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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 13 to 17 May 2013

The Portuguese Government has requested the publication of this response. The report of the CPT on its May 2013 visit to Portugal is set out in document CPT/Inf (2013) 35.

Strasbourg, 26 November 2013

Response of the Portuguese authorities

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has adopted, on 5 July 2013, the report on its visit to Portugal, carried out from 13 to 17 May 2013.

Portugal has studied this report thoroughly and sends its response herein. This document gives an account of action taken by national authorities to implement the Committee's recommendations and replies to the CPT's comments and requests for information.

We are pleased to note the Committee's comment that the co-operation received by the CPT's delegation during the visit, both from the national authorities and from staff at the establishments visited, was excellent.

We remain committed to working closely with the CPT, while fully implementing the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Directorate-General for External Policy

Ministry of Foreign Affairs of Portugal

A. Prison establishments

Comments made by the Ministry of Justice

1. Preliminary remarks

Paragraph 8

The CPT recommends that Portuguese authorities vigorously pursue their efforts to combat prison overcrowding, by placing further emphasis on non-custodial measures in the period before the imposition of a sentence, increasing the use of alternatives to imprisonment and adopting measures facilitating the reintegration into society of persons deprived of their liberty.

The Portuguese authorities are deeply engaged in solving the problem of prison overcrowding, deploying their action on legislative measures and on renovation works and increasing Prison Establishments´ capacity.

Within the scope of measures relating to the creation of mechanisms to stimulate the use of alternatives to imprisonment, it should be highlighted that the Portuguese Criminal Code foresees the possibility of replacement of imprisonment by non-custodial measures, such as the replacement of a prison sentence by a fine, house arrest with recourse to electronic surveillance techniques, substitution of fines for work, suspension of the execution of the imprisonment sentence and community work (Articles 43, 44, 48, 50 to 57 and 58 to 60 of the Criminal Code, respectively).

The Portuguese Code of Criminal Procedure restricts the requirements of pre-trial detention, decreases its length of application, and extends the range of application of the precautionary measure of remaining in house with electronic surveillance (Article 201 of the said Criminal Code).

It should be noted, in this context, that from the total of prisoners who entered the prison system during 2012, 57% did so following a final judicial decision of conviction and from the total of prisoners who were released in that same year, only 46% had served the entire sentence. It is also to be underlined that, in the same period, there were 20,683 people serving 21,946 measures of community work, and in March of the current year 707 penalties and measures with electronic surveillance were under enforcement. Finally, it should be recalled that the "National Plan for Rehabilitation and Reintegration 2013 - 2015" (approved by Resolution of the Council of Ministers 46/2013, of 23 July) is ongoing.

The preservation of prison facilities and the improvement of the material conditions of detention are a constant concern to the Portuguese authorities, so whenever situations of malfunctions and/ or damages are detected repairing works do take place.

There is a plan of works, financed by the Fund for the Modernization of Justice, aimed at the interventions considered priority and most urgent in the prison establishments in order to improve their operating conditions. At issue is the rehabilitation of degraded facilities, which will simultaneously contribute to increase prison establishments' capacity. Within such plan, interventions in 11 Prison Establishments will be undertaken (i.e., Caxias; Coimbra; Porto; Vale de Judeus; Funchal; Évora; Pinheiro da Cruz; Santa Cruz do Bispo; Special Prison of São José do Campo; Special Prison of Leiria, Regional Prison of Montijo), including acquisition of equipment.

In addition to such works, and also aimed at combating prison overcrowding, Portuguese authorities are developing another plan to increase the capacity of the prison system (which will amount to over one thousand places) and thus relieve the existing overcrowding in some prison establishments.

It is worth mentioning that a new Prison in Angra do Heroismo was built from scratch (the entry of the first prisoners is foreseen for November of the current year) and that renovation and expansion works are undergoing in the Prison Establishment of São José do Campo, in Viseu, and in the Prison Establishments of Alcoentre (works in completion), Caxias (1st stage of the works is completed and the 2nd stage is under completion), Linhó (works are completed), Coimbra (works started), Porto (works to start), Vale de Judeus (works started) and Leiria (works to start soon).

Paragraph 9

The CPT recommends that the Portuguese authorities establish a protocol for "guaranteed service" for inmates, applicable whenever there is a strike by prison staff.

Portuguese authorities would like to reaffirm that within the minimum services (which are decided by means of an arbitral decision) to be rendered during strikes, urgent telephone contacts with the representatives of the prisoners, all diligences that might delay the limit period on remand of custody or jeopardize the gathering of evidence (provided that the Public Prosecutors communicate it to the Prison Establishments), the admission and release of prisoners, the needs of food, hygiene, medical and religious assistance, as well as the enjoyment of two hours of daily recreation at open air were guaranteed at all times.

During longer periods of strike, prisoners were also entitled to enjoy a weekly visiting period.

Paragraph 10

The Committee would like to receive updated information on the current institutional arrangements for the provision and supervision of health care in prisons, as well as on the transfer process.

For all purposes, since 2009, prisoners are considered as users of the National Health Service and have access to it in the same conditions as any other citizen, (Law 115/2009 of 12 October).

As it was mentioned in previous report, steps have been taken towards a closer cooperation and participation of the National Health Service in the effective and regular provision of healthcare in the prison context. For this purpose, the Directorate-General of Probation and Prison Services and the representatives of the Regional Health Service Departments have been holding meetings in order to analyse the possibility of a greater number of health related professionals from the Ministry of Health to collaborate with the prison system and/or to guarantee that certain medical specialties are ensured by the specialized services of that Ministry.

It is important to remind Portugal's present economic and financial situation, which has repercussions, *inter alia*, in the scarcity of human and financial resources affecting both the Ministry of Health and the Ministry of Justice.

Paragraph 11

The CPT reaffirms its recommendation to take oversight measures to ensure the quality of health services, in particular staff stability.

The Portuguese authorities share the CPT´s concern.

To this effect, certain mechanisms were established to allow a more careful analysis of the whole procedure and, if necessary, to accelerate it. Therefore, and in addition to the clause contained in the specifications of the public tender that determines that the contractor shall keep the central core of the staff who will work in the Prison Establishments for a minimum period of six months, other means to facilitate the investigation and analysis on the quality of the provision of healthcare in Prisons exist. Such is the case of performing technical audits on a regular basis, in order to follow up and supervise the quality of the service rendered by health professionals and by the company as a whole. To make this work more complete and comprehensive, the audit team includes general practitioners as well as nursing and pharmacy practitioners.

The audit team is also provided with information made available by the Directors of Prison Establishments regarding the health professionals who work in those Establishments. Whenever the Prison Establishments' Directors consider that such health professionals are not performing their duties in a proper and desirable manner, they may ask the Central Services for their suspension and immediate replacement.

2. Lisbon Central Prison

Paragraph 14

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

The Portuguese authorities have been complying with this recommendation particularly by means of paying special attention to the training of their prison staff and to the maintenance of a good relationship between prisoners and all the staff who, in different manners, provide services within the prison administration.

As regards the investigation and punishment for ill-treatment, and as previously mentioned, the Auditing and Inspection Service of the Directorate-General for Probation and Prison Services (SAI), which is coordinated by a Public Prosecutor magistrate, performs its activity, either *ex officio* or following prisoners or their families' complaints, or news conveyed by the media; an investigation is opened and in case of a public crime, a communication to the Public Prosecution Service is mandatory.

Prison establishments may, at any moment, be visited by members of sovereignty bodies, including magistrates, representatives of international organizations working on subject matters related to the promotion and protection of the prisoners' rights. Furthermore, the prisoners have the right to correspond themselves, without any control, with lawyers, notaries, solicitors, diplomats, sovereignty bodies, the Ombudsman, the Audit and Inspection Service of Justice and with the President of the Bar Association.

In relation to the incident reported by prisoners in the D Wing of the Lisbon Central Prison, which occurred on the night of 31st December 2012, an inquiry was opened. In that night, several prisoners of the D Wing disobeyed legitimate orders issued by prison officers, which is a serious disciplinary offence (provided for in Article 104(h) of the Code of Execution of Criminal Sanctions). All prisoners involved in this incident were heard in the undertaken inquiry and none of them complained of ill-treatment by the officials.

Paragraph 15

The CPT would like to be informed of the outcome of the investigation by the SAI and of any subsequent actions taken in these cases, as well as of whether the Public Prosecutor's Office was informed of these incidents of alleged ill-treatment of prisoners.

As to the incidents referred to in paragraph 15, in the case of the first incident related by a prisoner from D Wing, allegedly occurred on the 2 of December, the complaining prisoner was heard in the Legal Office of the Prison Establishment and his declarations were sent to the SAI, which closed the case for lack of evidence.

In relation to the second incident, i.e., to the facts occurred on the 4 of May involving prisoners placed in the E Wing, an inquiry was also opened by SAI, which concluded that the use of coercive means was needed and had been adequate and proportional in accordance with the conditions and procedures established in the Regulation for the Use of Coercive Means.

Please refer to annexes 1 and 2.

Paragraph 16

The CPT recommends that authorities take the necessary steps to ensure that whenever there are grounds to believe that an inmate may have been ill-treated, either within the prison concerned or by law enforcement officials prior to being remanded to prison, this matter is rapidly and systematically brought to the attention of the relevant investigatory authorities, notably the Prison Inspection and Audit Service (SAI) and the Public Prosecutor's Office.

This recommendation is complied with by Portuguese authorities since all *indicia* of ill-treatment or situations in which coercive means are used are mandatorily communicated to the SAI within 24 hours, by means of a written procedure (detailed in Regulation on the Use of Coercive Means) in accordance with Article 96 of the Code of Execution of Criminal Sanctions.

A medical examination must be performed, injuries are recorded photographically, subject to the consent of the inmate. Injuries prior to being remanded to prison are also seen by a doctor, photographed and sent to the Director-General (Article 11 of the General Regulation of Prison Establishments).

