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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 19 TO 27 JANUARY 1992

Permanent Representation of Portugal
to the Council of Europe

Strasbourg, 12 October 1993

Sir,

I enclose two documents prepared by the Ministries of Justice and of the Interior which relate to the Report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the occasion of its visit to Portugal.

These observations are submitted without prejudice to any subsequent fuller reply.

Yours faithfully,

(signed)
G. Santa Clara Gomes
Permanent Representative

Mr Claude NICOLAY
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment
COUNCIL OF EUROPE

CONFIDENTIAL

MINISTRY OF THE INTERIOR

LEGAL SECTION

OBSERVATIONS ON THE CPT'S REPORT ON ITS VISIT TO PORTUGAL FROM 19 TO 27 JANUARY 1992 - DOC. CPT/Inf (94) 9

I

INTRODUCTION

1. First of all we must explain that the ensuing observations relate exclusively to the content of the CPT's Report concerning the operation and establishments of the National Republican Guard and the Public Security Police, because, of all the bodies visited by the CPT these were the only two which are completely organised by and operationally dependent on the Ministry of the Interior (see Article 15 (1) of Legislative Decree no. 55/87 of 31 January 1987, approving the Implementing Act regarding the Ministry of the Interior, since modified under Legislative Decree No. 92/92 of 23 May 1992).

2. Therefore, the two aforementioned forces are the sole subjects of the ensuing general analysis, with specific regard to the following establishments visited by the CPT:

- Headquarters of the National Republican Guard in Almada;
- Almada Division of the Public Security Police;
- District Headquarters of the Public Security Police in Lisbon;
- Public Security Police Station at Praça de Alegria in Lisbon;
- District Headquarters of the Public Security Police in Santarém
- Headquarters of the National Republican Guard in Santarém;
- Sintra Division of the Public Security Police.

3. The Public Security Police is an armed, uniformed security force whose functional objectives are to ensure public order, security and peace, respecting the democratic rule of law and the rights of citizens (see Articles 1 and 2 of the Statute approved under Legislative Decree no. 151/85 of 9 May 1985).

It has the particular task of exercising its attributions and policing responsibilities in urban areas with populations of over 20 000 (see Articles 1 (2), 5, 6 and 7 of the aforementioned Statute).

The National Republican Guard is an armed, uniformed security force made up of soldiers, whose functional objectives are to ensure public order, security and peace, respecting the democratic rule of law and the rights of citizens (see Articles 1 and 2 of the Implementing Act approved under Legislative Decree no. 231/93 of 26 June 1993, replacing the previous Implementing Act approved under Legislative Decree no. 333/83 of 14 July 1983).

It has the particular task of exercising its attributions and general police powers in those areas for which the Public Security Police are not competent, and fiscal police powers throughout the national territory (see Articles 2 (a) and (e) and 7 of the aforementioned Implementing Act).

4. Under the terms of the Constitution of the Republic (Article 272 [4]), the Public Security Police has a single organisation for the whole national territory, and its operational machinery comprises:

- 1 General Headquarters (Lisbon);
- 2 Regional Headquarters (Madeira and the Azores);
- 18 District Headquarters (1 for each district);
- 16 Divisions;
- 30 Sections;
- 146 main police stations ("esquadras");
- 82 local police stations ("postos");
- 2 Special Units (Task Force and Special Operations Unit).

Similarly, the National Republican Guard has a single organisation for the whole national territory, and its operational machinery comprises:

- 1 General Headquarters (Lisbon);
- 2 Regiments;
- 2 Special Brigades (Financial and Road Traffic);
- 4 Territorial Brigades;
- 20 Companies;
- 70 Sections;
- 496 local stations ("postos").

5. The two security forces have a combined total strength of 43 000 policemen serving in the units referred to in paragraph 4.

The dispersion of the different police units has led to some problems with the permanent supervision and control of staff, and above all with the maintenance, conservation and improvement of the establishments intended for accommodating members of the public in general and prisoners in particular.

However, despite the existence of such difficulties, which will take some time to solve owing to the current shortage of funds, the fact is that the overall assessment of the operation of the police forces and their image in the minds of most people are globally positive, conversely to the impression given in the CPT's Report.

II

TORTURE AND OTHER FORMS OF ILL-TREATMENT

6. The conclusion set out in paragraph 15, p. 13 of the report to the effect that "the ill-treatment of persons (physical assault, cruelty, beatings etc) in police custody (National Republication Guard and Public Security Police) is a relatively common phenomenon in Portugal" appears manifestly excessive.

Situations of abuse of authority and excessive use of means of coercion are unequivocally exceptional, as is generally acknowledged by the competent authorities, the independent bodies defending and promoting citizens' rights, and even by the media.

When such situations are identified they are invariably severely punished either at the disciplinary level within the ranks of the police bodies, headed by the Minister of the Interior, or at criminal level before the competent courts.

Complaints of abuse of authority, excessive use of means of coercion and any other infringement of the rights of citizens, as well as simple information concerning the existence of such situations, are always investigated under disciplinary proceedings, the decision in which is, in the last resort, a matter for the Ministry of the Interior, with the possibility of appeal to the competent courts.

Such situations are also investigated under a criminal prosecution by the judge of the Public Prosecutor's Office competent for the area in question. In Portugal such judges come under an autonomous judicial body independent of the Government, as laid down in the Constitution (Article 221) and the law (Articles 1 and 2 of Act no. 47/86 of 15 October 1986, modified by Act no. 23/92 of 20 August 1992).

It should be noted that the higher ranks of the security forces, or even the actual Ministry which supervises them, are not entitled to influence or intervene in the criminal investigation of acts committed by police officers within or outside the exercise of their duties. Policemen are subject to the same treatment as all other citizens.

The said situations are also often investigated by the Ombudsman ("Provedor de Justiça") whose office, in virtue of Article 23 of the Constitution and Act no. 9/91 of 9 April 1991, is an organ independent of the Government, and by the "Committee on Rights, Freedoms and Safeguards" of the Assembly of the Republic.

The Ministry of the Interior has always co-operated, within the scope of its powers, in such investigations, respecting the entirety of the recommendations put forward by the said bodies in the disciplinary field.

III

RECOMMENDATIONS: VOCATIONAL TRAINING; HUMAN RIGHTS

7. The content, spirit and purpose of the "Recommendations" put forward on p. 14 (paragraph 18) and p. 53 (para. 1 [a]) of the CPT's Report are entirely compatible with the Government's approach, as in fact emerges from its programme on the recruitment and initial and further training of police officers, at all levels of the structures of the National Republican Guard and the Public Security Police.

It must be acknowledged that in this field objectives can never be considered as being fully attained, since the pursuit thereof is an ongoing task which necessitates constant efforts in the attempt to improve results.

However, we can affirm, and this is demonstrated by the evidence to which the CPT were given ready access, that constant efforts have been expended over the last ten years to improve the situation.

8. The Public Security Police currently has a university-level academy - the Higher Police College in Lisbon - which is geared to training police officers and providing higher-level courses in command and leadership, as well as refresher, proficiency and degree courses for officers from the lower police ranks.

In the organisation of the course programmes, especially in the field of the legal sciences, the humanities and professional ethics, Human Rights and Rights, Freedoms and Safeguards are two of the main subjects.

These studies are generally directed, and even actually taught, by specialist university professors and highly experienced judges.

Furthermore, the aforementioned academy holds very frequent debates, colloquies and seminars on the subject of human rights. For example, as recently as, last March a seminar on "Public Order and the Fundamental Rights" was organised and attended by the most highly reputed law professors of our universities, former ministers, members of parliament, the Attorney General and the Ombudsman ("Provedor de Justiça").

It might be acknowledged that the work of the said college has not yet affected the whole police structure, since it only began operations in 1984 and is specialised in the training of the higher ranks, but the Government is making huge investments in establishments and equipment which will very shortly upgrade the results achieved.

The Public Security Police also has a further training establishment - the Practical Police School in Torres Novas - which specialises in initial and further training for officers from the lower police ranks.

Moreover, the work of this school, in connection with the organisation and implementation of curricula, ethical and deontological training, and also the holding of colloquies, seminars and debates, is guided by the concern to instill in trainees humanistic principles and values which are, in fact part of the cultural tradition of the Portuguese people.

9. Given the military organisation and structure of the National Republican Guard, its officers have since 1991 been trained by the Military Academy, which at that time introduced a special university-level course for the purpose. In the curricula for the course socio-political and legal sciences play a major role, since students must earn a minimum number of credits in these subjects (see Legislative Decree no. 173/91 of 11 May 1991, regulated under Directive no. 416-A/91 of 17 May 1991).

The National Republican Guard also has a further training establishment - the Practical School of the National Guard - specialising in the moral, cultural, physical, military and technico-vocational training of officers from the lower ranks, as well as running refresher, specialist and proficiency courses.

In short, to conclude on this point, human rights and fundamental rights, freedoms and safeguards have been matters of priority concern to the Minister, the police headquarters and those responsible for the training institutes for officers of the Public Security Police and the National Republican Guard.

IV

INFORMATION: COMPLAINTS OF ILL-TREATMENT [P. 53, para. 1(a)]

10. The following are statistical data on complaints submitted in the last two months regarding ill-treatment allegedly inflicted by officers of the National Republican Guard and the Public Security Police:

NATIONAL REPUBLICAN GUARD

	1990	1991
. Complaints submitted	38	57
. Complaints on which no further action was taken	13	19
. Disciplinary proceedings brought on the basis of these complaints	14	23
. Disciplinary proceedings on which no further action was taken	14	21
. Disciplinary proceedings leading to penalisation of those accused	2	2
. Criminal prosecutions instigated on the basis of these complaints	11	15
. Criminal prosecutions instigated on these complaints on which no further action was taken	7	7
. Criminal prosecutions pending	3	12
. Criminal prosecutions leading to the conviction of the accused military office	1	-

PUBLIC SECURITY POLICE

	1990	1991
. Complaints submitted	107	124
. Proceedings on which no further action was taken	52	36
. Disciplinary proceedings brought on the basis of these complaints	107	124
. Criminal prosecutions instigated on the basis of these complaints	37	50
. Convictions in disciplinary proceedings	24	9
. Convictions in criminal prosecutions	7	3

11. Anyone who considers that he/she has suffered ill-treatment, abuse of authority or excessive use of means of coercion by officers of the National Republican Guard or the Public Security Police is entitled to submit a complaint, which must be accepted.

The complaint may be submitted to the administrative authorities (Minister, Commanders or Directors of the police forces, etc), the judicial authorities (organs of the Public Prosecutor's Office and investigating judge), or simultaneously to both.

The complaint may also be submitted to the aforementioned informal supervisory bodies (Ombudsman, Committee on Rights, Freedoms and Safeguards of the Assembly of the Republic), which, in addition to carrying out their own investigations, may transmit them to the aforementioned formal supervisory bodies together with a request for information on the procedures adopted.

Any complaint of ill-treatment, abuse of authority, etc, gives rise to two types of proceedings which, according to national legislation, are parallel and autonomous: disciplinary proceedings aimed at verifying a possible violation of the police officer's functional and statutory duties, and criminal proceedings aimed at verifying the possible perpetration by the indicted officers of acts constituting a criminal offence.

