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Meeting: 1514<sup>th</sup> meeting (December 2024) (DH)

Item reference: Action Plan (17/10/2024)

Communication from Portugal concerning the case of Miranda Magro v. Portugal (Application No. 30138/21)  
- *The appendices in Portuguese are available upon request to the Secretariat.*

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Réunion : 1514<sup>e</sup> réunion (décembre 2024) (DH)

Référence du point : Plan d'action (17/10/2024)

Communication du Portugal concernant l'affaire Miranda Magro c. Portugal (requête n° 30138/21) (**anglais uniquement**) - *Les annexes en portugais sont disponibles sur demande au Secrétariat.*

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AGENTE DO GOVERNO PORTUGUÊS JUNTO DO TRIBUNAL EUROPEU DOS DIREITOS HUMANOS

**Rui Miguel MIRANDA MAGRO**  
**(CASE NO. 30138/21)**

DGI

17 OCT. 2024

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**EXECUTION OF JUDGMENT**  
**ACTION PLAN**



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## **EXECUTION OF JUDGMENT**

### **Action Plan**

#### **I. IDENTIFICATION**

- 1. Date of Judgment:** 9 January 2024
- 2. Application number:** 30138/21
- 3. Applicant's name:** Rui Miguel MIRANDA MAGRO

#### **II. THE JUDGMENT**

##### **A. Summary description of the breach:**

**4.** Violation of Articles 3 and 5 § 1 of the Convention, concerning inadequate detention conditions the applicant was subjected in the psychiatric unit of the Caxias Prison Hospital from 14 April 2021 until his transfer on 18 October 2021 to a mental health facility. The applicant was sentenced to preventive detention after he was declared not criminally responsible, owing to his mental disorder (paranoid schizophrenia). The inadequate conditions consisted, along with other shortcomings, in the lack of adequate medical care

##### **B. Summary description of the decision concerning general measures**

**5.** The Court recommended that the respondent State consider the adoption as a matter of urgency of general measures in order to secure appropriate living conditions and the provision of suitable and individualised forms of therapy to mentally ill persons who need special care owing to their state of health, such as the applicant, so as to support their possible return and integration into the community.

#### **III. INDIVIDUAL MEASURES:**

##### **6. Payment of the sum awarded by way of just satisfaction:**

**Date:** 8 may 2024 (see appendix 1).

**Amount:** EUR 34,000.00.

##### **7. Other**

The applicant's security measure expired on 14 April 2024, when he was released.



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#### IV. GENERAL MEASURES:

8. It should be noted that, as the facts of the present case show, there is a structural problem which requires general measures some of which have since been taken to deal with this problem, namely:

a) - **The approval of Decree-Law 70/2019 and its regulation, namely through a joint order of the Ministries of Justice, Health and Social Security to facilitate the return of hospitalised citizens to society:**

- i. Decree-Law No. 70/2019 of 24 May provides for the adaptation of the regime for the execution of measures involving deprivation of liberty applied to an incompetent person or an imputable person interned in an establishment for incompetent persons, as well as preventive internment when carried out in a mental health unit that is not part of the Prison Services.
- ii. The current model of implementation of security measures of psychiatric confinement, set out in Decree-Law no. 70/2019, is a model that combines the possibility of serving the measure in facilities belonging to the Ministry of Justice or in those belonging to the Ministry of Health, depending on the level of security required. The Government recognises that it is necessary to continue the effort to make more beds available in the units of the National Health Service, in order to comply with the legal provision that establishes a preference for the implementation in a mental health unit of the NHS.
- iii. **Joint Order no. 3625/2024**, of 4 April, of the Ministries of Justice, Health and Social Security, establishes the procedures for signalling, assessing and identifying social and health responses in the event of release on bail or the end of a security measure in detention, ensuring that people who are in a position to end their detention but who do not have autonomy or family support in a free environment are referred to existing support.
- iv. The Government is convinced that the significant increase of beds in the National Health Service forensic units, which is taking place under the



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Ministry of Health within the purview of the Recovery and Resilience Plan, will strengthen very significantly the capacity of the forensic system, thus reducing the need to use psychiatric facilities of the prison system.