The improvement of these investigative proceedings is a major concern to the prison authorities.

If there are *indicia* of crime, the case is immediately communicated to the Public Prosecutor´s Office.

Paragraph 17

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

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

Human Rights issues are a major concern to the Portuguese authorities, and as detailed/demonstrated in the last report have influenced, guided and are contemplated in the domestic law. As such, they are since long included in the initial and continuous training of prison guards, in its various approaches, including the one related to the use of coercive means.

For instance, in the last Initial Training Course for Prison Guards, which started in April 2012, a total of 10h30 were dedicated to this specific matter; some of this training was given by members of International Amnesty, and the most relevant legal instruments, both national and international were analysed on this occasion.

On the other hand, continuous training of prison guards and prison staff covers several areas and Human Rights are included in such curricula. There is the intention, in the near future, to carry out in partnership with NGOs further training in Human Rights issues.

At the level of the Conference of the Ministers of Justice of Ibero-America, Portugal is a promoter and an active member of a Working Group in charge of drafting an e-learning training program in Human Rights, in order to improve and extend training in this field to prison staff and other relevant targets in different countries.

Paragraph 18

The CPT recommends that proactive measures be taken to address the issue of inter-prisoner violence in D Wing and consideration to be given to reinforcing the number of prison officers allocated to D Wing.

While accepting this recommendation, Portuguese authorities would like to clarify that the occasional problems of indiscipline that sometimes arise between prisoners in Wing D are imported from outside life, originating in existing rivalries between different groups. Some measures to minimize this problem were taken. To prevent the outbreak of conflicts and with exception to meal times and visiting hours where all cells are opened simultaneously both in the morning and in the afternoon, the opening time of the cells was changed. Some cells will open during the morning and others in the afternoon so that confrontation is avoided.

The incidents with prisoners allocated to the “lower part of Wing F” are occasional and, when necessary, the more confrontational prisoners are withdrawn from this sector. It should be borne in mind that, as a rule, prisoners only remain in the lower part of Wing F until the final conviction is delivered. After that, they are transferred to other Prison Establishments.

Paragraph 19

Once again, the Committee recommends that there be a permanent staff presence in the basement unit of F Wing whenever inmates are unlocked from their cells

Surveillance to "the lower part of Wing F" is undertaken by elements of the prison guard on duty on the whole wing. While accepting the recommendation on the need for a permanent surveillance in the lower part of F Wing of the Lisbon Prison, Portuguese authorities shall seek to fulfil this recommendation, insofar as there are enough human resources available.

Paragraph 22

The CPT reiterates its recommendation that vigorous action be undertaken to renovate the different wings, starting with the basement units. In this context, priority should be given to repairing broken windows, providing artificial lighting in every cell as well as fully partitioning the toilets in all the cells used by more than one person.

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

The Portuguese authorities accept both parts of this recommendation, as they had the opportunity to express in the previous report. Notwithstanding, the economic and financial constraints have to be taken into account.

Serious efforts are being made to improve the conditions of life in Lisbon Central Prison Establishment. Despite budgetary constraints, expenses with the conservation of equipment amount to 17 594€; other goods 5040€, hygiene and cleaning 10607€. Throughout the year 2013, 360 linen, 100 mattresses, 100 towels, 222 blankets, 200 economic lamps, 45 pallets and 110 pillowcases were acquired and replaced. Cells from different wings, as well as some spaces outside the prison area were painted with the cooperation of the prisoners. Pest controls (rats and cockroaches) were performed.

In what concerns the partitioning of sanitary facilities in cells occupied by more than one person, the solution suggested for such difficulties is complex, as the divisions would diminish the cell space. In F, G and H Wings of the Prison Establishment, where individual cells are wider WCs are fully partitioned. Despite difficulties, alternative solutions allowing for more privacy are being considered.

Paragraph 23

The CPT recommends that the Portuguese authorities take the necessary steps to develop purposeful activities for remand and sentenced prisoners. Employment opportunities, equitably remunerated, for many inmates could be found in the context of the renovation work referred to in paragraph 22.

Portuguese authorities, acknowledging the importance of developing purposeful activities for convicted and on remand prisoners, accept and follow this recommendation. Education and professional training of the prisoners as well as their integration in professional activities are envisaged as important means to achieve their social reintegration. Precisely due to this concern and as mentioned above, the National Plan for Rehabilitation and Reinsertion 2013-2015 was approved and is being implemented.

At the time of the CPT visit in May 2013, there had been a slight decrease of prisoners engaged in labour activities, as compared to the CPT last visit due to the closing of a workshop on electronic components for lack of orders. In the beginning of the last school year, there were 303 prisoners enrolled, 73 of which abandoned school, due to release, transference or other personal reasons.

Lisbon Central Prison seeks to make available an educational project to accommodate the needs of prisoners, regardless of their educational level and their criminal-legal situation. The Lisbon Central prison seeks to implement an equality of opportunities principle, notwithstanding the fact that convicted prisoners are generally more motivated. Indeed, some difficulties arise in the case of juveniles enrolled in Education and Training courses for adults, because this training is specially designed for mature prisoners. Another problem is that of the certification of prisoners that enrol late in the school year and who, for that fact, attend an insufficient number of classes.

Paragraph 24

The Committee recommends that the necessary steps be taken without delay to transfer all juveniles currently detained in Lisbon Central Prison to another establishment offering both an appropriate environment and a tailor-made regime that responds to the individual needs of the inmates concerned.

It is also a major concern for the Portuguese Prison authorities to keep separated juvenile offenders from the other prisoners and to proceed to their placement in prison establishments as close as possible to their social and cultural background.

As mentioned in the previous report, a pilot project aimed at younger prisoners is currently being implemented in three prison establishments.

The intention underlying this project is to address the specific needs of this age group. The model of the technical intervention in prison environment seeks to respond to prevalent crime factors in this age group, by means, inter alia, of the development of two specific programmes. The "*Intervention program for juveniles up to 21 years old convicted for violent crimes*" and the program "*Generate Social Ways*". These programs are sequential and complement each other. They are conceived for groups of around 10 to 12 persons and their objectives are general crime prevention, re-offending prevention, prevention of crime by younger offenders, and the promotion of a social integrated life style and attitudes.

The first program is composed of 22 sessions and aims to enhance and develop key-competences in view of a consistent and long lasting social reintegration process and the improvement of juveniles' abilities to interact with other individuals.

The second program, more intensive in what concerns emotional activation, is composed of 44 sessions; with therapeutic objectives, promotes change through cognitive restructuring of dysfunctional mental processes and schemes.

In addition to these specific rehabilitation programmes, younger prisoners also benefit from educational activities, counselling, professional training, as well as sports, specifically adapted to their age group's interests and needs.

Paragraph 25

The Committee reiterates its recommendation that steps be taken to increase the presence of general practitioners at Lisbon Central Prison to the equivalent of at least three full-time posts. Further, the presence of nurses should be increased.

The Committee recommends that the presence of a dentist be increased to the equivalent of at least a half-time post.

The Portuguese authorities accept this recommendation, but nonetheless note that the reinforcement of general healthcare and nursing must be thoughtfully planned, bearing in mind current budgetary constraints.

In this context, it should be mentioned that whenever healthcare professionals from the Directorate-General for Probation and Prison Services are absent for vacation or for health reasons, the Prison Establishment' Director may request their replacement.

Paragraph 26

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

As mentioned in the previous report, all the requisites of the assessment of a newly arrived prisoner are explicitly established in the 2009 Handbook of Procedures for the Provision of Healthcare and in the Code of Execution of Criminal Sanctions.

The admission of a new prisoner to the establishment is communicated to the medical services, and the prisoner's medical data is annexed to his file. The prisoner is placed under observation by a nurse within 24 hours subsequent to his admission. In the case where the nurse identifies the need for immediate medical observation, the prisoner is immediately referred to the Prison Establishment's doctor, or, if necessary, emergency proceedings are activated, guaranteeing that the prisoner is given access to medical care with quality standards identical to those afforded to all other citizens. A full medical examination upon admission of the prisoner in the Prison Establishment is carried out within 72 hours subsequent to his admission, except in emergency cases.

Paragraph 27

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

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

Recording of the medical examination in cases of traumatic injuries should be made on special form provided for this purpose, with «body charts» for marking traumatic injuries that will be kept in the medical file of the detainee. If any photographs are made, they should be filed in the medical record of the person concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above mentioned statements and the doctors´ opinion/observations, should be made available to the prisoner and to his lawyer.

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

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

The *Register Sheet of Aggressions/Self-Mutilations* (constituting annex 27 of the said Handbook of Proceedings for the Provision of Healthcare in Prisons) is a form specially designed to record all injuries detected by doctors subsequent to complaints of aggressions or suspicions of aggression.

Acknowledging the need for a more detailed register of the aggressions and their clinical consequences, and bearing in mind the relevance of such register as means of proof, a proposal on the register of aggressions in the prison environment was presented by the Coordinator of the South delegation of the SAI. The Director-General of Probation and Prison Services approved this proposal in 16 April 2012.

It reinforces the need for the dissemination of clear guidelines to all Prison Establishments' Directors concerning the obligation for medical services to fulfil the form contained in Annex 27 of the Handbook of Proceedings for the Provision of Healthcare in Prisons every time a prisoner is physically assaulted, including the detailed reference to the specific body areas injured to be complemented with a photographic register of the injuries, whenever possible.

