



CPT/Inf (2009) 13

**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 14 to 25 January 2008

The Portuguese Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2009) 14.

Strasbourg, 19 March 2009

CONTENTS

Copy of the letter transmitting the CPT’s report.....4

I. INTRODUCTION.....5

A. Dates of the visit and composition of the delegation5

B. Establishments visited.....6

C. Consultations held by the delegation.....7

D. Cooperation between the CPT and the Portuguese authorities.....7

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED8

A. Law enforcement agencies.....8

1. Preliminary remarks8

2. Ill-treatment9

3. Conditions of detention11

4. Safeguards against ill-treatment12

 a. notification of custody.....13

 b. access to a lawyer.....14

 c. access to a doctor15

 d. information on rights.....15

5. Inspection and complaints procedures.....16

B. Establishments under the authority of the Ministry of Justice19

1. Preliminary remarks19

2. Ill-treatment21

3. The management of drug-related problems in prison.....23

4. Material conditions25

5. Regime.....27

6.	Health-care services.....	29
a.	somatic care.....	29
b.	psychiatric and psychological care provided in the prisons visited	31
c.	medical screening on admission and recording of injuries sustained in prison	31
d.	confidentiality and filing of medical data	33
e.	psychiatric unit of the “Sao João de Deus” Prison Hospital	33
7.	Other issues of relevance to the CPT’s mandate	36
a.	staff.....	36
b.	use of force in a prison context	36
c.	discipline and isolation.....	38
d.	contact with the outside world	39
e.	inspection procedures.....	40
f.	information provided to prisoners.....	42
g.	deaths in custody.....	42
C.	Psychiatric institutions	43
1.	Preliminary remarks	43
2.	Living conditions.....	44
3.	Treatment.....	45
4.	Means of restraint	47
5.	Safeguards	50
a.	initial placement and discharge.....	50
b.	consent to treatment	51
c.	other safeguards during placement.....	51
6.	Inspection.....	52
7.	Other issues under the CPT’s mandate.....	53
APPENDIX I:		
LIST OF THE CPT’S RECOMMENDATIONS, COMMENTS		
AND REQUESTS FOR INFORMATION		54
APPENDIX II:		
LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL		
ORGANISATIONS WITH WHICH THE CPT’S DELEGATION HELD		
CONSULTATIONS		67

Copy of the letter transmitting the CPT's report

Ms Susana VAZ PATTO
Head of the Human Rights Unit
Directorate of International Organisations
Ministry of Foreign Affairs
Largo do Rilvas
PT-1354 LISBOA Codex

Strasbourg, 24 July 2008

Dear Madam

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 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 14 to 25 January 2008. The report was adopted by the CPT at its 66th meeting, held from 7 to 11 July 2008.

The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I of the report. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the Committee requests the Portuguese authorities to provide within **six months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Portuguese authorities to provide, in the above-mentioned response, reactions to the comments formulated in this report which are summarised in Appendix I as well as replies to the requests for information made.

The CPT would ask, in the event of the response being forwarded in Portuguese, that it be accompanied by an English or French translation. It would also be most helpful if the Portuguese authorities could provide a copy of the response in a computer-readable form.

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

Yours faithfully

Mauro PALMA
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

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 14 to 25 January 2008. The visit formed part of the CPT's programme of periodic visits for 2008 and was the Committee's fifth periodic visit to Portugal.

2. The visit was carried out by the following members of the CPT:

- Jean-Pierre RESTELLINI (Head of the delegation)
- Tim DALTON
- Anna GAVRILOVA-ANCHEVA
- Emilio GINES SANTIDRIÁN
- Andres LEHTMETS.

They were supported by Caterina BOLOGNESE and Marco LEIDEKKER of the CPT's Secretariat, and assisted by:

- Haritini DIPLA, professor of international law at the University of Athens, Greece (expert)
- Cyrille ORIZET, psychiatrist, Georges Pompidou European Hospital in Paris, France (expert)
- Laurence CORREARD (interpreter)
- Lara DUARTE (interpreter)
- Sophie ENDERLIN (interpreter)
- Louis KEIL (interpreter)
- Manuel SANT'IAGO RIBEIRO (interpreter).