**b) - the plan to reconfigure the forensic system, by the National Coordination of Mental Health Policies (a measure funded by the Portugal's Recovery and Resilience Plan), which will rehabilitate and increase vacancies in NHS health units<sup>1</sup>:**

- i. In the context of the Ministry of Health, the "Plan for the Reconfiguration of the Forensic System", drawn up by the National Coordination of Mental Health Policies and presented on 31.03.2022, approved by the Ministry of Health on 29.11. 2023, provides for the construction/renovation of three forensic psychiatry facilities and equipment (Lisbon Hospital and Psychiatric Centre; Coimbra University Hospital Centre, E.P.E.; Santo António University Hospital Centre, E.P.E.) and establishes the creation of three forensic residential units, of which the one at the ULS Santo António has already been completed and is in operation. The other works are expected to be completed by the end of 2025.
- ii. Under the Recovery and Resilience Plan, the Ministry of Health intends to double the capacity of its mental health units for forensic patients, which will contribute to diminishing the number of patients serving the measure in the prison system, thus fully complying with the legal preference for the implementation in a mental health unit of the National Health Service. Since 2019, around 60 inpatients have been transferred from «Santa Cruz do Bispo» to «Magalhães Lemos Hospital». In 2024, under the aforementioned Plan, 40 new places will be available, following the renovation of a new pavilion in «Magalhães Lemos Hospital». This will allow for the transfer of more patients from «Santa Cruz do Bispo Clinic».

<sup>1</sup> The Plan is available at:

[https://research.unl.pt/ws/portalfiles/portal/87205850/Programa\\_Reconfigura\\_o\\_Sistema\\_ForeNSE\\_2022.pdf](https://research.unl.pt/ws/portalfiles/portal/87205850/Programa_Reconfigura_o_Sistema_ForeNSE_2022.pdf)

On the ongoing mental health reform, including the forensic system, the following recent presentation (partly bilingual) is also available: Xavier M, Barreto H, Cruz MC, Domingos P, Gago J, Maia Correia T, Marques C, Marques MJ, Matos Pires A, Morgado P, Narição M, Pereira S, Redondo J, Santos T, Vieira F, Sena e Silva F (2024). *A Reforma da Saúde Mental em Portugal: três anos de transformação*. Lisboa: Coordenação Nacional das Políticas de Saúde Mental, Ministério da Saúde. doi: 10.34619/1n9a-yb44, disponível na página do Ministério da Saúde ([https://saudemental.min-saude.pt/wp-content/uploads/2024/05/Relato%CC%81rio-Reforma-SM\\_CNPSM\\_2024.pdf](https://saudemental.min-saude.pt/wp-content/uploads/2024/05/Relato%CC%81rio-Reforma-SM_CNPSM_2024.pdf))



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**c) - The approval of the new Mental Health Act limiting the maximum duration of hospitalisation measures;**

In 2023, a new Mental Health Act (Law 35/2023 of 21 July) was passed with the principal objective of aligning Portuguese legislation on treatment and involuntary hospitalisation with developments in international practice and standards in this domain. This was achieved by bringing the legal system into line with the UN Convention on the Rights of Persons with Disabilities, in particular. Law 35/2023 of 21 July, which entered into force in August 2023, also repealed Article 92(3) of the Penal Code, which until then had allowed for the successive extension of security measures for the internment of non-custodial citizens in certain cases. The continued existence of this provision had long been questioned, as it allowed internment measures to be of unlimited or even indefinite duration in practice. As a result, the maximum period of detention for people who are not capable of committing an offence but have nonetheless prevaricated will always be the abstract punishment for that offence.

With the entry into force of the new law, security internment measures that had already exceeded the maximum sentence for the type of offence came to an end, resulting in the release of around 50 people.

In order to prepare for the entry into force of the new regime, close coordination was established between the government departments of Justice, Social Security and Health, and a methodology was defined to carry out a survey of all cases for which it was foreseeable that the measure would end, characterising the clinical and social situation of each of these citizens through a multidisciplinary approach, bringing together information from the fields of social reintegration, mental health and social security. On the basis of this characterisation, an attempt was made to define the most appropriate response to the capacities and needs of each citizen. These responses may include reintegration into a family environment, placement in residential structures, whether for the elderly or for people with disabilities, different types of housing responses, placement in health institutions or in units of the integrated mental health care network.



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Law 35/2023 amended the regime for reviewing the detention measure, reducing the intervals between mandatory reviews by the court from 2 years to 1 year, in line with a «Committee for Prevention of Torture» (CPT) recommendation in this regard.

### **9. Santa Cruz do Bispo Psychiatric Clinic improved conditions**

The male prison of Santa Cruz do Bispo consists of:

- A pavilion with two wings, each with two floors, for ordinary prisoners.
- A **Psychiatric Clinic** for the detention of prisoners without custody and prisoners with special needs in this area, with 73 single cells, nine dormitories and one double room (Order No. 1564/2023, of 31 January).
- A Drug Free Unit, a unit for the treatment of drug-addicted prisoners, housed in an autonomous pavilion with its own kitchen, gym and playground.
- The «Casa de Acolhimento de Santo André» (Santo André Reception House), set up as a self-contained house, initially to house ex-prisoners with no outside support, and now also receiving open regime prisoners.