Paragraph 28

The CPT recommends that the necessary measures be taken to stop the practice of prison doctors establishing certificates indicating that an inmate is "fit for punishment" at Lisbon Central Prison and in every other Portuguese prison (including at Monsanto Prison) where the practice may still be applied;

The CPT recommends that prisoners in provisional isolation be visited daily by health-care staff;

The CPT's recommendation concurs with the concerns of the Portuguese authorities which would like to clarify that the purpose of the clinical assessment preceding the execution of the disciplinary sanction of remaining in the disciplinary/ordinary cell is not to decide if the inmate is fit for the sanction, but rather the opposite, i.e., to verify whether the inmate's health conditions may justify the postponement or discontinuation of the enforcement of the disciplinary sanction.

It should also be mentioned that an inmate subject to a disciplinary sanction of confinement must be kept under constant medical surveillance, be visited by a nurse every day and be examined by a physician whenever necessary (Article 175(1) of the General Regulations of Prison Establishments).

Paragraph 29

The CPT considers that the prison infirmary should be patrolled by prison officers at night and that the night duty nurse should be able to access the cells in the infirmary without delay in case of emergency.

This recommendation is also accepted by the Portuguese authorities. It is worthwhile to mention that surveillance and the guards scaled for the night period carry out support to the infirmary. The Lisbon Central Prison will try to deploy a guard in full time for this area.

Paragraph 30

The CPT recommends that measures be taken to ensure sufficient staffing levels – including at managerial level – at Lisbon Central Prison.

As to this recommendation, the Portuguese authorities will try, as far as the availability of surveillance staff would allow it, to reinforce the surveillance of these areas in the Lisbon Central Prison.

Paragraph 31

The CPT reiterates its recommendation that the disciplinary procedure be improved by giving prisoners access to the statements of prison officers with the opportunity to challenge them, and offering them the possibility to be heard by the Director before a sanction is imposed.

As referred in the previous report, disciplinary procedure and the competence to apply disciplinary sanctions to prisoners is strictly regulated by the Code of Execution of Criminal Sanctions.

The enforcement of disciplinary measures is always preceded by written or recorded procedure; the inmate is informed of the facts he is accused of, and has the right to legal assistance by a lawyer, to be heard, and to present evidence. The final decision and its grounds are notified to the inmate and/or his lawyer and recorded in his individual file. The execution of the disciplinary measure is of the responsibility of the Prison Director.

Paragraph 32

Once again, the CPT recommends that the Portuguese authorities take the necessary steps to ensure that placement in provisional disciplinary isolation do not last longer than a few hours.

As to this recommendation, the Portuguese authorities would like to inform that they comply with the Law in this particular. As a rule, the time during which an inmate is provisionally isolated and waiting for a review decision on the disciplinary measure is counted in the total time of the execution of the sentence.

It is possible, as previously stated and reaffirmed in the meeting between the CPT and the Directorate-General for Probation and Prison Services, which in rare and isolated situations such period may not have been counted at the time of the execution of the disciplinary sanction. It is being considered to issue a recommendation to all prison establishments to remember that such period of provisional detention should be always counted.

Paragraph 33

The CPT recommends that the remarks made in paragraph 33 be taken into account when the legal provisions regarding disciplinary confinement are amended.

As mentioned in the course of the 2013 CPT's last visit, the Portuguese authorities have no objection, in principle, to reduce the maximum duration of disciplinary confinement from 21 to 14 days. Nevertheless, and as it was pointed-out then, it implies legislative amendments, which did not take place.

As to the remaining part of the CPT's paragraph 33 remarks, careful consideration shall also be given.

Paragraph 34

The CPT recommends that steps be taken to ensure that every prisoner in disciplinary confinement is offered daily access to the outdoor yard for at least one hour.

This recommendation is being complied with as all prisoners held in disciplinary confinement at Lisbon Central Prison are offered daily access to the outdoor yard for an hour per day; such access is taking place after bathing and cell cleaning.

Paragraph 35

The Committee recommends that steps be taken as regards restrictions on family contact in the context of disciplinary confinement, to amend the rules and practice in the light of the remarks in paragraph 35.

As previously stated, there is no prohibition of family contact. Prisoners serving a disciplinary confinement sanction can, upon request to the Director, receive visits.

3. Monsanto High Security Prison

Paragraph 37

The Committee recommends that the necessary steps be taken to ensure that all the safeguards referred to in paragraph 37 in relation to the use of force by prison staff exist in practice.

The Portuguese authorities would like to highlight the fact that prisoners have reported a fair and correct treatment by the Monsanto High Security Prison Establishment's staff.

It is believed that this recommendation is being observed at the Monsanto Prison Establishment.

Bearing in mind its status of high security prison, Monsanto is under constant scrutiny by several bodies and entities, as for example SAI, the Directorate General for Probation and Prison Services, the Court of Execution of Sanctions, the General Inspectorate of Justice Services and the Ombudsman. None of them detected any excessive use of force.

As referred in the last report, the use of coercive means in prison establishments is stringently regulated by the Code of Execution of Criminal Sanctions and its Regulation.

In cases where these means are used, prisoners are taken to clinical services, to be examined by a nurse or a doctor, and when needed, receive treatment for injuries suffered.

An information with the results of the examination, detailed description of the injuries and of the treatment is drafted, and together with a specific form (model form 13), also fulfilled by the medical staff, is added to the individual record of the inmate, as well as photographic registry depending on consent of the prisoner, so that all proceedings are registered in a written manner.

The prisoner and his lawyer can have access to the prisoner's clinical data.

The file is submitted to the Prison Director, who opens an inquiry, orders official communications as well as the taking and conservation of images from surveillance cameras.

Subsequent to the opening of the inquiry, the data concerning the inquiry is communicated to the SAI. Nevertheless, the inmate and his lawyer and some official authorities, such as the Ombudsman or the General Inspectorate of Justice Services, can have access to the data.

In what regards the use of coercive means by prison guards, it is important to stress that besides their training, an effort is being made to raise awareness, mainly in what concerns the need to obey legal provisions, understanding them correctly, in particular on the aspects related to the proportionate use of coercive means and the respect towards the prisoners.

Paragraph 38

The Committee recommends the practice of strip-searching at Monsanto Prison be reviewed in the light of the remarks in paragraph 38.

In the Portuguese prison system, the resort to strip-searching is subject to rigorous criteria, based on an individual risk assessment, supervised, and carried out in a manner respectful of human dignity.

As mentioned, the Monsanto Prison Establishment is a high security prison, i.e., a maximum-security prison. It opened in 2007 to lodge prisoners who due to their legal-criminal status or their behaviour show a level of danger incompatible with the placement under any other execution regime. The placement of a given prisoner in high security execution regime is based on individual assessment.

This security execution regime mainly consists mainly of life limitations in the prison community life and of limitations of the prisoner's contacts with outside life. Therefore, such restrictions cannot be regarded as discretionary acts, but rather as corresponding to the enforcement of stipulated rules of a high security establishment, as it is the case of the Monsanto Prison.

The majority of the Monsanto Prison´s population is characterized by aggressive and violent behaviour. Thus, the level of risk of violence is very high and continuous. Such high continuous level of danger is the source of a more strict preventive approach followed at Monsanto High Security Prison.

The function of strip-searching is to operate as a security and prevention tool with the purpose of guaranteeing order and discipline in the prison environment. In fact, the Law distinguishes between mandatory and non-mandatory strip-searches. Apart from the cases provided for in Article 152 of the General Regulation of Prison Establishments, Article 206(5) of the same Regulation also applies. Strip-search takes place whenever the prisoner receives visits without being separated from the visitor by a non-breakable glass and, thus, being possible a direct contact between the prisoner and the visitor, including intimate visits. This is intended to prevent security risks for the visitor, the prisoner and third parties.

Strip-searching is carried out in accordance with the provisions of the Handbook for Searches of the Directorate General for Probation and Prison Services (please refer to annex 3), in specific appropriated rooms, and in the presence of at least two guards (Article 152(7) of the said General Regulation of Prison Establishments).

The Committee´s recommendation on partial strip-searches has to be considered in light of security concerns.

Strip-searching in Monsanto Prison follows the security demands of a high security execution regime in accordance with the law.

Paragraph 39

The CPT recommends that appropriate measures be taken to ensure sufficient artificial lighting for reading purposes and an adequate temperature in cells at all times. Further, the plumbing of the in-cell sanitary facilities should be checked.

The CPT suggests for the in-cell toilets, to be equipped with at least a partial partition.

Before its classification as a maximum-security prison, the Monsanto Prison was renovated and provided with new equipment. Its premises are in an adequate state of conservation, not only in what concerns security, but also as regards comfort of prisoners and prison staff.

The cells have sufficiently sound hygiene and sanitarian conditions and respect prisoners´ dignity.

As to the artificial lighting for reading purposes, the fulfilment of the CPT´s recommendation would require refurbishment work in every cell, which would imply an excessively costly intervention. The choice of the lighting in cells is connected with security reasons: the lights must not be reachable by the prisoners, as they could be used as dangerous objects against their physical integrity or that of third persons, including against guards. The recourse to more powerful light bulbs as a way to solve the problem is under consideration.

Irregularities and breakdowns are immediately repaired, and at the moment improvements are being performed in plumbing and isolation against infiltrations.

In what concerns inside temperature, the fact that temperatures are generally mild in this region of the country should be taken into consideration. The lowest temperatures are registered between December and February, period during which clothes and blankets are distributed to the prisoners.

As for the WC partial partition, it should be also taken into account that the cells are individual, and therefore, prisoners´ privacy is ensured. For safety reasons, objects that can be ripped off and used to wound are avoided.

Paragraph 40

Once again, the CPT recommends that the yards be provided with shelter from inclement weather and prisoners to be provided with waterproof clothing, when necessary.

It is worth mention that all yards have a small platform of around 1.5m wide to protect from inclement weather. Notwithstanding the willingness of the Portuguese authorities to provide yards with shelter, it depends upon availability of financial recourses.

