



CPT/Inf (98) 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 20 to 24 October 1996

The Portuguese Government has requested the publication of this visit report and of its report in response. The response of the Portuguese Government is set out in document CPT/Inf (98) 2.

Strasbourg, 13 January 1998

CONTENTS

Copy of the letter transmitting the CPT report.....3

I. INTRODUCTION.....4

A. Dates of the visit, composition of the delegation and establishments visited.....4

B. Context of the visit to Portugal4

C. Co-operation received during the visit.....5

D. Immediate observations under Article 8, paragraph 5 of the Convention5

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED6

A. Introduction6

B. Physical ill-treatment.....6

C. Conditions of detention9

 1. Material conditions9

 2. Regime.....11

D. Health care services12

Copy of the letter transmitting the CPT report

Strasbourg, 18 March 1997

Dear Sir,

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 Government of Portugal drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Portugal from 20 to 24 October 1996. The report was adopted by the CPT at its 32nd meeting, held from 10 to 14 March 1997.

The CPT requests the Portuguese authorities to provide, within six months, a report setting out details of the measures adopted to implement the recommendations in this report, and their reactions and responses to the comments and requests for information (the Committee's recommendations, comments and requests for information appear in bold in the text).

I am entirely at your disposal to answer any questions concerning either the report or the future procedure.

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

Yours faithfully,

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

Mr João José Gomes Caetano da Silva
Ministério dos Negócios Estrangeiros
Director de Serviços das Organizações
Políticas Internacionais
Direcção-Geral dos Assuntos Multilaterais
Largo do Rilvas
P - 1354 LISBOA Codex
Portugal

I. INTRODUCTION

A. Dates of the visit, composition of the delegation and establishments visited

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 20 to 24 October 1996.

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

- Mrs Nadia GEVERS LEUVEN-LACHINSKY (Head of the delegation);
- Mr John OLDEN;
- Mr Stefan TERLEZKI.

It was assisted by:

- Mr Rod MORGAN (Professor of Criminal Justice, University of Bristol, United Kingdom) (expert);
- Mr David TONG (Acting Consultant Psychiatrist, Forth Valley Health Board, United Kingdom) (expert);
- Ms Silvia CAMILO (interpreter);
- Mrs Sophie ENDERLIN (interpreter);
- Ms Melanie ROE (interpreter).

and was accompanied by Mr Mark KELLY of the CPT's Secretariat.

3. The CPT's delegation visited Oporto Prison.

B. Context of the visit to Portugal

4. The 1996 visit to Portugal was one which the Committee considered to be "required in the circumstances" (cf. Article 7, paragraph 1 of the Convention). A delegation of the CPT first visited Oporto Prison in May 1995, as part of the Committee's second periodic visit to Portugal. The primary purpose of that visit was to interview prisoners on remand who had recently been in police custody; accordingly, the delegation focused its attention on only one part of the prison - C Wing - which accommodated almost all newly-arrived prisoners.

The gravity of its delegation's findings on that occasion led the CPT to conclude that all inmates in C wing at Oporto Prison were being held in inhuman and degrading conditions. The Committee's 1995 visit report inter alia recommended that the conditions of detention in that Wing be the subject of a full review, with the aim of ensuring that the physical and mental integrity of inmates held there was guaranteed. As is the Committee's usual practice, it requested that the Portuguese authorities provide a response to the recommendations set out in its visit report within six months (i.e. by 20 June 1996).

By mid October 1996, the response of the Portuguese authorities had still not been received¹, and the Committee decided to carry out a further visit to Oporto Prison, in order to enable a CPT delegation to examine the current situation in that establishment in greater depth.

C. Co-operation received during the visit

5. The Portuguese authorities were notified of the CPT's intention to carry out a visit to Oporto Prison on 16 October 1996 (i.e. four days before the visit began). Notwithstanding this short period of notice, the delegation benefitted from the unqualified co-operation of the authorities at national level, both before and during its visit. It also enjoyed excellent co-operation from management and staff in Oporto Prison.

