarda Psychiatric Hospital and Júlio de Matos Hospital resulted in the creation of the *Centro Hospitalar Psiquiátrico de Lisboa* (Lisbon Psychiatric Central Hospital Unit), which also houses the Miguel Bombarda Forensic Unit. This service, with 32 beds currently has 3 doctors in

psychiatry, 4 clinical psychologists, 1 social service technical officer, 1 occupational therapist, 1 educational specialist, 10 nurses and 8 auxiliary medical staff.

Paragraph 112: The Ministry of Health is pleased to note that the CPT's appreciation of the good relationships between patients and healthcare personnel, in all of the institutions visited, with it having been noted, in loco, that the relationship between staff and patients, in addition to being respectful was also affable.

2. Current Conditions

Paragraph 113: The *Casa de Saúde de São João de Deus* welcomed such an important visit by the CPT, and was most pleased to note its concerns relating to humane, respectful and integral treatment and respect for human rights and guarantees provided to resident inpatients under the Mental Health Law, as such concerns and principles comprise inalienable postulates and pillars for the treatment, recovery and rehabilitation of resident inpatients in the said establishment as a Care Centre of the *Ordem Hospitaleira de São João de Deus*, which operates on five continents, with its own charismatic and universal healthcare identity for the integration of human beings, notwithstanding the reasons, circumstances or motives for the admission.

Paragraph 114: Notwithstanding welcoming the fact that the CPT considered that the patients were provided with the necessary facilities in qualitative and quantitative terms, the Miguel Bombarda Psychiatric Hospital has appointed a new Director of Services, Dr. Manuel Cruz, with the objective of ensuring compliance with the CPT's recommendations on the Forensic Unit, pursuant to which walls have already been erected between the rooms in line with the CPT's recommendations.

Paragraph 115: We hereby inform the CPT that the sanitary installations of the Miguel Bombarda Forensic Unit and the Lisbon Psychiatric Central Hospital Unit have already been repaired.

Paragraph 116: The Miguel Bombarda Forensic Unit already has its own area for daily outdoor exercise, with direct access.

3. Treatment

Paragraph 118: At the present time a large number of patients are taking part in occupational therapy workshops given by an occupational therapist in the Miguel Bombarda Forensic Unit.

Paragraph 119: As is standard practice in the *Casa de Saúde de S. João de Deus*, all of the patients confined therein, including patients sectioned under the Mental Health Law and at a severe stage of their illness, wear their own individual and personal clothes; only resident inpatients who are forced to stay in bed or who are at their very early treatment stage use their own pyjamas or those provided by the Healthcare Centre, which are supplied whenever considered expedient and necessary.

Paragraph 120: Notwithstanding the importance attached to resident inpatients' attending vocational training courses in the Miguel Bombarda Forensic Unit, several of them are already doing so although this is constrained by the available funding.

Paragraph 121: The prescribing of emergency medication at the *Casa de Saúde de S. João de Deus* is particularly used in the Intensive Care Unit. The highest percentage of admissions of users in the *Casa de Saúde* comes from the emergency services of Funchal's Central Hospital, in the case of psychiatric emergencies, with patients being sedated in the said location under the medical prescription of a psychiatrist and administered by nursing personnel.

In the case of the Miguel Bombarda Forensic Unit, the new Clinical Director and Chairman of the Board of Trustees of the *Centro Hospitalar Psiquiátrico de Lisboa*, Dr. Ricardo França Jardim is reviewing the procedures used to prescribe emergency medication, in accordance with the CPT's recommendations.

Paragraph 122: As the only Healthcare Institution in the Autonomous Region of Madeira with psychiatric admission facilities (men only), the *Casa de Saúde de São João de Deus* treats all of its compulsively admitted inpatients, who are often in states of psycho-motor agitation, which requires sedation therapies during the first few hours of confinement. It is not, however, the said institution's policy to subject its users to extraordinarily strong sedation, and it complies solely and absolutely with medical prescription, in expedient and necessary aspects. Notwithstanding the above presupposition, it is normal, for a user at the early stages of treatment, to be more sensitive to the sedative effect of the medication prescribed and administered.