B. Establishments visited

3. The delegation visited the following places of detention:

Establishments under the authority of the Ministry of Interior

Public Security Police:

Coimbra

- District Headquarters, Avenida Elísio de Moura, Coimbra

Lisbon Area

- Estrada da Brandoa Police Station, Amadora
- Rua André Resende Police Station, Benfica
- Avenida Doutor Nuno Alvares Pereira Police Station, Cacém
- Avenida Coronel Eduardo Galhardo Police Station, Lisbon
- Rua Capelo Holding facilities, Lisbon

Madeira

- Câmara de Lobos Police Station
- Funchal Divisional Police Station
- Ribeira Brava Police Station

Oporto

- Bela Vista Holding facilities

National Republican Guard:

- Headquarters, Rua de Sá, Aveiro
- Headquarters, Avenida Dias da Silva, Coimbra
- Headquarters, Condeixa-a-Nova

Establishments under the authority of the Ministry of Justice

- Judicial Police Criminal Investigation Department (DIC), Rua do Largo de Santo António, Aveiro
- Judicial Police Headquarters, Rua Assis Vaz, Oporto
- Coimbra Central Prison
- Coimbra Regional Prison, including the Judicial Police detention facility
- Funchal Central Prison
- Funchal Regional Prison
- Judicial Police Prison, Oporto
- Monsanto High Security Prison, Lisbon
- Oporto Central Prison
- São João de Deus Prison Hospital, Caxias
- Holding cells of the Courthouse at Rua Gomes Freire, Lisbon

The delegation also interviewed remand prisoners at Lisbon Central Prison and the Judicial Police Prison in Lisbon.

Establishments under the Ministry of Health

- Miguel Bombarda Psychiatric Hospital, Lisbon
- Psychiatric Unit at the Emergency Department, Curry Cabral Hospital, Lisbon
- Casa de Saúde de São João de Deus, Funchal

C. Consultations held by the delegation

4. In the course of the visit to Portugal, the delegation had discussions with José CONDE RODRIGUES, Deputy Minister of Justice, José MAGALHÃES, Deputy Minister of the Interior, Maria do CÉU SOARES MACHADO, High Commissioner for Health, and Rui SÁ GOMES, Head of the Portuguese Prison Service, as well as with other senior officials from the relevant ministries. It also met Jorge NORONHA e SILVEIRA, Deputy Ombudsman, António CLEMENTE LIMA, Inspector-General of the Inspectorate General of Internal Affairs (IGAI), Américo BRÁS CARLOS, Inspector-General of the Inspectorate General of Judicial Services (IGSJ), and representatives of non-governmental organisations active in areas of concern to the CPT.

A list of the national authorities and non-governmental organisations with which the delegation held consultations is set out in Appendix II.

D. Cooperation between the CPT and the Portuguese authorities

5. The degree of cooperation received by the CPT's delegation from the Portuguese authorities was on the whole very good. The delegation was granted rapid access to the establishments it wished to visit and to the persons whom it wanted to interview, and most of the information it wanted to consult was provided promptly. In particular, the delegation would like to thank the CPT's liaison officers for the assistance provided before and during the visit.

However, an exception to the otherwise satisfactory level of cooperation was the denial of access to medical files, for more than a day, during the visit to the privately run Casa da Saúde São João de Deus in Funchal. The delayed access seriously impeded the visit to this establishment. Further, the CPT was not provided with a complete list of all the places where persons may be deprived of their liberty (e.g. private psychiatric hospitals and holding cells in court premises). In this respect, the CPT wishes to recall that States Parties to the Convention are under an obligation to provide full information on all places where persons deprived of their liberty are being held. As long as the deprivation of liberty takes place as a result of action by a public authority, it is not material whether the establishment in question has a private or a public status; nor is the length of stay relevant.

The CPT trusts that the Portuguese authorities will take the appropriate steps to ensure that, in future, effective access to medical files is guaranteed in all institutions the Committee visits, and that visiting delegations are provided with full information on all places where persons may be deprived of their liberty (including private psychiatric hospitals, holdings cells in court premises, etc.) prior to the commencement of a visit.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

6. In the course of the 2008 visit, the CPT's delegation focused its attention on the Public Security Police (PSP) and National Republican Guard (GNR), both of which are under the Ministry of Interior, and on the Police Judiciária (PJ), which is subordinated to the Ministry of Justice. In addition, the Courthouse holding cells at Rua Gomes Freire in Lisbon were visited.

7. The legal framework governing the deprivation of liberty by law enforcement officials remains essentially the same since the CPT's first periodic visit in 1992. In brief, a person suspected of a criminal offence may be detained in a law enforcement establishment for up to 48 hours¹.