At the end of the visit, a fruitful meeting was held in Oporto Prison with Dr. Celso Manata, Director-General of the Prison Service; Dra. Maria José Mota de Matos, Head of Division in the Directorate General of Prison Services; Dr. Hernâni Vieira, the Director of Porto Prison and Dra. Isabel Raimundo of the Ministry of Foreign Affairs. The Committee is particularly grateful to Dr. Manata and to Dras. Mota de Matos and Raimundo for having travelled to Oporto to be present on that occasion.

In short, the CPT welcomes the spirit of close co-operation which prevailed before and during its visit to Portugal, which was fully in accordance with Article 3 of the Convention.

D. Immediate observations under Article 8, paragraph 5 of the Convention

6. During the meeting held with the Portuguese authorities at the end of the visit, the CPT's delegation invoked Article 8, paragraph 5, of the Convention and made immediate observations in respect of the situation which is described in this report. In so doing, the delegation made clear that it considered that there was an urgent need to improve the treatment of persons deprived of their liberty at Oporto Prison, and requested the Portuguese authorities to provide a written response to its observations "as soon as possible". The delegation's oral remarks were confirmed in writing shortly after the visit.

The CPT regrets to record that, to date, no written response has been received to its delegation's immediate observations under Article 8, paragraph 5, of the Convention.

¹ It should be noted, however, that the Portuguese authorities' response was supplied to the visiting delegation (in Portuguese) at the outset of the 1996 visit. At the request of the Portuguese authorities, a French translation of the response was published on 21 November 1996, together with the CPT's report on its 1995 visit to Portugal (cf. respectively, documents CPT/Inf (96) 32 and CPT/Inf (96) 31).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Introduction

7. As already indicated in the CPT's 1995 report, Oporto Prison accommodates male prisoners in four parallel Wings (each of three storeys), connected by a long corridor. The great majority of male inmates are accommodated - three to a cell - in cells which were originally designed for single occupancy. The prison also provides separate dormitory accommodation for women inmates.

Notwithstanding its official capacity of 500, at the time of the 1996 visit, the prison was holding 1348 inmates: 1071 men and 72 women on remand; 193 male and 12 female sentenced prisoners. This represented an increase of over 200 prisoners as compared to the population at the time of the CPT's 1995 visit.

B. Physical ill-treatment

8. The CPT's delegation heard a considerable number of allegations of physical ill-treatment of inmates by custodial staff at Oporto Prison.

Those allegations were consistent as regards the forms of ill-treatment involved (namely, blows with batons, punches and kicks), and as regards the manner in which it had allegedly been inflicted (namely, removal of particular inmates from their cells after the Wing concerned had been locked for the night and subsequent beating of those inmates by prison staff in the main corridor which connects the Wings and/or at the "control" point at the end of that corridor).

The credibility of those allegations was supported by the content of certain formal complaints by prisoners which were seen by the delegation and - in some cases - by medical evidence.

9. By way of illustration, reference might be made to the two following cases:

case 1: a male remand prisoner stated that, during the night of 1 to 2 September 1996, he banged on his cell door, in order to ask for medication for a stomach complaint. He alleged that the cell door was eventually opened by a number of prison officers, who said that they would take him to the infirmary, but instead took him to the main corridor, where they punched and kicked him. He further alleged that he was then taken to the infirmary, given medication by a nurse and brought back to the main corridor, where he received a second beating.

The prisoner's medical record contained the following entries - "2.9.96 Assaulted. Complaining of various pains. On examination, 3 excoriations and haematomata on face and neck, large haematoma on left arm. Complaining of chest pain, but no abnormality detected on auscultation. 4.9.96 Complaining of intense thoracic pain with difficulty in breathing. Vomited dark red blood. On examination, sonorous and sibilant noises, clearer in the right chest." These injuries are consistent with the prisoner's allegations of assault. It might be added that, during the delegation's visit, this inmate was transferred to an outside hospital, after complaining of continuing respiratory difficulties.

case 2: a male remand prisoner stated that, during the night of 9 to 10 June 1996, following a dispute with another prisoner, he was removed from his cell by a number of prison officers. He alleged that those officers took him to one end of the main corridor (near to the entrance to the prison's chapel), where they punched and kicked him. The prison officers concerned then took him to the infirmary where, he claims, they again assaulted him.

