



CPT/Inf (94) 9 [Part 1]

**Report to the Portuguese Government  
on the visit to Portugal  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 19 to 27 January 1992**

The Portuguese Government has agreed to the publication of the CPT's report on its visit to Portugal, together with its Response.

Strasbourg, 22 July 1994

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Copy of the letter transmitting the CPT's report

Strasbourg, 27 October 1992

Dear Mr Santana Carlos,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Portuguese Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Portugal from 19 to 27 January 1992. The report was adopted by consensus by the CPT at its fourteenth meeting, held from 28 September to 2 October 1992.

I would draw your attention in particular to paragraph 167 of the report, in which the CPT requests the Portuguese authorities to provide an interim and a follow-up report on action taken upon its report. The CPT would be most grateful if it were possible, in the event of the reports forwarded being in Portuguese, for them to be accompanied by an English or French translation.

More generally, the CPT is keen to establish an ongoing dialogue with the Portuguese authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention. Consequently, any other communication that the Portuguese authorities might wish to make would also be most welcome.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Antonio CASSESE  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

Mr António SANTANA CARLOS  
Director of Multilateral Affairs  
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## Preface

As the European Committee for the prevention of torture and inhuman or degrading treatment or punishment is a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of two other Council of Europe supervisory bodies within the field of human rights: the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims ex post facto).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it and ultimately harmful to the national authorities in general.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular it:

- i) examines the general conditions in establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to understand how they perceive i) and ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained in not only the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights are:

- i) the Commission and the Court have as their primary goal ascertaining whether breaches of the European Convention of Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Commission and Court have substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case law formulated thereunder;
- iii) given the nature of their functions, the Commission and the Court consist of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc;
- iv) the Commission and Court only intervene after having been petitioned through applications from individuals or States. The CPT intervenes ex officio through periodic or ad hoc visits;
- v) the activities of the Commission and Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the CPT may issue a public statement on the matter.

## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Portugal from 19 to 27 January 1992. The visit formed part of the CPT's programme of periodic visits for 1992.

2. The delegation consisted of the following members of the Committee:

- Michael MELLETT, Head of the delegation;
- Petros MICHAELIDES;
- Ergun ÖZBUDUN;
- Stefan TERLEZKI.

The delegation was assisted by:

- Ole Vedel RASMUSSEN, Surgeon at Bispebjerg Hospital, Denmark (expert);
- Silvia CAMILO (interpreter);
- Melanie ROE (interpreter);
- Kathryn TEIXEIRA DINIZ (interpreter);
- Helen WALKER (interpreter).

The delegation was also accompanied by the following members of the CPT's Secretariat:

- Mr Trevor STEVENS, Secretary of the Committee;
- Mr Mark KELLY.

**B. Establishments visited**

3. The delegation visited the following places of detention:

Alcoentre

- Vale de Judeus Prison

Almada

- Headquarters of the National Republican Guard
- Almada Division of the Public Security Police
- Alfeite Naval Prison

Lisbon

- Headquarters of the Judicial Police
- Headquarters of the Public Security Police
- Public Security Police Station at Praça da Alegria
- Judicial Police Group Prison

Santarem

- Headquarters of the Public Security Police
- Headquarters of the National Republican Guard

Sintra

- Public Security Police Station at Rua Dr Guilherme Fernandes
- Linhó Prison.

In addition, a number of prisoners were interviewed at the Prison Hospital in Caxias.

**C. Consultations held by the delegation**

4. The delegation held consultations with the national authorities and with representatives of non-governmental organisations active in the CPT's fields of interest, in addition to talks at local level with those responsible for the places visited.

A list of the authorities and organisations with which the delegation held talks is set out in Appendix 2 to this report.

**D. Co-operation encountered during the visit**

5. The talks held by the delegation with the national authorities were conducted in a spirit of full co-operation. The delegation was received by both the Minister of Justice and the Minister of the Interior; further, the Minister of Health made known that he was ready to meet the delegation, if appropriate in the light of its programme. The delegation also met with the Minister for Defence Procurement and had a fruitful exchange of views with the two Deputy Ombudsmen, Messrs. Silveira and Vaz Serra.

In addition, both at the outset and at the end of the visit, the delegation had a joint meeting with the liaison officers appointed by the Ministries of Foreign Affairs, Justice, the Interior, Defence and Health. Those meetings provided a useful forum in which to exchange information and to settle practical aspects of the visit.

Reference should also be made to the credentials/identity documents provided to members of the delegation by the appropriate Ministries; these served to facilitate considerably the work of the delegation during the visit.

6. At local level the delegation received a satisfactory reception at all of the places visited, including those which had not been notified in advance that a visit would take place. In particular, the delegation experienced no significant delays in gaining access to the establishments visited. It was observed that both managerial and subordinate staff were aware of the possibility of a visit by the CPT and had some knowledge of the mandate of the delegation.

7. Notwithstanding the general spirit of co-operation, one particular situation encountered at Vale de Judeus Prison, Alcoentre, is of concern to the CPT. The establishment's Security Unit was empty at the time of the visit, four prisoners who had been held there having been transferred on 18 January 1992 (i.e. the day before the start of the delegation's visit to Portugal), three to the Prison Hospital at Caxias and the other to one of the ordinary wings in the prison.

The delegation examined the custody records concerning the Security Unit, which showed that it was extremely rare for the Unit to be empty. The delegation also examined the records of the prisoners concerned at Vale de Judeus and at the Prison Hospital, and spoke to staff in both establishments about the prisoners. Normal procedures for transfers to the Prison Hospital had apparently not been followed, and the hospital's staff were at a loss to explain the reasons for the decision to transfer them. From the information gathered, the delegation was led to conclude that the prisoners had been transferred because of its visit. The CPT regards this as a negation of true co-operation.

**E. Legal framework**

8. A summary of some of the legal provisions in Portugal which relate to the prevention of torture and inhuman or degrading treatment or punishment of persons deprived of their liberty is to be found in Appendix 3.

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

### **A. Police establishments**

#### **1. General information**

9. The delegation visited establishments under the control of three distinct police forces in Portugal: the Judicial Police (Polícia Judiciária -P.J.), which is accountable to the Ministry of Justice and responsible for the investigation of serious crimes at a national level; the Public Security Police (Polícia de Segurança Pública - PSP) and the National Republican Guard (Guarda Nacional Republicana - GNR), which are accountable to the Ministry of the Interior and responsible for the maintenance of law and order in, respectively, urban and rural areas.

10. As indicated in the legal framework (cf. Appendix 3, paragraph 4), the maximum period during which persons may be detained by the police prior to a judicial hearing is 48 hours. The purpose of this first hearing is to determine whether detention without judicial charge should be continued. If it is continued (remand in custody), the person concerned is placed in a prison establishment.

11. Detention without judicial charge may last for up to sixteen months, depending upon the nature of the crime and the complexity of the investigation required (cf. section 215 of the Code of Criminal Procedure). In terms of the Code of Criminal Procedure, investigations during the period before judicial charge are to be conducted by the Public Prosecutor's Office. However, section 144(2) of the Code provides that such investigations, "may be conducted by a criminal investigation department to which the Public Prosecutor's Office or the investigating judge has delegated competence therefor." In practice this provision has been supplemented by Attorney General's Circular 8/87, which represents a general delegation of investigatory powers from the Public Prosecutor to the Judicial Police. In the Lisbon, Oporto and Coimbra districts the Judicial Police thereby have competence to investigate "all crimes reported to them or of which they have knowledge" and outside those districts, "competence to investigate crimes punishable with a maximum prison sentence of more than three years".

#### **2. Torture and other forms of ill-treatment**

12. The delegation spoke to many people about their experiences whilst detained by the police; some of them, for example those interviewed in the Judicial Police Group Prison in Lisbon, had very recently been in police custody.

13. The delegation heard numerous detailed allegations of ill-treatment inflicted in establishments of each of the three police forces referred to in paragraph 9. The principal form of ill-treatment alleged was physical assault (including kicks, punches and blows with the butts of pistols). In addition, the delegation heard some allegations that detained persons were subjected to simultaneous blows to both ears with telephone directories. Some isolated allegations that detainees were beaten on the soles of their feet with truncheons were also heard. It is also noteworthy that off-duty policemen present in the police stations concerned were on occasion alleged to be the perpetrators of such ill-treatment.

14. Several of the prisoners who made such allegations were examined by the delegation's medical expert and some of those examined displayed physical injuries which were consistent with their allegations of ill-treatment.

By way of illustration, the CPT would mention the case of a prisoner seen in the Judicial Police Group Prison in Lisbon. He alleged that some three days earlier he had been kicked, punched and hit with a truncheon by police officers in a Public Security Police Station. The prisoner was examined by the delegation's medical expert and found to display injuries consistent with his allegations, including a pronounced hematoma, measuring approximately 12cm, on the outside of his left shoulder and two parallel lesions on the front of his left leg, just below the knee.

15. The existence of such ill-treatment in police establishments was corroborated by representatives of non-governmental organisations with which the delegation held talks. The delegation also spoke with two judges to whom detainees are presented immediately after a period of police custody. They stated that they regularly encountered cases of detainees who displayed injuries consistent with ill-treatment by the police. However, most of the detainees concerned were apparently reluctant to make a written statement about the treatment they had received, out of concern that it could prove to their detriment in the context of the criminal proceedings being brought against them. The issue of the ill-treatment of detainees was also raised with the Deputy Ombudsmen, who indicated that the number of complaints about such treatment - which had declined in recent years - was beginning to rise again.

**In the light of the information received by its delegation during the visit to Portugal, the CPT can only conclude that the ill-treatment of persons in police custody is a relatively common phenomenon.**

16. Portuguese law contains a number of provisions penalising torture and other forms of ill-treatment (cf. Appendix 3). Further, there is formal provision for certain safeguards against ill-treatment (in particular access to a lawyer). Later in this report the CPT will recommend some reinforcements of those safeguards (see paragraph 36 et seq.). However, it should be emphasised that legal and other technical safeguards - while important - will never be sufficient; the best possible guarantee against ill-treatment is for its use to be unequivocally rejected by law enforcement officials. It follows that the provision of suitable education on human rights questions and of adequate professional training is an absolutely essential component of any strategy for the prevention of ill-treatment. This is especially true in a country such as Portugal, which in the fairly recent past was governed by a dictatorial regime which at least acquiesced in, if not favoured, resort to ill-treatment by law enforcement officials.

17. The above-mentioned education and professional training should exist at all levels of the law enforcement hierarchy, and should be ongoing. It should seek to put across and develop two points. First, that all forms of ill-treatment are an affront to human dignity and as such are fundamentally incompatible with the values enshrined in the Portuguese Constitution as well as in many international instruments ratified by and binding upon Portugal. Second, that resort to ill-treatment is a grossly ineffective means of combatting crime. Other interrogation and investigation techniques, which respect human rights, are likely to lead to better results from a security standpoint.

Further, particular attention should be given to training in the art of handling, and more especially of speaking to, persons in police custody i.e. interpersonal communication skills. The possession of such skills will often enable police officers to defuse situations which might otherwise become violent.

18. In the light of the above remarks, **the CPT recommends:**

- **that a very high priority be given to human rights education and professional training for law enforcement officials of all ranks and categories. Experts not belonging to the law enforcement agencies should be involved in this education and training;**
- **that an aptitude for interpersonal communication be a major factor in the process of recruiting law enforcement officials and that, during the training of such officials, considerable emphasis be placed on acquiring and developing interpersonal communication skills;**
- **that senior law enforcement officials be required to deliver to their subordinates the clear message that the ill-treatment of detained persons is not acceptable and will be dealt with severely.**

19. The CPT would add that energetic action to follow up complaints would have an important preventive effect. In this respect **the CPT would like to receive up-to-date statistics on complaints about ill-treatment made against the police together with information on action taken on those complaints (number of complaints rejected, cases pending, convictions, etc.).**

**The CPT also wishes to receive detailed information about the precise procedure followed when such complaints are submitted to a Public Prosecutor and, in particular, about which agency is entrusted with carrying out investigations into such allegations.**

**Furthermore, the CPT wishes to know whether appropriate action can be taken upon information received which suggests that ill-treatment has occurred, even in the absence of a written statement by the alleged victim.** In this connection, the CPT's delegation was informed that the prosecution of certain types of ill-treatment was only possible on the basis of a formal complaint by a private citizen.

### 3. Conditions of detention in the police establishments visited

#### a) introduction

20. Custody by the police is of relatively short duration. Consequently, physical conditions of detention cannot be expected to be as good in police establishments as in other places of detention where persons may be held for lengthy periods. However, certain elementary material requirements should be met.

21. All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a mattress and clean blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

#### b) situation in the establishments visited

22. Conditions of detention in the establishments visited varied from relatively good to very poor. The situation in the detention area of the Lisbon Headquarters of the Public Security Police is of particular concern to the CPT.