12. The organisation of and decision in disciplinary proceedings are matters for the upper ranks of the security forces, headed by the Minister. A judicial appeal can always be lodged with the competent administrative courts in the event of a penalty, which can range from a mere reprimand to dismissal.

The administration of disciplinary justice, which is in the last instance a matter for the Minister, backed by a legal office presided over by a public prosecutor, has always laid great stress on cases of serious violations of the functional and statutory duties of police officers. In 1992 alone 66 officers were dismissed from the various police bodies, although in some of these cases human rights violations were not the grounds for the decision.

In disciplinary proceedings the accused is always heard in person, invited to submit evidence, and kept informed, if he so wishes, of the progress of the proceedings.

The Disciplinary Regulations of the Public Security Police were approved under Act no. 7/90 of 20 February 1990.

The Military Disciplinary Regulations, which are applicable to the National Republican Guard, were approved under Legislative Decree no. 142/77 of 9 April 1977.

Whenever, in the decision taken in disciplinary proceedings, it is concluded that in addition to a violation of official duties there is evidence that the police officer has committed a criminal offence, ie the crimes set out in Articles 157, 160, 412, 417 and 432 of the Penal Code, the facts are reported to the competent official of the Attorney General's Department, in accordance with Article 242 of the Code of Criminal Procedure.

13. The organisation of and decision-making in criminal prosecutions are matters for the judicial authorities, in virtue of the Code of Criminal Procedure, approved under Legislative Decree no. 78/87 of 17 February 1987 and published under parliamentary legislative authorisation in Act no. 43/87 of 26 September 1987. The provisions comprise no exceptions linked to the accused's capacity as a police officer, a government official or an employee of a public authority.

The investigation proceedings ("instruçao") which takes the form of an inquiry ("inquérito"), is a matter for the Attorney General's Department, as laid down in Articles 262 ff of the Code of Criminal Procedure, and all administrative authorities are required to co-operate therein.

The accused is tried by the ordinary criminal courts with competence for the local area, and the police hierarchy is precluded from any form of direct or indirect interference in the normal progress of proceedings.

Decisions are binding on all authorities, under the terms of Article 208 (2) of the Constitution, which secures the independence of the courts and the autonomy of the Attorney General's Department (cf. Articles 206 and 221 of the Constitution of the Portuguese Republic).

The ordinary courts have specific competence, in the context of criminal prosecutions, to order dismissal from public office or temporary suspension from the exercise of public duties, as laid down in Articles 66 and 67 of the Penal Code.

14. Even where no formal complaint has been lodged by the injured party, if knowledge has been obtained by any means (public rumour, media report, complaint by any of the informal supervisory bodies, etc) of an infringement by a public official of the fundamental human rights, both criminal and disciplinary proceedings are normally set in motion.

Article 70 of the Disciplinary Regulations of the Public Security Police and Article 77 of the Military Disciplinary Regulations applicable to the National Republican Guard lay down that disciplinary proceedings are mandatory whenever superior officers obtain knowledge, by any means, of facts which might incur disciplinary responsibility on the part of subordinate officers.

On the other hand, where criminal prosecutions are concerned, Article 241 of the Code of Criminal Procedure provides that the Attorney General's Department shall be notified directly of the offence through the intermediary of the criminal investigation departments or a report submitted by the injured person or his legal representative. The Attorney General's Department is required to register the report (Article 247) and to open the investigation on the basis thereof (Article 262).

Cases of abuse of authority and violation of human rights are almost invariably crimes of a public nature (see eg Penal Code, Articles 157 (1a) - serious coercion, 160 (2d) - sequestration, 412 - deposition obtained under duress, 417 - false imprisonment, 432 - abuse of authority, etc), making it mandatory for the Attorney General's Department to initiate a prosecution under the terms of Article 221 (1) of the Constitution and Articles 48 and 53 of the Code of Criminal Procedure.

Nevertheless, unco-operativeness or lack of interest or simply of commitment to the detection of facts on the part of the victim, whatever the reasons for such an attitude, obviously makes it difficult or even impossible to pursue judicial action in such cases.

Experience in recent years has shown a change in the mentality of victims: after incidents have occurred they are quick to report them, especially to the press and media or the informal supervisory bodies, but thereafter they show little commitment to co-operating with the competent judicial or administrative authorities in the investigations linked to the respective proceedings.

In short, to conclude on this particular point, our domestic, penal and disciplinary legislation and regulations on criminal procedures lay down all the necessary mechanisms for investigating cases of abuse of authority or violation of human rights by officers of the police forces, even where the victims have submitted no formal complaint.

V

CONDITIONS OF DETENTION IN THE POLICE ESTABLISHMENTS (P. 54, 2 and 3)

15. It is acknowledged that in some cases the prevailing conditions in the detention cells of the police establishments are inadequate and therefore, further to the CPT's Report, the various stations and headquarters have been instructed as far as possible to rectify the existing irregularities.

However, at the end of 1992 a start was made on preparing a 4-year programme of in-depth restructuring of the national system of police forces, aimed at the following basic objectives:

- redefining the areas of responsibility of each of the security forces (National Republican Guard and Public Security Police), with the concomitant readjustments to the respective operational machineries;

- improving recruitment methods and initial and further training programmes for new officers, as well as refresher and retraining courses for established officers;

- generally improving establishments, in particular those intended for receiving the general public and accommodating prisoners;

- providing closer links between the police establishments and the community which they serve, by making relations between police officers and the citizens closer and more human.

Implementation of the programme, of which we expect great things, will necessarily involve the construction or allocation of new establishments and the restoration of dilapidated establishments, some of which might even have to be abandoned, depending on the concentration of forces or the reorganisation of units.

Obviously there are budgetary restraints, and the top priority in terms of investment is staff training, but the problems highlighted in the CPT's Report as being the most serious are currently being solved.

16. In connection with the "recommendations" on other conditions of detention set out in paragraphs 38 to 41, p. 19, and para. 3 (a), p. 54,, the following should be noted:

- Under the terms of Article 27 (4) of the Constitution, "Everyone deprived of his freedom shall be informed at once (and in comprehensible terms) of the reason for his arrest or detention (and of his rights)";

- Furthermore, under the terms of Article 28 (i) of the Constitution and Articles 141 and 254 of the Code of Criminal Procedure, the situation of detention of any person shall be subject to a hearing by the competent judge within a maximum period of 48 hours;

- In accordance with the provisions of Articles 58 (1c), (2) and (3) and 61 of the Code of Criminal Procedure, when a person is detained he must be formally charged, which necessitates information on and explanations of the person's rights and duties;

- One of these rights is precisely that of appointing a defence counsel, communicating with the latter in private and being assisted by him at all stages of proceedings, from the time of arrest onwards (see Article 61 (1) of the Code of Criminal Procedure);

- Furthermore, under the terms of Article 259 of the Code of Criminal Procedure, whenever any police authority proceeds to an arrest it must immediately communicate this fact to the judge issuing the arrest warrant, or, in other cases, to the Attorney General's Department.

In pursuance of the above-mentioned legal provisions and the service instructions issued to those responsible for the police forces, with a view to keeping police custody of prisoners to a minimum, the detention of any person in police establishments may not extend beyond a few hours, the maximum being one night, this being understood as the period of time from the end of the evening of one day until 8 or 9 am the next day.

There are only two situations in which a person can be detained: firstly, in the case of an order from a judicial authority in the form of a signed warrant requiring the accused to appear in court (Article 254 (b) of the Code of Criminal Procedure), and secondly in the case of the arrest *in flagrante delicto* of a person committing an offence punishable by a prison sentence (Article 255 of the said Code).

In the former case the prisoner is immediately brought before the court if this can be done during court working hours, or if not on the following day.

In the latter case there are two possible hypotheses: if the offence for which the person is detained is a minor one (punishable by a prison sentence whose maximum duration is not more than three years), the prisoner is immediately brought before the court for a decision in summary proceedings (Articles 381 to 391 of the Code of Criminal Procedure); if the offence is punishable by a prison sentence whose maximum duration is more than three years, the Public Prosecutor's Office is immediately notified of the detention and the prisoner remains under the orders and control of the court, which has to reach a decision on his situation within a maximum of 48 hours (Article 259 [b] of the said Code).

We have received no indication that the aforementioned regulations and instructions have not been entirely complied with by police officers. The least we can say is that no complaint of infringement of these rules has been received in the past few years.

In order to facilitate police officers' work and prevent violation of the said rules, one of which is enshrined in the Constitution, the headquarters of the police forces have been instructed to supply officers with a booklet containing the explanations which prisoners should be given.

A study is currently being conducted with a view to drawing up a form in all the Community languages to be used in cases of detention of foreign citizens who do not know our language.

The draft of this document has already been distributed in order to prompt suggestions, and when it has been approved all police units will have to use it and police officers will be advised to do so even when on patrol.

In view of the foregoing it can be concluded, on this point, that our legislation effectively secures the supervision by the judicial authorities (the Bench and the Attorney General's Department) of all situations of detention. Moreover, the practice of the police establishments (Public Security Police and National Republican Guard) coming under the Minister of the Interior is appropriate and consistent with the said legislation.

VI

PRACTICAL INFORMATION ON CONDITIONS OF DETENTION [P. 59 (c)]

17. As stated in the introduction (see para. 1 above), the ensuing explanations are based exclusively on the operations of the Public Security Police and the National Republican Guard, having regard to their specific attributions and powers.

A - Everyone who is detained by the police is entitled to be assisted by counsel right from the beginning of the situation of police custody, as laid down in Article 32 (3) of the Constitution and Article 61 (1e) of the Code of Criminal Procedure.

B - The right to be assisted by counsel includes the right of the latter to be present when the prisoner is questioned, as clearly set out in Articles 61 (1e), 62, 64 (1a) and 141 (2) of the Code of Criminal Procedure.

It should nonetheless be noted that police officers proceeding to a detention cannot question the detainee. They can only identify him, explain to him the reasons for his detention and ask him for information on the offence he has committed, for the purposes of the report on the incident (see Articles 61 (1g), 250 (2) and (5), and 253 of the Code of Criminal Procedure.

Furthermore, our system of criminal procedure enshrines the general principle that a person who is suspected, charged or even formally indicted can never be forced to make declarations on the facts which he is alleged to have committed, not even in court (see Articles 61 (1c), 141 (4) and (5), and 343 (1) and (2) of the Code of Criminal Procedure).

Consequently, police officers carrying out arrests can only, and indeed must, record in the report on the incident the complete identification of the prisoner, the facts providing the grounds for detention and any information volunteered by the latter, as appropriate. However, such information has no specific evidential value and is not binding upon the prisoner, who cannot be forced to sign any kind of document.

C - In our view, the reason why lawyers seldom intervene in the initial phase of prisoners' police custody is as follows: there is a general idea that contact with a lawyer at this stage is scarcely necessary because no important procedural act can be implemented, apart from the identification of the prisoner; both the prisoner and his family and lawyers know that the first important procedural act to be implemented after arrest is the examination which has to be conducted by the investigating judge within a maximum period of 48 hours; as a general rule, when defendants are brought before the investigating judge their lawyers are already present in the relevant establishments because they have meanwhile been contacted by the police authorities at the request of the prisoners, directly or through the intermediary of their families.