The prisoner's medical record recorded that he had become agitated during a night visit to the infirmary on the date in question, and had been restrained by prison officers. He received stitches in a wound on the bridge of his nose and was referred to an outside hospital, where he was informed that he had sustained a broken nose. On medical examination by one of the delegation's doctors, he was found still to bear an obvious deformity on the bridge of his nose. Such an injury is consistent with the prisoner's allegations of assault.

10. The CPT recommends that a person or authority independent of the prison service carry out a thorough investigation into the extent of the problem of ill-treatment by prison staff of inmates at Oporto Prison and that appropriate action be taken against any prison officers found to have engaged in such behaviour.

11. The CPT's mandate is not limited to ill-treatment of persons deprived of their liberty which is inflicted or authorised by prison staff. Naturally, the Committee pays close attention to such ill-treatment; nevertheless, it is also very concerned when it discovers a prison culture which is conducive to inter-prisoner intimidation/violence.

As had been the case during the CPT's 1995 visit, numerous prisoners at Oporto Prison told the delegation that incidents of inter-prisoner violence were virtually a daily occurrence. Many of those inmates freely admitted that, in consequence, they lived in fear of their fellow inmates. The existence of this problem was also widely acknowledged by custodial and support staff in the establishment.

Again, the credibility of statements made about such events was supported by the content of certain formal complaints which were seen by the delegation and - in some cases - by medical evidence. In one such recent case, a prisoner's medical file recorded that, on 12 September 1996, he had sustained a peri-orbital haematoma, with excoriation on the left eyebrow, as a result of an assault by another prisoner.

12. By all accounts, the problem of inter-prisoner violence at Oporto Prison is inextricably linked to the widespread circulation of drugs within the establishment. Indeed, it was advanced by prisoners, prison staff and members of the health care team that perhaps up to 90% of prisoners were regular users of hard drugs, most notably of heroin and cocaine. The delegation also received indications - including from prison officers themselves - that some prison staff currently employed in the establishment may be involved in supplying such drugs to inmates. At the very least, there was plainly widespread and far-reaching tolerance of the presence, circulation and use of hard drugs in Oporto Prison.

13. To these troubling elements must be added the fact that the level of staffing on the Wings was manifestly inadequate. As an example, at the time of the visit, only three custodial staff had been allocated to A Wing, which housed upwards of 400 prisoners. Further, custodial staff rarely -if ever - ventured into the accommodation areas whilst prisoners were unlocked from their cells (which was the case for much of the day). In consequence, supervision of the activities of prisoners was practically non-existent. Moreover, even when staff were present on the Wings, they were clearly reluctant to intervene in disputes between prisoners. The delegation itself had occasion to witness two prisoners physically attack each other, whilst a member of staff stood idly by.

The delegation was also concerned to find that certain functions which would normally be performed by prison staff had been delegated to a small number of privileged prisoners ("faxinas"). Most notably, such inmates apparently determined the cells to which newly-arrived prisoners were allocated, had authority to transfer a prisoner from one cell to another within a given Wing, and maintained the records of inmate movements between Wings. Indeed, on a number of occasions during the visit, prison officers accompanying the delegation were unable to locate particular inmates without consulting the privileged prisoners who had been entrusted with these tasks.

This abrogation of responsibility for security functions (which properly fall within the ambit of custodial staff) reinforced the delegation's impression that - as had been the case during the CPT's 1995 visit to C Wing - prisoners minded to exploit their fellow inmates enjoyed a virtually free hand.