Paragraph 42

The CPT recommends that the Portuguese authorities review the regime for inmates at Monsanto Prison in the light of the remarks in paragraph 42. In particular, a program of purposeful activities should be put in place for each inmate, elaborated upon arrival at the establishment by a multi-disciplinary team and allowing progressively more out-of-cell time in the event of the inmate engaging in a positive manner with the regime;

All inmates serving sentences in Portuguese prisons, including in the Monsanto High Security Prison, must have a specifically adapted Plan for Individual Rehabilitation (PIR – please refer to annex 4).

The purpose of PIR is to prepare prisoners for their return to liberty. It establishes measures and activities adapted to the treatment in prison environment, comprising several phases of different duration and focusing in particular in such areas as schooling, training, work, health, social and cultural activities and relations with the outside world.

The PIR is periodically assessed, updated and follows the prisoner throughout the fulfilment of the sentence.

The elaboration of the PIR is carried out by the services of execution of sanctions, with the participation of the security and clinical services. The prisoner is always heard and may present suggestions, proposals and projects if he wishes to do so. The PIR is approved by the Prison Director after the opinion of an advisory panel, and sent to the Court for the Execution of Sanctions to be confirmed.

Besides PIR, the Monsanto Prison develops weekly plans for the prisoners' daily activities (please refer to annex 5). These plans, jointly drafted by the Service of Education and the Service of Surveillance (if necessary in cooperation with the Service of Psychology), include the different kinds of activities available in the prison establishment (sports, cultural, recreational and training). They take the characteristics and goals of the regime into account, considering such aspects as the number of prisoners participating in each activity at the same time, and their progressive insertion in the activities, which allows for a better integration and simultaneously a better assessment of their progress by the prison management. These plans are drafted carefully in order to avoid potential conflicts between prisoners.

It is important to stress that besides all these activities, there is also the possibility to work. At the moment, there are 15 prisoners working, and 52 are affected to work.

The recreational and cultural activities available in security regime are: sports in the courtyard twice a week (eventually directed by trainer of the Penitentiary Treatment Service), graduated in Sports Sciences, with a maximum number of 8 prisoners; gymnasium three times a week, maximum of 3 or 4 prisoners, in periods of 45 minutes; library access during one hour, twice a week, for a maximum of 4 prisoners; film watching in a multimedia room (with close-circuit cameras, and accompanied by a staff member), for up to 8 prisoners.

In the 2012/2013 school year, there were 3 courses given in the Monsanto Prison, of Information and Communication Technologies (100 hours), English (50 hours) and Sports Management Techniques (50 hours). Every course takes place once a week, during 90 minutes. In each course, 7 prisoners participated, and 21 prisoners were given training. The Monsanto Prison intends to pursue these courses in the next academic year, depending on the availability of teachers from the Ministry of Education.

Opportunity is also given to prisoners to access higher education studies, even though they do not attend lessons they can perform the examinations. At the moment, there are 3 prisoners in higher education studies: 2 studying Law at Universidade Autónoma de Lisboa, and another studying Maths at Universidade Nova.

Furthermore, training and awareness sessions in the areas of volunteering and health are upheld by a multidisciplinary team composed of health and penitentiary treatment staff members. All these actions must always be developed taking into account the security concerns.

Paragraph 43

The CPT would like to be informed about the refusal to attend requests for CD or DVD players in some high security cells.

Access to a television or CD or DVD player can be authorized by the Prison Director in accordance with Article 198(2)(d) of the General Regulation of Prison Establishments. This access regime is tighter than the one provided for in Article 37(e) of the said Regulation. It is up to the Prison Director the decision to authorize access to these devices, taking into account security concerns and the physical characteristics of the cells, which sometimes do not allow for direct access to TV. In the cells, televisions are placed behind a non-breakable glass, accessible only from the outside of the cell by prison guards. Prisoners have access to it only through a remote control. The placement of DVD/CD in that space, connected to the TV, would not be practical as prisoners do not have access to the referred TV space. On the other hand, as the acquisition of such DVDs/CDs would have to be performed by the prison bodies, it is also difficult to put in practice.

Nevertheless, TV and radio are guaranteed to prisoners placed in high security regime.

The Monsanto Prison has a room with a LCD and DVD, where films are regularly played for prisoners with a good behaviour, according to the rules on prison discipline.

The prisoners placed in the security regime have tighter conditions on what access to these devices is concerned, and therefore, in the above mentioned context, the decision to reject prisoners´ request to have DVDs/CDs (with them) seems legitimate. The SAI and the Public Prosecution within the Court for the Execution of Sanctions concur with this opinion.

Please refer to annex6.

Paragraph 44

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

At Monsanto Prison Establishment, the medical facilities are good, functional and well equipped and guarantee confidentiality and secrecy of the clinical files, as well as of all medical acts therein practiced.

Medical examinations take place in a proper and adequate cabinet, located in an area of the Prison Establishment reserved for medical services. The prisoner is taken to the medical cabinet by two custodial staff, but they do not enter the cabinet nor stay by its door. In fact, the door is kept almost closed and the custodial staff remains on the outside of the cabinet, in the opposite side of the corridor in front of the door, without any possibility of watching or hearing what happens inside the cabinet.

Secrecy in the doctor/patient relationship is ensured at all times, as well as the necessary supervision, which allows for a quick intervention in case of conflict.

Paragraph 45

The Committee recommends that prisoners with severe mental disorders who require in-patient treatment to be transferred without delay to an appropriate facility, where they can receive proper treatment and care.

As mentioned previously, prisoners are placed in the security regime according to their violent disruptive characteristics (in conformity with Article 15 of the Code of Execution of Criminal Sanctions) and never on mental health grounds. Persons declared non-criminally liable are interned in clinics and psychiatric hospitals, both in prison hospitals or common psychiatric hospitals.

If the mental disorder arises after the admission to the prison establishment, the respective procedure is enshrined in Articles 164 and 165 of the Code of Execution of Criminal Sanctions, which determine the circumstances and manner in which prisoners can be interned in those hospitals.

Paragraph 46

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

The content and recommendation in paragraph 17 above apply equally to Monsanto Prison.

Intra-personal communication skills of custodial staff is a priority for Portuguese prison authorities. Particular attention is being paid to the training of prison staff. This training aims at recalling that in prison environment the appropriated interaction between prison staff and prisoners is of the utmost importance, as well as the respect towards the prisoners.

As to the use/visibility of truncheons in detention areas, the Portuguese authorities would like to underline that its incorporation in the uniform is not intended to intimidate the prisoners, but rather to have a dissuasive effect.

Paragraph 48

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

The CPT invites Portuguese authorities to subject every prisoner to criminogenic risks and needs assessment, and to review each placement according to these assessments.

The Portuguese authorities consider that the placement of inmate prisoner in a high security regime follows a rigorous assessment procedure stipulated by law (Article 15 of the Code of Execution of Criminal Sanctions and in Article 194 of the General Regulation of Prison Establishments).

Furthermore, decisions on the placement, maintenance and cessation of the security regime must be always grounded, and are reassessed within six months, or three for prisoners fewer than 21 years of age.

Those decisions are communicated to the Prosecutor´s Office to the Court for Execution of Sanctions, for a legality control and notified to the prisoner and his lawyer.

Paragraph 50

The Committee recommends that all prisoners be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern.

The relevant legal provisions should be amended accordingly.

It should be borne in mind that the Monsanto´s prison population is a population whose criminal behaviour determined the respective placement in an execution security regime, which is exceptional.

The legislation in force allows for visits without a separation glass, depending on the level of risk of the prisoner (Articles 204 and 206 of the General Regulation of Prison Establishments).

Paragraph 51

The Committee would like to receive observations concerning visits to prisoners whose families are unable to visit on a regular basis, to maintain contacts with their families by allowing them to accumulate visits, have additional telephone time or to use modern technology in facilitating communication.

The provisions of the General Regulation of Prison Establishments referred in the previous response also permit to extend the duration and periodicity of visits.

Moreover, Article 209 of the said Regulation provides for an increase in the number of phone calls, as well as of their duration.

B. Investigations of allegations of ill-treatment

Comments made by the Ministry of Home Affairs/Inspectorate General of Home Affairs

Introduction

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe carried out an *ad hoc* visit to Portugal from 13 to 17 May 2013.

The CPT Delegation that came to Portugal on 2013, in what concerns the Ministry of Home Affairs (MAI), only visited the Inspectorate General of Home Affairs *(Inspeção Geral da Administração Interna* - IGAI). Therefore, the present document gathers the comments, information and answers to the paragraphs of the Report focusing on the matters where IGAI is mentioned and whenever a question relating to IGAI's responsibility is made, namely:

- Chapter II, Section B, point 1, paragraph 53 (page 24), point 2, subsection (a), paragraphs 54 to 56 (pages 24 and 25), subsection (b), paragraphs 57 to 59 (pages 26 and 27), paragraphs 61 and 62 (pages 27 and 28), the recommendation of paragraph 63 and also, in the Appendix, the comment under the title «Investigation into the case of alleged ill-treatment by a GNR officer» (page 34), as well as a last information request on page 34.

The abovementioned paragraphs refer to one case, involving a GNR (Guarda Nacional Republicana) officer, commander of Grândola Territorial Detachment, who allegedly physically assaulted a detained citizen on the June 22, 2011, during a GNR operation.