The government has made considerable efforts to improve the conditions at the clinic, both in terms of material conditions and in terms of staffing levels.

There has been a permanent effort to increase human and material resources in order to enhance the range of psychopharmacological, psychotherapeutic and socio-emotional treatments, individualised and adapted to the needs of each patient, as will be described in more detail below.

It is relevant to inform that a new therapeutic space was recently opened in the Clinic, containing a “Snoezelen” room for cognitive stimulation and behavioural stabilisation of patients in periods of crisis and psychomotor agitation.

#### **9.1. Separation of patients and treatment**

All patients are, at the time of admission, assessed as to their behavioural level, degree of autonomy and level of risk. Inpatients with mental health conditions who share accommodation with individuals with intellectual impairment are patients with calm behaviour and no indicators of risk. Furthermore, most inpatients with mental health



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conditions, namely psychosis, show a marked impairment of their intellectual faculties, due to the course of the disease, in a similar way to patients with intellectual disabilities. Thus, it has been ensured that the sharing of accommodation between inpatients allows for adequate and functional relationships, with well-being for both parties.

Regarding individualized treatment, according to needs, initial assessment is followed by the elaboration of a «Therapeutic and Rehabilitation Plan», individualized and approved by the Sentencing Court. This Plan may contemplate schooling activities (from the 1st to the 12th grade), vocational training or work, as well as occupational therapy, such as:

Health promotion projects:

- Therapeutic Walk;
- Cognitive Stimulation Sessions;
- Personal and Social Skills Training;
- Arts (“The freedom of affections”) - with the collaboration of a renowned painter from the city of Porto;

Volunteering from the Catholic University and the Faculty of Psychology of Porto University.

Besides these occupational activities, the Clinic offers programmes directed to specific problems, such as alcohol addiction, and projects involving animals, such as “Pelos Dois” (“For the Two of Us”), where inmates participate in the training of dogs that were abandoned and are being prepared for adoption.

## **9.2. Persons not criminally responsible but serving time**

Women who, due to a mental health condition at the time of the crime, cannot be held criminally liable (*inimputáveis*) and those subject to a Court order of preventive (pre-trial) commitment to a psychiatric unit (*internamento preventivo*) are (due to the lack of a psychiatric unit for women in the prison system) assigned to the Clinical Services of Santa Cruz to Bispo Women’s Prison, temporarily, while awaiting for a place in a forensic unit. They are provided with a specific programme that encompasses sports (gym), psychomotor stimulation (occupational therapy) and open-air recreation, which takes place in Wing 1, as the clinical services are located on floor 2, where there is no yard.





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The problem of the lack of sufficient places in forensic units is expected to improve considerably with the reconfiguration of the forensic system foreseen under the Recovery and Resilience Plan, as described above (see, § 8 b)).

#### **10. Alternative facilities to the Clinic**

As stated above, the current regime governing the implementation of security measures of confinement, set out in Decree-Law no. 70/2019, combines the possibility of serving the measure in facilities belonging to the Ministry of Justice or in those belonging to the Ministry of Health, depending on the level of security required. The law actually establishes a preference for the assignment to a mental health unit of the National Health Service, the assignment to a mental health unit of the prison system being designed as the exception. According to Article 7, after an assessment of risks and needs, the measure is implemented in a mental health unit of the health system, except where security requirements, based on serious danger to the person or of third parties, or of escape, require the assignment to a mental health unit integrated within the prison service.

#### **11. The work planned for the Prison Hospital included in the 2023-2027 Multiannual Justice Investment Plan**

The multiannual investment plan for the justice sector 2023-2027, approved by Council of Ministers Resolution no. 119/2023 of 9 October, provides for the renovation of the 5th floor of the Clinical Pavilion of Santa Cruz do Bispo and the roof of the building, work scheduled for 2025 and budgeted at €315822 + VAT.

#### **OTHER GENERAL MEASURES**

##### **12. Publication, communication and diffusion:**

- a) The Court's judgment was publicized online on the official website of the Prosecutor's General Office (Procuradoria-Geral da República).
- b) It was transmitted to the prison authorities (Direção-Geral de Reinserção Social e Serviços Prisionais) in view of its dissemination among officials and staff so the necessary measures are implemented.

#### **V. APPENDICES**

**Appendix 1:** just satisfaction form and proof of payment.



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Lisbon, 17 October 2024



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DGI

17 OCT. 2024

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## JUST SATISFACTION FORM

Information on the payment of the sum awarded by way of just satisfaction

State: Portugal

Name		Rui Miguel MIRANDA MAGRO
Application number		30138/21
Sum awarded		EUR 34,000,00
Payment deadline		9 July 2024
Date of payment		8 May 2024
Amount paid	Total	EUR 34,000,00
	Default interests	-----