23. The Headquarters of the Public Security Police in Lisbon are housed in a local government building (the Governo Civil) in the city centre. The Headquarters includes a police holding area for those arrested by the PSP in the central Lisbon area. Those detained there have normally been held for short periods in other PSP police stations before being transferred to the Governo Civil. Fourteen to fifteen people are held there during the course of an average day.

At the beginning of its visit the delegation was told that there were three large cells for men at a sub-basement level and two for women on a level above. It became apparent during the course of the visit that another cell was in use on that latter level (cf. paragraph 26).

24. The delegation inspected a large cell for men which measured approximately 30 m<sup>2</sup>. It contained seven beds with concrete bases and wooden tops. The delegation was informed that male detainees are provided with blankets, but not with mattresses. The cells received no natural light and the artificial light was inadequate. A second cell for men had similar characteristics. A third section consisted of a suite of two rooms, each with a single bed, which were divided by a sanitary annex. There was one exterior door to this unit. The officers on duty said that this accommodation provided a total of sixteen places.

25. On the floor above, the delegation inspected the accommodation which was said to be for women. The first cell was designed for occupancy by women with children. It measured 22 m<sup>2</sup>. The cell was divided into three areas, one which had two beds with mattresses, a central area which contained one bed, and a sanitary annex comprising a lavatory and washbasin. The second cell for women was smaller and contained four beds.

As with those for men, these cells did not benefit from natural light and the artificial light was inadequate.

26. At the end of the corridor on this upper floor, the delegation were shown another large cell. This was very dirty and in an extremely poor state of repair. A wooden platform which ran along one wall provided places for three to four people to lie down.

The officers present stated that this cell had not been in use for a long time - however, the delegation drew their attention to graffiti of apparently recent origin. It was then said that the cell had been used in the previous week and that when used, it accommodated men.

27. In short, the basement cells at the Headquarters of the PSP in Lisbon offered very poor conditions of detention. They were dirty and dilapidated and had inadequate lighting facilities; moreover, they were inadequately ventilated. Conditions in the cell for men on the upper floor could fairly be described as squalid.

All of these matters need to be addressed as a matter of urgency. However, it might also be asked whether the Public Security Police could not find better premises for their main holding area in Lisbon.

28. Conditions in the detention area of the Headquarters of the National Republican Guard in Almada were on the whole acceptable, albeit somewhat austere. They benefitted from adequate natural and artificial lighting and the sanitary facilities were satisfactory. The premises as a whole were clean. Mattresses and blankets were apparently provided to detainees.

However, when visited, the inside temperature was rather low and it was not clear whether there was satisfactory heating in the area.

29. The Almada Division of the Public Security Police possessed two cells each measuring approximately 6m<sup>2</sup>. The delegation was informed that a maximum of two prisoners were held in each cell and that no prisoner was ever held for more than one night.

Both cells were in a rather dirty condition. They were equipped with lavatories, one of which was in a poor state of repair. One of the cells contained a shabby foam mattress and blanket. The cells did not benefit from natural light; however, the artificial lighting was adequate.

30. The Public Security Police station at Praça da Alegria in Lisbon did not possess any holding rooms. The delegation was informed that persons taken into custody were held at the station for a few hours at most, and then transferred to the Governo Civil (cf. paragraph 23). Persons taken into custody were kept in the front entrance hallway; those thought likely to attempt to escape were handcuffed to one of the wooden benches in this area. Any questioning would apparently be done in an adjacent office.

The CPT considers that it is unacceptable for detained persons to be kept shackled to a piece of furniture in full view of persons visiting the police station. Proper cellular accommodation should be provided.

31. The CPT's delegation was not satisfied by the conditions of detention at the Headquarters of the Public Security Police at Campo sá da Bandeira in Santarém. This establishment possessed two cells, one for men and one for women, both measuring approximately 10 m<sup>2</sup>.

The cell for men contained two concrete beds with mattresses. It had adequate lighting, both natural and artificial and was equipped with a lavatory. At the time of the visit the temperature in the cell was very low, at least in part due to the fact that the cell window was unglazed.

The cell for women was located in a generator room and was reached through two doors; the outer door led to an area which housed the generator, and the cell itself lay behind a further door. It contained two iron-framed beds with mattresses. The cell enjoyed no natural light, but the artificial light was adequate. As with the cell for men, it contained a lavatory, which was out of order at the time of the visit. The cell was divided at half its height by a wire anti-escape mesh, thereby engendering a particularly oppressive atmosphere.

Neither of the cells possessed a call bell; as regards the womens' cell, it was not apparent that (given the two doors and the noise which might be emitted by the generator) it would be possible to hear anyone calling for assistance.

32. Both of the cells were far from clean and were in urgent need of renovation. Further, the cell for women should be relocated; a generator room is not a suitable place to hold someone in custody.

33. By contrast, conditions at the Headquarters of the National Republican Guard at Rua Tenente Vladim in Santarem were quite adequate. The cells were in a good state of repair and contained lavatories which functioned. In addition, it is commendable that they were equipped with a call system.

34. Conditions of detention at the Public Security Police Station at Rua Dr Guilherme Fernandes in Sintra were good. The station had one large cell measuring approximately 14 m<sup>2</sup>, with a very high ceiling. The officers present stated that, in recent times, there had never been more than three people held there at any one time.

The cell had been freshly painted and was reasonably clean. It contained a platform bed with a mattress and a lavatory behind a partition. Blankets were available in a storeroom nearby.

c) action proposed

**35. The CPT recommends the Portuguese authorities:**

- **to review the conditions of detention in the different police establishments visited by the delegation, in the light of the remarks made in paragraphs 21 to 34;**
- **to take appropriate steps to ensure that the conditions of detention in all police establishments meet the requirements indicated in paragraph 21;**
- **to explore the possibility of withdrawing from service the existing cellular accommodation at the Governo Civil in Lisbon.**

**4. Safeguards against the ill-treatment of persons detained by the police**

a) introduction

**36. The CPT attaches particular importance to three rights for persons detained by the police:**

- the right of those concerned to have the fact of their detention notified to a close relative or a third party of their choice,
- the right of access to a lawyer,
- the right to a medical examination by a doctor of their choice (in addition to any medical examination carried out by a doctor called by the police authorities).

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons in detention, which should apply from the very outset of their custody (i.e. from the moment when they are obliged to remain with the police).

37. Furthermore, in the view of the CPT, persons taken into police custody should be expressly informed without delay of all their rights, including those referred to in paragraph 36.

b) notification of custody to a close relative or third party

38. Detained persons do not have the right immediately to inform a close relative or third party of the fact of their detention by the police. Such a right is only expressly guaranteed from the moment when a court order involving deprivation of liberty becomes effective (cf. Article 28(3) of the Constitution).

39. Police officers with whom this subject was discussed stated that if an arrested person asked them to contact a family member or third party they would comply with that wish unless there was a danger of collusion or the person had been arrested under a court order which expressly prohibited such contacts.

40. The CPT considers that the right of a person taken into police custody to inform immediately a relative or third party of his situation should be expressly guaranteed. The exercise of such a right could, of course, be subject to carefully-defined exceptions designed to protect the interests of justice.

**41. The CPT recommends:**

- **that persons in police custody should have the right as from the outset of their custody to have the fact that they have been detained notified to a family member or a third party of their choice;**
- **that any possibility exceptionally to delay the exercise of this right should be clearly circumscribed and made subject to appropriate safeguards (e.g. such delay to be recorded in writing together with the reasons therefor and to require the approval of a senior officer or public prosecutor).**

c) access to a lawyer

42. Article 32 of the Portuguese Constitution provides inter alia that, "Criminal proceedings shall provide all the necessary safeguards for the defence" and that, "The accused shall have the right to choose and to be assisted by counsel at all stages of the proceedings".

This is supplemented by section 61(1) of the Code of Criminal Procedure, which deals with the rights and duties of accused persons; these include, inter alia,

- " ... (d) The right to choose his own defence counsel or ask the court to appoint one;
- (e) The right to be assisted by a defence counsel at all stages of the proceedings in which he participates, and, if detained, to communicate with his defence counsel, even in private."

43. The CPT was informed that these provisions are interpreted to entitle a detainee to a lawyer even during the period of up to 48 hours during which they may be held in police custody before being presented to a judge.

**The CPT wishes:**

- **to receive confirmation that a person detained by the police has a right of access to a lawyer as from the outset of his custody;**
- **to be informed whether the right of access to a lawyer includes the right for the person concerned to benefit from the presence of a lawyer during questioning.**

44. Notwithstanding the above, the delegation was told that it was extremely rare for a detained person to have access to a lawyer during the initial period of police custody and that, in practice, access to assistance from a legally qualified person was often not available even during later stages of the proceedings.

**The CPT wishes to receive the comments of the Portuguese authorities on this subject.**

- d) medical examinations of detained persons

45. Police officers told the delegation that if a detainee requested or otherwise appeared to be in need of medical assistance, he would be taken to the nearest hospital. However, several prisoners met by the delegation alleged that they had not received appropriate medical attention whilst in police custody.

In this respect, **the CPT wishes to make the following recommendations:**

- **that the possibility for a person detained by the police to have access to a doctor (including, if he so wishes, one of his own choice) be expressly guaranteed;**
- **that all medical examinations of persons in police custody be conducted out of the hearing, and preferably out of the sight, of police officers;**
- **that the results of all medical examinations as well as relevant statements by the detainee and the doctor's conclusions be formally recorded by the doctor and made available to the detainee and his lawyer.**

46. As regards more particularly the Judicial Police Headquarters in Lisbon, the delegation was informed that the Ministry of Justice was giving consideration to the idea of having a doctor permanently on call there. Such a doctor would be able, when necessary, to examine persons brought before a judge by the police with a view to their remand in custody.

**The CPT considers that this would be a most appropriate development and wishes to receive further information on this matter from the Portuguese authorities.**

e) information on rights

47. The delegation noted that the provisions of section 61(1) of the Code of Criminal Procedure were reproduced on a card carried by police officers, which was apparently read to those arrested by them. The CPT fears that the technical nature of this provision's wording could well render it unintelligible to many detained persons.

48. In order to ensure that persons in police custody are duly informed of their rights, **the CPT recommends that a form setting out those rights in a straightforward manner be given systematically to such persons at the outset of their custody. This form should be available in different languages. Further, the detainee should be asked to sign a statement attesting that he has been informed of his rights.**

f) conduct of police interviews

49. The delegation was told on several occasions by police officers that they did not interrogate persons taken into police custody. Such interrogation was, it was stated, the task of the judge to whom the persons concerned were presented with a view to their remand in custody (cf. Article 28(1) of the Constitution).

However, the delegation heard from other sources, including a judge, that persons could be questioned by the police during the initial period of up to 48 hours before being brought before a judge. This was subsequently confirmed by other police officers to whom this point was put, in particular by members of the Judicial Police. Those officers did, however, emphasise that only statements which were made before a judge would have any evidential value in court.

50. In this respect, **the CPT recommends that the Portuguese authorities draw up a code of conduct on police interviews addressing inter alia the following matters: the systematic informing of the detainee of the identity (name and/or identity number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which an interview may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, medicine, or who are in a post-traumatic state. The code should also provide that a record be kept of the time at which interviews start and end, of any request made by the detainee during an interview, and of the persons present during each interview.**

**Further, the CPT would like to receive clarification about the evidential value of statements made to the police or a Public Prosecutor prior to a detainee's first appearance before a judge.**

51. As already mentioned (cf. paragraph 11), the task of carrying out certain investigations during the period of up to sixteen months before judicial charge has been delegated to the Judicial Police. In this connection, **the CPT would like to be informed whether a person held on remand could be returned to police premises for the purposes of further questioning.**

- g) procedures vis-à-vis allegations of ill-treatment

52. In the context of the prevention of torture and other forms of ill-treatment, it is essential to ensure that evidence obtained as a result of such treatment cannot be admitted in legal proceedings (see also Article 15 of the United Nations Convention Against Torture). In this regard, the CPT has noted with interest the provisions of Article 32(6) of the Portuguese Constitution, according to which "Any evidence obtained by torture, force, violation of the physical or moral integrity of the individual ... shall be of no effect".

**The CPT would like to receive information on the precise procedures followed by an investigating or trial judge when confronted with allegations by the person detained that evidence presented against him was obtained as a result of torture or other forms of ill-treatment.**

## **B. Prisons**

### **1. General information**

53. The CPT's delegation visited the Judicial Police Group Prison in Lisbon; Linhó Prison, Sintra; Vale de Judeus Prison, Alcoentre and Alfeite Naval Prison, Almada.