1. Considering that the referred situation concerns the GNR, this security force contributed to the answer to this CPT Report and, for that purpose, the GNR considered relevant to give the following information:

a) The alleged ill-treatment committed by a GNR military occurred on June 22, 2011, when a vehicle containing stolen goods was ordered to stop by a GNR patrol and the 4 occupants were detained and handcuffed. One of the detainees, already in custody in Setúbal Regional Prison Facility, declared to have suffered a cut in his right thigh, inflicted by the GNR commanding officer of Santiago do Cacém.

b) Inquiry proceedings were initiated concluded that the wound was made due to the detainee resisting the arrest, when the handcuffs were locked; therefore the case was c1osed. Until now, no complaints were filled by the alleged victim against the GNR commanding officer of Santiago do Cacém.

c) The CPT questioned why only on the October 17, 2011 an inquiry procedure was initiated and only then the case was brought to the Portuguese Authorities' knowledge. The GNR replied to this question explaining that the GNR's Inspectorate Services had analysed the alleged case and concluded by dismissing the proceedings.

d) The GNR also refers that the IGAI, based on the GNR's answers, concluded that this security force had dealt, in general, with all the necessary measures that had to be taken.
e) The GNR mentions that on May 15, 2013 the case was sent to the General Prosecutor's Office and the CPT was informed about the ongoing investigation.
f) Referring to the CPT's recommendation of a Joint Circular (paragraph 63 of the report), the GNR considered relevant to mention that the General Prosecutor's Office must always be informed of a public crime. As for semi-public crimes, it depends on a complaint being filled.
g) In paragraph 64 of the report, the CPT suggests a creation of a record, to account for the number of the alleged ill-treatment complaints, purported to have been committed by law enforcement agents, to provide data regarding the results of the investigations. In case it would be implemented, this record should be at a high level. Nevertheless, it is important to mention that the GNR already records and analyses all information about crimes committed by their officers while on duty.

2. Also the IGAI contributed to the answer to this CPT Report and for that purpose, before commenting and answering the paragraphs already underlined, IGAI considered relevant to start by calling the attention to the following sequence of facts:
a) The alleged ill-treatment committed by the GNR Captain occurred on June 22, 2011;
b) The Commander of the Setúbal Territorial Command received the notice of that alleged ill-treatment on August 18, 2011;
c) By decision of October 10, 2011, the same Commander determined an inquiry procedure, the object of which was the GNR Captain;
d) After several diligences, in March 22, 2012, the same Commander decided to dismiss the procedure and the GNR General Command accepted it;
e) The GNR did not give notice of the facts to the IGAI;
f) On March 29, 2012, the IGAI knew about the facts of the case when it received a **copy of a letter that**, from Strasbourg, dated March 19, 2012, and signed by Letif Hüseynov (President of the CPT), was sent by the CPT to the Directorate General of External Policy of the Ministry of Foreign Affairs of Portugal;
g) That letter, although making a reference to the date and the place where the case took place, *« …on the morning of* 22 *June 2011 by the side of the road near Santiago do Cacém... »*, did not mention any names, neither of the victim nor of the alleged aggressor;
h) About the aggressor it was only mentioned that he was a Captain of the GNR;

i) With that scarce data, a search was made on the database used by the IGAI, but nothing was found;
j) On April 5, 2012, the IGAI took the initiative of contacting the CPT and by telephone additional information was requested by Inspector Eurico Silva;
k) On the same day (April 5, 2012), Hugh Chetwynd (Secretariat of the CPT) sent to IGAI, by e-mail, the information regarding the names of the Captain of the GNR and the victim, along with a pdf file containing a letter of December 13, 2011, of the Justice Department of the GNR Setúbal Territorial Command (ref. no. 1885/SJ, PAV 513/11 CTSTB) and an inquiry file of the alleged victim who made a deposition as a witness;
l) With those new elements a more thorough search was made and once more no file, process, letter, paperwork, official notice, or complaint of any kind were found that could be related which the facts reported by the CPT;
m) The data sent by Mr. Chetwynd confirmed that, on the one hand, the IGAI did not have any record or notice of the case and, on the other, revealed that the GNR had initiated an inquiry procedure PAV 513/11 CTSTB concerning the GNR Captain;
n) Only after April 5, 2012, with the additional data sent by Mr. Chetwynd, did IGAI have the conditions to ask the GNR for the information requested by the CPT;
o) On April 13, 2012 the GNR informed that an inquiry procedure had taken place and that it was closed on March 22, 2012, by order of the GNR Commanding Officer of Setúbal Territorial Command;
p) According to the letter signed by Letif Hüseynov, the answer to the CPT had to be given until April 16, 2012;
q) The urgency to answer within the deadline presented by the CPT determined that only summary procedures could be made and **only using the data given by the GNR**, which is in itself sufficiently coherent;
r) The dismissal of the inquiry procedure has legal consequences that we will detail in this reply, while answering to specific paragraphs of the CPT Report, focused on the Disciplinary Regulation of the GNR (RDGNR), approved by Law No. 145/99, of September 1, 1999;
s) Recognizing the urgency to establish new mechanisms to avoid similar cases to happen again and endorsing a proposal made by the IGAI, the Minister of Home Affairs on July 29, 2013, issued Order No. 10529/2013, published in the Official Gazette, second series, No. 155, August 13, 2013, pages 25645/25646.

1. Paragraph 53

(page 24)

The CPT says «*…In the report on the periodic visit of February 2012, the CPT described a serious allegation of ill-treatment of a person by a National Republican Guard (GNR) officer and requested the Portuguese authorities to carry out an investigation. The response of the authorities appeared to indicate that no effective investigation was in fact carried out into this case. Consequently, the Committee decided to examine for itself the manner in which the investigation was carried out and to look more generally at the system in place to investigate allegations of ill-treatment by law enforcement officials. To this end, it held a series of meetings with the Inspectorate General of Home Affairs (IGAI) and the General Prosecutor's Office and examined several cases of investigations into allegations of ill-treatment ... ».*

The IGAI conducted all possible proceedings, according to the law and the established facts, it could do. There were no others which could be carried out, as we will explain later on in this document reply.

2. Paragraphs 54 to 56

(pages 24 and 25)

In paragraphs 54 to 56 the CPT describes the case involving the GNR officer and the steps made during the inquiry procedures conducted by the GNR.

2.1 In paragraph 56 of the report (page 25) the CPT refers:

« *... The CPT raised this case with the Portuguese authorities by letter of* 7 *March 2012 and, by letter of 13 April 2012, they responded that the GNR had closed the case ...*».

A. Acknowledgment of the facts by the Inspectorate General of Home Affairs (IGAI)

The IGAI knew about the facts of the case only on March 29, 2012, when it received a **copy of a letter** sent by the CPT (dated March 19, 2012, and signed by Mr. Letif Hüseynov) to Mrs. Teresa Adegas of the Directorate General of External Policy of the Ministry of Foreign Affairs.

The abovementioned letter from the CPT, although referring to the date and the place where the case occurred, *« …on the morning of* 22 *June 2011 by the side of the road near Santiago do Cacém... »*, did not mention any names, neither of the victim nor of the alleged aggressor.

About the aggressor it was only mentioned that he was a Captain of the GNR.

With these elements, a search was made on the computer database system for paperwork management (smartdocs) used by the IGAI and nothing was found.

On April 5, 2012, the IGAI took the initiative of contacting the CPT by telephone, and Inspector Eurico Silva spoke with Mr. Chetwynd, to whom additional information was requested.

On the same day (April 5, 2012), Mr. Chetwynd sent to IGAI, by e-mail, the information regarding the names of the Captain of the GNR and the victim. This consisted of a pdf file of a letter of December 13, 2011, of the Justice Department of the GNR Setúbal Territorial Command (ref. no. 1885/SJ, PAV 513/11 CTSTB) and an inquiry file of the alleged victim who made a deposition as a witness.

A more thorough and detailed search was made and once more no file, process, letter, paperwork, official notice, or complaint of any kind were found which could identify the facts reported by the CPT.

B. The proceedings taken and the established facts

The data sent by Mr. Chetwynd confirmed that on the one hand, the IGAI did not have any record or notice of the case and, on the other, revealed that the GNR had initiated an inquiry procedure PAV 513/11 CTSTB concerning the GNR Captain.

Only after April 5, 2012, with the additional data sent by Mr. Chetwynd, the IGAI had the conditions to ask the GNR for the information requested by the CPT;

On April 13, 2012 the GNR informed that an inquiry procedure had taken place and closed on March 22, 2012, by order of the GNR Commanding Officer of Setúbal Territorial Command;

Furthermore, on September 3, 2012, the IGAI asked the GNR for more information about this case, obtaining the same data it had received on April 13, 2012, and the dismissal of the case PAV 513/11 CTSTB.

2.2 In paragraph 56 of the report (page 25) the CPT also refers:

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

The above paragraph implies that the CPT only partially understood what prevented the IGAI from further investigating the case, but it also shows that for the CPT it was not entirely clear the reason why there was nothing else that could still be done that, in a disciplinary law point of view, was **on time, suitable and necessary**.

The IGAI is specially orientated to the control of legality and the defence of the citizens' rights. IGAI is also responsible for ascertaining every notice of serious violation of the fundamental rights (article 2, no. 2, subparagraph (c) and (d), of Decree-Law No. 58/2012, dated march 14, 2012), but its mission is not restricted to this task.

According to Decree-Law no. 58/2012 (amended by Decree-Law no. 146/2012, dated July 12, 2012) IGAI's mission is to assure the auditing, inspection and high level control enquiries regarding all entities, services and organisms under the authority or whose activity is legally submitted to the Ministry of Home Affairs (article 2, no. 1).

In the case reported by the CPT, a GNR officer was involved and therefore, in a disciplinary point of view, the RDGNR is applicable.

C. Disciplinary competence-grounds

According to the RDGNR, the disciplinary responsibility is based on the chain of command and on its corresponding subordinating relationships (articles 60 and 61, no. 3).

An official report of a disciplinary infraction always gives place to a procedure to ascertain the eventual responsibility of the case, and the exercise of the disciplinary action is always official and it does not depend on a notice, complaint or denunciation (articles 71 and 72 of the RDGNR).

We refer to disciplinary illicit actions and not to other kind of illicit actions.