Given that prisoners cannot be questioned by the police officers who implemented the detention, the presence of lawyers, which in fact cannot be prohibited, can only be aimed at verifying the prisoner's condition and ascertaining the reasons for the detention. The lawyer only begins to intervene in an effective, meaningful manner during the court examination of his client.

D - As already mentioned, the prisoner must be immediately brought before the investigating judge for examination. If this examination cannot be conducted immediately, the prisoner is brought to the Attorney General's Department for a summary hearing (Article 143 (1) of the Code of Criminal Procedure).

This appearance at the Attorney General's Department has a variety of aims: to keep the duration of the prisoner's police custody to a minimum; to order the immediate release of the prisoner if the Attorney General's Department finds that the detention is unfounded or unnecessary; and to make the urgent procedural arrangements which prove advisable for the individual case.

It should be stressed that during the hearing the prisoner is entitled to be assisted by counsel and, according to our procedural system, the investigation ("inquérito" - the first phase of a criminal prosecution) is led by the Attorney General's Department - Article 263 of the Code of Criminal Procedure.

However, the duties of the Attorney General's Department in Portugal are exercised by a group of judges having an autonomous and independent status similar to that of the judiciary, as secured under the Constitution (Article 221) and Act no. 47/86 of 15 October 1986 (Articles 1 and 2).

The judges of the Attorney General's Department have the status of judicial authorities and cannot receive orders or instructions from anyone concerning the handling of proceedings, which is governed exclusively by strictly legal and objective criteria (Articles 1 (1b) and 53 of the Code of Criminal Procedure).

This status has no parallel in similar European systems, which is why it might seem strange that the Attorney General's Department holds such wide-ranging powers in connection with criminal prosecutions. Nevertheless, both the legislation on judicial organisation and the Code of Criminal Procedure are very recent phenomena, and they have been approved by the Assembly of the Republic under the terms of our Constitution.

E - After the first examination of the prisoner, the investigating judge has to decide on the latter's procedural position, and at this point there are three possible hypotheses: his immediate release may be ordered in cases of unfounded or unnecessary detention (Article 261 of the Code of Criminal Procedure); or one of the coercive measures provided for in Articles 196 to 201 of the said Code may be applied to him; or, in the more serious cases explicitly set out in Article 202 of the said Code, the accused is placed in a situation of preventive detention, a measure which is exceptional in character and can only be maintained where it is absolutely necessary (see Articles 191 (1), 192, 193 (23), 204, 209 and 211); the detention is subject to mandatory re-examination every three months (see Articles 212 and 213 of the Code).

The subsequent examinations of an accused person remanded in custody are conducted by the Attorney General's Department in the investigation ("inquérito") phase, by the investigating judge in the judicial investigation ("instrução judicial") phase, and by the trial judge in the hearing phase (Article 144 (1) of the Code).

Both the Attorney General's Department and the investigating judge may authorise criminal investigation departments to conduct the subsequent examinations (see Articles 1 (1c) and 144 (2) of the Code); these will normally be officers of the Judicial Police since this is the body specialising in and responsible for backing up the Attorney General's Department, the investigating judge and the criminal courts.

It should, however, be pointed out that the accused can always refuse to make any declarations on the facts which he is alleged to have committed (Article 61 (1c) of the Code) and may also demand that the examination be conducted in the presence of his lawyer (Article 61 (1e) of the Code).

F - Where the investigating judge or trial court is confronted with an allegation from a prisoner to the effect that the evidence against him was obtained through coercion,

torture or other forms of ill-treatment, he must take account of the following in the procedure he adopts:

Our Constitution lays down that "any evidence obtained by torture, force, violation of the physical or moral integrity of the individual, wrongful interference in private life, the home, correspondence or telecommunications shall be of no effect". (Articles 32 (6) and 34).

This principle was transposed to and amplified in the Code of Criminal Procedure - Article 126.

Consequently, if the investigating judge or court gives credence to the prisoner's allegations, the evidence complained of must be considered as having no effect and can have no impact on the proceedings (Article 126 [1]).

Since 1929 our system of criminal procedure has enforced the principle that a confession on the part of the defendant is only valid for the purposes of a conviction if it is given voluntarily before the trial court (Articles 343, 344, 345 and 355 of the Code of Criminal Procedure.

In addition to the invalidity of any evidence obtained through infringement of the aforementioned principles, if the judge or court is satisfied that the prisoner's allegations are true, he/it must include the facts reported by the latter in the case file and forward a certificate to that effect to the Attorney General's Department to enable the latter to instigate a criminal prosecution - end of Article 359 (1) of the Code of Criminal Procedure.

VII

CONCLUSIONS

18. On the basis of the foregoing statements we would set forth the following conclusions:

18.1 Even if we admit to a number of deficiencies in the control and supervision of the activities of police officers owing to the enormous area over which they are spread, and some irregularities in the maintenance of police establishments owing to the extensive area covered and the exiguity of available resources, the assessment of the operation of the National Republican Guard and the Public Security Police and the image attaching to these institutions in the communities they serve are globally positive.

18.2 Situations of abuse of authority, excessive use of means of coercion and other forms of violation of the rights of citizens are indubitably exceptional cases, conversely to the impression given in the CPT's Report, as is generally acknowledged by the competent national bodies (the Assembly of the Republic holds an annual parliamentary debate on the subject, further to the Government Report), the organisations defending and promoting human rights, and the press and the media.

18.3 Matters relating to human and fundamental rights, freedoms and safeguards, which are enshrined in the Constitution, are the constant priority concern of this Ministry, the headquarters of the police forces and the top officials of the respective training institutions.

18.4 National Penal, and disciplinary legislation and regulations on criminal procedure provide for appropriate mechanisms to prevent, investigate and penalise effectively cases where police officers are accused of abuse of authority and violation of the rights of citizens, and the practice followed in the administration of disciplinary justice has been highly expedient and very severe in judging such cases as have been detected.

18.5 National legislation effectively ensures the control by the judicial authorities (investigating judge and Attorney General's Department) of all situations of detention, and the practice followed by the National Republican Guard and the Public Security Police has been seen to be correct and in keeping with procedural regulations.

18.6 The information and explanations requested on pp 54 and 55, section (a), where the activities and operation of the National Republican Guard and the Public Security Police are concerned, as emerges from Chapter VI above, correspond to the provisions of the Constitution and the Code of Criminal Procedure, as well as to the practice followed by the higher ranks of the police forces, whereby no complaints or criticisms of note have been received.

18.7 In connection with all the subjects dealt with in the Report this Ministry is available to provide any explanations deemed necessary and to co-operate with the CPT, having paid the utmost attention to the recommendations put forward and adopted the most urgent measures proposed.

Lisbon, 23 July 1993.

MAGISTRATE AND LIAISON AGENT
(signed)
(Gomes Dias)

MINISTRY OF JUSTICE

MINISTER'S PRIVATE OFFICE

INTRODUCTION

1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Portugal from 19 to 27 January 1992, in compliance with the provisions of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 June 1987.

2. We have received the Committee's report in pursuance of Article 10 of the Convention. We would hereby like to comment on the section of the report relating to the visit to the services coming under the Ministry of Justice - Directorate General of Prison Services and Judicial Police.

PRISON SERVICES

3. As early as 1990, the concern to alert prison staff to the mechanisms to prevent ill-treatment set up under the aforementioned Convention led the Director General of Prison Services to send Circular no. 23 of 31 July 1990 to all Prison Establishments, containing the text of the Convention accompanied by a report from the Research Division requesting that Prison Directors hold meetings with their staff (Appendix 1).

TORTURE AND ILL TREATMENT

A) Lisbon Judicial Police Prison

4. **Recommendation: that the Portuguese authorities examine whether prison officers in the Lisbon Judicial Police Prison are on occasion abusing their authority by ill-treating prisoners and, if necessary, take remedial action (paragraph 58).**

5. The reference to possible ill-treatment seems somewhat odd to us because, in addition to the fact that we have no knowledge of any complaint from prisoners in this prison, in recent years, apart from one isolated incident, tranquillity has prevailed in Portuguese prisons. We would refer in this connection to the reports of the Ombudsman and Amnesty International.

Nevertheless, since the Commission reports that an educator working in the prison told them that there were approximately 12 written complaints per year regarding ill-treatment by staff, we checked the situation by hearing the two educators serving in the said prison.

According to their written statements, both declare that they know of no complaint of ill-treatment of prisoners, denying the assertion attributed to them by the Committee (Appendices 2 and 3).

Since there have been no complaints, and in view of the foregoing declarations, there can be no possibility of proceeding to any further examination of the situation.

6. **Comment: the recommendation already made in paragraph 18 on the subject of interpersonal communication skills applies equally to prison staff (paragraph 62).**

7. The importance which the Prison Administration attaches to the field of personal relations has been shown in the choice of the contents of staff training, particularly the training of prison officers. The appended table for 1992 shows the number of hours' training for head prison officers, highlighting training in the area of communication and interpersonal relations (Appendix 4).

The table on the distribution of the number of training schemes per area also demonstrates the emphasis which is placed on the issue of behavioural skills (Appendix 5).

8. **Request for information: Information on the number and nature of complaints made during the last two years of ill-treatment by prison officers in the Lisbon Judicial Police Prison and on the action taken upon them (paragraph 58).**

9. In accordance with our foregoing comments, and having consulted the Legal Inspection and Support Service of the Directorate General, we note that no complaint has been received from prisoners in this establishment.

10. **Request for information: The results of the administrative inquiry into the incident at the Linhó Prison in early March 1991, during which a number of prisoners complained of ill-treatment (paragraph 59).**

11. The incident to which the Committee is referring took place in March 1990, whereupon a Deputy Director General of Prison Services was immediately appointed to carry out the investigations.

In the course of the investigations it was ascertained that judicial proceedings had been commenced on the same grounds before the Cascais Court. Whereupon it was decided to await the conclusion of the said judicial proceedings before taking any disciplinary action (if any is then required).

12. **Request for information: a full account of the incident at the Vale de Judeus Prison in early August 1991 during which a German and a Dutch prisoner were physically assaulted by security forces (paragraph 59).**

13. On 8 August 1991, at about 2 pm, two officers of the Judicial Police posted at the Aveiro department visited the Vale de Judeus Prison for the purpose of conducting a specialised verification of all the typewriters of the Prison, as part of the standard control procedures for prison departments.

The prison officers were asked to collect all the typewriters being used by prisoners, with due authorisation, in their cells.

All the prisoners complied with this request except one German and one Dutch prisoner, who maintained their refusal to comply even after the prison staff had explained to them that they could be present during the said verifications. It was not until about 7 pm, after the prisoners had been locked up, that the prison officers managed to secure the typewriters, without the use of violence or coercion.

However, the German prisoner Manfred Reffel began to shout through his cell window, inciting his fellow prisoners to riot, and was followed by other prisoners who banged on the windows and threw burning objects into the prison yard. The security forces did not have to intervene since the prisoners eventually stopped their protests.

The next day, however, a further incident occurred at the initiative of the prisoner Manfred Reffel, whereby the prisoners in his wing refused to be locked up and took a number of prison officers as hostages. Nevertheless, since the situation was settled through dialogue, no recourse was had to the use of force.