In addition, as noted above at paragraph 3, a sub-group of the delegation visited the Prison Hospital at Caxias, in order to interview three particular prisoners who had been transferred there from Vale de Judeus Prison. No attempt was made to assess the general conditions of detention at the Prison Hospital and the results of the interviews conducted there will be discussed in respect of the treatment of detainees at Vale de Judeus Prison.

54. The **Judicial Police Group Prison** in Lisbon (Estabelecimento Prisional junto da Polícia Judiciária de Lisboa), is located within the building which houses the Headquarters of the Judicial Police. It is managed and staffed by the Directorate General of Prison Services. In principle at least, it is designed to operate as a short-term holding area for persons who have been remanded in custody following their arrest by the police. In addition it can be used to accommodate people being questioned by the Judicial Police prior to their being brought before a judge with a view to their remand in custody. The establishment has an official capacity of 80<sup>1</sup>. At the outset of the delegation's visit, it was holding 155 prisoners.

55. **Linhó Prison** is located outside the town of Sintra. It was built in 1956 and accommodates mainly sentenced male prisoners. It has an official capacity of 460. At the time of the delegation's visit it was holding 484 prisoners. The majority of the inmates were young adults aged between 21 and 25.

56. **Vale de Judeus Prison** is situated in the countryside outside the village of Alcoentre. Having been closed in 1978, following a major escape, it reopened in 1981 under its present name as a central maximum security prison for those serving longer sentences. The prison has an official capacity of 504 and at the time of the visit had a population of 478, with a concentration of older prisoners aged between 30 and 60.

57. **Alfeite Naval Prison** forms part of the compound of the Number 2 Group of the Portuguese Navy, located across the estuary from Lisbon, in the town of Almada. There were six people detained there when the delegation visited, one for breach of military discipline and five who had been convicted of ordinary crimes but were serving their sentences there because they were members of the Navy.

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<sup>1</sup> All official capacity figures are those provided to the CPT by the Portuguese authorities in a letter dated 29 November 1991.

## 2. Torture and physical ill-treatment

58. The delegation heard mixed accounts from detainees in the Lisbon Judicial Police Group Prison about their treatment by prison staff. Certain prisoners stated that their relations with the staff were reasonable, although staff could on occasion be rather unco-operative and over assertive. However, some allegations were heard that prisoners were on occasion roughly treated by prison staff especially in the event of querulous or unruly behaviour, e.g. if they made excessive noise. In this respect several prisoners referred to an incident which had apparently recently occurred in dormitory C. Furthermore, certain prisoners identified the largest of the three reception cells as a place where in the past prisoners had been seriously assaulted by staff. A social welfare officer (educator) told the delegation that there were approximately 12 written complaints per year from prisoners about ill-treatment by the staff.

**The CPT recommends the Portuguese authorities to examine whether prison officers in the Lisbon Judicial Police Group Prison are on occasion abusing their authority by ill-treating prisoners and, if necessary, take remedial action.**

**In this connection the CPT also wishes to be informed of the number and nature of complaints made during the last two years of ill-treatment by prison officers in the Lisbon Judicial Police Group Prison and of the action taken upon them.**

59. The delegation heard very few allegations of ill-treatment of prisoners by staff in the Linhó and Vale de Judeus prisons. As regards the former establishment, prisoners indicated that there had been a significant improvement in the situation since 1990. Prisoners in both prisons stated that, on the whole, their relations with the staff were satisfactory. The point was made on several occasions that younger members of staff tended to be more co-operative.

Nevertheless, the CPT understands that an administrative enquiry has been opened into an incident which occurred at Linhó Prison in early March 1991, during which prisoners were said to have been ill-treated. **The CPT would like to receive the results of this enquiry.**

Furthermore, the CPT received reports that, in early August 1991, a German and a Dutch prisoner were physically assaulted by security forces at Vale de Judeus Prison. This incident apparently escalated to involve other prisoners. **The CPT requests the Portuguese authorities to provide it with a full account of this incident.**

60. The CPT heard allegations that outside security forces ("intervention squads") were involved in either or both of the above incidents. In this respect, the CPT would stress that the intervention of outside security forces can often engender a high risk of ill-treatment of detainees and when such situations occur it is especially important that they are subject to rigorous means of control. More specifically, it is desirable that any such interventions should take place in the presence of the civil and legal authorities responsible for public order. **The CPT would welcome the comments of the Portuguese authorities on this subject.**

61. The delegation heard no allegations and found no other evidence of ill-treatment of persons detained at Alfeite Naval Prison. The delegation had the impression that relations between prisoners and supervisory staff were good.

62. Finally, the CPT wishes to emphasise the great importance it attaches to the training of prison staff. There is arguably no better guarantee against ill-treatment of a prisoner than a properly trained prison officer, capable of adopting an appropriate attitude in his relations with inmates. In this connection, **the CPT would underline that the recommendation already made in paragraph 18 on the subject of interpersonal communication skills applies equally to prison staff.**

### 3. Solitary confinement

63. The CPT pays particular attention to prisoners detained in conditions resembling solitary confinement. The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

64. The CPT has noted that according to section 111 of the Prison Regulations (Execução das medidas Privativas de Liberdade, Decreto-Lei No. 265/79), "special security measures" may be applied to a prisoner if his behaviour or his mental state are such as to suggest a risk of escape or the commission of acts of violence against himself or against other persons or property. Detention in a special security cell features in the list of authorised security measures.

Confinement of a prisoner in a special security cell for a period exceeding 15 days requires the approval of the Director-General of Prison Services and such confinement may not in any case exceed one month. If, after the latter period, the conditions leading to implementation of the special measure still obtain, the prisoner must be transferred to a "security establishment or section".

65. In this context, particular reference must be made to the situation found in the Security Unit of Vale de Judeus Prison (which was quite distinct from the establishment's Discipline Unit, on which cf. paragraph 136). The Unit consisted of ten cells, each measuring 7m<sup>2</sup>. They were furnished much as the ordinary cells in the prison. Lighting, both artificial and natural, and ventilation appeared to be adequate.

As already indicated (cf. paragraph 7), the Unit was empty at the time of the visit and gave the impression of being in some disarray. It was said that the Unit was being refurbished; however, there was no evidence of any renovation work in progress.

66. An examination of the files of the four prisoners who had been removed from the Security Unit shortly before the delegation's visit (i.e. on 18 January 1992), showed that one had been held in the Unit for more than two years, with intermittent visits to the Prison Hospital at Caxias; one for six months; one for three months and the last for one week.

The delegation subsequently spoke to the four prisoners in the locations to which they had been sent (i.e. for one, an ordinary wing in the prison and for the three others, Caxias Prison Hospital), who described their everyday lives in the Security Unit. They made no allegations of physical ill-treatment by staff, although one of them complained that staff had threatened him with violence and made excessive use of means of mechanical restraint (handcuffs). On the other hand, all four were highly critical of the regime applied to them within the Unit. The only out-of-cell activity offered was outdoor exercise for two hours per day; one hour in the morning and one in the afternoon. Although this had apparently not always been the case, occupants of the Unit were currently allowed to take exercise together. No other form of group association was offered. As regards in-cell activities, the prisoners said that they were limited to the provision of reading matter. The cells had neither television nor radio; nor was any work activity provided.

The prisoners' accounts of the regime applied in the Unit were, on the whole, confirmed by the Unit's staff.

67. The Prison Director stated that the three prisoners who had been transferred to the Prison Hospital had been held in the Unit because they had "psychiatric problems"; the delegation's discussions with the prisoners concerned tended to confirm the Director's view of their mental state. The fourth prisoner was said to have asked to be placed in the Security Unit for his own protection. The prisoner himself stated that he did not know why he had been placed there.

68. The CPT wishes to emphasise that when it is found necessary to deprive someone who is mentally disordered of his liberty, he should be kept and cared for in a secure hospital facility which is adequately equipped and possesses appropriately trained staff. The Security Unit at Vale de Judeus is not such a facility.

Further, it is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely to have damaging effects, resulting in degeneration in mental faculties and social abilities. As far as the delegation could ascertain, the regime applied to those undergoing segregation in Vale de Judeus did not provide such stimulation.

**The CPT recommends that an inquiry be carried out immediately into the operation of the Security Unit at Vale De Judeus Prison. The aims of this inquiry should, inter alia, be to ensure:**

- **that no mentally disordered person is held within the Unit;**
- **that the regime applied to the Unit's occupants offers them purposeful activities and guarantees them appropriate human contact;**
- **that no prisoner is held in the Unit for longer than is strictly necessary.**

69. It is axiomatic that a special security measure of solitary confinement should not last any longer than strictly necessary. This means that the decision to place someone in solitary confinement must be regularly reviewed. In addition, prisoners should, as far as possible, be fully informed of the reasons for their solitary confinement and, as the case may be, for its renewal. This will enable them, inter alia, to make effective use of legal remedies available for contesting the decision.

**The CPT therefore recommends that:**

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

**The CPT would also like to be informed of the legal remedies available to a prisoner who wishes to challenge a decision placing him in solitary confinement as a security measure.**

70. Further, the medical condition (both mental and physical) of all prisoners placed in solitary confinement (as a special security measure, for disciplinary reasons, etc.) must be the subject of special attention. In this connection, the CPT has noted the provisions of sections 113 and 137 of the Prison Regulations, which provide for medical supervision of such prisoners.

For its part, the CPT considers that whenever a prisoner held in solitary confinement asks for a medical doctor - or a prison officer asks for one on his behalf - the doctor should be called immediately to examine the prisoner. The results of the medical examination, including an assessment of the prisoner's physical and mental state and, if necessary, the likely consequences of continuing solitary confinement, should be set out in a written report and sent to the relevant authorities.

**The CPT recommends that the Portuguese authorities take all necessary steps to ensure that both the regulations and the practice in this area are in accordance with the requirements set out in this paragraph.**

#### 4. Conditions of detention in general

##### a) Lisbon Judicial Police Group Prison

##### i. *material conditions of detention*

71. As already indicated (cf. paragraph 54), the Judicial Police Group Prison in Lisbon was grossly overcrowded at the time of the delegation's visit. The establishment was accommodating almost twice the number of prisoners it was designed to hold.

72. Approximately half of the prisoners were accommodated in four dormitories each measuring approximately 36 m<sup>2</sup>. Up to 22 prisoners lived in each dormitory. Aside from double or triple bunk beds, the dormitories were equipped with a table, a few chairs and a television.

Each dormitory also had its own annex with sanitary facilities - one lavatory and two to three washbasins. Access to shower facilities was apparently possible on a regular basis.

73. The remaining prisoners lived in accommodation of three distinct types:

- Two rooms, each measuring approximately 12 m<sup>2</sup> with sanitary annex; six prisoners lived in each room, triple bunk beds being installed for this purpose;
- Sets of two to four interconnecting cells with sanitary annex, each cell measuring 6.5 m<sup>2</sup>; three prisoners were accommodated in each cell in a triple bunk bed;

Prisoners living in the above-mentioned rooms and cells had access during the day to an exterior corridor which contained a television.

- Sets of three cells, each measuring 6.7 m<sup>2</sup>, again each cell accommodating three prisoners. During the day prisoners living in these cells had access to a small communal area containing a table, chairs and a television set and to an adjacent sanitary annex. Buckets were supplied in order to enable prisoners to satisfy their natural needs at night. There were plans to reinforce the outer wall of each set of cells, which would mean that the cell doors could be left unlocked at night, thereby allowing access to the sanitary annex at all times.

74. In the view of the CPT, to house 20 or more prisoners in a dormitory which measures 36 m<sup>2</sup> is unacceptable under any circumstances, and the situation found at the Judicial Police Group Prison was all the more objectionable given that the prisoners were obliged to spend the vast majority of their time in the dormitories (cf. paragraph 80). The level of occupation in the other accommodation described above also denied adequate living space to the prisoners concerned.

75. Staff with whom the delegation spoke stated that the dormitories were designed to hold a maximum of eight to ten prisoners and the rooms a maximum of four, and that there should be only one prisoner per cell. In the CPT's opinion, at such a level of occupation the establishment might be considered to offer acceptable conditions of detention, provided that prisoners were permitted to spend a reasonable amount of time outside their respective living/sleeping areas.

76. In the light of the above comments, **the CPT recommends that immediate steps be taken to reduce substantially the number of prisoners held in the Judicial Police Group Prison. Preferably it should be kept within the limits of its official capacity of 80.**

**The CPT also recommends that a high priority be given to the planned refurbishments designed to enable all prisoners to have ready access to a toilet facility at all times.**

77. Aside from the specific problems arising from overcrowding, it should be added that much of the establishment was in a poor state of repair (peeling walls, dilapidated furniture, etc.). Some of the sanitary annexes, for example in Sector 3, were in an appalling condition. Specific mention should also be made of the unhygienic and dilapidated state of the kitchen facilities (see also paragraph 143).