The RDGNR establishes the disciplinary authority as a responsibility of the GNR, conducted by higher ranking officials. According to the RDGNR, the several higher ranked officials are the entities who have the power and the authority to use disciplinary measures upon the GNR military personnel.

D. The disciplinary competence of the GNR

The basic rule is that, when a disciplinary infraction is committed by a GNR military, he always answers to his direct superior officer and therefore the disciplinary power is a GNR prerogative (article 3 of the RDGNR).

According to the RDGNR, the disciplinary power is exercised by a higher ranking official of the GNR who applies sanction measures to the military whose behaviour harms the image of the organization or is not in accordance with his duties and functions.

Through the disciplinary power, the GNR high ranking officials promote the investigation of the facts which lead to the disciplinary infraction, the surrounding circumstances, the level of guilt of the author and, if necessary, apply the corresponding sanction.

Although the disciplinary procedures are conducted by the GNR, in cases concerning expulsion sanctions only the Minister of Home Affairs is invested with the competente to apply such a disciplinary measure (please refer to Annex B of the RDGNR).

E. Disciplinary illicit and criminal illicit acts

An illicit act committed by a law enforcement official can trigger simultaneously a disciplinary and a criminal illicit and each of the illicit acts is assessed according to its own rules and by different entities.

The investigation of the illicit act as a criminal illicit is committed to the Public Prosecutor *(Ministério Público* - MP).

The investigation of the illicit act as a disciplinary illicit committed by a GNR military, because basically represents a violation of official duties, is investigated in the framework of the disciplinary investigation exercised by the higher ranking officials of the infractor.

The criminal law and the disciplinary law aim to protect different interests, values or rights and the sanctions applied in each jurisdiction are of a different nature.

While the criminal law protects general and fundamental interests in which the legal assets of life in society are the fundamental basis of the penal frame, the disciplinary law protects the compliance of duties by all who are bound to an organization, aiming to protect its function ability, the prestige and the image of the organization.

Therefore, the commitment of an illicit act containing a disciplinary and a criminal scope can determine, without the violation of the principle of *«ne bis in idem»*, the establishement of two different procedures, one disciplinary and the other criminal in different instances to secure different legal rights, assets and values,

F. The IGAI determining criteria for intervention

The Regulation for Inspective and Monitoring Actions (RAIF), Regulation no. 10/99, dated April 29, 1999, defines the procedural rules of the IGAI's inspections.

In the preamble of the RAIF is written: «*...IGAI's scope of action is extensive and covers services and institutions that have different organic and different legal basis.*

Therefore it is important to concentrate in one single document the norms of procedure for the inspection and control actions, establishing a standard procedure and improving the IGAI's performance, allowing all actors, inspectors and inspected the necessary legal assurance...».

The RAIF establishes that *«Whenever an action or omission from law enforcement officials or services under the scope of action of the IGAI results in* a *violation of personal rights, namely murder or grievous bodily harm or evidence of serious misuse of authority or harm to high financial values, the forces or services must immediately give notice of the facts by telecopy to the Minister of Home Affairs and wait for the decision concerning the disciplinary procedures. »* (article 2).

G. Order of May 8, 2009

The established criteria of the RAIF were reinforced by the Order of May 8, 2009, of the Minister of Home Affairs, determining:

«Considering the administrative proceedings adopted by the IGAI when the cases of violation of personal rights, namely murder or grievous bodily harm or evidence of serious misuse of authority or harm to high financial values take place, the forces or services must immediately give notice of the facts by telecopy to *the Minister of Home Affairs and to the Inspection General of Home Affairs, I do hereby establish:*

The IGAI must, as soon as it receives a communication by the security forces, initiate the inquiry procedures, for which is has its own capacity, or propose the Ministry of Home Affairs other inquiry procedures, if it is the adequate path. »

From 2009 it was clear that in addition to the information addressed to the Ministry of Home Affairs, the security forces must also give notice of the facts to the IGAI.

The enquiry procedures where the violation of serious fundamental rights of the citizens are investigated, find legal basis in articles 2, no. 2, subps. (c) and (d) and 5, no. 1, subp. (d), of Decree-Law No. 58/2012, article 2 of the RAIF and Order of May 8, 2009, whenever the illicit acts assume disciplinary relevance.

H. Disciplinary competence of IGAI

The IGAI's competence to investigate disciplinary infractions of law enforcement agents is reserved only to serious situations and with social and relevant impact, namely in murder or grievous bodily harm or serious evidence of misuse of authority or harm of high financial values (article 2 of the RAIF and Order of May 8, 2009).

There is no confusion or conflict of competences between the GNR, the IGAI and the MP. A close reading of the RDGNR makes it clear that there is no reference to the IGAI.

The IGAI's competence to open an inquiry procedure of a disciplinary nature involving law enforcement agents is mentioned on the RAIF, Order of May 8, 2009, and Decree-Law No. 58/2012, 2012, showing that the IGAI has autonomy and has an independent external nature when dealing with law enforcement agents, namely the GNR.

The fact that the RDGNR establishes the exercise of disciplinary power as a competence, typically exercised within the GNR, conducted by their high ranking officials, implies legal and legitimate authority to the GNR to open, conduct and conclude an inquiry procedure, whether in the case to apply a disciplinary sanction or to dismiss the procedure.

When the illicit acts are more serious, the IGAI's competences concur with the competences of the GNR higher ranking officials, assuming preponderance in the referring cases of article 2, no. 2, subp. (c) of Decree-Law No.58/2012, article 2 of the RAIF and Order of May 8, 2009.

This disciplinary competence is exercised in the scope of disciplinary rules applied to the perpetrator, and so, in the case of a GNR military, the IGAI applies the GNR rules established by the RDGNR.

I. Concurring competences

Concurring disciplinary competences between the IGAI and the GNR higher ranking officials, besides not withdrawing the GNR's competency (because in the hierarchy of laws a regulation and a ministerial order are ranked below a law approved by the Legislative Assembly), has consequences in the 3 months deadline referred to in article 46, no. 3, of the RDGNR.

The right to open a disciplinary procedure becomes unenforceable if the infraction is known by the competent entity and the procedure is not opened within the 3 months deadline.

As the competence to open a disciplinary procedure belongs, according to the RDGNR, to the GNR higher ranking officials, the deadline starts as soon as the infraction is noticed by the competent superior official.

In the case referred by the CPT, the competent GNR high ranked officials (still within the 3 months deadline) opened an inquiry procedure, according to the RDGNR rules, and made the necessary probatory diligences.

The Commander of the Setúbal Territorial Command received the notice on August 18, 2011, and by decision of October 10, 2011, determined an inquiry procedure, the object of which was the GNR Captain.

After several diligences, in March 22, 2012, the same Commander decided to dismiss the procedure and the GNR General Command accepted it.

Therefore, although there was no notification addressed to the IGAI about the infraction, the GNR, as a competent authority, by dismissing the procedure, drained the possibility of opening another procedure, even considering the provisions of article 2 of the RAIF and Order of May 8, 2009.

In disciplinary law, if the procedure is dismissed it drains the possibility of opening another procedure and it is worthless to discuss if the procedure was poorly conducted by the GNR, as mentioned by the CPT, or discuss if the GNR did not make all the necessary diligences or if certain facts weren't clarified by the GNR.

It is recognised that, with the information now available, there are inquiry insufficiencies in that procedure, and that the CPT comments are valid.

However, in the framework of the competences attributed to the GNR by the RDGNR, the procedures were conducted according to the established rules, rules to which the IGAI is also bound and to which it must also comply within all disciplinary procedures according to the RDGNR.

J. Investigation dismissal

When the GNR, in the scope of their competencies, concluded the inquiry procedure, deciding its dismissal, the disciplinary investigation was closed, making it legally impossible for the IGAI to reopen and appreciate it again, something not foreseen in the RDGNR.

The RDGNR only admits the possibility to reopen a procedure when the accused is punished and only in two specific cases, mentioned in articles 126 and 127, being the punished military the only person who may require it, according to article 128.

The disciplinary law, as a sanction law, is ruled by the principle of legality and the IGAI has no legal power to reopen a dismissed procedure, namely procedures dismissed by GNR officials exercising the legitimate powers of disciplinary law.

On the other hand, we have to consider the rights of the accused in disciplinary enquiry procedures, namely the principle of the protection of legitimate expectations when a decision of dismissal is applied. This decision is expected to be stable, legitimate, fair and final, and according to the RDGNR it must consider the GNR's interests and values.

The dismissal of the procedure against the GNR Captain by their higher rank officials prevents IGAI from reopening the procedure and, as there was no punishment, even the GNR Captain would not have the legitimacy to require the opening and revision of the procedure, since he was not punished.

All the diligences carried out by the IGAI came to a halt when the inspectors realised that the GNR higher ranking officials had instated, instructed and concluded an inquiry procedure by dismissing it.

Therefore the statement «there was nothing more to do» must be understood, under the light of the disciplinary law, that nothing else could be done that would still be **on time, suitable and necessary**.

Not only for this reason, but also for this reason, it is so important that, in cases where *«actions or omissions* (…) *result in murder or serious bodily harm or evidence of serious misuse of authority or harm of high financial value...»* the police and security forces must immediately give notice of the facts, by telecopy, to the Minister of Home Affairs and to the IGAI and wait for the development of the investigation.

3. Paragraph 58

(page 26)

The CPT says «*...the GNR would have been well advised to interview the lawyer who had represented the detained person at the initial court hearing on* 26 *June 2011...».*

This statement is totally correct and pertinent.

The investigation conducted by the GNR during the inquiry procedure was far from being complete, sufficient and objective[1].

However, the CPT remark also raises an observation which we consider pertinent.

As the CPT recognizes, the detainee was brought before the court on June 24, 2011 and was represented by a lawyer in the court hearing.

The presence of the detainee before the judge, in view of his interrogation, occurred two days after the detention and after receiving medical assistance in Alcácer do Sal Health Centre.