Paragraph 123: The use of electroconvulsive therapy (**ECT**) in *Casa de Saúde de São João de Deus*, is most unusual and, when required, private services are used to give such treatment subject to all lawful constraints such as the presence of anaesthetists, intensive care specialists, psychiatrists, a nursing team, laboratorial and other exams. It should be pointed out that this Medical Centre has not used this kind of treatment for around four years.

The procedures recommended shall certainly be implemented at the Miguel Bombarda Psychiatric Hospital, by its current directors in terms of the Clinical Division of the Forensic Unit and Hospital Management.

4. Containment Measures

Paragraphs 124–129: Improvements have been made to restrictive emergency measures in psychiatric hospitals with the use of new equipment and professionals with more adequate training. The application of new policies such as in the case of the Miguel Bombarda Hospital, with the appointment of the new Director of the Forensic Unit and on the basis of the Hospital's Board of Trustees' awareness of the recommendations made in the CPT report are currently in progress.

They are used at the *Casa de Saúde de S. João de Deus* to protect users, at times of greatest psycho-motor agitation and when there is a real danger of harm to the patient or to other users. The *Casa de Saúde* has appropriate nursing wards for users undergoing the most severe stages – as the Committee has noted observed and validated. It is, however, unusual to immobilise users and this is only done in accordance with medical instructions. There is a record of acts in which such patients are immobilised. The materials used to constrain the movements of patients are properly stored in their own compartments, out of sight.

Whenever this measure has to be taken, the patient's respective family is always informed of the need to immobilise the patient.

As the CPT can ascertain, the premises of this Central Hospital Unit comprise large areas in which users are free to stroll at will. Even patients under compulsory confinement orders stroll through the institution's spaces without any restriction and are also involved in psychosocial rehabilitation projects.

The immobilising or physical restraining of users, including a prohibition from leaving the units are always a method of last recourse and not standard practice although this intervention method is also a reality and not a utopia, even in general hospitals.

It is evident that, in such units must have an adequate staff complement and, in addition, the staff, particularly nursing staff should have appropriate training to deal with the most violent patients.

Paragraph 130: Most psychiatric institutions do not have information leaflets on their current practice, in terms of restraining measures. Other establishments do have this information but there is no nationwide standardisation; the information recorded is solely dependent on the respective institution's criteria.

In the future and as recommended by the CPT, National Mental Health Coordination shall arrange for the production of brochures setting out good practice to be implemented in the said services, to be distributed in all psychiatric institutions.

In any event, when patients are sectioned, their rights are read out to them, as is the case of the *Casa de Saúde de S. João de Deus*, and full information is provided on the Unit in which the User has been confined and its activities plan.

Confinements, however, are often made in situations of extreme stress in which a patient is not in a fit state to understand the measure taken. As soon as the situation improves and the patient calms down, they are informed of the measures taken. Reference should be made to the fact that a patient's family is always informed of the measures taken and is not left out of the process, all the more so to the extent that it is the actual family which in a large number of cases applies for the patient to be sectioned.

5. Protection

Paragraphs 131 – 135: This can be verified by the CPT in psychiatric hospitals and notably in the *Casa de Saúde de S. João de Deus* in which medical staff and other support services take care to ensure that continuity is given to procedures relating to compulsory confinement within the lawfully defined period, allowing users to willingly accept their treatment. In cases in which this is not possible, all of the information requested is provided to the Judicial Services.

Being healthcare institutions, psychiatric institutions psychiatric aim, in practice to minimise compulsory confinements to the extent possible.

In terms of access of a court appointed lawyer, these hospitals raise no objection in providing access to the patient. Users are, in any event, free to submit complaints in writing or orally, either to the Director of the Unit or by formally depositing their complaints in a complaints box.

Paragraph 136: Law 36/98 of 24 July, as the Fundamental Mental Health Law, establishes the general principles of mental health policy and regulates the compulsory confinement of persons suffering from psychiatric disturbances.