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

ii) *regime*

78. There was no programme of organised activities for prisoners.

Outdoor exercise was the principal activity outside of the cells and dormitories. Prisoners told the delegation that they were allowed one hour of exercise in the morning three times a week. Prison staff said that there were four or five hourly sessions per week; however, they admitted that a period of outdoor exercise every day was not guaranteed. The reason for this was apparently lack of staff.

The outdoor exercise yard was of a fair size. However, it was very poorly surfaced, and offered no shelter from inclement weather.

79. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a fundamental safeguard. The scrupulous respect of this requirement is all the more important in prisons which offer only very limited regime activities.

**The CPT recommends that immediate steps be taken to ensure that all prisoners at the Judicial Police Group Prison are allowed at least one hour of outdoor exercise every day.**

**The CPT also recommends that the prison exercise yard be resurfaced and that means of shelter against inclement weather be installed.**

80. Apart from outdoor exercise, the only forms of recreation offered to the vast majority of prisoners were television and dominos.

Staff stated that prisoners also had access to a library; this facility, located in a converted cell, was found to have only a very limited number of old books.

No educational courses were offered, there were no organised sports activities and the vast majority of the prisoners were offered no work. Some 25 prisoners made up a domestic workforce (kitchen and cleaning tasks, maintenance, etc.).

In summary, the typical prisoner spent almost the whole day idle in his dormitory or cell complex, television being practically his only source of distraction. As one prison officer put it, "...prisoners here do a lot of visual work".

81. The situation described above is of particular concern in view of the fact that prisoners may be held in the establishment for relatively long periods of time. Many of the prisoners had been held there for several months, and a few for more than a year.

82. In the CPT's opinion, a fundamental choice has to be made:

- **either** the Judicial Police Group Prison should revert to its original function as a short-term holding area in which people could be held for a maximum of two to three weeks prior to their transfer to a normal prison facility. In that case the existing situation would be rendered acceptable by reducing overcrowding, making the necessary improvements to the material conditions of detention and guaranteeing at least one hour of outdoor exercise per day;
- **or** it should be formally recognised as a remand facility in which prisoners may be held for extended periods - i.e. for periods of a month or more. In this case, the programme of activities offered to prisoners at the establishment would have to be radically improved. The aim should be to ensure that prisoners in the establishment are able to spend a reasonable part of the day (8 hours or more) outside their dormitories and cells, engaged in purposeful activities of a varied nature (education, sport, work with vocational value).

**The CPT recommends that the Portuguese authorities adopt one of these two alternatives.**

b) Linhó Prison

i) *material conditions of detention*

83. Prisoner accommodation in Linhó Prison was located in two main galleried halls - Blocks A and B - each accommodating approximately 240 prisoners. A standard cell measured around 7m<sup>2</sup> and was equipped with a bed and corner washbasin. Both natural and artificial light were adequate.

The cells were of an adequate size for one prisoner. However, the delegation noted that in Block B, (which housed the majority of the "inactive" part of the population, of whom there were around 70), a large proportion of the prisoners were held two to a cell: at this level of occupation the cells offered cramped accommodation. This situation is all the more a source of concern in view of the fact that Linhó Prison has a significant number of prisoners serving lengthy sentences.

**The CPT recommends that serious efforts be made to ensure that, except for in exceptional circumstances, prisoners in Linhó Prison are held one to a cell.**

84. The delegation was struck by the low temperatures (below 9°C during the day) within Blocks A and B. In this respect it should be noted that the cells had no means of heating. Further, many of the cell windows had no glass (the Governor informed the delegation that approximately 50% of the windows throughout the establishment were broken).

In several cells (especially in Block B, among the inactive population, and in the Security Unit), the delegation encountered prisoners huddled beneath blankets in an attempt to stay warm, makeshift curtaining having been placed against the windows to keep out the cold.

**The CPT recommends that a high priority be accorded to the reglazing of broken windows in Linhó Prison and that prisoners be provided with heating facilities during the winter months.**

85. The prison cells did not possess integral sanitation. Prisoners were provided with buckets to enable them to comply with the needs of nature at night (and, as regards the inactive population, even during the day).

All prisoners slopped out their buckets at approximately 8 am, prior to taking breakfast. For this purpose a cesspit was located on the ground floor of each block in the middle of a small room, which also contained lavatories offering only a modicum of privacy. Slopping-out facilities also existed on the other floors, but were out of operation at the time of the delegation's visit.

86. The delegation observed the slopping-out procedure one morning and was appalled by what it witnessed, particularly in Block B.

The cell doors were opened in sequence and the prisoners brought their buckets to the cesspit. The process was staggered, thereby avoiding the formation of a significant queue. However, by the time 30 or 40 prisoners had used the cesspit, newly arriving prisoners were confronted with a mound of excrement and assorted rubbish, piled up on the grille covering the cesspit, to which they added their own contribution. By this stage the stench in the slopping-out area was overpowering. The occasional prisoner would use one of the lavatories located alongside the cesspit - in full view of newly arriving prisoners. Having emptied their buckets, prisoners would rinse them out; however, no detergent or disinfectant was provided. The mound of excrement was later cleared with a hose.

To commence each day with such an experience must have a degrading effect on all involved, including the prison staff. Moreover, the present arrangements no doubt constitute a health hazard, which will increase in significance during the warmer months of the year.

87. It should also be recalled that a considerable number of prisoners were held two to a cell, in particular among those who were inactive. These latter prisoners spent a considerable part of their time confined to their cells and were obliged to rely upon their buckets as a sanitary facility to a far greater extent than other prisoners.

In this connection, the CPT would stress that in its opinion, the act of discharging human waste, and more particularly of defecating, in a bucket in the presence of another person in a confined space used as a living area is degrading, both for the person using the bucket and for his cell mate.

88. The Prison Director stated that there were plans to introduce toilet facilities in the cells at Linhó (as well as in establishments throughout Portugal - cf. paragraph 153). However, he was not in a position to indicate a precise timetable for this work.

**The CPT recommends:**

- **that the provision of integral sanitation in cells at Linhó Prison (and of ready access at all times to toilet facilities in prison establishments in general) be accorded a very high priority;**
- **that, pending the provision of integral sanitation:**
  - **the slopping-out facilities on the upper floors of the detention blocks be brought into operation;**
  - **prisoners be provided with appropriate means to clean and disinfect their buckets;**
  - **prison officers receive clear instructions to the effect that a request made by a prisoner during the day to be released from his cell for the purposes of using a toilet facility should be granted, unless significant security considerations require otherwise.**

89. The delegation also heard complaints from prisoners that under the present laundry arrangements their bed sheets may not be changed for weeks. **The CPT would like to receive the comments of the Portuguese authorities on this matter.**

On the other hand, no complaints were heard about access to shower facilities. Regular access was guaranteed, including for the inactive population.

*ii) regime*

90. Linhó offers various kinds of work activities to those detained. Prisoners employed in workshops within the prison walls assembled or produced a range of items: clothes pegs, shoes, carpets, car filters, statuettes, stained glass windows, etc. There was also a sawmill and a blacksmith's shop. Conditions in these workshops appeared to be adequate.

In respect of the working facilities outside the walls, the prison farm appeared to provide a constructive working environment, albeit for a comparatively small number of prisoners. By contrast, working conditions at the prison "quarry" were unacceptable.

91. The above-mentioned quarry was located at a distance of a few hundred metres from the prison. At the time of the delegation's visit, twenty-four prisoners were employed in breaking stone and in lifting the broken stone onto the back of an open truck. The stone was not quarried on site but arrived by truck from a quarry elsewhere<sup>2</sup>, the job of the prisoners being simply to split the blocks of stone into smaller fragments.

The site presented a scene which resembled a hard labour colony from the last century. The equipment used was primitive (sledgehammers, crowbars and one small drill) and the protective clothing provided was minimal. To sum up, it appeared to the delegation that the work was both backbreaking and dangerous. Some prisoners stated that they had chosen to work there because it offered small additional privileges, such as the opportunity to eat lunch outdoors. None of them made reference to having chosen the work because it provided the "good physical exercise" which certain members of staff had advanced as a reason for volunteering to work there.

**92. The CPT recommends that immediate steps be taken to provide all prisoners who work in the quarry with proper protective clothing. This should include boots with protective toecaps and protective gloves for all workers; in addition, those required to break the stones should have goggles and those required to load it onto the back of trucks should be issued with safety headwear.**

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<sup>2</sup> A quarry face adjacent to the site where the stone breaking occurred had been worked in the past but quarry work stopped when the only officer who held a dynamite licence left the prison.

93. However, it must also be said that in the CPT's opinion, breaking stones with sledgehammers can no longer be regarded as an appropriate activity for prisoners. It is work which has little or no vocational value and is potentially perilous. **Consequently, the CPT recommends that stone-breaking activities cease as soon as possible and be replaced by other work of a more challenging and vocational nature.**

94. The prison also had education places for one hundred prisoners (i.e. approximately 20% of the population), who followed a curriculum set by the Ministry of Education. External teachers provided primary and secondary education programmes, following the models of outside education, as well as a release education programme. In addition, prisoners could avail themselves of the services of five "educational technicians", who worked for the prison education service and five social workers, who were members of the social rehabilitation service (instituto de reinserção social). In addition the prison possessed a small, but apparently well-run library. As regards sports facilities, the establishment had a small gymnasium, used mainly for weight training by approximately 40 prisoners per day.

95. Obviously, the first priority at Linhó Prison must be to address the deficiencies in material conditions. However, it is also clear that there is considerable room for improvement in the regime activities provided to prisoners. The present regime cannot realistically be expected to meet the requirement under Portuguese law that convicted persons be provided with the treatment necessary for their social rehabilitation<sup>3</sup>.

**The CPT invites the Portuguese authorities to develop regime activities for prisoners at Linhó Prison.**

96. As recognised under Portuguese law<sup>4</sup>, the provision of individualised custody plans is an important element in assisting prisoners to come to terms with a period of incarceration and to prepare for release. In this respect, the delegation was informed by one of the educational technicians at Linhó that such plans ("plans for social rehabilitation") were only prepared for those prisoners serving indeterminate sentences.

**The CPT recommends that individualised custody plans be drawn up for all sentenced prisoners.**

*iii) the inactive population*

97. A certain number of prisoners had no work - the so-called "inactive" population. It was not clear to the delegation whether the situation of these prisoners was due to a lack of work places, a lack of work which was appropriate for the prisoners in question or simply to their refusal to work.

**The CPT would like to receive clarification of the reasons for the inactive status of the above mentioned prisoners.**

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<sup>3</sup> Cf. section 2 (1) of the Prison Regulations.

<sup>4</sup> Cf. section 9 of the Prison Regulations.

98. The out-of-cell activities for the inactive population consisted of a daily three-hour period in an exercise yard. However, as a result of the rota system in operation, these prisoners regularly spent a continuous period of 27 hours (from a given midday to the early afternoon of the following day) locked in their cells, with the exception of brief periods for slopping out and food collection. In addition to this impoverished regime, it should be recalled that the inactive prisoners were often held in accommodation which was cramped (i.e. two to a cell), lacked integral sanitation and, at the time of the delegation's visit, was very cold (cf. paragraphs 83 to 87). To sum up, their quality of life was extremely poor and could well be considered as inhuman and degrading.

99. The CPT has already made recommendations concerning the issues of overcrowding, heating and integral sanitation (cf. paragraphs 83, 84 and 88). The Director indicated that he wished to reform the regime activities offered to the inactive prisoners both by reducing the period of 27 hours for which they could be locked in their cells and by employing additional staff to organise activities for them.

**The CPT recommends that a very high priority be given to these developments.**

*iv) staffing levels at night*

100. The ratio of staff to prisoners, especially at night, was also a matter of concern to the delegation. It was apparent that, apart from perimeter security staff, there were only five officers on duty at night. Of these, one was based at the entrance and one at the switchboard, leaving only three actually "on circuit" inside the prison.

It is clearly difficult for three officers to respond adequately to the needs of around five hundred prisoners. The delegation learned that recently a prisoner who had been calling for help for some considerable time had died in his cell before assistance arrived. In addition it was claimed that many prisoners resorted to various forms of self-harm in an attempt to attract attention more quickly. Staff and prisoners told the delegation that there were cases of self-mutilation "almost every night" in both Blocks A and B. The problems in this area were exacerbated by the absence of a call system (cf. also paragraphs 150 and 151).

**The CPT recommends that the Portuguese authorities review staffing levels at night in Linhó Prison.**

c) Vale de Judeus Prison

i) *material conditions of detention*

101. The physical layout of Vale de Judeus Prison reflects its function as a high security prison, with prisoner accommodation in four blocks (A, B, C and D) at the furthest extremity from the gate. These are perpendicular to one side of a long four storey building which houses rooms for recreation and association, and supports an open balcony which runs the length of the building on the opposite side from the prisoner accommodation. Accommodation is in individual cells except for two dormitories in Block B.