This court hearing was held according to article 141 of the Portuguese Code of Criminal Procedure *(Código de Processo Penal* - CPP).

The interrogation of the detainee is made exclusively by the judge, with the assistance of the M.P. and the defendant's lawyer, in the presence of the court clerk. The presence of any other person is not allowed, and only if security reasons so determines, will the detainee be kept under police surveillance (article 141, no. 2, of the CPP).

During the interrogation, the M.P. and the defendant's lawyer, without prejudice of raising objections of nullity, must refrain from interfering and the judge can allow any request for clarification of answers from the detainee. At the end of the interrogation, the M.P. and the defendant's lawyer may request the judge to ask the detainee the questions they may consider relevant for the establishment of the truth (articles 141, no. 6, of the CPP).

It is a court hearing before a judge and the presence of law enforcement agents is not allowed, except for safety reasons if the circumstances so demand.

During the hearing, the detainee or the lawyer, without any constraints, could (and should) have alerted the judge to the fact that the detainee was wounded in his right thigh.

As far as we know, the judge was not alerted to that fact.

This source of information did not work.

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[1] Several questions were not clarified; for example, the official notice written by the GNR Captain, in article 10, refers «Later, the victims complained about being physically ill and immediately were rushed to the Alcácer do Sal Health Center and medical assistance was given...» but when interrogated the Captain admitted: «...as the detainee, after the arrest presented a cut in one of the thighs, the Alcácer do Sal Firemen Department was contacted who transported him to the Health Center...», which leads to the conclusion that the GNR Captain omitted relevant information when he elaborated the official notice and the instructor of the inquiry procedure did not confront him with the omission and wasn't diligent enough to clarify all questions that could emerge from this.

4. Paragraph 59

(page 27)

The CPT says «...The response to the report on the 2012 visit states: *"According to the IGAI, based on the reply given by the GNR, it is possible to conclude that this Security Force took, on the whole, all the necessary steps that needed to be taken. The IGAI does not see any other measures whose implementation could be useful or necessary. The IGAI also thinks that, considering the findings resulting from the inquiry procedure, the respective conclusion is considered adequate."*[42], *As the IGAI never examined this case, it is difficult to comprehend how such a conclusion could have been formed.* ***The CPT trusts that in the future, it will receive accurate and reliable responses to its visit reports in relation to such matters, in the light of the principle of co-operation in Article 3 of the Convention****...*».

The answers to these questions were already given in points **A.** to **J.**

Notwithstanding, we should say that we assumed that the CPT, in view of its previously formulated assessments, was aware of the legal framework which regulates the IGAI's activity and of the legal implications of the RDGNR, namely that the inquiry procedures conducted by the IGAI are legitimated by a legal framework in which illicit acts assume strict legal and disciplinary relevance and that the IGAI's competence goes hand in hand with the GNR higher ranking officials' competencies, acquiring the preponderance in the relevant cases referred to in article 2, no. 2, subp. (c) of Decree-Law No. 58/2012, article 2 of the RAIF and Order of May 8, 2009.

It is also important to notice that the inquiry procedure was dismissed by a competent entity and according to the RDGNR the procedure could not be re-opened or reviewed. Thus there was nothing that could be done which would be opportune, useful and necessary. This was the sense of the transcribed answer and we concede that its formulation was not entirely clear.

We take notice of the CPT final recommendation in this paragraph, clarifying that the said information, above transcribed, **was based upon the statements given by the GNR itself**. The information was given to a request made by the CPT. This request, subscribed by Letif Hüseynov, was dated March 19, 2012, and as we have already referred it in point **A.** that request demanded for an answer until April 16, 2012.

Once more we recall that the IGAI only took notice of the case in March 29, 2012, and only on April 5, with the additional data sent by Mr. Chetwynd, the IGAI had the conditions to ask for more information to the GNR, requested by the CPT. The GNR answer on April 13, 2012, and the answer to the CPT had to be given until April 16, 2012.

The urgency to answer within the deadline presented by the CPT determined that only summary procedures could be made and only using the data given by the GNR, in itself sufficiently coherent, and revealing that the inquiry procedure aiming the GNR Captain was dismissed with all the ensuing consequences to which we consider that all the clarifying explanations were already given.

Afterwards, the analysis of this case with more and much detailed information allowed the IGAI to conclude that the CPT is right in its criticism by affirming the need to alter some procedures to prevent similar cases to happen again.

On this last point we will come back further in the answer to Paragraph 62 of CPT Report, page 28.

5. Paragraph 61

(page 27)

CPT says «*...both the GNR and the IGAI believed that they were the authority competent to investigate the case, rather than the Public Prosecutor's Office....*».

We believe that the answer to this paragraph has already been given in points **A.** to **J.**

Nevertheless, we reckon that the said paragraph does not take in consideration the rules of the RDGNR.

In disciplinary law (RDGNR) both the GNR and the IGAI are competent to investigate cases such as the one in which the object was the GNR Captain.

If it were to be proven that the GNR Captain used a knife to wound the right thigh of the

victim, when he was already in custody, immobilized and handcuffed, such behaviour would be considered a crime, but also and at the same time a disciplinary infraction, thus violating articles 11, no. 1, subp. (a) and no. 2, subp. (c), 13, no.1 and no. 2, subp. (a), 14, no. 1 and no.2, subps. (a) and (f), 17, no 1 and no. 2, subp.(a), of the RDGNR.

To investigate that disciplinary infraction, by violating the said rules, both the GNR and the IGAI are the competent authorities to conduct an investigation in a disciplinary procedure.

In the transcribed paragraph, the CPT doesn't take into account these competences.

6. Paragraph 62 (page 27)

The CPT says «*...Despite the fact that the law enforcement agencies are bound by* a *Ministerial Order of May 8, 2009, to report directly to the IGAI any action which results in grievous bodily harm or death, the CPT's delegation found from an examination of a number of cases that this was not always complied with. For example, a case of alleged physical ill-treatment (including electro-shocks) and racial abuse by GNR officers which resulted in three Roma being hospitalized was not initially communicated to IGAI and the Public Prosecutor's Office was only informed nearly four months after the GNR had archived the case...*», a case which CPT refers in footnote (43) to be related to the IGAI case number PA-14/2012.

We recall that, as requested, the IGAI randomly made available to the CPT delegation 10 administrative cases for examination, all based on complaints of alleged ill-treatment, violence or assault towards detainees, allegedly committed by law enforcement officials.

The referred case consulted by the CPT was **PA-814/2012** and not **PA-14/2012** as mentioned by CPT in footnote (43).

On the other hand, the quoted statement is presumably based upon a miscommunication of the IGAI.

The case in particular, regarding Roma citizens, determined the opening of 3 distinct cases, namely:

- Administrative infraction procedure PCO-537/2012;
- PA-702/2012;
- PA-814/2012, being this one, out of the 3, the case that the CPT analysed.

We want to clarify that PCO-537/2012 originated on a communication of the High Commission for Immigration and Intercultural Dialogue (ACIDI).

The mentioned communication was received by the IGAI on October 9, 2012.

Its source was a newspaper news bulletin, reporting ill-treatment allegedly committed by GNR military personnel against people living in a gipsy camping site in Cabanelas, Vila Verde.

The case concerned an administrative infraction procedure, focusing on the GNR militaries behaviour in an operation consisting in a detention of a person. During the operation, there was an alleged abuse of physical force which inflicted ill-treatment on people living in that camping site, including the detainee.

The case is ACIDI's responsibility, because it was reported on the news bulletin that the GNR military personnel acted in a discriminatory way, namely forcing detained people to sing Gipsy Kings' songs.

By decision of the General Inspector dated October 10, 2012, endorsing a proposal of the Deputy Inspector General, an administrative infraction procedure *(processo de contraordenação)* was opened.

The PCO-537/2012 is presently in the report stage.

As for PA-702/2012, its origin was a notice issued by the MP of Vila Verde with a copy of the decision of the Vila Verde MP ordering an inquiry procedure (no. 298/12.lTAVVD) due to the news of these facts reported by NGO «SOS Racismo».

The notice was received by the IGAI on October 26, 2012, and a copy of this notice was attached to PCO 537/2012.

This procedure awaits information from the MP of Vila Verde about the inquiry 298/12.1TAVVD.

As for **PA-814/2012**, its origin was a report of «Amnesty International» (AI) received by IGAI on December 17, 2012, and those facts were the cause of a denounce forwarded by the AI to the GNR General Command.

By decision of December 20, 2012, the General Inspector of the IGAI issued an order to open an administrative monitoring procedure *(processo administrativo de acompanhamento)*, asking the GNR General Command information if a disciplinary inquiry procedure about the facts was open and, if so, which stage it was in.

This information was requested for the first time on December 26, 2012, and, for a second time, on February 11, 2013.

On February 27, 2013, the GNR informed that on December 21, 2012, they had determined the direct dismissal of the «SOS Racismo» complaint.

On April 23, 2013, the MP of Vila Verde informed that the inquiry 298/12.1TAVVD is still under investigation.

On September 30, 2013, the Deputy Inspector General asked the GNR to send a copy of the reports that dismissed the complaint based on the decision of December 21, 2012.

The IGAI is still waiting for an answer to that request.

Meanwhile, by decision of the Deputy inspector-General, dated October 7, 2013, the integration of the case **PA-814/2012** into case PA-702/2012 was determined.

In brief, as for this paragraph, the CPT observation is correct regarding the fact that the GNR never took the initiative to communicate to the IGAI that these facts had taken place; but this case also illustrates that there are several communication channels which may bring similar cases to the IGAI's knowledge.

Notwithstanding, that lack of communication did not prevent the IGAI from knowing the situation in due time , not by one but by 3 ways: by AICIDI communication, by MP notice and by copy of an AI denounce.