All these facts emerge from the investigations which were immediately instigated. The report concludes that some prisoners had taken advantage of the situation of insubordination created by the prisoner Manfred Reffel. In fact, this prisoner has constantly conducted defamatory campaigns against the prison services during the periods he has spent in Portuguese prisons. He has consistently been shown to be in the wrong, and the application which he submitted against Portugal to the European Commission of Human Rights was declared inadmissible (hearing of 14 February 1992).

14. **Request for information: the comments of the Portuguese authorities on safeguards provided during interventions of outside security forces in prisons (paragraph 60).**

15. In paragraph 60 of its report the Committee states that it heard allegations regarding the involvement of outside security forces ("intervention squads") in incidents at Linhó and Vale de Judeus Prisons.

Some confusion has obviously been caused here by the involvement of the Directorate General's transfer group at Linhó Prison. However, this group is made up of prison officers, not outside forces, and is responsible for transferring prisoners between different prisons.

The intervention of outside security forces has been very rare. In the last six years there has only been one intervention in a prison, during a riot when the prisoners had started a fire. The Commander of the Police Forces, the Head Prison Officer, the Prison Director and the Director General of Prison Services were present during these incidents.

SOLITARY CONFINEMENT

Recommendations:

16. **that an inquiry be carried out immediately into the operation of the Security Unit at Vale de Judeus Prison, to ensure:**
- **that no mentally disordered person is held within the Unit;**
- **that the regime applied to the Unit's occupants offers them purposeful activities and guarantees them appropriate human contact;**
- **that no prisoner is held in the Unit for longer than is strictly necessary (paragraph 68).**

17. **That any prisoner placed in solitary confinement as a special security measure or whose solitary confinement is renewed be informed in writing of the reasons for the decision, unless compelling security requirements dictate otherwise; that the prisoner be given an opportunity to present his views on the matter to the relevant authority before any final decision on placement in, or renewal of, solitary confinement is taken; that placement in solitary confinement for an extended period be subject to a full review at least every three months, if necessary based on a medical-social report (paragraph 69).**

18. **that all necessary steps be taken to ensure that both the regulations and the practice comply with the following requirements: whenever a prisoner held in solitary confinement asks for a medical doctor - or a prison officer asks for one on his behalf - the doctor should be called immediately to examine the prisoner; the results of the medical examination, including an assessment of the prisoner's physical and mental state of health and, if necessary, the likely consequences of continuing solitary confinement, should be set out in a written report and sent to the relevant authorities (paragraph 70).**

19. The absence of a maximum security prison led, in 1986, to the installation of three high security areas in three central prisons, aimed at providing temporary accommodation for prisoners whose aggressive or dangerous behaviour precluded the application of the ordinary prison regime to them.

The legal basis for the implementation of this measure is to be found in Article 111 (2) of Legislative Decree 265/79 of 1 August 1979, which provides *inter alia* for the separation of a prisoner from the rest of the prison population where his behaviour or mental condition gives rise to a serious danger of escape or the perpetration of violent acts against himself, or other persons or objects.

One of these high security wings is in Vale de Judeus Prison, accommodating prisoners considered to be very dangerous, though only when strictly necessary.

Periodic attempts are made to re-integrate these individuals into the ordinary regime of the same or other prisons, and they are also frequently transferred to the Psychiatric Clinic of the prison hospital with a view to providing them with psychological support. That was what had happened at the time of the Committee's visit.

The report issued by the Director of the Clinic states that the prisoners in question do not suffer from any mental disorder, even though they are "socially maladjusted and anti-social individuals who are dangerous and show aggressive behaviour towards themselves and others" (Appendix 6).

The prisoners, who were in the clinic at the time of the Committee's visit, have long since been transferred to other prisons, in a further attempt to integrate them into the ordinary regime.

These security areas are governed by a regime which is obviously stricter, nevertheless the rights to engage in correspondence, receive visits, enjoy recreation and receive medical assistance when necessary are respected. However, the organisation of activities is difficult because of the specific nature of the regime of temporary segregation from the rest of the prison population.

The special security measure of segregation from the rest of the population is implemented in cases of constant criminal practices, into which investigations are launched and on the basis of which a criminal prosecution is instigated, of which procedures the prisoners are naturally notified.

20. **Request for information: information on the legal remedies available to a prisoner who wishes to challenge a decision placing him in solitary confinement as a security measure (paragraph 69).**

21. Prisoners who are subject to a special security measure have access to the normal mechanisms for submitting evidence and complaints laid down in Articles 138, 139, 150 and 151 of Legislative Decree no. 265/79, viz the Prison Director, the Inspectors of the Prison Services, the Judge of the Execution Court, the organs of supreme authority and the European Commission of Human Rights.

CONDITIONS OF DETENTION

a) Lisbon Judicial Police Prison

Recommendations:

22. **that immediate steps be taken to reduce substantially the number of prisoners held in the Judicial Police Prison; preferably it should be kept within the limits of its official capacity of 80 (paragraph 76);**

23. **that a high priority be given to the planned refurbishments designed to enable all prisoners to have ready access to a toilet facility at all times (paragraph 76);**

24. **that the establishment as a whole be restored to a good state of repair as soon as possible, and that inmates be provided with suitable cleaning equipment in order to enable them to maintain their living quarters in a satisfactory state of cleanliness**

(paragraph 77);

25. **that immediate steps be taken to ensure that all prisoners at the Judicial Police Prison are allowed at least one hour of outdoor exercise every day (paragraph 79);**

26. **that the prison exercise yard be resurfaced and that means of shelter against inclement weather be installed (paragraph 79);**

27. **in connection with the future of the establishment, the Portuguese authorities should adopt one of the following two alternatives:**

- **either the Judicial Police Prison should revert to its original function as a short-term holding area in which people could be held for a maximum of two to three weeks prior to their transfer to a normal prison facility. In that case the existing situation would be rendered acceptable by reducing overcrowding, making the necessary improvements to the material conditions of detention and guaranteeing at least one hour of outdoor exercise per day;**

- **or it should be formally recognised as a remand facility in which prisoners may be held for extended periods - ie for periods of one month or more. In this case, the programme of activities offered to prisoners at the establishment would have to be radically improved. The aim should be to ensure that prisoners in the establishment are able to spend a reasonable part of the day (8 hours or more) outside their dormitories and cells, engaged in purposeful activities of a varied nature (education, sport, work with vocational value) (paragraph 82).**

28. The increase in the prison population in recent years and the consequent overcrowding of establishments (the current level of overcrowding is 40%) have made it difficult for us to proceed to a rapid reduction in the number of prisoners in the Lisbon Judicial Police Prison.

As part of the "Programa Expedito" ("express programme") implemented by the Ministry of Justice, this year on the 29th of April, an invitation to tender was issued for the construction of 19 prison wings, the deadline for execution of the work being set at 120 days.

Another venture has involved measures to convert military and juvenile institutions into prisons, and in fact the new Funchal Prison is expected to be opened by the end of this year, with sufficient capacity for 250 prisoners.

29. In accordance with the recommendation formulated by the Committee during its visit, refurbishments have been carried out in the establishment, and currently all prisoners have access to toilet facilities at all times.

30. Furthermore, part of the establishment has been renovated, including the cell toilet facilities. A laundry has been installed and a new hall built for newly-arrived prisoners, complete with toilet and shower facilities. This hall provides an area where prisoners can wait outside the actual prison to appear before the judge.

Prisoners are supplied with sufficient cleaning equipment on a weekly basis.

31. It has proved impossible to provide all prisoners with daily outdoor recreation owing to a shortage of prison officers.

This situation will change in 2 or 3 months time with the arrival of new staff contingents who are currently attending the training course in the Prison Training Centre.

The staff of the Judicial Police Prison will then be reinforced in such a way as to enable all prisoners to have daily outdoor exercise.

32. Although the resurfacing of the prison exercise yard is planned, we do not consider this to be a top priority, in view of the greater urgency of refurbishing the food heating area and the visiting room.

33. In accordance with Directive no. 352/80 of 6 November 1980, the purpose of the Lisbon Judicial Police Prison is indeed to provide a short-term holding area, and this is the role that we hope it will have.

However, this can only be guaranteed if the problem of overcrowding is solved. Since this has not yet happened, constant repairs have been carried out and improvements made to the conditions of detention.

b) Linhó Prison

Recommendations:

34. **that serious efforts be made to ensure that, except for in exceptional circumstances, prisoners in Linhó Prison are held one to a cell (paragraph 83).**

35. **that a high priority be accorded to the reglazing of broken windows in Linhó Prison and that prisoners be provided with heating facilities during the winter months (paragraph 84).**

36. **that the provision of integral sanitation in cells at Linhó Prison (and of ready access at all times to toilet facilities in prison establishments in general) be accorded a very high priority (paragraph 88).**

- **that, pending the provision of integral sanitation in Linhó prison:**

- **the slopping-out facilities on the upper floors of the detention blocks be brought into operation;**

- **prisoners be provided with appropriate means to clean and disinfect their buckets;**

- **prison officers receive clear instructions to the effect that a request made by a prisoner during the day to be released from his cell for the purposes of using a toilet facility should be granted, unless significant security considerations require otherwise (paragraph 88).**

37. **that immediate steps be taken to provide all prisoners who work in the quarry with proper protective clothing. This should include boots with protective toecaps and protective gloves for all workers; in addition, those required to break the stones should have goggles and those required to load them on to the back of trucks should be issued with safety headgear (paragraph 92).**

38. **that stone-breaking activities cease as soon as possible and be replaced by other work of a more challenging and vocational nature (paragraph 93).**

39. **that individualised custody plans be drawn up for all sentenced prisoners (paragraph 96).**

40. **that a very high priority be given to the reform of the regime activities offered to the inactive prisoners both by reducing the period of 27 hours for which they could be locked in their cells and by employing additional staff to organised activities for them (paragraph 99).**

41. **that the Portuguese authorities review staffing levels at night in Linhó Prison (paragraph 100).**

42. Although the policy in the field of prisoner accommodation is one prisoner to a cell unless special circumstances dictate otherwise, it is becoming difficult to implement the policy completely as long as the current situation of overcrowding persists.

43. As had already been planned, and as was notified to the Committee, 220 windows in the prison have been reglazed, with both the panes and the frames being replaced.

As financial resources have permitted, heating systems have been installed in prisons in the coldest parts of the country (eg in the Guarda Regional Remand Prison, this year).

44. At the present time 6 completely renovated and extended toilet facilities are in operation at one end of the two prison blocks. The same number of toilet facilities are under construction at the south end.

Although we are gradually installing toilets in the cells of various prisons, for the moment, in view of the urgency of solving the current problems, we are opting for the renovation of the collective facilities in Linhó Prison.

In the daytime virtually all prisoners have access to toilet facilities, and the cell roll-call system is to be reintroduced in order to make the same procedure available at night.

45. At the time of the Committee's visit prisoners working in the quarry already had protective gloves and boots, although they were not accustomed to using them. The prison officers have been advised that they should alert prisoners to the need to use such means of protection.

In any case, the number of prisoners working in the quarry has been substantially reduced.

46. Individualised custody plans are systematically drawn up for prisoners serving relatively light sentences.

This facility can only be introduced for all convicted prisoners if more staff with technical skills are recruited.

47. The outdoor exercise timetables have been altered, and the period of time for which inactive prisoners could be locked in their cells has been reduced from 27 to 21 hours.