102. The individual cells were of an adequate size (7m<sup>2</sup>) for one prisoner and the delegation encountered no prisoners held two to a cell. The cells were well equipped (including a washbasin) and benefited from good natural and artificial light. Many of the prisoners had televisions and appeared to be allowed a wide latitude in the choice of personal possessions which they could keep in their cells.

103. The dormitories in Block B were of a reasonable size (approximately 45m<sup>2</sup>) for the eight prisoners accommodated in each, all of whom had apparently chosen to live there. Like the cells, material conditions in the dormitories were quite satisfactory, and the atmosphere appeared to the delegation to be very relaxed.

The cells did not possess integral sanitation (both dormitories had a sanitary annex). During the day, prisoners had ready access to the toilet facilities located on each floor. However, after 7.00 pm prisoners had to make use of a bucket in their cells. Consequently, as at Linhó Prison, a slopping-out system was in operation. However, unlike at Linhó, there was an adequate number of slopping-out recesses, equipped with proper sluices. Further, the toilet facilities were situated in a separate room from the slopping-out area.

Although conditions of sanitation in Vale de Judeus were far superior to those in Linhó, **the CPT nevertheless considers that prisoners at Vale de Judeus should as soon as possible be granted ready access at all times to toilet facilities (cf. paragraph 153).**

104. The prison's shower facilities were of a good standard and prisoners had access to them two or three times a week.

ii) *regime*

105. Various workshops were in operation, including a printshop, a shoe assembly workshop and an arts and crafts area. They appeared to provide reasonable working conditions. The staff clearly enjoyed a relatively informal relationship with the detainees, which contributed greatly to the working environment.

The delegation was particularly impressed by several well-equipped workshops providing vocational training facilities, with places for 60 prisoners. There were five areas of activity - carpentry, cabinet making, masonry, building and plumbing - with places for 12 prisoners on each course. Successful completion of a course could lead to the award of a professional qualification.

106. Education was provided at both primary and secondary levels and there was a release programme which enabled some prisoners to participate in tertiary education.

Association/recreation facilities adjacent to the prisoner accommodation appeared to be adequately equipped and fully used. The delegation was particularly impressed by the large and well-lit art rooms.

As regards sports facilities, the prison possessed a good sized gymnasium which doubled as a theatre; it was more than adequate for both purposes. Further, the exercise yards were well surfaced and marked out for sport. In addition, a full-sized football pitch was located between the administration offices and the prisoner accommodation blocks. Organised sports activities were an important part of the regime.

107. There was general agreement amongst the prisoners to whom the delegation spoke that the regime in the prison was comparatively good. Those who had experience of other Portuguese prisons were particularly inclined to take a positive view of the facilities available in Vale de Judeus. This view was shared by the delegation.

d) Alfeite Naval Prison

108. Alfeite was a very small and well-kept prison. The cellular accommodation was of a high standard and in a good state of repair. There were 10 individual cells, each measuring approximately 7m<sup>2</sup>. Every cell had an adjoining sanitary annex containing a washbasin and lavatory. Prisoners also benefited from a variety of other facilities including free access during the day to a walled exercise area.

109. The prisoners were allowed a wide range of personal possessions and enjoyed a high degree of freedom not only within the prison itself, but throughout the whole naval compound in which it was located. Some of them worked in normal naval jobs within the compound and wore naval uniform. The prisoners as a whole had very few complaints of substance about their treatment whilst detained, and indeed several expressed the view that they were fortunate to be serving their sentences in Alfeite rather than in a civil prison.

## 5. Medical services in the three civil prisons visited<sup>5</sup>

### a) staffing levels

110. The health care staff at the Lisbon Judicial Police Group Prison were a doctor and a nurse, both part-time. The doctor attended the prison four times per week for one to two hours and the nurse five times per week for a similar period. Urgent medical problems which arose in their absence were referred to the nearby San José hospital.

There was no provision for psychiatric or psychological treatment; people who required such care had to be transferred to the Prison Hospital at Caxias.

111. The present health care team is manifestly insufficient for a remand establishment which regularly holds between 150 and 200 prisoners. The current staffing level does not allow the legitimate needs of the inmates to be met. Not surprisingly, the delegation encountered prisoners who had been waiting for days to see the doctor.

112. The deleterious effects of the low staffing level were exacerbated by the fact that the prison's medical facilities were very limited. The delegation noted that, for example, the doctor had only recently been supplied with an item as basic as a sterilising machine.

**113. The CPT recommends that immediate steps be taken to ensure a more frequent attendance by a doctor and a nurse at the Judicial Police Group Prison, and to upgrade the establishment's medical facilities.**

It should be added that it will remain very difficult to provide a satisfactory level of health care in the establishment until the problems of severe overcrowding, inadequate regime activities and (for some prisoners) lack of ready access to toilet facilities are resolved. In this respect the CPT recalls its recommendations at paragraphs 76 and 82.

114. Staffing levels at Linhó Prison were also quite inadequate. A part-time doctor (who also worked at the Judicial Police Group Prison in Lisbon), visited the establishment three times a week. The doctor was assisted by two nurses, one of whom worked for three hours in the morning and the other for three hours in the afternoon, five days a week. As at the Judicial Police Group Prison there was no on site provision for psychiatric care, prisoners being transferred to the Prison Hospital at Caxias.

115. In the CPT's opinion such a poorly resourced medical service is incapable of offering an appropriate level of health care in an establishment of the size of Linhó Prison (approximately 500 inmates). The effect of the present system was only too evident at the time of the delegation's visit. There had been no medical consultations for several days and thirty-three patients were waiting to see the doctor.

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<sup>5</sup> The CPT's delegation did not examine the medical services at Alfeite Prison, as the team which carried out the visit did not include a doctor; however, no complaints were heard there about access to medical treatment.

116. **The CPT recommends that the post of prison doctor at Linhó be converted to a full-time position and that the nursing staff be reinforced.**

117. Vale de Judeus Prison employed a doctor on a full-time basis; however he lived at a considerable distance from the establishment and, as far as the delegation could ascertain, spent only a limited amount of time per day in the prison.

The prison also employed a full-time nurse, who was on sick leave at the time of the delegation's visit. The Director stated that the nurse had been absent for no more than two weeks. However, the delegation heard allegations that he had very rarely been present over the preceding six months. It was undisputed that, at least at the time of the delegation's visit, nursing tasks mostly fell on the shoulders of an "auxiliary" - a prisoner who had apparently had some form of nursing training.

There were no in-house or visiting psychiatric/psychological services, a remarkable lacuna in a large high security establishment such as Vale de Judeus.

118. **The CPT recommends that the de facto presence in the prison of at least one full-time doctor and the equivalent of two full-time nurses be guaranteed.**

119. The ineluctable consequence of the situation described above was that provision of health care by an appropriately qualified person was not assured in the three prisons.

120. At Linhó Prison, for example, it was clear that the two nursing staff were carrying out tasks which are properly those of a doctor. The nurses made clinical decisions on the intramuscular administration of sedatives, on the prescription of antibiotics and on the appropriate level of dosage of neuroleptic drugs. While the delegation was impressed by the dedication of the nurses at Linhó (they had, for example, established an "on-call" system, although they were only paid for their time in the prison), nursing staff are not trained to make the diagnostic judgements which should precede the prescription and administration of such drugs. The recommended conversion of the post of doctor at Linhó Prison to a full-time position should address this situation.

121. The provision of medical care by inappropriately qualified persons was an even more acute problem at Vale de Judeus Prison where, as already indicated, a prisoner carried out the tasks of a nurse. He had no formal nursing qualifications; nevertheless he, inter alia, administered medication, dealt with overdoses and sutured wounds.

Moreover, the delegation was told that this prisoner might see up to twenty patients per morning, in order to decide which cases to refer to the doctor during his brief visits.

122. The recommendation made at paragraph 118 is designed to address this totally unacceptable situation. **The CPT would add that the use of prisoners to provide health care services is a highly questionable practice, regardless of whether they possess appropriate qualifications.**

b) psychiatric/psychological services

123. Reference has already been made to the total absence of any psychiatric or psychological services within the three prisons. Prisoners considered to be in need of psychiatric care could be sent to the Prison Hospital at Caxias.

The lack of in-house or visiting psychiatric or psychological services in prisons of the size and nature of Linhó and, to an even greater extent, Vale de Judeus, is most regrettable. There must be many prisoners in those establishments who, whilst not requiring admission to a psychiatric institution, would benefit from appropriate psychiatric or psychological care but do not receive it. Moreover, the admission of a detainee to a psychiatric facility should be based upon a psychiatric opinion. The absence of an in-house or visiting psychiatric service must render it extremely difficult to observe that diagnostic process.

124. In this context it should also be noted that the delegation was concerned by the very substantial numbers of prisoners at Vale de Judeus Prison (approximately one third of the population), who had been prescribed psychotropic drugs of various kinds. At the time of the delegation's visit, for example, 87 prisoners were receiving the neuroleptic Serenal.

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

c) medical screening on reception

126. The inadequate resources of the health-care teams inevitably had repercussions upon the medical screening of newly-arrived prisoners. Frequently, such prisoners were seen by a doctor only some considerable time (more than 24 hours) after their arrival, and might on occasion not be seen at all. This could have particularly serious consequences at the Lisbon Judicial Police Group Prison, which represents a point of entry into the prison system.

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

127. The delegation also noted from the medical files of prisoners at the Lisbon Judicial Police Group Prison that whereas any signs of injuries were recorded, no reference was made to any statements by detainees regarding the origin of those injuries. The doctor confirmed that he did not record any such statements.

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

d) night and weekend cover

128. There was no permanent presence of a doctor or nurse at the establishments visited, in particular at night and weekends. The delegation was further informed that there was often no "on-call" system in operation. Apparently in the event of an emergency occurring in the absence of health-care staff, a prisoner would simply be taken to the nearest outside hospital facility.

**129. The CPT recommends that prison staff should always be able to contact a doctor capable of offering advice on emergency cases and, when medically appropriate, of attending the prison within a short period of time.**

**It is further recommended that someone competent to provide first aid always be present on prison premises, preferably someone with a recognised nursing qualification.**

e) suicide and self-harm

130. Reference should also be made to the subject of suicide and self-harm, in particular in relation to the information received at Linhó Prison. There had been three suicides at the establishment during the twelve months prior to the delegation's visit. Further, it would appear that suicide attempts were frequent; consultation of twelve medical files chosen at random showed that three of the prisoners to whom they related had recently attempted suicide. The suicide rate was notably lower at Vale de Judeus (apparently only 2 suicides since 1986). However, as at Linhó Prison, instances of self-harm/mutilation were, according to staff, a common occurrence.

131. Certain of the recommendations already made by the CPT are of relevance in this area, in particular those concerning the reinforcement of medical services (including in the psychiatric/psychological fields) at both Linhó and Vale de Judeus Prisons, and the improvement of material conditions of detention as well as staffing levels at night at Linhó.

132. As regards more particularly suicide prevention, the CPT would underline that the reception process, and more particularly medical screening, has a crucial role to play in this context; performed properly, that process can both identify those most at risk and relieve some of the anxiety experienced by all newly-arrived prisoners.

Further, all prison staff, whatever their particular job, should be on the look out for (which implies being trained in recognising) signs of suicidal behaviour.

Of course, persons identified as a suicide risk should be subject to special precautions. In particular, they should not be placed alone in a cell with easy access to means of killing themselves (cell window bars, broken glass, belts or ties, etc), should benefit from counselling, support and appropriate association, and should, for as long as necessary, be kept under a special observation scheme.

**The CPT invites the Portuguese authorities to draw up a suicide prevention programme, taking into account inter alia the points made above.**

133. **More generally, the CPT would appreciate receiving information on the number and causes of deaths in Portuguese prisons over the last three years.**

f) other matters

134. Various other shortcomings in health care working practices became apparent to the delegation. The delegation found that at Linhó Prison the local anaesthesia was not kept refrigerated, and that at both Linhó and Vale de Judeus prisons, medicines were out-of-date.

The delegation also noted that confidentiality of medical records was not guaranteed in any of the establishments visited; they were not kept under lock and key and were stored in areas to which custodial staff could, and did, have access. This problem appeared to be particularly acute at Linhó Prison.

**The CPT invites the Portuguese authorities to take action to remedy the shortcomings identified above.**

## 6. Other issues related to the CPT's mandate

### a) discipline

135. The Prison Regulations establish a clear **disciplinary procedure**. There is provision for several kinds of disciplinary sanction, the most severe being cellular confinement for up to one month.