We recognize that, the GNR behaviour by not taking the initiative to communicate to the IGAI those facts, demands a review of the procedural rules. About this matter, some comments will be made later on regarding Paragraph 62 of the CPT Report, page 28.

However, the CPT observation is incorrect when affirming «*...the Public Prosecutor's Office was only informed nearly four months after the GNR had archived the case*...», because it so stands that the MP, based upon news by the media, immediately opened an inquiry procedure, originating case number 298/12.1TAVVD, communicated and received by the IGAI on October 26, 2012.

7. Paragraph 62 (page 28)

The CPT says «*...IGAI only looks into a very small percentage of ill-treatment cases submitted to it (for example, 25 of 308 complaints received in 2012) and it remains unclear as to the criteria used to decide which cases are investigated...*».

As we said before, the Inspector General of the IGAI determines the opening of an inquiry procedure strictly based on normative criteria (article 2, no. 2, subp. (c) of Decree-Law No. 58/2012, article 2 of the RAIF and Order of May 8, 2009).

These normative **criteria** are the legal prescriptions which determine the IGAI's investigation and in points **A.** to **J.** the doubts presented by the CPT have already been explained.

The concern of the CPT saying that the IGAI only investigates a small percentage of the submitted cases involving ill-treatment is correct, but it has an explanation and is a result of the abovementioned normative criteria: the IGAI only acts when there is a situation of serious violation of the human rights by police services or law enforcement officials.

The same concern demands a supplementary clarification.

The IGAI takes notice of the facts susceptible to constitute a disciplinary infraction mainly in two ways:

(i) in a formal manner by MP notice, or communications by several entities (such as ACIDI and AI), or by complaints or reports;

(ii) in an informal manner by media news.

The MP notices are by far the biggest information source of the IGAI, although many cases are brought to the IGAI's knowledge by NGOs, namely civic, cultural or neighbourhood committees, and associations, besides the abovementioned Amnesty International , ACIDI or other similar organisations.

According to Circular no. 4/98, of General Prosecutor's Office, the MP magistrates «*...communicate directly to the IGAI the opening of an inquiry procedure when the accused is a law enforcement agent of the GNR or PSP, with a copy of the report or official notice with the complete identification, agent rank, the crimes involved and the kind of crime which is the object of the information*…» and, in the end, send to the IGAI «… *information on the decision and grounds which contributed to the dismissal of the case*...».

All received complaints are analysed and all news containing an alleged disciplinary infraction are always considered by the IGAI, who decides if it should intervene and if so at what level and the manner the intervention should be exercised.

Because the IGAI's direct intervention is reserved only for cases with serious harm and special relevance, the IGAI's intervention depends on the level of seriousness and the values at stake.

Only in the more serious cases IGAI proceeds to a direct control, opening inquiry, investigation or disciplinary procedures.

Inquiry procedures are determined by the General Inspector, without prejudice of the Minister of Home Affairs himself determining the establishment of any procedure. Inquiry procedures are reasonably quick and fast, allowing the collection of material evidence to determine if the case should be an investigation procedure or a disciplinary procedure.

This answer is related to another statement of the CPT in the same paragraph.

8. Paragraph 62 (page 28)

The CPT says «*...Moreover, there appeared to be no proper oversight by IGAI of the investigations carried out by the internal control bodies of the law enforcement agencies (notably, GNR and PSP)...*».

This part of the CPT statement is rejected by IGAI.

Besides 3 kinds of procedures of a disciplinary nature, the IGAI also opens a large number of administrative procedures with a wide range of objectives.

The administrative procedures is a form of indirect control and have the purpose of following and monitoring the evolution of procedures instructed by the GNR or PSP, with the IGAI always demanding information concerning the procedures. This is, for example, the case of the previously mentioned procedures PA-702/2012 and PA-814/2012, which are currently being investigated.

Sometimes, even in some more serious cases, instead of a direct control a preliminary evaluation can advise the opening of an administrative monitoring procedure *(processo administrativo de acompanhamento)* to oversee the disciplinary procedure already in course or to monitor the criminal procedure, if that is the case.

In the cases considered of minor relevance, the IGAI only sends the received communications (complaints and reports) to the head officers responsible for the services and to the complainant.

When the IGAI does not have the legal competence (for example wrong forwarding of files) the complaint or report is sent to the competent authority.

Every year, the IGAI receives several complaints and reports that do not fall under its competence, or the nature or level of serious harm is not enough to justify an intervention.

To assess their relevance, every complaint and report is analysed under an administrative monitoring procedure *(processo administrativo de acompanhamento).*

Concerning complaints in which the IGAI cannot intervene, for example the ones related with professional problems or personal relationships of law enforcement officials, or personal involvement with the hierarchy or with a private security company, when justified, are sent to the competent entity or dismissed. In any case, all the paperwork received contributes to the IGAI's statistics.

Furthermore, the IGAI has many ongoing administrative infraction proceedings *(contraordenação)*, one of which is, for example, the case previously mentioned and under investigation as case PCO-537/2012.

The above-mentioned reasons explain the disparity between the numbers of the different kinds of procedures year after year, which makes the PAs more numerous by comparison with the reduced number of inquiry procedures, investigation procedures and disciplinary procedures. It is also important to state that many complaints have no grounds or that they do not fall under the IGAI's legal competence, determining the case dismissal or the decision to send it to the competent legal authority.

9. Paragraph 62 (page 28)

The CPT says «*...Further, the time-limit of three months to initiate a disciplinary investigation following the reception of a complaint appeared to hinder the ability of IGAI to examine cases which were investigated by the internal control units of the law enforcement agencies and thereafter transmitted to IGAI, as illustrated by the above-mentioned GNR case of 24 June 2011. **The CPT would appreciate the observations of the Portuguese authorities on these last three points**...*».

The answer to this paragraph has already been given in points **A.** to **J.**

It is also important to refer that the concurring disciplinary competences between the IGAI and the GNR's hierarchy does not withdraw any competence from the GNR (or the PSP in that matter), but it has enormous implications in the 3 months deadline.

In the case mentioned by the CPT, the GNR hierarchy, under the RDGNR rule, opened, an inquiry procedure in due time and dismissed it. The GNR has the disciplinary competence to do so, and by dismissing it, it exhausted the possibilities of any other disciplinary proceedings, even considering that the GNR did not comply with article 2 of the RAIF and the Order of May 8, 2009.

Under the competence given by the RDGNR, the GNR conducted and managed the inquiry procedure, following the rules established by the RDGNR, rules to which the IGAI is also bond when applying it.

The principle of legality prevails in the disciplinary law, as a sanction law, and the IGAI does not have a qualifying rule to reopen a dismissed case, namely dismissed procedures determined by the GNR officials, which are the legal competent entities invested with the powers to do it.

Therefore, it is so important that in cases of *«actions or omissions* (…)[which] *result in murder or serious bodily harm or evidence of serious misuse of authority or harm to high financial values are verified.…»* the security forces must immediately give notice of the facts to the Minister of Home Affairs and to IGAI by telecopy and wait.

In the case reported by the CPT, the GNR did not give notice of the facts which illustrates how, under the legal framework applied, the IGAI's investigation can be frustrated.

Furthermore, the case reported by the CPT illustrates how the communication channels can fail, and they all did because no one, not even the lawyer of the detainee, gave notice of the occurrence to the IGAI, and for that matter to the judge when the detainee was brought to the court hearing two days after being arrested.

The communication system depends on the existence of effective cooperation between involved institutions, services and persons, as well as the trust that all will do their part. In this case that did not happen; at all.

This failure was promptly identified and confirmed after the report of the CPT.

Recognizing the urgency to establish new mechanisms to avoid similar cases to happen again and endorsing a proposal made by the IGAI, the Minister of Home Affairs on July 29, 2013, issued **Order No. 10529/2013**, which was published in the Official Gazette, second series, No. 155, August 13, 2013, pages 25645/25646

With **Order No. 10529/2013**, rules of procedural nature were issued, resulting in obligations to be complied with by all security forces, Home Affairs Services and also the IGAI. It is mandatory since August 14, 2013, and from that date on the Order of May 8, 2009, was revoked, among others. It is also important to note that this Order No. 10529/2013 is quite visible as was published in the Official Gazette, while Order of May 8, 2009, was not.

The Order No. 10529/2013 was also published in a daily newspaper with the title «*IGAI aperta a malha de investigação a polícias*» ("IGAI closes in the investigation of police forces") - see the annexed copy. We also annex a translated copy of Decision No. 10529/2013, which is already translated and specific in its contents.

10. Paragraph 63

(page 28)

Recommendation

«*...the CPT recommends that a Joint Circular from the Ministries of Justice and the Interior be sent to all law enforcement agencies (GNR, PSP, SEF, Judicial Police) and prison establishments reiterating that the Public Prosecutor's Office should be informed directly of any allegation of ill-treatment in addition to any other relevant State Entity (including IGAI, SAI, Ministries)...*».

This recommendation is entirely pertinent; so pertinent that the idea came from the Deputy Inspector General of the IGAI, who verbalized it during the meetings that the Committee's Delegation held with the IGAI, on May 13-15, 2013.

In what concerns this matter, it is possible to say that the cabinets of the Minister of Home Affairs and the Minister of Justice are working in cooperation in a joint order.

11. Appendix - comment «Investigation into the case of alleged ill-treatment by a GNR officer»

(page 34)

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

This comment was answered in points **A.** to **J.** and complementary in point 4, concerning paragraph 59.

12. Appendix, last information request

(page 34)

The CPT asks the following information «*...the observations of the Portuguese authorities on the last three points referred to in paragraph* 62 *(paragraph* 62)....».

This request was already answered in points 7, 8 and 9 regarding the 3 questions made in paragraph 62, page 28, of the CPT report.

* * *

The annexes can be found on the CPT's website: www.cpt.coe.int