14. The CPT considers that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. In particular, staff should be in a position more closely to supervise the activities of prisoners. It follows that a balance must be struck between prisoners' privacy and their supervision, and between prisoner choice and regime restrictions. Far from impinging upon the quality of a regime which an establishment is able to offer, such an approach can serve to foster a safer custodial environment.

When incidents of inter-prisoner intimidation/violence do occur, staff must be both resolved and properly trained to intervene. Further, in the aftermath of such events, care will be required to ensure that measures directed at curtailing the activities of intimidating/violent inmates do not have an adverse effect upon the prison population at large. In this respect, the prison system as a whole may need to develop the capacity to ensure that potentially incompatible categories of prisoners are not accommodated together.

Finally, prison staff are unlikely to be able to protect prisoners if they fear for their own safety. This implies inter alia that the level of staffing must be sufficient to enable prison officers effectively to support each other in the exercise of their supervisory tasks. It also requires a willingness to address the issue of managing inter-prisoner violence during initial and ongoing training programmes for staff of all grades.

The CPT recommends that the Portuguese authorities carry out without delay a thorough investigation of the nature and scale of the problem of inter-prisoner violence at Oporto Prison. More generally, it invites the Portuguese authorities to devise a strategy to address the problem of inter-prisoner violence, in the light of the remarks set out in paragraphs 11 to 14.

C. Conditions of detention

1. Material conditions

15. The cellular accommodation at Oporto Prison is currently being renovated. The cells are being fitted with new windows and doors, re-painted, tiled and equipped with "simple" sanitation (placement of an unscreened lavatory in each cell). Work had been completed in all of A Wing and half of C Wing and, at the time of the 1996 visit, it was planned that this "rolling programme" of renovation would be completed by the end of 1997.

The CPT welcomes this development; however, it has reservations about the installation of unscreened lavatories in cells which are occupied by as many as three prisoners. Even were Oporto Prison to be in a position to hold only one prisoner per cell, the inmate concerned could still be said to be living in a lavatory.

In the report on its 1995 visit, the Committee stressed that either the lavatories installed in cells should be properly partitioned from prisoners' living space (preferably in a sanitary annex) or other means should be found to enable all prisoners who need to use a lavatory to be released from their cells without undue delay, including at night (cf. paragraph 99 of document CPT/Inf (96) 31). **The CPT recommends that full account be taken of this consideration during the ongoing renovation of the cellular accommodation at Oporto Prison. It would also like to be informed of the date on which it is currently envisaged that the renovation work will be completed.**

16. The Committee was disappointed to learn that its delegation found that prisoners' living areas - including in the newly-renovated Wings - were in a filthy and thoroughly unhygienic state. The cells were dirty and the corridors and stairwells were littered with rotting refuse. Moreover, notwithstanding the concerted cleaning efforts which prisoners claimed had taken place immediately prior to the delegation's visit, the communal lavatories in the unrenovated Wings were in an irredeemably feculent condition.

The CPT recommends that far greater attention be given to maintaining Oporto Prison in a salubrious state. The measures to be taken in this respect should include providing inmates with basic cleaning materials and ensuring that the prison's health care service regularly monitors the cleanliness and hygiene of the areas in which prisoners live.

17. It should be added that the bathing facilities for male inmates were completely inadequate: one bathhouse with 32 shower heads served the needs of over 1,200 prisoners. **The CPT recommends that a high priority be given to improving the bathing facilities for male prisoners at Oporto Prison.**

18. The negative effects upon prisoners' lives of the poor material conditions seen at Oporto Prison were undoubtedly exacerbated by the fact that the establishment was grossly overcrowded, especially in the areas for male prisoners. The situation in B Wing was typical: of one hundred and twenty-two 7m² cells (designed for single occupancy), one hundred and eighteen were holding three prisoners and the remaining four were holding two inmates; living space was equally limited in the Wing's three dormitories, where up to ten prisoners were being held in rooms measuring little more than 16m².