The Regulations provide prisoners with a right to be heard on the subject of the infraction of which they are accused. However, the relevant provision (section 131 (2)) seems to imply that the hearing process is conducted exclusively in writing. **The CPT wishes to be informed whether a prisoner has the right to be heard orally** (it should be noted in this respect that the delegation met a significant number of illiterate prisoners).

A sanction of confinement in a disciplinary cell for more than eight days can be appealed to the supervisory judge (Juiz do Tribunal de Execução das Penas). However, it would appear that no such right of appeal exists in respect of other sanctions. **The CPT considers that a right of appeal to a higher authority should exist in respect of all types of disciplinary sanctions.**

Further, certain of the prisoners whom the delegation met in the Disciplinary Unit at Linhó Prison had been waiting for some time (in one case, for 13 days) for a formal decision concerning the imposition of a disciplinary sanction. **The CPT would like to receive the comments of the Portuguese authorities on this state of affairs.**

136. **Material conditions** in the disciplinary cells at the **Judicial Police Group Prison in Lisbon** can be described as, on the whole, acceptable, **with the exception of the in-cell toilet facilities, which were in a deplorable state.**

Conditions of detention in most of the cells in the Discipline Unit at **Linhó Prison** (which was also used for solitary confinement measures of a non-disciplinary character), were little different from those in the main inmate accommodation blocks. Like those in the main blocks, **temperatures in the cells were very low.**

Four bar-fronted disciplinary cells located in a separate area at one end of the Unit offered a distinctly lower standard of accommodation. They were very small (scarcely 4m<sup>2</sup>) and their fittings were spartan, consisting only of a bed and slopping-out bucket. Their bar-fronted design would permit a prisoner to be observed continuously in safety and they might therefore be suitable for use as a temporary holding area for prisoners exhibiting violent behaviour. However, they represent an unduly harsh environment in which to place those undergoing disciplinary sanctions. **The CPT therefore recommends that they should not be used for that purpose.**

Conditions of detention in the Discipline Unit at **Vale de Judeus Prison** were of an acceptable standard. The cells were of a good size (7m<sup>2</sup>) and benefited from satisfactory ventilation and lighting. There was a raised bed block in each cell and staff told the delegation that detainees were allowed to keep their mattress throughout the day. However, **the CPT considers that it would be desirable for the cells to be equipped with a table and chair.**

137. The delegation was informed in each of the establishments that a person undergoing cellular confinement as a disciplinary sanction was not allowed any **outdoor exercise**. In the view of the CPT, this is unacceptable. The requirement of daily outdoor exercise is widely recognised as constituting a basic safeguard for all prisoners.

**The CPT recommends that all prisoners without exception, including those undergoing cellular confinement as a disciplinary sanction, be offered the opportunity to take at least one hour of exercise in the open air every day.**

b) complaints and inspection procedures

138. Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison administration, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to prison establishments by an independent body (e.g. a Board of Visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the premises.

139. The CPT notes that, in addition to avenues of complaint to the different echelons within the prison administration and the Prison Department Inspectorate, both sentenced and remand prisoners may submit complaints to the supervisory judge, who is required to visit each prison establishment at least once a month.

Prisoners may also submit complaints to the office of the Ombudsman. The delegation was informed that these communications were not subject to any control by the prison authorities. **The CPT would like to receive confirmation that this is indeed the case and wishes to receive details of any relevant legal texts. It would also like to be informed about any other bodies outside the prison administration to which prisoners may have confidential access.**

140. As far as the inspection of establishments is concerned, the Prison Regulations make provision for an Inspectorate attached to the Directorate-General of Prison Services (section 156). It is stipulated that each establishment should be visited once a year, in addition to any extraordinary inspections which may prove necessary.

141. As regards inspections by bodies which do not form part of the prison administration, the delegation was informed that the Ombudsman could organise visits to all places of detention; however, the frequency of such visits apparently depends very much on the policy of each successive Ombudsman. In any event, it is clear that the Ombudsman's office is not in a position to exercise regular supervision over the situation in each and every prison establishment in Portugal.

As already mentioned, a supervisory judge must visit each establishment at least once a month and prisoners may submit complaints to him. However, it appeared that the main role of the judges was to deal with questions such as the granting of prison leave or parole. The CPT believes that it is most important to provide for the independent inspection of the treatment of those detained and that, in this respect, the current procedures could usefully be reinforced. Ideally, the on-going supervision of prison establishments should be carried out by an independent body; however, it would also be possible to enlarge the role of supervisory judges to include this task. This would imply inter alia that they would no longer limit their activities to hearing detainees who have asked to see them, but take the initiative to visit prison premises and enter into contact with inmates.

**The CPT recommends that the Portuguese authorities review the current procedures for the inspection of prison establishments in the light of the above remarks.**

c) food

142. **Complaints about the quality and the quantity of the food were widespread in each of three civil prisons visited.** It is very common for the CPT to receive such complaints from prisoners; however, this does not mean that they should be dismissed lightly. As the Explanatory Memorandum to the European Prison Rules states, "food and water are basic to life itself and inevitably are a focus of special interest to people who are bound to the monotony of institutional routines by virtue of imprisonment". It follows that poor food, badly served, can be a source of serious discontent within a prison.

143. Visits to the kitchen facilities at the Judicial Police Group Prison in Lisbon and at Linhó Prison showed them to be unhygienic and dilapidated. Much of the equipment in use was very old and in poor condition. **The CPT invites the Portuguese authorities to upgrade the kitchen facilities in these two establishments.**

144. Most prisoners at Linhó and Vale de Judeus Prisons ate together in canteen facilities. Many prisoners complained that the distribution system used was such that food was often cold when it reached them. The delegation's observations tended to bear out those complaints. **The introduction of a self-service food distribution system might usefully be considered at both establishments.**

From the delegation's observations it also appeared that **improvements could be made as regards the quantity and quality of eating utensils provided to prisoners.**

d) contact with the outside world

145. It is very important for prisoners to be able to maintain reasonably good contact with the outside world. Above all, they must be given the opportunity to preserve their relationships with their families and/or friends, and in particular with their spouse or partner and children. The maintenance of such relationships can be of critical significance for all concerned, particularly in the context of the prisoners' social rehabilitation.

The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources. This is in the spirit of several recommendations of the European Prison Rules, in particular those set out in paragraph 43, sub-paragraph 1 and paragraph 65, item c.

146. Under the Prison Regulations (section 30) prisoners are entitled to at least one hour of **visiting time** per week (at Vale de Judeus visits lasted, in principle, for two hours). This visit entitlement would appear to be adequate; **however, the CPT wishes to stress the need to retain a certain flexibility in the application of the visiting rules to those whose families live a long way from the prison (making frequent visits impractical).** For example, such prisoners could be authorised to accumulate a number of visiting periods.

147. As regards the **material conditions in which visits took place**, the delegation noted that visiting facilities for families (as distinct from those for lawyers) were far from satisfactory at the Judicial Police Group Prison in Lisbon; indeed, senior staff described them as "inhuman". Prisoners and visitors stood at opposite sides of a barrier which consisted of wire mesh enclosing metal bars. As an absolute minimum, a prisoner and his visitors should be provided with seats, and far less repressive physical arrangements would be preferable. **The CPT recommends that facilities at the Judicial Police Group Prison in Lisbon for visits from family members be improved without delay.**

Visits at Linhó Prison took place in a large open-plan room and the visiting system appeared to operate to the satisfaction of all concerned.

By contrast, the CPT would draw the attention of the Portuguese authorities to the fact that both prisoners and staff at Vale de Judeus Prison complained about the congested conditions in which visits took place. The delegation observed that space was so restricted that some prisoners and their families had to stand in corridors during the full two-hour visiting period. **The CPT recommends that the visiting facilities at Vale de Judeus Prison be enlarged substantially or that some other system of regulating the number of prisoners who receive visits at any one time be found, without reducing their overall visit entitlement.**

148. **The CPT would also like to emphasise the importance of giving prisoners who do not receive regular visits improved opportunities for telephone contact with their families.**

Many prisoners (in particular foreigners) at Vale de Judeus Prison complained that they had very limited opportunities to telephone their families. In this connection, the CPT notes that the establishment's internal rules on this matter would appear to be more restrictive than the general Prison Regulations. **The CPT recommends that arrangements at Vale de Judeus Prison for telephone contacts between prisoners and their families be reviewed in the light of the above remarks.**

149. Finally, the CPT considers that granting prisoners the right to receive extended visits in order to maintain family and personal (including sexual) relations would be a commendable step, provided that such visits took place in conditions which respected human dignity. **The CPT invites the Portuguese authorities to explore the possibility of introducing such a measure.**

e) call systems

150. The delegation noted that none of the cells in the establishments visited were equipped with a call bell (cf. in particular paragraph 100). Prisoners requiring assistance while locked in their cells had to attract the attention of prison officers by banging on their cell doors.

151. The risk of a prisoner in need of assistance being left unattended would be significantly reduced if a call system existed. **The CPT recommends that all cells be equipped with such a system, preferably linked to a central monitoring point, staffed on a permanent basis.**

f) access to toilet facilities

152. As already indicated (cf. paragraphs 85 to 88 and 103), the CPT does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently "slopped out" at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).

153. The CPT was informed that slopping-out was still a feature in many prisons in Portugal, but that there were plans to provide all prisoners with ready access to toilet facilities. **The CPT recommends that implementation of those plans be accorded a very high priority.**

In this connection **the CPT would like to receive details of the plans in question and, more particularly, of the timescale within which it is envisaged that the necessary work will be completed.**

### **III. RECAPITULATION AND CONCLUSIONS**

#### **A. Police establishments**

154. The CPT's delegation heard numerous detailed allegations of ill-treatment inflicted in establishments of the Judicial Police, the Public Security Police and the National Republican Guard. The principal form of ill-treatment alleged was physical assault (including kicks, punches and blows with the butts of pistols). In addition, the delegation heard some allegations that detained persons had been subjected to simultaneous blows to both ears with telephone directories. Several of the prisoners who made such allegations were examined by the delegation's medical expert and certain of them were found to display physical injuries which were consistent with their allegations.

The existence of such ill-treatment was corroborated by other reliable sources. In the light of the information received by its delegation during the visit to Portugal, the CPT has been led to conclude that the ill-treatment of persons in police custody is a relatively common phenomenon.

155. The CPT has examined the safeguards offered to persons detained by the police in respect of the prevention of ill-treatment, and has made several recommendations in this area: detained persons should have the right, as from the outset of their custody, to inform a close relative or third party of their detention (any possibility to delay the exercise of this right to be clearly circumscribed and made subject to appropriate safeguards); the right of persons detained by the police to have access to a doctor (including one of their own choice) should be expressly guaranteed; a form setting out their rights in a straightforward manner should be given to detainees at the outset of their period of police custody; and a code of conduct for police interviews should be drawn up.

One fundamental safeguard against ill-treatment by the police, namely access to a lawyer, is already formally guaranteed under Portuguese law. However, it is clear that at present there is a marked discrepancy between law and practice in this area; lawyers rarely if ever become involved during the initial stages of detention.

156. The CPT has also emphasised the fundamental importance of appropriate professional training for police officers, which is an essential element of any strategy to prevent ill-treatment. Skilled officers will be able to carry out their duties successfully, without having recourse to ill-treatment and to cope with the existence of fundamental safeguards for those detained. It has also recommended that senior officers deliver the clear message to their subordinates that ill-treatment is unacceptable and that it will be severely punished.

157. Conditions of detention in the police establishments visited by the CPT varied from relatively good to extremely poor. The situation in the detention area of the Lisbon Headquarters of the Public Security Police is of particular concern and it has been recommended that the Portuguese authorities explore the possibility of withdrawing from service the existing cellular accommodation.

The CPT has also highlighted a number of deficiencies in conditions of detention in certain of the other establishments visited. In particular, the cellular accommodation at the PSP Headquarters in Santarem left a great deal to be desired.

## **B. Prisons**

158. Some allegations were heard in the Judicial Police Group Prison in Lisbon that prisoners were on occasion roughly treated by prison staff. Certain prisoners identified the largest of the establishment's three reception cells as a place where, in the past, prisoners had been seriously assaulted. The CPT has recommended that the Portuguese authorities examine whether prison officers at this establishment are on occasion abusing their authority by ill-treating prisoners and, if necessary, take remedial action.

159. The delegation heard very few allegations of physical ill-treatment of prisoners in Linhó and Vale de Judeus prisons. As regards the former establishment, prisoners indicated that there had been a significant improvement in the situation since 1990. Prisoners in both prisons stated that, on the whole, their relations with the staff were satisfactory. Nevertheless, the CPT has requested a full account of an incident which apparently occurred at Vale de Judeus Prison in early August 1991.

The delegation heard no allegations and found no other evidence of ill-treatment of persons detained at Alfeite Naval Prison. The delegation had the impression that relations between prisoners and supervisory staff were good.