Further, the police are still able to hold a person for up to six hours for the purpose of establishing his or her identity (Article 250 Code of Criminal Procedure). As long ago as 1997, the General Inspectorate of the Ministry of Interior² (IGAI) had recommended that this period be reduced to two hours maximum. The Portuguese authorities themselves informed the CPT, in their responses to the reports on the 1999 and the 2003 visits, that they intended to comply with the recommendation and were studying the most appropriate means to effect the change. However, despite the extensive revision in 2007 of the Code of Criminal Procedure (CCP), the six-hour period was retained. **The CPT would like to receive the observations of the Portuguese authorities on this question.**

8. Since the CPT's last visit to Portugal in 2003, significant changes have been made to the legal framework governing the work of law enforcement agencies. Some of the new legislation is not of direct relevance in the context of the CPT's mandate³. However, the changes to the CCP, which entered into force on 15 September 2007, have a profound impact on the use of detention by law enforcement officials. For instance, amendments to Article 202⁴ have limited the offences for which a person may be detained outside '*flagrante delicto*'⁵.

¹ See Appendix 2 CPT/ Inf (94) 9.

² Inspecção Geral da Administração Interna.

³ For instance, the revisions of the organic laws on the PSP (Lei nr 53/2007), and GNR (Lei nr 63/2007) and the proposed amendments to the organic law of the JP (Proposta de Lei N. 143/X) under discussion in parliament at the time of the visit.

⁴ See paragraph 41.

⁵ See Article 257 CCP.

Further, an overarching legal framework (Law No. 276/2007) for the various Portuguese Inspection Services, including the above-mentioned IGAI and the Inspectorate-General for Judicial Services (IGSJ), which inspects Prison Service and Judicial Police establishments, entered into force on 31 July 2007. The new legislation describes in detail the different duties and responsibilities of these inspectorates as well as measures to ensure their independence from the central Portuguese administration⁶.

2. Ill-treatment

9. In the course of the 2008 visit, the CPT's delegation heard numerous allegations of ill-treatment by law enforcement officials; in other words, the positive trend noted by the CPT after the 1999 and 2003 visits, when a declining number of allegations of ill-treatment were received by its delegations, has apparently not been maintained. The allegations received during the 2008 visit mainly concerned slaps, punches and blows with various objects such as batons and telephone books; allegations of verbal intimidation and of a specific threat made with a firearm were also received.

Nevertheless, it should be added that the CPT's delegation also met persons who stated that they had been correctly treated by law enforcement officials during their period of detention.

10. The CPT wishes to highlight one particular case of alleged ill-treatment encountered when visiting the PSP station in Cacém. In the cell block, the delegation met two foreign nationals who said they had been punched and beaten with a baton whilst on the police station's parking lot; one of them displayed a small lacerate wound (of about 3 mm in size) and a swelling on his right eyebrow with traces of blood. Despite this person having being detained for at least several hours, no doctor had been called. The other person did not bear visible signs of ill-treatment.

It should also be noted that the competent court was only notified of the detention of the person with visible injuries after the CPT's delegation had begun its visit to the police establishment; the detention of the other person had, according to the relevant documents, been notified some four hours earlier⁷. The detained persons themselves claimed that they had stayed overnight in a cell in that police station.

The CPT brought the above-mentioned case to the attention of the Portuguese authorities, and the Committee understands that the IGAI is currently investigating the above allegations; **it would like to be informed about the outcome of the investigation as soon as possible.**

In the course of the visit to the GNR Headquarters in Aveiro, the CPT's delegation was made aware of an IGAI investigation into allegations of ill-treatment of teenagers in Aveiro in 2007 by four GNR officers. **The CPT would also like to be informed about the outcome of this IGAI investigation.**

⁶ See also paragraph 28.

⁷ According to Article 259 of the Code of Criminal Procedure (CCP), a detention by law enforcement officials should be notified 'immediately' to either the competent court or the public prosecutor.

11. The CPT's delegation found a large number of non-standard and unlabelled objects, such as baseball bats, a plastic pistol, telescopic batons and cudgels in the interview rooms of the two Judicial Police stations visited. There is no legitimate reason for such objects to be kept in rooms used for interviewing suspects. Apart from inviting speculation about improper conduct on the part of police officers, objects of this kind are a potential source of danger to staff and criminal suspects alike. All items seized for the purpose of being used as evidence should always be properly labelled, recorded and kept in a dedicated property store, as indicated by the relevant regulation.

On 19 February 2008, the Portuguese authorities informed the CPT by email that the Minister of Justice had ordered the storing and labelling of all unauthorised objects in every Judicial Police station within one month. On 24 April 2008, the CPT received confirmation that the order had been followed up and executed by the Judicial Police. Similar instructions have been issued for the Public Security Police. There was no information available concerning the National Republican Guard.