Although the dormitories in the women's unit offered more space per prisoner (e.g. up to eighteen prisoners in some 75m²), one such dormitory was only equipped with eight beds and the remaining ten women had to sleep on mattresses on the floor. Moreover, at the time of the visit, twenty-one women were sleeping on beds which had been placed along either side of the unit's main corridor.

19. The Committee's 1995 report noted that the Portuguese authorities had embarked on a programme of prison building, but expressed doubts about whether building new prison accommodation would, in itself, provide a lasting solution to the problem of overcrowding. In this respect, it recalled that some European States had embarked on extensive programmes of prison building, only to find their prison populations rising in tandem with the increased capacity acquired by their prison estates. The CPT added that, in those countries which enjoy uncrowded prison systems, the existence of policies to limit and/or modulate the number of persons being sent to prison has tended to be an important element in maintaining the prison population at a manageable level (cf. paragraph 98 of document CPT/Inf (96) 31).

In their response, the Portuguese authorities declared themselves in full agreement with the Committee's views on this subject, and provided details of a programme to tackle overcrowding which is amongst the most ambitious and promising yet encountered by the CPT (cf. pages 31 to 33 of document CPT/Inf (96) 32). In April 1996, the Government unveiled an "Action Plan for the Prison System"², which inter alia foresees an enhanced role for non-custodial penalties as opposed to prison sentences, and posits reform of the criminal justice system, with a view to reducing the average time spent in prison on remand. Further, Decree-Law No. 46/96 provides for a number of emergency measures designed to rapidly increase the capacity of the prison system (including expedited tenders for prison building contracts, compulsory purchase orders and recruitment of additional custodial staff).

The CPT welcomes this comprehensive approach. It considers that - if fully implemented in practice - the principles set out in the Action Plan for the Prison System and the measures contained in Decree-Law No. 46/96 are capable of having a significant, nationwide impact upon prison overcrowding. **The Committee wishes to receive a full account of the manner in which the Portuguese authorities are implementing this policy.**

20. As regards, more particularly, the situation of women held at Oporto Prison, the CPT can only share the view recently expressed by the Portuguese Ombudsman³ to the effect that it is highly desirable that a specific prison for women in the North of Portugal should replace the current women's unit as soon as possible. **It would like to receive details of the plans of the Portuguese authorities in this respect.**

² cf. Resolution No. 62/96 of the Council of Ministers, 29 April 1996.

³ cf. pages 262 to 263 of the Ombudsman's Report on the Prison System (Lisbon, June 1996).

2. Regime

21. As with so many other aspects of life in Oporto Prison, the establishment's capacity to deliver satisfactory regime activities was severely hampered by the degree of overcrowding to which it was subject. Were the prison to operate within its official capacity, it would be in the enviable position of being able to offer a work place to every inmate. As matters stand, although the number of available work places (at 529) actually exceeds the prison's official capacity of 500, less than half of the inmate population can be offered work.

Efforts were being made to provide educational activities and vocational training. Indeed it was noteworthy that, at the time of the visit, some 182 prisoners were engaged in primary, secondary and tertiary education, and 24 inmates were taking part in vocational activities (automotive engineering and computer science). Additional vocational training courses were planned (auto-electrics, metalwork and photography).

The prison does not have a gymnasium or weight-training facility, and offers very limited sporting activities. On every second day, prisoners were offered access (on a Wing-by-Wing basis) to an exercise yard next to A Wing, which had been equipped with an all-weather surface. Although in principle an excellent facility, the yard was mainly used for five-a-side football - an activity in which a rather limited number of inmates can participate at any one time. The exercise yards to which prisoners had access on a daily basis were in a poorer state of repair. The B Wing yard was in a filthy condition, and the C Wing yard was equally dirty and featured an uncovered sewer, which had evidently been blocked for some considerable time. The D Wing yard, which was equipped with goalposts, was not appreciably cleaner. The only other sporting facilities (goalposts and basketball hoops) were located in a courtyard used exclusively by those attending school.