Decree Law 35/99 of 24 July, which establishes the guidelines for the organisation, management and assessment of psychiatric and mental health services referred to as “Mental Health Services” is being revised in accordance with the CPT’s recommendation.

Paragraph 137: See reply to the recommendation of **Paragraph 130**.

Paragraph 138: Ministry of Health institutions or IPSSs are not responsible for “ensuring the efficacy of right to a lawyer, in terms of compulsory confinement in accordance with the Mental Health Law”, as the judicial authorities are exclusively responsible for this measure. Provided that a court appointed or private lawyer visit the Institution to defend their clients, no obstacles are raised to their duties as a user’s court appointed lawyer as referred to in **Paragraph 135**.

A mixed group from the Ministries of Health and Justice is being set up to deal with medical-legal and Forensic Unit appraisals. It will also consider all other relevant aspects of the health-justice interface, including the issue above mentioned.

6. Inspection

Paragraphs 139-140: The body responsible for supervising health services is the *Inspecção-Geral das Actividades de Saúde*. It is recognised, however, that the body’s activity has been limited.

The Monitoring Commission has also not been very active in visiting admission services. A reorganisation of this Commission, with the support of the National Coordination of the National Mental Health Plan, is in progress with the aim of expanding its supervisory activity, with the extension of its action designed to include patients who have been sectioned under the provisions of the Criminal Code being desirable.

7. Other problems found during the CPT's visit

Paragraphs 141-142: The new Directorate of the Miguel Bombarda Hospital's Forensic Unit is already implementing the CPT's recommendations.

The new Mental Health Plan provides for the decentralising of current psychiatric resources to ensure coverage of all regions in the country using adequate means for the treatment of psychiatric patients.

Appendix

- 1 - Information by the Directorate-General for the Administration of Justice on the places of detention in Court or Public Prosecution facilities.
- 2 - Opinion by the Consultative Board of the Attorney-General's Office, ratified by the Minister of the Interior, of 13 December 2007.
- 3 - Order of the Ministry of Justice of February 2008, issued for the Judicial Police and for the DGSP.
- 4 - Order n. 12/2007 of the National Director of the Judicial Police, containing instructions on the seizure of drugs, money and values, on the guard and deposit of assets and their security mechanisms.
- 5 - Program on the seminar "Criminal Investigation and Human Rights", for the Judicial Police.
- 6 - List of training courses for the GNR officers.
- 7 - List of training courses for the PSP officers.
- 8 - Program of the Seminar "Human Rights and Police Practices".
- 9 - Order of the Minister of Justice setting up a work-group to prepare the formal regulation on detention conditions at the Judicial Police and court premises.
- 10 - Leaflets containing concise information on the rights and duties of the detained person, in several languages.
- 11 - Regulation on Inspections and Supervision of the Inspectorate-General of Home Affairs (RAIF).
- 12 - Figures provided by the Ministry of Interior.
- 13 - Order of the Director-General for the Prison Services, of 19 March 2008, formally determining that the basement at the Coimbra Central Prison be closed.
- 14 - Internal Order n. 10, of 14 May 1992, and Internal Order n. 7/GDG/99, of 17 de March 1999, of the Director-General for the Prison Services.
- 15 - Order of the Director-General for the Prison Services, dated 11 March 2008, determining the interdiction of the use of extendible batons and setting up a work group to draft specific legislation on the distribution, use and employment of non-lethal defense and security items.
- 16 - Order n. 1/GDG/2003 of the Director-General for the Prison Services on disciplinary cells and on the observance of special security measures.
- 17 - Report by the IGSJ on the application of special security measures and on the special security sections (it has included a visit to the Coimbra Central Prison).
- 18 - Report by the IGSJ on the inspection visit to the Monsanto High Security Prison.
- 19 - Law 45/2004, of 19 August, establishing the legal system of forensic expertises.

These appendices (mainly in Portuguese language) may be obtained on request.