We hope that this period, too, can be reduced with the employment of additional staff.

48. As stated in paragraph 31 above we are expecting 180 new prison officers to emerge from the training course, together with the recruitment of 500 members of the Financial Police, which has been disbanded.

These staff reinforcements will enable us to increase the number of officers on duty at night.

49. **Comment: the Portuguese authorities are invited to develop regime activities for prisoners at Linhó Prison (paragraph 95).**

50. At the present time some 80 % of the population of Linhó Prison are engaged in occupational and educational activities. The constant overcrowding of the prison is making it difficult to organise any more activities.

51. **Requests for information:**

- **the comments of the Portuguese authorities on complaints from prisoners that under the present laundry arrangements their bed sheets may not be changed for weeks (paragraph 89);**

- **clarification of the reasons for the inactive status of certain prisoners (paragraph 97).**

52. There is indeed a problem with the prison laundry, where all the linen of the Linhó Prison is washed. A complete solution to the problem will involve installing a laundry inside Linhó Prison, a measure which is already planned.

Meanwhile the solution adopted in order to alleviate the problem has been to purchase additional bed linen and to allow prisoners to use their own bedclothes, if they so wish, having been given orders to change the sheets once a week (Circular no. 3 of 23.4.93 - Appendix 7).

53. The population designated "inactive" includes those prisoners who do not wish to work and those who wish to work, but for whom no appropriate work can be organised, primarily owing to the current situation of overcrowding.

a) Vale de Judeus Prison

54. **Comment: the prisoners should as soon as possible be granted ready access at all times to toilet facilities (paragraph 103).**

55. The Prison Services are intending to install toilet facilities in all cells. This plan is to be implemented gradually, and has already been put into effect in a number of establishments.

MEDICAL SERVICES IN THE THREE PRISONS

Recommendations:

56. **That immediate steps be taken to ensure a more frequent attendance by a doctor and a nurse at the Judicial Police Prison, and to upgrade the establishment's medical facilities (paragraph 113).**

57. **That the post of prison doctor at Linhó be converted to a full-time position and that the nursing staff be reinforced (paragraph 116).**

58. **That the de facto presence in the prison of at least one full-time doctor and the equivalent of two full-time nurses be guaranteed (paragraph 118).**

59. **That steps be taken without delay to provide prisoners at Linhó and Vale de Judeus with an appropriately resourced in-house or visiting psychiatric/psychological service. Such a service should also be provided to those held in the Judicial Police Prison in Lisbon for so long as that establishment continues to operate as a remand facility in which people may be detained for considerable periods of time (paragraph 125).**

60. **That every newly-arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission; save for in exceptional circumstances, this interview/examination should be carried out on the day of admission, especially where remand establishments are concerned (paragraph 126).**

61. **That all medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing, and preferably out of the sight, of prison officers and that the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner (paragraph 127).**

62. **That prison staff should always be able to contact a doctor capable of offering advice on emergency cases and, when medically appropriate, of attending the prison within a short period of time (paragraph 129).**

63. **that someone competent to provide first aid always be present on prison premises, preferably someone with a recognised nursing qualification (paragraph 129).**

64. Medical treatment in prison services is essentially provided by the Prison Hospital.

The Hospital has been completely renovated in the past 4 years, and has 140 beds, two operating theatres, ultrasound scanning, X-ray, physiotherapy, electrocardiology, electroencephalography, and auditory testing departments, and also an analysis laboratory and a pharmacy. It also provides treatment in 17 specialist medical fields.

65. Although medical treatment in the actual prison establishments has been improving with the conversion of medical posts in various prisons to full-time positions, it still falls short of our ultimate aims, particularly where nursing staff is concerned.

The Prison Services currently have 17 vacancies for nursing staff, and are experiencing difficulty in filling them. Furthermore, this problem is not peculiar to the prison services, since it broadly affects all health services.

66. The post of medical doctor in the Lisbon Judicial Police Prison will shortly be converted into a full-time position.

A contract has been concluded with a nursing centre in Vila Franca de Xira, guaranteeing permanent availability of treatment in the Vale de Judeus Prison.

67. The arrangements for psychological treatment in prisons are based on principles of continuous provision of care under the local psychiatric health service. This means that psychiatric and mental health care is centred on one department, viz the Psychiatric and Mental Health Clinic, designed for hospitalisation of critical cases, with an average of 200 confinements each year and appointments for out-patient treatment (in the Clinic and at the prisons). Such consultations, of which there are an annual average total of 6,000, are organised through the mental health unit made up of the general practitioner and other experts, under the supervision of the clinic psychiatrists.

Continuity of treatment is also secured through link-ups with the community mental health structures.

68. In pursuance of Article 6 (4) of Legislative Decree no. 265/77, prisoners must be subjected to a medical examination a maximum of 72 hours after their admission to prison. This is a legal requirement and is the usual practice in Portuguese Prisons.

69. All medical consultations in prisons are conducted with respect for the prisoner's privacy, ie without any auditory or visual surveillance.

A Ministry of Justice Directive of 12 November 1980 lays down that prison officers accompanying prisoners for medical consultations outside the prison must not be present during the medical examinations unless their presence is absolutely necessary for reasons of security (Appendix 8).

70. In a Circular of 14 May 1992 the Director General of Prison Services laid down that prisoners with physical injuries or contusions must be examined by the prison doctor and interviewed with a view to drafting an Official declaration (Appendix 9).

Comments:

71. **The use of prisoners to provide health care services is a highly questionable practice, regardless of whether they possess appropriate qualifications (paragraph 122).**

72. **The Portuguese authorities are invited to draw up a suicide prevention programme, taking into account the points made in paragraph 132.**

73. **The Portuguese authorities are invited to take action to remedy the shortcomings identified in paragraph 134.**

74. We are in complete agreement with the Committee's comment on the use of prisoners to provide health care services. However, in view of the difficulty of filling the nursing staff vacancies, it was considered better to use appropriately qualified prisoners for such services than not to have them at all.

75. In 1987, subsequently to what was at the time called the "wave of suicides" in prisons (23), a Co-operation Protocol was drawn up between the Directorate General of Prison Services and the Medical Science Faculty of the New University of Lisbon.

From that time onwards the current Psychiatric and Mental Health Clinic was gradually built up and various research projects were carried out in prison establishments.

Although the number of suicides has decreased, the psychiatric services have been greatly concerned to inform staff of such situations by organising special training schemes for technical staff and prison officers.

As an example we have appended a copy of the Circular sent to prisons on 24 May 1991 to alert psychiatric departments to high-risk groups and high-risk periods for suicide attempts (Appendix 10).

76. Account has been taken of the observations formulated by the Committee in paragraph 134, and the directors' offices and clinical services of prisons were consequently alerted to prevent such negligence.

Request for information:

77. **information on the number and causes of deaths in Portuguese prisons over the last three years.**

78. 1989 - 33 prisoners died: 11 by suicide; 1 as a result of an attack by a fellow-prisoner; and 21 as a result of illness.

1990 - 40 prisoners died: 17 by suicide; 1 as a result of an attack by a fellow-prisoner; and 22 as a result of illness.

1991 - 47 prisoners died: 13 by suicide and 34 as a result of illness.

OTHER ISSUES RELATED TO THE CPT'S MANDATE

Recommendations:

79. **That the four bar-fronted disciplinary cells at one end of the Discipline Unit at Linhó Prison should not be used for the execution of disciplinary sanctions (paragraph 136).**

80. **That all prisoners without exception, including those undergoing cellular confinement as a disciplinary sanction, be offered the opportunity to take at least one hour of exercise in the open air every day (paragraph 137).**

81. **That the Portuguese authorities review the current procedures for the inspection of prison establishments in the light of the remarks made in paragraph 141 (paragraph 141).**

82. **That the facilities at the Judicial Police Prison in Lisbon for visits from family members be improved without delay (paragraph 147).**

83. **That the visiting facilities at Vale de Judeus Prison be enlarged substantially or that some other system of regulating the number of prisoners who receive visits at any one time be found, without reducing their overall visit entitlement (paragraph 147).**

84. **that arrangements at Vale de Judeus Prison for telephone contacts between prisoners and their families be reviewed (paragraph 148).**

85. **That all cells be equipped with a call system, preferably linked to a central monitoring point, staffed on a permanent basis (paragraph 151).**

86. **That implementation of plans to provide all prisoners with ready access to toilet facilities be accorded a very high priority (paragraph 153).**

87. The disciplinary cells in the Linhó Prison are so designed that the prisoners are not permanently exposed, since one has to go through a wooden door, which is kept closed, before reaching the actual cell.

The purpose of the bars is to create a protective barrier between staff (technicians, prison officers, medical doctor, religious attendant) and the prisoner against the latter's possible use of violence.

The cells might be improved, although it would have to be borne in mind that they were built thirty years ago.

88. The prisons have been given instructions to the effect that prisoners undergoing the sanction of solitary confinement to disciplinary cell should have 1 hour of isolated exercise in the open air.

89. On 27 April this year the Minister of Justice appointed a committee to examine shortcomings in the Prison Services and revise a number of provisions governing them.

The role and degree of autonomy of the inspectorate services will be one of the many matters to be settled by this committee.

90. The visiting room at the Judicial Police Prison is inadequate, and plans are being made to alter it.

91. In October 1992 the visiting room at Vale de Judeus Prison was completely renovated and extended.

92. Telephone kiosks (payphones), to which prisoners have free access, have been installed in the prisons.

93. The call system in the cells was brought into operation last year in the Lisbon Judicial Police Prison. The required repair work will, as far as possible, be carried out in order to make the system operational in the other establishments.

94. As stated in section 29 above, renovations have already been carried out in the Lisbon Judicial Police Prison, so that prisoners have access to toilet facilities at all times.

Even though not all the problems have been solved, the situation has considerably improved at Linhó Prison, with the installation of new toilet facilities (section 44 above).

Comments:

95. **A right of appeal to a higher authority should exist in respect of all types of disciplinary sanctions (paragraph 135).**

96. **Toilet facilities in the disciplinary cells at the Judicial Police Prison in Lisbon were in a deplorable state (paragraph 136).**

97. **Temperatures in the cells in the Discipline Unit at Linhó Prison were very low (paragraph 136).**

98. **It would be desirable for the cells to be equipped with a table and chair (paragraph 136).**

99. **Complaints about the quality and quantity of the food were widespread in each of the three prisons visited (paragraph 142).**

100. **The Portuguese authorities are invited to upgrade the kitchen facilities in the Lisbon Judicial Police Prison and the Linhó Prison (paragraph 143).**

101. **At the Linhó and Vale de Judeus Prisons, the introduction of a self-service food distribution system should be considered, and improvements could be made as regards the quantity and quality of eating utensils provided to prisoners (paragraph 144).**

102. **It is important to retain a certain flexibility in the application of the visiting rules to those whose families live a long way from the prison (making frequent visits impractical) (paragraph 146).**

103. **It is important to give prisoners who do not receive regular visits improved opportunities for telephone contact with their families (paragraph 148).**

104. **The Portuguese authorities are invited to explore the possibility of extended visits in order to maintain family and personal (including sexual) relations (paragraph 149).**

105. In accordance with the text currently governing the enforcement of measures depriving persons of their liberty, viz Legislative Decree no. 265/79 of 1 August 1979, only sanctions of confinement to disciplinary cell for a period of more than eight days are subject to an appeal before the execution court (Article 143).