The CPT welcomes the above instructions and **trusts that the Portuguese authorities will ensure that they are strictly adhered to. Further, the Committee would like to be informed whether similar instructions have been issued in respect of the GNR.**

12. In response to previous CPT findings, the Portuguese authorities have suggested that ill-treatment by law enforcement officials is on the decline (1999) and that the instances of ill-treatment described in CPT reports are "isolated cases" (2003). To support these claims, statistics collected by the IGAI and the IGSJ were presented. While fully recognising the importance of the work of these inspectorates, the CPT wishes to stress that these statistics do not encompass all complaints of ill-treatment in Portugal; many investigations are carried out by internal investigation departments of local police services and not reported to the IGAI or the IGSJ. For instance, in 2006 the internal investigation department of the Madeira Public Security Police registered 50 complaints by civilians of police violence and, in total, only two of those complaints were transferred to the IGAI.

The CPT considers that the apparent discontinuation of the positive trend observed during previous visits is important enough to merit in-depth and independent research into the prevalence and causes of ill-treatment by law enforcement officials. Such research could indicate whether or not ill-treatment is indeed on the rise and help to identify counter-measures that should be taken. **The CPT recommends that a thorough, comprehensive and independent study into the prevalence of ill-treatment by law enforcement officials be carried out.**

13. In any event, the CPT's findings highlight the need for the Portuguese authorities to step up their vigilance as regards the manner in which law enforcement officials treat persons in their custody. In addition to the various initiatives already taken, the Portuguese authorities should consider new measures such as the installation of closed-circuit television (CCTV) in the public areas and interrogation rooms of police stations⁸. Such cameras may also be installed in the cell blocks, provided that the persons deprived of their liberty are assured of their privacy when using the toilets, wash-basins and showers. At the same time, the introduction of CCTV should not be a substitute for direct contact with custodial staff, who should continue to regularly inspect cells in order to ensure the safety and well-being of detained persons. **The CPT recommends that the Portuguese authorities install CCTV in the public area, cell blocks and interrogation rooms of police stations.**

14. Further, the improvement of training given to law enforcement officials is also desirable. The CPT noted that human rights are an integral part of the curriculum for police officers of all ranks. However, the allegations of ill-treatment received by the CPT would suggest that the training is not adequately adapted to the daily reality of police officers; human rights concepts need to be integrated into the instruction given for dealing with high-risk situations such as the apprehension and questioning of suspects. A similar view was also expressed by the Inspector General of IGAI in a recent interview where he suggested that PSP and GNR officials require better training, "particularly in terms of citizens' rights" and that they appear to "have seen too many American films"⁹. **The CPT recommends that the Portuguese authorities review the training provided to law enforcement officials, in the light of the above remarks.**

3. Conditions of detention

15. The CPT visited a total of 15 PSP, GNR and PJ detention facilities. It was apparent from both interviews with staff and detained persons and a study of the registers, that overnight detention in police stations is a relatively rare phenomenon; in certain stations, the last overnight stay had been recorded some two months prior to the visit. In the Lisbon and Oporto areas, persons detained by the police continue to be transferred to the prisons of the Judicial Police and, in Lisbon, to the Rua Capelo PSP holding facility, after a short period.

The CPT also visited for the first time the Courthouse holding cells at Rua Gomes Freire in Lisbon, which are used for inmates waiting to be presented to a judge; inmates stay no longer than a few hours in these cells.

⁸ During the visit, the CPT's delegation was informed by the Portuguese authorities that they are currently carrying out a study into this matter.

⁹ SIC Online 24 November 2007.

16. The material conditions in cells belonging to PSP and GNR are governed by the 1999 Regulation 8684/99 of the Ministry of Interior¹⁰ and regularly inspected by the IGAI. The CPT's delegation was told that the detention facilities under the Judicial Police and the holding cells at criminal courts are not formally covered by these rules. However, it appeared that, in practice, similar standards are applied. Nevertheless, **the CPT recommends that a formal regulation be adopted governing conditions in detention facilities run by the Judicial Police and in holding facilities at criminal courts.**

17. In general, the material conditions of the police cells visited were acceptable for stays of up to two days: the sizes of the single (around 8m²) and double-occupancy (around 14m²) cells were satisfactory. Most cells were equipped with a call-bell, a ground-level toilet and a plinth, or bed, with mattress and blanket. The cells visited were generally clean and had sufficient access to natural light and artificial lighting.