22. To sum up, notwithstanding the commendable efforts of prison staff and civilian instructors, many hundreds of inmates at Oporto Prison are offered no purposeful activities whatsoever. The persons concerned spend their time milling aimlessly around the accommodation blocks and exercise yards or simply languishing in their cells.

The CPT recommends that greater efforts be made to provide all prisoners at Oporto Prison with a meaningful programme of daily activities. In particular, more creative use should be made of the establishment's existing exercise yards, and it would be highly desirable for the prison to be equipped with a gymnasium and/or weight-training facility.

D. Health care services

23. In the report on its 1995 visit, the CPT described the health care service at Oporto Prison as being "in a state of crisis" (cf. paragraph 109 of document CPT/Inf (96) 31). One full-time doctor and the equivalent of three full-time nurses were attempting to provide health care to more than 1000 male prisoners. There was a daily average of some 20 consultations, whereas the waiting list exceeded 100. The Committee recommended that immediate steps be taken to reinforce the health care team responsible for male prisoners, emphasising that a health care team responsible for more than 1000 inmates should include at least two full-time doctors.

The 1996 delegation was pleased to note that the establishment's health care team had been substantially reinforced. An additional full-time general practitioner had been recruited, as had a full-time psychiatrist, a part-time infectologist and a full-time dentist. In addition, the prison had a complement of eight fully-trained nurses, who provided 24-hour nursing cover, including ambulatory care on the Wings. As a result of these changes, there was apparently no longer a waiting list to see a doctor, and all inmates who requested a medical consultation were seen by a member of the health care service within twenty-four hours. In addition, structural work had begun, with the aim of enlarging the premises of the health care service and expanding the range of services which it could offer to inmates. **The CPT greatly welcomes these developments.**

24. Notwithstanding these positive findings, the CPT wishes to stress that due attention must also be given to the quality of health care which is provided to prisoners. In this respect, many inmates at Oporto Prison complained about the indifferent manner in which they had been treated during medical consultations and/or about the absence of appropriate follow-up care. Medical records seen by the delegation's doctors suggested that, in certain cases, the manner in which health care had been delivered was - at best - desultory, and - at worst - medically negligent.

The Committee understands that the Portuguese authorities have recently appointed a Sub-Director General with specific responsibility for health care in prisons. **It recommends that he conduct a review of the quality of health care being delivered to inmates at Oporto Prison.**

25. The delegation's doctors were also concerned to find that medical confidentiality was still not ensured in an effective manner - requests by inmates to see a doctor were transmitted by other inmates and, as in 1995, certain prisoners assisting health care staff had access to medical files. Moreover, it remained the case that prison staff and inmates were able to overhear conversations between the doctors and their patients.

The Committee must reiterate that medical secrecy should be observed in prisons in the same way as in the outside community. Keeping patients' files should be the doctor's responsibility, and such files should only be accessible to qualified members of the health care team. **The CPT recommends that steps be taken at Oporto Prison to ensure the strict confidentiality of medical data. It also recommends that all medical examinations of prisoners (whether on arrival or at a later stage) be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of sight of prison officers.**

26. Finally, the Committee wishes to return to the subject of the role of prison health care services in the prevention of ill-treatment. In the report on its 1995 visit, the CPT recommended that the record drawn up following a medical examination of a newly admitted prisoner (or a prisoner returning to the establishment) should contain: (i) an account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment), (ii) an account of objective medical findings based on a thorough examination, and (iii) the doctor's conclusions in the light of (i) and (ii). It stressed that the same approach should be followed whenever a prisoner is medically examined following a violent incident in prison.

In the light of its delegation's findings at Oporto Prison during the 1996 visit (cf. paragraphs 8 to 10), **the CPT recommends that formal guidance be issued on this subject, making clear that such a procedure should be followed on every occasion on which a prisoner sustains injuries, including as the result of the use of force by prison staff.**