This text is to be reassessed by the committee referred to in section 89 above, since this is one of the many matters open to review.

106. The disciplinary cells in the Lisbon Judicial Police Prison have in the meantime been taken out of service.

107. As stated in section 43 above, we are intending to install heating systems in the establishments as the requisite financing becomes available. In any case the situation of Linhó Prison has improved considerably with the reglazing of windows and the replacement of window panes and frames.

108. We do not generally receive any complaints about food. Although there is some fluctuation in food quality, the reason for this lies more in the mode of preparation than in the quality of the products and their nutritional value.

109. The Lisbon Judicial Police Prison does not actually have kitchen facilities but rather an area for heating food, which is prepared in the other Lisbon prison.

Plans exist for the urgent renovation of the food-heating area (see section 32 above). The kitchen at Linhó Prison is also to be renovated.

110. We entirely agree with the Committee regarding the advantages of a self-service system for meals. A self-service system is already operating in a prison in the north of the country, and we intend to install further such systems as resources permit.

111. Taking account of the importance of maintaining contact with the outside world the Legislative Decree no. 265/79 of 1 August 1979 provides for the right to visits, laying down that contact in particular between the prisoner and members of his family must be encouraged (Articles 29 ff).

Convicted prisoners normally receive visits two or three times a week, and remand prisoners 3 or 4 times a week. In establishments situated in areas less well served by public transport, visiting rules are applied more flexibly.

Furthermore, there are facilities for visits by spouses in open-regime sections of both prisons, appropriately equipped to ensure the requisite privacy for such visits.

Requests for information

112. **Information on whether a prisoner has the right to be heard orally on the infraction of which he is accused (paragraph 135).**

113. **The comments of the Portuguese authorities on the fact that some prisoners with whom the delegation spoke in the Disciplinary Unit at Linhó Prison had been waiting for some time (in one case, for 13 days) for a formal decision concerning the imposition of a disciplinary sanction (paragraph 135).**

114. **Confirmation of the absence of control by the prison authorities of communications between prisoners and the Ombudsman and details of any relevant legal texts. Information about any other bodies outside the prison administration to which prisoners may have confidential access (paragraph 139).**

115. **Details of the plans to provide all prisoners with ready access to toilet facilities and, more particularly, of the timescale within which it is envisaged that the necessary work will be completed (paragraph 153).**

116. Article 131 (2) of Legislative Decree no. 265/79 of 1 August 1979 lays down that "before implementing any disciplinary measure the director must 'hear' the prisoner in writing", thereby guaranteeing that the prisoner's declarations are submitted in writing. Thus the prisoner has the possibility of being heard orally, but his declarations must be taken down in writing.

117. The Linhó Prison Disciplinary Unit is made up of disciplinary cells and accommodation cells designed for implementation of special security measures. The Unit therefore houses prisoners undergoing the said measures and prisoners undergoing disciplinary sanctions.

We are attempting to investigate the situation to which the Committee refers in paragraph 135 of the report. However, as quite some time has passed since the visit and the prisoners were not identified, the investigation is proving difficult.

In any case the situation described would be irregular in the case of prisoners undergoing disciplinary sanctions, since the director should issue a decision on the penalty after his examination of the prisoner in writing, in virtue of Articles 131 (1) and (2) and 136 of Legislative Decree no. 265/79.

It would also be irregular in the case of implementation of a special security measure, since this would have to be ordered by the director or, in his absence, by his substitute, subject to expeditious ratification by the former, as laid down in Article 114 of the same text.

118. Prisoners' correspondence is governed by Articles 40 ff of Legislative Decree no. 265/79 and Circular no. 18/85 of 7 January 1985. The Circular (reproduced in Appendix 11) lays down that correspondence with the Ombudsman and with appointed lawyers shall be exempt from control.

Correspondence with other bodies may be subject to control, but never to censorship. In that respect, the aforementioned Circular and Directive no. 130/80 of 17 April 1980 regulate the exercise of the right of petition to the European Commission of Human Rights (Appendix 12).

119. As stated above, at the Lisbon Judicial Police Prison the requisite work has already been done to provide prisoners with access to toilet facilities at all times. Similarly, renovation work has been carried out on some of the toilet facilities at Linhó Prison.

Other establishments already have a considerable number of cells with individual toilet facilities, eg prisons in Lisbon, Vila Real, Évora, Beja, Santa Cruz do Bispo and Braga.

However, this is a programme which is to be gradually implemented as financial resources become available.

JUDICIAL POLICE

The Judicial Police is mentioned in the Report drawn up by the European Committee for the Prevention of Torture in connection with assistance by physicians to prisoners, with specific regard to the **possibility of having a medical doctor in Judicial Police establishments on a full-time basis, and also compliance with the defendant's right to be assisted by a lawyer from the time of the first examination onwards.**

We consider that we must give the following explanations on these points:

- The Headquarters of the Judicial Police in Lisbon have a medical surgery equipped for providing first aid and carrying out direct medical examinations. Every day of the week a medical doctor mans this surgery on a part-time basis and a nurse on a full-time basis. It is planned that the doctor will work on a full-time basis in the near future.

- As explained in the Report, Portuguese legislation on criminal procedure bestows on the accused the right to "be assisted by a lawyer in all procedural acts in which he participates and, where he is detained, to communicate with him, even in private". During the act of detaining or charging the person in question, the declaration appended hereto is read out, giving the accused information on his rights. Naturally, if he demands to be assisted by a lawyer, this right is respected (Appendix 13).

To our knowledge, for the past two years, there have been no complaints for acts of aggression or torture brought against members of the Judicial Police.

Lastly, we would refer to the **Recommendation on the teaching of human rights** (Appendix 14):

1. All levels of training given in the National Police and Criminal Science Institute (initial training, graduate courses and specialist courses) provide for education in the field of human rights.

2. The teaching/learning process incorporates (at all levels) a curricular plan providing training in the aforementioned field through different subjects, consolidated into the following educational areas:

a) General legal training;
b) Applied legal training and occupational technique;
c) Training in the humanities;
d) Foreign language learning;
e) Physical education, training in self-defence and sport: operational techniques and methods of intervention.

3. Furthermore, the curricular plans also comprise the subject of Police Deontology, which we are appending. The adopted initial training programme and bibliography involves a total reading time of 11 hours in addition to the 209 hours of applied legal training and occupational technique.

4. The programme of applied legal training and occupational technique stresses inter-personal communication aspects from the angles of both theoretical and practical training. Under the further training programme, the Institute provides a 36-hour module on interview and examination techniques, which incorporates the curricular training plans coming under the applied legal training and occupational technique programme.

APPENDIX 1

MINISTRY OF JUSTICE
DIRECTORATE GENERAL OF PRISON SERVICES
PRIVATE OFFICE OF THE DIRECTOR GENERAL

For the attention of the
Prison Director

LISBON, 31 JULY 1990

Portugal recently ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

As a result of the ratification of this Convention, Portuguese prisons will certainly be visited by members of the Committee which, under the internationally agreed terms, is entitled to observe the treatment administered to detained persons and investigate any complaints of possible ill-treatment inflicted or conduct which might be considered degrading or classified as torture.

In order to prevent prison staff from committing any acts inconsistent with the disciplinary guidelines which they are given and encouraged to respect, and which have now been reinforced at an international level, I would like you to notify the staff of your prison of the content of the aforementioned Convention, accompanied by a report drawn up by the Research Division, which I am also enclosing.

I would ask you to give this information at meetings, of which there should be a whole series in order to reach all members of staff (prison officers and other employees), and during which you should read and comment on the provisions of the Convention, together with Titles II, XI and XII of Legislative Decree no. 265/79 of 1 August 1979.

I would also be grateful if you could forward to me, for statistical purposes, schedules of meetings held and the numbers and categories of staff members attending (eg: prison officers - 20; administrative staff - 10).

In view of the importance of the subject and of staff training therein, attendance at the meetings planned, to which staff should be invited, shall be compulsory.

Yours, etc

The DIRECTOR GENERAL
(signed)
Fernando Duarte

MINISTRY OF JUSTICE
DIRECTORATE GENERAL OF PRISON SERVICES

Research and Planning Division

REPORT

RE: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Pursuant to a proposal submitted by the Public Prosecutor's Office, the Private Office of the Minister of Justice has requested that this Directorate General prepare a report on the above-mentioned Convention, because it is one of the bodies most directly concerned with the obligations laid down therein.

We must accordingly inform you of the following:

1. With a view to reinforcing the protection of persons deprived of their liberty from torture and inhuman or degrading treatment or punishment, this Convention provides for a non-judicial preventive mechanism by establishing a Committee which conducts visits in order to examine the treatment of persons imprisoned or detained as a result of a decision taken by a public authority (Articles 1 and 2).

The Committee, whose members are elected by the Committee of Ministers of the Council of Europe, act on the basis of facts ascertained during its visits and of information provided by the Party to the Convention. After each visit the Committee draws up a report which it forwards to the Party with the recommendations it deems appropriate, suggesting, if necessary, improvements in the protection of persons deprived of their liberty [Article 10 (1)].

If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after giving the Party an opportunity to make known its views, by a majority of two thirds of its members, to make a public statement on the matter [Article 10 (2)].

Article 11 secures the confidentiality of the information gathered and of the report, although the latter may be published whenever the Party so requests.

2. The provisions of the Convention have been assessed from the technical and legal angle by the Public Prosecutor's Office, which concluded, in Opinion no. 11/87, appended, that they were consistent with the Portuguese legal and constitutional systems.

Furthermore, in its Report no. 306/87, appended, the Department of Documentation and Comparative Law considered that this Convention corresponded generally to political thinking in Europe and dealt with matters in keeping with our Constitution and the European Convention on Human Rights, which Portugal has incorporated into its domestic legal system.

3. In connection with the Portuguese prison system, the Public Prosecutor's Office would stress that the concerns of this Convention are reflected in the text governing the enforcement of measures depriving persons of their liberty (Legislative Decree no. 265/79 of 1 August 1979), which also promotes the idea of humanitarian treatment, permeating all the provisions of this text.

In view of the matter under discussion, we would draw particular attention to the provisions contained in Article 151, which expressly secures for prisoners the right recognised under Article 25 of the European Convention on Human Rights, viz the right of individual petition on the grounds of a violation of the rights enshrined in the Convention. Among these rights is that contained in Article 3 to the effect that no one shall be subjected to torture or inhuman or degrading treatment or punishment.

The activities of the prison services are regulated by the provisions of the aforementioned Legislative Decree no. 265/79, with reference to the established principles of the European Prison Rules - which, although they have no binding legal force, represent a code of fundamental values.

In our view, although difficulties in terms of human and financial resources occasionally hamper the development of a larger number of projects considered necessary for prison treatment, they can never be allowed to stand in the way of the conditions of humanity and dignity which must prevail in prison life, or to obstruct the duty to co-operate with the bodies having specific responsibility for ensuring the existence of such conditions.

Lisbon, 20 July 1988.