160. The treatment of prisoners held in the Security Unit at Vale de Judeus Prison is a matter of serious concern to the CPT. Although the Unit was empty at the time of the delegation's visit (all the indications being that it had been emptied in anticipation of the visit), discussions with both prisoners very recently transferred from the Unit and its staff, together with on-site observations, enabled the delegation to form a picture of everyday life there. It became evident that prisoners could be held in the Unit for extended periods under a solitary confinement-type regime, without being guaranteed appropriate human contact or offered purposeful activities. The CPT has recommended that an immediate inquiry be carried out into the operation of the Unit.

The reinforcement of procedural safeguards for those placed in solitary confinement as a special security measure has also been recommended.

161. Material conditions of detention in the Judicial Police Group Prison in Lisbon were very poor. The establishment was grossly overcrowded, the regime had been reduced to a bare minimum and sanitary facilities in certain parts of the establishment left a great deal to be desired. The conditions in which prisoners received visits from their families were also far from satisfactory. The CPT has recommended certain specific measures designed to ameliorate conditions in the establishment. However, it is also clear that the Portuguese authorities must address the issue of the function which the Judicial Police Group Prison is intended to serve and draw the necessary conclusions. At present the establishment is expected to function as a remand prison despite only having the resources of a short-term holding area; not surprisingly, it fails to meet that expectation.

162. Material conditions of detention at Linhó Prison displayed a number of serious deficiencies. Above all, the existing "slopping-out" arrangements were found to be quite unacceptable. The CPT has recommended certain short-term measures designed to alleviate the present situation. However, the Committee has also stressed that the provision of integral sanitation in cells at Linhó Prison (and of ready access at all times to toilet facilities in prison establishments in general) should be accorded a very high priority.

Other shortcomings in material conditions addressed by the CPT include low temperatures (at least in part caused by the large number of broken windows in the establishment) and some degree of overcrowding.

Certain aspects of the regime, notably the stone-breaking activities at the prison "quarry" and the lack of out-of-cell activities for prisoners who have no work are also the subject of particular criticism and further recommendations.

163. Material conditions of detention at Vale de Judeus Prison were, on the whole, acceptable (although the CPT would reiterate that prisoners should, as soon as possible, be granted ready access to toilet facilities at all times) and the activities offered to prisoners were of a good standard.

The delegation also formed a positive view of both the material conditions of detention and the regime activities available at Alfeite Naval Prison.

164. Medical services in the three civil prisons visited were not satisfactory. In each of the establishments, the health-care team was seriously under resourced and therefore unable to meet the legitimate needs of those detained. Further, the delegation found that medical care was often provided by an inappropriately qualified person. At Linhó Prison, two nursing staff were carrying out tasks which were properly those of a doctor, and at Vale de Judeus Prison, nursing services were provided by a prisoner with no formal nursing qualifications. The CPT has recommended that the health care teams at all three prisons be reinforced.

It was also notable that none of the three prisons could offer in-house or visiting psychiatric or psychological services to those detained. The CPT has recommended that steps be taken without delay to provide prisoners at Linhó and Vale de Judeus with an appropriately resourced in-house or visiting psychiatric/psychological service. Such a service should also be provided to those held in the Judicial Police Group Prison in Lisbon for so long as that establishment continues to operate as a remand facility.

165. The CPT has made recommendations and comments on various other matters, (discipline, complaints and inspection procedures, food, contact with the outside world, call systems). Of these, it wishes to underline its recommendations that all prisoners without exception, including those undergoing cellular confinement as a disciplinary sanction, be offered outdoor exercise every day, and that the current procedures for the inspection of prison establishments be reviewed.

**C. Action on the CPT's recommendations, comments and requests for information**

166. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix 1.

167. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2, of the Convention, the CPT requests the Portuguese authorities:

- i) to provide within six months an interim report giving details of how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken (N.B. the CPT has indicated the urgency of certain of its recommendations);
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Portuguese authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report that are summarised in Appendix 1 as well as replies to the requests for information made.

**APPENDIX 1**

**SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS  
AND REQUESTS FOR INFORMATION**

**A. Police establishments**

1. Torture and other forms of ill-treatment

(a) recommendations

- a very high priority to be given to human rights education and professional training for law enforcement officials of all ranks and categories; experts not belonging to the law enforcement agencies to be involved in this education and training (paragraph 18);

- an aptitude for interpersonal communication to be a major factor in the process of recruiting law enforcement officials and, during the training of such officials, considerable emphasis to be placed on acquiring and developing interpersonal communication skills (paragraph 18);

- senior law enforcement officials to be required to deliver to their subordinates the clear message that the ill-treatment of detained persons is not acceptable and will be dealt with severely (paragraph 18).

(b) requests for information

- up-to-date statistics on complaints about ill-treatment made against the police together with information on action taken on those complaints (number of complaints rejected, cases pending, convictions etc.) (paragraph 19);

- detailed information about the precise procedure followed when complaints about ill-treatment by the police are submitted to a Public Prosecutor and, in particular, about which agency is entrusted with carrying out investigations into such allegations (paragraph 19);

- information on whether appropriate action can be taken upon information received which suggests that ill-treatment has occurred, even in the absence of a written statement by the alleged victim (paragraph 19).

2. Conditions of detention in the police establishments visited

recommendations

- conditions of detention in **the different police establishments visited by the delegation** to be reviewed in the light of the remarks made in paragraphs 21 to 34 (paragraph 35);
- appropriate steps to be taken to ensure that the conditions of detention in **all police establishments** meet the requirements indicated in paragraph 21 (paragraph 35);
- the possibility to be explored of withdrawing from service the existing cellular accommodation at the **Headquarters of the PSP in the Governo Civil, Lisbon** (paragraph 35).

3. Safeguards against the ill-treatment of persons detained by the police

(a) recommendations

- persons in police custody to have the right as from the outset of their custody to have the fact that they have been detained notified to a family member or a third party of their choice; any possibility exceptionally to delay the exercise of this right to be clearly circumscribed and made subject to appropriate safeguards (e.g. such delay to be recorded in writing together with the reasons therefor and to require the approval of a senior officer or public prosecutor) (paragraph 41);
- the possibility for a person detained by the police to have access to a doctor (including, if he so wishes, one of his own choice) to be expressly guaranteed (paragraph 45);
- all medical examinations of persons in police custody to be conducted out of the hearing, and preferably out of the sight, of police officers (paragraph 45);
- the results of all medical examinations as well as relevant statements by the detainee and the doctor's conclusions to be formally recorded by the doctor and made available to the detainee and his lawyer (paragraph 45);
- a form setting out in a straightforward manner the rights of those held in police custody to be given systematically to such persons at the outset of their custody; this form to be available in different languages; the detainee to be asked to sign a statement attesting that he has been informed of his rights (paragraph 48);

- a code of conduct on police interviews to be drawn up addressing inter alia the following matters: the systematic informing of the detainee of the identity (name and/or identity number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which an interview may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, medicine, or who are in a post-traumatic state; the code to provide also that a record be kept of the time at which interviews start and end, of any request made by the detainee during an interview, and of the persons present during each interview (paragraph 50).

(b) comments

- having a doctor permanently on call at the **Judicial Police Headquarters in Lisbon** would be a most appropriate development (paragraph 46).

(c) requests for information

- confirmation that a person detained by the police has a right of access to a lawyer as from the outset of his custody (paragraph 43);

- information on whether the right of access to a lawyer includes the right for the person concerned to benefit from the presence of a lawyer during questioning (paragraph 43);

- the comments of the Portuguese authorities on information received by the delegation which suggested that it was extremely rare for a detained person to have access to a lawyer during the initial period of police custody and that, in practice, access to assistance from a legally qualified person was often not available even during later stages of the proceedings (paragraph 44);

- information on consideration being given to the idea of having a doctor permanently on call at the **Judicial Police Headquarters in Lisbon** (paragraph 46);

- clarification about the evidential value of statements made to the police or a Public Prosecutor prior to a detainee's first appearance before a judge (paragraph 50);

- information on whether a person held on remand could be returned to police premises for the purposes of further questioning (paragraph 51);

- information on the precise procedures followed by an investigating or trial judge when confronted with allegations by the person detained that evidence presented against him was obtained as a result of torture or other forms of ill-treatment (paragraph 52).

**B. Prisons**

1. Torture and physical ill-treatment

(a) recommendations

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

(b) comments

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

(c) requests for information

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

- the results of the administrative enquiry into an incident which occurred at **Linhó Prison** in early March 1991, during which prisoners were said to have been ill-treated (paragraph 59);

- a full account of an incident at **Vale de Judeus Prison** in early August 1991, during which a German and a Dutch prisoner were said to have been physically assaulted by security forces (paragraph 59);

- the comments of the Portuguese authorities on the subject of special safeguards during the intervention in prisons of outside security forces (paragraph 60).

2. Solitary confinement

(a) recommendations

- an inquiry to be carried out immediately into the operation of the **Security Unit at Vale de Judeus Prison**, the aims of this inquiry to be inter alia to ensure:

- that no mentally disordered person is held within the Unit;
- that the regime applied to the Unit's occupants offers them purposeful activities and guarantees them appropriate human contact;
- that no prisoner is held in the Unit for longer than is strictly necessary (paragraph 68);

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

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

(b) requests for information

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

3. Conditions of detention in general

(i) **Lisbon Judicial Police Group Prison**

recommendations

- immediate steps to be taken to reduce substantially the number of prisoners held; preferably, the prison should be kept within the limits of its official capacity of 80 (paragraph 76);

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

- the establishment as a whole to be restored to a good state of repair as soon as possible, and inmates to be provided with suitable cleaning equipment in order to enable them to maintain their living quarters in a satisfactory state of cleanliness (paragraph 77);

- immediate steps to be taken to ensure that all prisoners are allowed at least one hour of outdoor exercise every day (paragraph 79);

- the prison exercise yard to be resurfaced and means of shelter against inclement weather to be installed (paragraph 79);

- concerning the future of the establishment, the Portuguese authorities should adopt one of two alternatives:

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

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

(ii) **Linhó Prison**

(a) recommendations

- serious efforts to be made to ensure that, except for in exceptional circumstances, prisoners are held one to a cell (paragraph 83);

- a high priority to be accorded to the reglazing of broken windows and prisoners to be provided with heating facilities during the winter months (paragraph 84);

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

- pending the provision of integral sanitation at Linhó:

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

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

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

- immediate steps to be taken to provide all prisoners who work in the prison "quarry" with proper protective clothing. This should include boots with protective toecaps and protective gloves for all workers; in addition, those required to break the stones should have goggles and those required to load it onto the back of trucks should be issued with safety headwear (paragraph 92);

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

- individualised custody plans to be drawn up for all sentenced prisoners (paragraph 96);

- a very high priority to be given to developments to reform the regime activities offered to inactive prisoners, both by reducing the period of 27 hours for which they can be locked in their cells and by employing additional staff to organise activities for them (paragraph 99);

- the Portuguese authorities to review staffing levels at night in the establishment (paragraph 100).

(b) comments

- invitation to the Portuguese authorities to develop regime activities for prisoners in the establishment (paragraph 95).

(c) requests for information

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

- clarification of the reasons for the classification of certain prisoners as "inactive" (paragraph 97).

(iii) **Vale de Judeus Prison**

comments

- prisoners should as soon as possible be granted ready access at all times to toilet facilities (paragraph 103).

4. Medical services in the three civil prisons visited

a) recommendations

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

- the post of prison doctor at **Linhó** to be converted to a full-time position and the nursing staff to be reinforced (paragraph 116);
- the de facto presence in **Vale de Judeus Prison** of at least one full-time doctor and the equivalent of two full-time nurses to be guaranteed (paragraph 118);
- steps to be taken without delay to provide prisoners at **Linhó and Vale de Judeus** with an appropriately resourced in-house or visiting psychiatric/psychological service; such a service also to be provided to those held in the **Judicial Police Group Prison in Lisbon** for so long as that establishment continues to operate as a remand facility in which people may be detained for considerable periods of time (as distinct from as a short-term holding area) (paragraph 125);
- every newly-arrived prisoner to be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission; save for in exceptional circumstances, this interview/examination to be carried out on the day of admission, especially insofar as remand establishments are concerned (paragraph 126);
- all medical examinations of prisoners (whether on arrival or at a later stage) to be conducted out of the hearing, and preferably out of the sight, of prison officers and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) to be formally recorded and made available to the prisoner (paragraph 127);
- prison staff should always be able to contact a doctor capable of offering advice on emergency cases and, when medically appropriate, of attending the prison within a short period of time (paragraph 129);
- someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification (paragraph 129).

(b) comments

- the use of prisoners to provide health care services is a highly questionable practice, regardless of whether they possess appropriate qualifications (paragraph 122);
- invitation to the Portuguese authorities to draw up a suicide prevention programme, taking into account the points made in paragraph 132 (paragraph 132);
- invitation to the Portuguese authorities to take action to remedy the shortcomings in health-care working practices identified in paragraph 134 (paragraph 134).

(c) requests for information

- information on the number and causes of deaths in Portuguese prisons over the last three years (paragraph 133).

5. Other issues related to the CPT's mandate

(a) recommendations

- the four bar-fronted cells in the **Discipline Unit at Linhó Prison** not to be used for the execution of disciplinary sanctions (paragraph 136);

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

- the Portuguese authorities to review the current procedures for the inspection of prison establishments in the light of the remarks in paragraph 141 (paragraph 141);

- facilities at the **Judicial Police Group Prison in Lisbon** for visits from family members to be improved without delay (paragraph 147);

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

- arrangements at **Vale de Judeus Prison** for telephone contacts between prisoners and their families to be reviewed (paragraph 148);

- all cells to be equipped with a call system, preferably linked to a central monitoring point, staffed on a permanent basis (paragraph 151);

- implementation of plans to provide all prisoners in Portugal with ready access to toilet facilities to be accorded a very high priority (paragraph 153).

(b) comments

- a right of appeal to a higher authority should exist in respect of all types of disciplinary sanctions (paragraph 135);

- the in-cell toilet facilities in the **disciplinary cells at the Judicial Police Group Prison in Lisbon** were in a deplorable state (paragraph 136);

- temperatures in the cells of the **Discipline Unit at Linhó Prison** were very low (paragraph 136);

- it would be desirable for the cells in the **Discipline Unit at Vale de Judeus Prison** to be equipped with a table and chair (para 136);

- complaints about the quality and the quantity of the food were widespread in each of **the three civil prisons visited** (paragraph 142);

- invitation to the Portuguese authorities to upgrade the kitchen facilities at the **Judicial Police Group Prison in Lisbon** and at **Linhó Prison** (paragraph 143);

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

- importance of retaining a certain flexibility in the application of the visiting rules to those whose families live a long way from the prison (making frequent visits impractical) (paragraph 146);

- importance of giving prisoners who do not receive regular visits improved opportunities for telephone contact with their families (paragraph 148);

- invitation to the Portuguese authorities to explore the possibility of introducing extended visits in order to enable prisoners to maintain family and personal (including sexual) relations (paragraph 149);

(c) requests for information

- information on whether a prisoner has the right to be heard orally on the subject of an infraction of which he is accused (paragraph 135);

- the comments of the Portuguese authorities on the fact that certain of the prisoners whom the delegation met in the Disciplinary Unit at Linhó Prison had been waiting for some time (in one case, for 13 days) for a formal decision concerning the imposition of a disciplinary sanction (paragraph 135);

- confirmation that prisoners' communications with the office of the Ombudsman are not subject to any control by the prison authorities and details of any relevant legal texts. In addition, information about any other bodies outside the prison administration to which prisoners may have confidential access (paragraph 139);

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

**APPENDIX 2**

**LIST OF THE NATIONAL AUTHORITIES  
AND NON-GOVERNMENTAL ORGANISATIONS  
WITH WHICH THE DELEGATION HELD CONSULTATIONS**

**A. National authorities**

Ministry of Justice

- Dr. Alvaro Laborinho Lucio, Minister of Justice
- Dr. F. Duarte, Director General of Prison Services
- Dr. Gabriel Catarino, Deputy Director of the Judicial Police
- Dra. Maria José Mota de Matos, Liaison Officer

Ministry of Foreign Affairs

- Dr. Rui Carmo, Liaison Officer

Ministry of Defence

- Dr. Restelo Eugenio Ramos, Minister for Defence Procurement
- Brigadeiro José Machado Graça Malaquias, Liaison Officer

Ministry of the Interior

- Dr. Dias Loureiro, Minister of the Interior
- Dr. Gomes Dias, Liaison Officer

Ministry of Health

- Dra. Maria de Lurdes Cordeiro Subtil, Liaison Officer

Office of the Ombudsman

- Dr. Silveira, Deputy Ombudsman
- Dr. Vaz Serra, Deputy Ombudsman

**B. Non-governmental organisations**

Representatives of the following non-governmental organisations

- Portuguese Bar Association
- Compagneiro
- Forum - Justicia e Liberdade

### APPENDIX 3

#### **LEGAL FRAMEWORK**

##### A. Fundamental human rights safeguards

1. Article 25 of the Portuguese Constitution<sup>6</sup> provides that the moral and physical integrity of persons shall be inviolable and that no one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment. Under the terms of Article 32(6) of the Constitution,-

"Any evidence obtained by torture, force, violation of the physical or moral integrity of the individual ... shall be of no effect."

These provisions are reproduced in the Code of Criminal Procedure<sup>7</sup>, (section 126).

2. The Law on the Judicial Police<sup>8</sup> imposes upon officers of that force the "special duty" not to use torture or inhuman, cruel or degrading treatment and not to carry out any order or instruction to use such treatment (section 91(1)(b)). Further, section 91(2) of the Law provides that disciplinary proceedings may not be taken against police officers who refuse to obey such orders.

3. In addition, according to Article 8 of the Constitution, the rules and principles of international law, including those contained in international conventions, shall apply in domestic law for as long as they remain internationally binding upon the Portuguese State. In this respect it should be recalled that Portugal has ratified inter alia the European Convention on Human Rights (and recognised the competence of the European Commission on Human Rights to receive individual petitions under Article 25 of that Convention), the International Covenant on Civil and Political Rights together with its Optional Protocol, and the United Nations Convention Against Torture.

##### B. Detention by the police

4. The period for which people may be detained by the police is subject to the limitations set out in Article 28(1) of the Constitution, which provides that:

"Detention without judicial charge shall, within forty-eight hours, be subject to the scrutiny of a court, for validation or continuation of detention; the court shall hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him or herself."

This forty-eight hour time limit is repeated in section 254 of the Code of Criminal Procedure.

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<sup>6</sup> Constitution of the Portuguese Republic, Second Revision, 1989.

<sup>7</sup> Código de Processo Penal, Decreto-Lei 78/87, 17 February 1987.

<sup>8</sup> Polícia Judiciária, Decreto-Lei 295-A/90, 21 September 1990.

5. The police may arrest without a warrant issued by a court both those caught in flagrante delicto and, under certain conditions (cf. section 257 (2) of the Code of Criminal Procedure), other criminal suspects. Such arrests must be notified immediately to the Public Prosecutor (cf. section 259).

6. Persons detained by the police do not have the right to immediately inform a relative or third party of their choice of the fact of their detention by the police. Article 28(3) of the Constitution only expressly provides for such a right from the moment when a court order involving deprivation of liberty becomes effective.

7. Access to a lawyer is governed by Article 32 of the Constitution, taken together with section 61(1) of the Code of Criminal Procedure. Article 32 of the Portuguese Constitution provides that,

"Criminal proceedings shall provide all the necessary safeguards for the defence" and that the accused "shall have the right to choose and to be assisted by counsel at all stages of the proceedings".

This is supplemented by section 61(1) of the Code of Criminal Procedure, which deals with the rights and duties of accused persons; these include, inter alia,

" ... (d)The right to choose his own defence counsel or ask the court to appoint one;

(e)The right to be assisted by a defence counsel at all stages of the proceedings in which he participates, and, if detained, to communicate with his defence counsel, even in private."

8. With regard to the provision of information to individuals deprived of their liberty by the police, section 61(1) of the Code of Criminal Procedure also provides that an accused person shall have the right to be informed by the court authority or the criminal investigation department before which he is to appear of the rights available to him. In terms of section 61(1) these include, in addition to the right to a lawyer, the right to be present during any procedural acts which directly concern him; to be heard by the investigating court or judge whenever they are called upon to take any decision affecting him; to remain silent; to intervene in the inquiry and investigatory procedure; and, in accordance with law, to appeal any decision taken against him.

Section 61(1) is reproduced on a card carried by police officers which is apparently read to those arrested by them.

C. Imprisonment

9. The Portuguese Prison Regulations<sup>9</sup> provide, at section 2, that imprisonment "...shall be geared to the prisoner's social rehabilitation, preparing him for a future way of life which is socially responsible and crime free", although this must be balanced against the need to "protect society, preventing the perpetration of further criminal offences"

Section 3 of the Prison Regulations establishes five principles (or "modalities of enforcement") for the execution of sentences, which:

- shall be geared to securing respect for the person of the prisoner and for those of his rights which remain unaffected by the sentence;
- shall be approximated as far as possible to the conditions of normal outside life;
- shall not be such as to create situations involving serious risks to the protection of society or the individual prison community;
- shall be geared to prompting the prisoner to participate in his own social rehabilitation, particularly in the formulation of his own personal rehabilitation plan and,
- shall always be enforced with absolute impartiality and without discrimination

10. The Prison Regulations also contain detailed provisions governing the different aspects of prisoners' daily lives. Particular consideration will be given in what follows to those issues which are related to the mandate of the CPT and considered in the body of the report.

11. One such issue is that of placement of prisoners in non-voluntary solitary confinement/segregation. This is governed by sections 111 et. seq. of the Prison Regulations, under which "special security measures" may be applied to a prisoner if "...his behaviour or his mental state are such as to suggest a risk of escape or the commission of acts of violence against himself or against persons or objects." The measures which may be authorised include holding the prisoner in a special security cell.

12. Confinement of a prisoner in a special security cell for a period exceeding 15 days requires the approval of the Director-General of Prison Services (section 113(4)) and such confinement may not in any case exceed one month (section 113(2)). If, after the latter period, the conditions leading to implementation of the special measure still obtain, the prisoner must be transferred to a "security establishment or section" (section 113(3)).

In addition the law provides that a prisoner held in a special security cell must be seen by the establishment's doctor and be given regular check-ups for as long as he remains there; the doctor must report to the Director on the prisoner's physical and mental state of health and, if appropriate, on the need to modify the special security measure imposed (section 113(6)).

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<sup>9</sup> Execução das Medidas Privativas de Liberdade, Decreto-Lei No. 265/79, as amended.

13. Chapter X of the Prison Regulations deals with the provision of medical services in prisons. Section 95(1) states that,-

"Every prison must, as far as possible and in accordance with its needs, have a medical service, an infirmary service and a pharmaceutical service to meet the prisoners' essential requirements in terms of health care and prevention."

In addition, section 101(1) provides that, in general, "...it is incumbent upon the prison medical officer to attend to the physical and mental health of prisoners, and in particular: (a) to conduct daily visits to ill prisoners and to all prisoners in need of his attention...".

14. Disciplinary procedures are the subject of sections 128 to 137 of the Prison Regulations. These include the principle of proportionality (section 130) and provisions on the procedure to be followed in imposing such measures and the conditions in which they must be implemented.

15. Section 131(2) states that before taking any disciplinary action, "...the Director must examine the prisoner using written procedure" and according to section 131(5), any decision to impose disciplinary measures, "...shall be communicated orally to the prisoner and shall be set down in writing, accompanied by the reasons therefor."

The Regulations provide that disciplinary penalties may be applied in respect of a list of specific offences and, generally, to any prisoner "whose conduct is inconsistent with order and discipline in the prison and the aims of the enforcement of the prison sentence" (section 132).

16. The types of disciplinary measures which may be applied range from admonition through partial or total withdrawal of privileges to confinement to individual quarters or solitary confinement in disciplinary cells for periods of up to one month (section 133(1)(a) to (i)).

Disciplinary cells must be certified as fit for habitation by the prison medical service and in particular must contain "...appropriate furniture, adequate space and sufficient ventilation and lighting for prisoners to read and study when authorised to do so" (section 134(1)). Before a disciplinary measure is enforced, and when justified by the nature of the measure, the prisoner is to be examined by the medical officer, (section 137).

17. With regard to complaints procedures, it should be noted in particular that section 139 of the Prison Regulations grants all prisoners the right of access to the supervisory judge, who, under the terms of section 23 of Legislative Decree No.783/76 of 29 April 1976, is required to visit each establishment at least once a month.

In the determination of complaints submitted to him, the supervisory judge is required to attempt to reach a settlement which has the agreement of the Director of the prison; however,-

"Where the Judge and the Director are not in agreement, the subject shall be submitted for examination by the prison's Technical Council, which shall settle the issue by a majority vote" (section 139(3)).

18. Inspection procedures are the responsibility of the Directorate-General of Prison Services. Section 156 of the Prison Regulations provides that general inspections "...shall be conducted annually, without prejudice to the exceptional inspections necessitated by specific incidents" and that, for administrative reasons "...the Minister of Justice may instruct either judges or other officials from the Public Prosecutor's Office to conduct inquiries and investigations or disciplinary procedures."