Head of Division
(signed)
Maria José Mota de Matos

APPENDIX 2

OFFICIAL DECLARATION

On 26 March 1993 I, Fernando Duarte, Director General of Prison Services in the Ministry of Justice, was visited in this Directorate General by the social welfare officer (educator), Mr José Augusto de Carvalho Pereira Vaz;

questioned about the affirmation contained in paragraph 58 of the Report of 2/10/92 drawn up by the European Committee for the Prevention of Torture, to the effect that one of the social welfare officers (educators) of the Lisbon Judicial Police Prison had told the said Committee that there were some 12 written complaints per year from prisoners regarding physical ill-treatment inflicted by staff, he declared:

- that it is untrue that such an affirmation was made by the declarant, who furthermore has no knowledge of any assault or participation in an assault directed against prisoners;

- asked whether he knew of any complaint which had been transmitted to the Directorate General of Prison Services, he answered in the negative, stating that in any case the question was prejudged by the previous reply;

- nothing further was said, and, his declarations having been read out, he confirmed that they were correct, ratified them and signed them, in the presence of the Director General.

(signed)

APPENDIX 3

OFFICIAL DECLARATION

On 1 April 1993 I, Fernando Duarte, Director General of Prison Services, was visited in these Central Services by Carlos Alberto da Costa Martinez, social welfare officer (educator) in the Lisbon Judicial Police Prison;

questioned about the affirmation contained in paragraph 58 of the Report of 2/10/92 drawn up by the European Committee for the Prevention of Torture, to the effect that one of the social welfare officers (educators) of the Lisbon Judicial Police Prison had told the said Committee that there were some 12 written complaints per year from prisoners regarding physical ill-treatment inflicted by staff, he declared:

- that it is untrue that he made such a declaration to the aforementioned Committee; that he furthermore knew of no complaint of physical violence which had been transmitted to the Directorate General of Prison Services either by newly-arrived prisoners or those already accommodated in the prison area. Nothing further was said, and, his declarations having been read out, he confirmed that they were correct, ratified them and signed them, in the presence of the Director General.

(signed)

APPENDIX 4

XI - HOLDERS OF THE PRISON OFFICERS' DIPLOMA

	no. hours' training	no. participants
Inter-personal relations and communication		
Leadership and management		
Conflict management		
Security		

APPENDIX 5

VI - DISTRIBUTION OF NO. OF TRAINING SCHEMES PER AREA

VII - DISTRIBUTION OF PARTICIPANTS PER AREA

VIII - DISTRIBUTION OF TOTAL DURATION PER AREA

APPENDIX 6

MINISTRY OF JUSTICE

24 March 1993

DIRECTORATE GENERAL OF PRISON SERVICES
PSYCHIATRIC AND MENTAL HEALTH DEPARTMENT
CLINIC DIRECTOR'S OFFICE

Dr António Alves Gomes

For the attention of
the Director General of Prison Services

In reply to your request I would inform whomever it may concern that the prisoners in the security sector of the Vale de Judeus Prison who were observed in the Psychiatric and Mental Health Clinic in 1992 are socially maladjusted and anti-social individuals who are dangerous, show aggressive behaviour towards themselves and others, and are responsible for their acts, since they are not suffering from a mental illness liable to produce a medical finding of psychosis and consequent lack of responsibility for their actions.

Yours etc

The DIRECTOR

(signed)
Dr António Alves Gomes

APPENDIX 7

DIRECTORATE GENERAL OF PRISON SERVICES
DIRECTOR GENERAL'S OFFICE

LISBON 32.4.93

Having recently been informed that in some prison establishments prisoners' bed sheets are not changed and washed with the requisite minimum frequency and that this shortcoming has resulted in serious problems of health and hygiene, I hereby rule as follows:

1. that the two sheets and pillowcase used by each prisoner shall be replaced every week with similar washed bedclothes;

2. that the blankets issued to each prisoner shall be washed at least every three months and whenever the respective user is transferred or released;

3. that whenever so requested by the person concerned, the prisoner shall be allowed to use his own bedclothes.

Yours etc

The DIRECTOR GENERAL
(signed)
Fernando Duarte

APPENDIX 8

MINISTRY OF JUSTICE
DIRECTORATE GENERAL OF PRISON SERVICES

Sentence Enforcement and Security Measure Services

CIRCULAR NO. 72
LISBON, 26/11/80

For the attention of the Director

For your information and for the purposes of its implementation, I enclose a photocopy of the directive drawn up by the Minister of Justice relating to the presence of prison officers during prisoners' medical consultations.

Yours etc

The DEPUTY DIRECTOR GENERAL
(signed)

DIRECTIVE

1. The Chairman of the Medical Association informs me that he has been "alerted to the fact that prison officers accompanying prisoners for medical consultations frequently demand to be present during the examinations".

He considers that this situation blatantly contravenes a fundamental human right and a basic rule of medical ethics, viz the "inalienable right of the patient to professional secrecy".

2. It has been my constant concern to promote respect, in the operation of the prison services, for the principle of humanitarian treatment of offenders: "the prisoner's human dignity must be recognised by all staff at all times" (Directive no. 23/78 of 10.10.78, in D. Rep, Series II, of 23.10.78).

However, as I also stressed in the same Directive, this concern cannot be allowed to override the immutable principles of the authority of the State, the security of all citizens and the discipline of the services.

Under the circumstances I do consider that the presence of prison officers or other staff of the Directorate General of Prison Services should be avoided during medical examinations.

Where the presence of such persons, is not absolutely necessary for security reasons, it infringes the confidentiality which should characterise the doctor-patient relationship.

It is nevertheless obvious that this guideline cannot be absolute and unalterable; a sense of responsibility, prudence and common sense would dictate exceptions to this rule, where the dangerous character of the prisoner or the circumstances in which the medical treatment takes place conclusively indicate that an exception would be appropriate.

In such cases the officer accompanying the prisoner/patient must inform the doctor of the exceptional conditions and subsequently provide reasons for it, if this is deemed necessary by the Minister of Justice or the Director General of Prison Services.

Communicated to the Directorate General of Prison Services and the Medical Association.

Lisbon, 12 November 1980

(signed)

Mário Raposo
Minister of Justice

APPENDIX 9

For the attention of
the PRISON DIRECTOR

CIRCULAR NO. 10

LISBON, 14 May 1992

Cases of prisoners with injuries or physical contusions are occasionally noted in our prisons

We also, albeit rarely, receive complaints from prisoners returning from temporary transfers to other prisons.

If we are to have ready access to information and clarifications on these situations, the services must take the necessary steps to prevent, in future, any confusion or undue exploitation of such cases.

I therefore hereby rule that the Prison Director shall order a specialist medical examination of any detainee or prisoner in respect of whom such situations are noted, and that the said detainee or prisoner shall be heard with a view to drafting an Official Declaration.

Photocopies of the said documents should be forwarded to the Directorate General of Prison Services.

Yours, etc

The DIRECTOR GENERAL
(signed)
FERNANDO DUARTE

APPENDIX 10

DIRECTORATE GENERAL OF PRISON SERVICES
MENTAL HEALTH DEPARTMENT
PSYCHIATRIC AND MENTAL HEALTH CLINIC

For the attention of the
Director General of Prison Services
Dr Fernando Duarte
24.5.91

RE: PREVENTION OF SUICIDE

Both in the community at large and in detention facilities, suicides and attempted suicides are a constant in all societies as paradoxical and pathological forms of communication, aggressiveness and depression. The phenomenon scarcely varies in intensity, although at certain times it may increase or decrease.

It increases in intensity, where depressive illnesses and manic-depressive psychoses are concerned, at the beginning of and during the spring, and also in autumn.

We are currently witnessing conspicuous signs that this latter trend is being confirmed in the community at large, and I believe this is having repercussions in our prison services.

THEREFORE:

a) in addition to the training and information campaigns (involving the staff of the following services: technical, educational, prison officers, etc) which we have, at your initiative, been consistently running for four years now, and which, as we know, have produced useful results by preventing a great many cases and reducing the number of cases of self-mutilation;

b) I consider that it might be appropriate to draw the attention of Prison Directors and all technical staff to high-risk groups and high-risk periods for suicide attempts.

HIGH-RISK GROUPS

These are psychiatric patients (particularly those suffering from depression and schizophrenia), alcoholics and drug addicts.

HIGH-RISK PERIODS

As stated above, these are:

a) the period surrounding admission to prison;

b) the period preceding the judgment;

c) the period following the judgment;

d) periods of emotional break-ups occurring outside prison (divorce, separation, death of family members, etc) or within the social life of the prison;

e) suspension or absence of visits and communication with the outside;

f) periods of emotional expectation (positive or negative) involving unsure or conditional releases or amnesties;

g) the pre-release period, with re-activation of guilt feelings, expected or actual rejection by, and acute conflict with, the family;

h) during situations of recent suicides in the same or other prisons, and waves of suicides in the community at large accompanied by extensive media coverage.

At the present time we should be paying even greater attention to these indicators (HIGH-RISK GROUPS - HIGH-RISK PERIODS).

Prisoners who are, or are expected soon to be, in such situations should be more closely watched and, where appropriate, taken out of solitary confinement, they should be examined by the prison doctor, given greater support by the educators, and staff should generally be alerted to the need for vigilance. In all cases of doubt, the Psychiatric and Mental Health Clinic should be contacted.

These precautions are important, as is the possibility of early detection of pre-suicidal signs, eg sudden behavioural changes in a prisoner which are inconsistent with his nature.

Since DEPRESSION is the main cause of suicide, I shall set out a number of clues which might help in detecting it:

HOW TO RECOGNISE A DEPRESSIVE SYNDROME IN CLINICAL PRACTICE

TWENTY POSSIBLE SYMPTOMS ENCOUNTERED IN DEPRESSION

1. Manifestations of inhibition or apathy.
2. Depressed or dysphoric, curt, anxious, irritable moods.
3. Anxiety, apprehension, fear.
4. Feelings of despair, inferiority, abandonment, discouragement.
5. Drop in self-esteem and deterioration of self-image.
6. Ideas of and/or attempts at suicide.
7. Panic (anxiety) attacks.
8. Somatisation (muscular tension, chronic headaches, digestive disturbances, atypical pains);
9. Sleep disturbances, with insomnia or hypersomnia;
10. Anorexia, with weight loss, or polyphagia, with weight gain;
11. Difficulties vis-à-vis mental processes, memory, ratiocination and ability to concentrate; indecision;

12. Loss of interest in work or everyday chores, which the patient may be unable to carry out;
13. Social isolation. Slowing of the psychomotor faculties;
14. Loss of interest in activities previously considered attractive;
15. Anguish, agitation and/or aggressive dysthymia;
16. Loss of interest in sex, decrease in sexual activity and/or sexual dysfunctions;
17. Lack of reactivity (the patient fails to react to any positive changes in his environment);
18. Circadian variations (the patient may feel better at night and worse in the morning, or vice-versa).
19. Increase in alcohol consumption or use of drugs, contrasting with previous habits.
20. Delusional ideas centring on culpability, doom, unworthiness, annihilation, guilt and remorse, or even visceral negation and eternal suffering (in delirious melancholies reaching the stage of psychotic destructuring of the ego).

When implementing the precautions suggested it should never be forgotten that, in addition to the forms of depression noted every person with suicidal tendencies has enormous aggressive potential and is often - in cases of feigned attempts at suicide - driven to use blackmail.

The technical expert must take account of this aggressiveness and adopt an understanding but firm position, never allowing himself to be drawn into the vicious spiral of blackmail, which is harmful even to the person initiating them.

A number of pointers for psychotherapeutic treatment might be useful here.

The psychotherapeutic attitude is also very useful in preventing the risk of suicide. Fantasy is always present in the relationship with the depressed patient, which tends to affect the medical doctor, causing enormous anxiety and therefore disrupting his therapeutic activity.

It is particularly important to note that intense depressions with major elements of inhibition may be remedied by pharmacological therapy more readily than the actual depressive mood, thus increasing the potential risk of suicide at this stage. It is as if the patient's psychomotricity has been released, giving him the "strength" to put his self-destructive ideas into practice.

A relationship which is perceived as being empathic and reassuring will favour and make possible the verbalisation of the any suicidal thoughts arising.

Suicide, or potential suicide, is surrounded by the crossfire of a conflict centring on ambivalence, which at conscious level takes the form of a harrowing struggle between the desire to destroy oneself as an alternative to giving vent to one's aggressive feelings on others (the person attempting suicide is primarily "angry" with someone and, secondarily, with himself), and fantasies of salvation and redemption.

On noting the existence of suicidal ideas, the doctor must resist the temptation to argue rationally and logically with the patient, but must rather concentrate on what we might call the positive side of the ambivalence, the desire to live, transmitting to him his empathic understanding and assuring him in some way that his availability is not compromised by the "death drive", in short offering himself as a good "object" in the relationship and as a

sufficiently solid buffer for the more or less manifest aggressiveness emanating from the person intending to destroy himself.

Emergency psycho-pharmacological therapy in cases of serious risk of suicide should take the form of administration of fast-acting sedatives and tranquillizers, allowing the patient to be quickly hospitalised if necessary.

In the hope that these observations will be useful for the situation under consideration, I remain,

Yours etc

The Director
(signed)
Dr António Alves Gomes

Caxias, 24 May 1991

APPENDIX 11

For the attention of the
Research and Planning Division

CIRCULAR NO. 18/85/DCSDEPMS_ 14 7.1.85

RE: Control of correspondence - Ombudsman and lawyers

Under the terms of Article 150 (1) of Legislative Decree no. 265/79 of 1 August 1979, amended by Legislative Decree no. 49/80 of 22 March 1980, prisoners may, individually or collectively, submit to the organs of supreme authority or any other authorities petitions, complaints or claims in defence of their rights, the Constitution and general legislation.

Since the question has arisen whether the Ombudsman is included among the bodies referred to in the aforementioned article, I hereby set out the following clarifications:

1. Article 150 (1) refers to both the defence of the prisoners' rights as such and the defence of other individual rights which do not specifically derive from the situation of deprivation of liberty in which the prisoners find themselves.
Consequently, the concept of authority to which the Article refers also includes the Ombudsman.

2. Prisoners may correspond with these authorities for the defence of their rights without censorship, ie correspondence sent and received may not be withheld and its content must remain intact.

3. However, such correspondence is not exempt from verification, with the exception of that sent by the Ombudsman to prisoners, which is accorded special treatment in pursuance of Circular no. 273 of 14 October 1980: "correspondence sent by the Ombudsman to prisoners shall be sealed in an envelope, placed in a second envelope addressed to the prison director and accompanied by an official letter signed by the Ombudsman".

4. Correspondence with the Ombudsman must be recorded in a special register, duly initialled by the official and the prisoners.

5. Correspondence with appointed lawyers shall also be exempt from verification, except in the case of well-founded suspicions that the outside addressee or sender are not authentic.

6. Prisoners' correspondence addressed to or received from their lawyers shall only be subject to censorship in the case of well-founded suspicions that its content might jeopardise the security of the establishment or is aimed at achieving illicit aims.

7. Circulars nos. 52, 53 and 70, of 12 July 1976, 19 August 1976 and 27 August 1984 respectively are hereby repealed.

THE DIRECTOR GENERAL
(signed)

APPENDIX 12

MINISTRY OF JUSTICE

Private Office of the Minister
Directive no. 130/80

1. Act no. 65/78 of 13 October 1978 approved, for ratification, the European Convention on Human Rights.

Legislative Decree no. 265/79 of 1 August 1979, which restructured the services responsible for measures depriving persons of their liberty, highlighted the principle that such measures should be enforced in such a way as to respect the personality of the prisoner and his legal rights and interests which are not affected by the sentence [Article 3 (1)], thus almost exactly reproducing Article 1 (2) of Decree no. 2273/1977 of 29 July 1977, in Spain, altering the regime of prison establishments.

Accordingly, Article 151 (1) of Legislative Decree no. 265/79 explicitly secures the rights recognised in Articles 25 ff of the Convention. The Legislative Decree further prescribes that "the Minister of Justice shall regulate the internal modalities for the respective applications" [Article 151 (2)]. It was only by mistake that this Article 151 of Legislative Decree no. 265/79 was preceded by the heading "Applications to the European Court of Human Rights", to which the preamble to the same text also alludes. In fact, the real issue is the right of petition (appeal) to the European Commission of Human Rights, which is a separate body from the Court, although they are both part of the Council of Europe.

The regulation which is hereby approved is merely subsidiary to Act no. 65/78 and to the Convention and its Additional Protocols, as regards appeal procedure, and to Legislative Decree no. 265/79, as regards the internal regulations of the prison establishments. However, one matter merits attention. The right of petition in general is enshrined in the Constitution [Article 49 (1)] and is one of the bases of the human rights protection system set forth in the Convention. It should therefore not be considered that the exercise of the said right can be restricted *de facto* by application of Article 43 of the Legislative Decree. Moreover, the principle which currently prevails in the field of prison law is that censorship of prisoners' correspondence is an exceptional measure. It is therefore understood that the provisions of Articles 40 ff of the Legislative Decree should, under these circumstances, be applied in such a way as to avoid preventing *de facto* the exercise of the said right. However, that is not to say that it should be purely and simply eliminated as a tribute to the purity of the "grand designs". In fact, it is actually the Council of Europe which warns about the abuses to which the exercise of the right of petition may indirectly give rise. In the specific case of its exercise by prisoners, the Council explains that the latter are not dispensed from complying with the prison rules and subjecting their correspondence, including letters to the Commission, to any normal control by the prison authorities" (Human Rights Files, no. 2, 6 October 1978). We have opted for as open a solution as possible, albeit in such a way as to avoid affecting the requisite discipline of prison establishments.

2. Therefore, on the basis of Article 151 (1) of Legislative Decree no. 265/79 of 1 August 1979, I hereby rule as follows:

1. Prisoners who consider that they have suffered violation of any of the rights listed in the European Convention on Human Rights and its Additional Protocols, with the reservations formulated in Act no. 65/78 of 13 October 1978, by a public authority acting subsequently to the entry into force of the Convention in Portugal, may, after having exhausted all available domestic remedies and within a period of six months after the last decision of the highest-level competent national authority, submit to the European Commission of Human Rights, individually or collectively, a petition addressed to the Secretary General of the Council of Europe.

2a. The petition must be drafted on plain unheaded, unsealed paper in such a way as to avoid prejudicing the effective exercise of the rights set forth in Articles 25 ff of the Convention and the established provisions of Articles 40 ff of Legislative Decree no 265/79.

2b. Under no circumstances shall the prison director withhold correspondence which a prisoner has addressed to or received from the Council of Europe.

3. The Directorate General of Prison Services shall allow prisoners who so request to consult, on the prison premises, Act no. 65/78 and the complete text of the Convention and its Additional Protocols, in the official translation.

4. The same Directorate General shall commission an unofficial Portuguese translation of the Rules of Procedure of the European Commission of Human Rights, to which it shall, where possible, provide access for prisoners so requesting.

5. Any prisoner requesting information on the most appropriate manner in which to exercise his right of petition may submit his reasoned observations to the Legal Access Department (*Gabinete de Acesso ao Direito*) of the Ministry of Justice, when it is set up.

6(1) With a view to having his petition drafted in one of the Commission's official languages (French or English), the prisoner may request, by means of a formal application to the Minister of Justice, wherein he shall briefly substantiate his state of insolvency or any other valid difficulty, that the petition be translated into one of the said languages by the Ministry services.

6(2) The Minister of Justice shall hear the prison director concerned and subsequently, if the petition is justified, authorise its translation into one of the said languages, free of charge in respect of the prisoner.

6(3) In such cases, as a general rule, the length of the petition must not exceed two twenty-five line pages.

APPENDIX 13

RIGHTS AND DUTIES OF PERSONS CHARGED WITH A CRIMINAL OFFENCE

Article 61, Code of Criminal Procedure

The person so charged must be informed of the following:

He must consider himself as a defendant in a criminal prosecution, in which he has the following particular **rights:**

a) To be present during procedural acts which directly concern him;

b) To be heard by the investigating judge or court whenever they have to take any decision which directly affects him;

c) Not to reply to questions put by any authority or body on the facts with which he is charged or on the content of any declarations he has made on such facts;

d) To select, or request that the court appoint, a defence lawyer;

e) To be assisted by a defence lawyer in all procedural acts during which he is present, and, where he is detained, to communicate with him, including in private;

f) To participate in the inquiry (*inquérito*) and judicial investigations (*instrução*), providing evidence and requesting those judicial acts which he deems necessary;

g) To be informed of his rights by the judicial authority or the criminal investigation department before which he must appear;

h) To appeal, pursuant to the law, against any decision contrary to their interests.

and has the following particular duties:

a) To appear before the judge, the Public Prosecutor or the criminal investigation departments whenever this is required by law and he is duly summoned for that purpose;

b) To reply truthfully to questions put by the competent body on his identity, and where required by law, on his criminal record;

c) To submit to evidence-taking proceedings and the means of coercion and financial surety specified in law and ordered and conducted by the competent body.

APPENDIX 14

National Police and Criminal Science Institute

POLICE DEONTOLOGY

Trainees are required:

- To be able to identify the main deontological functions of a criminal investigation agent of the Judicial Police;

- To demonstrate, vis-à-vis the various administrative, judicial and social exigencies, efficient, conscientious, self-reliant and ethically sound behaviour patterns.

On completion of the course the trainee should be able to:

- Identify the broad lines of the political system within which police activities must take place, considering police organisations as integral parts of the State's sovereign function (General Services for the Administration of Justice with responsibilities for the security of citizens and the defence of the Institutions);

- Identify the general rights and duties of a civil servant;

- Identify the special rights and duties of an officer of the Judicial Police.

Programme content:

- Presentations
- Aims of the subject
- The police institutions and the political system
- Rights, freedoms and safeguards
- Values and norms
- The police as an institution for the maintenance of order
- The timing of police action (ideological and punitive mechanisms)
- Police functions
  (formal and informal functions)
- The community and the police
- The police as an auxiliary institution for the administration of justice
- General duties of an official of the Public Administration:
  duty of impartiality
  duty of diligence
  duty of obedience
  duty of secrecy
- General rights of an official of the Public Administration
- Special duties and rights of a Judicial Police Officer:
  right of access
  right to use the *cartão de livre-trânsito* (card affording the bearer right of access to private premises, [pass card])
  right to carry and use arms

- Discretionary use of police powers:
  limitations
  the legality principle
- Final considerations and assessment

DEONTOLOGY

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