However, some deficiencies were noted. For instance, **in the PSP station at Rua Brandoa in the Lisbon area, the artificial lighting was defective and there was no call-bell.** Also, none of the police stations visited had an outdoor exercise yard, **which would be problematic in the case of deprivation of liberty of longer than 24 hours.**

18. In the Rua Gomes Freire Courthouse, there were four cells of around 10m² equipped with a bench running the length of the cell. The cells were clean and although there was no call-bell, the staff office is in the direct vicinity of the cells and a video camera monitored the corridor connecting the cells. At the time of the visit, there were no persons being held in these cells.

4. Safeguards against ill-treatment

19. The CPT places particular emphasis on three fundamental rights during custody by law enforcement agencies, namely the right of detained persons to inform a close relative or another third party of their choice of their situation, and the rights of access to a lawyer and to a doctor. These rights should apply from the very outset of the deprivation of liberty (i.e. from the moment when the persons concerned are obliged to remain with the police). It is equally fundamental that persons deprived of their liberty by the police be informed without delay of all their rights, including those mentioned above.

The CPT is very concerned that the information gathered during the fifth periodic visit to Portugal indicates that the above-mentioned safeguards are still not guaranteed as from the outset of police custody. In particular, many persons detained by law enforcement agencies complained that they had not been allowed to contact their lawyer as from the outset of their deprivation of liberty or, in some cases, to contact a third party.

¹⁰ The CPT already commended the Portuguese Authorities on the adoption of Regulation 8684/99 in its report on the 1999 visit to Portugal (CPT/ Inf (2001) 12, paragraph 17).

20. In the past, the Portuguese authorities have contested the CPT's findings by contrasting them with IGAI-annual reports¹¹. However, an examination of these reports shows that IGAI inspections focus on information about access to rights from the moment of the formal detention (i.e. once a person has been declared an '*arguido*'¹²). A number of the persons interviewed by the CPT complained that they had been arrested and interviewed by law enforcement officials in a police station prior to being declared an '*arguido*'. In some cases, the CPT's delegation was able to confirm this practice when it examined the relevant documentation. Moreover, representatives of the Portuguese Law Society informed the CPT's delegation that the practice of interviewing persons suspected of a criminal offence before officially declaring them an '*arguido*' is not uncommon.

Further, a person can be obliged to remain in a police station for various other reasons, including for the purposes of identification (Article 250 CCP) and to be questioned as a witness (Article 132 (1)a CCP). As already indicated in previous CPT reports, these persons do not benefit fully from the above-mentioned fundamental safeguards.

a. notification of custody

21. The right to notify one's detention to a family member is included in Article 14 (4) of Regulation 8684/99 of the Ministry of Interior, and concerns all persons held against their will in a PSP or GNR station. In addition, Article 250 (9) of the Code of Criminal Procedure (CCP) states that persons held for identification purposes are entitled to contact a 'person of confidence'. Nevertheless, in the course of the 2008 visit the CPT's delegation met a number of persons who claimed they had not been allowed to notify anyone of their situation whilst in police custody. **The CPT recommends that the Portuguese authorities take appropriate steps to ensure that the right of persons deprived of their liberty by law enforcement officials to notify their detention to a third party is effective in practice.**

Regulation 8684/99 does not appear to apply to the Judicial Police. **The CPT would like to receive confirmation that persons held by the Judicial Police, for reasons other than identification purposes, are guaranteed the right to notify their detention to a third party, and to be informed of the relevant legal provisions. Further, the Committee would like to receive confirmation that persons detained by law enforcement officials may notify their detention to another third party if notification of a close family member is not appropriate or feasible.**

22. The CPT recognises that the right to notify one's custody to a third party might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, **such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor).**

¹¹ For instance, see CPT/Inf (2007) 14, pages 7-8.

¹² As already indicated in the report on the 1999 visit (CPT/ Inf (2001) 12, paragraph 30), in Portuguese law only persons who have formally become the object of an investigation by law enforcement officials ('*arguido*'), benefit in full from the three fundamental rights advocated by the CPT.

b. access to a lawyer

23. The CPT has repeatedly recommended that persons held by the law enforcement agencies in Portugal be granted the right of access to a lawyer as from the outset of the deprivation of liberty. The right of access to a lawyer must include the possibility to meet with the lawyer in private and to have a lawyer present during any interrogation¹³.

In their response to the report on the CPT's 2003 visit, the Portuguese authorities stated that the legal basis regulating access to a lawyer had not evolved other than to reinforce the duty to inform accused persons of their right of access to a lawyer (Article 39 of Law 34/2004). Further, they pointed that there had been no complaints about a lack of access to a lawyer to either the Ombudsman or the IGAI.

Nevertheless, the facts found during the visit in 2008 clearly indicate that few detained persons have an effective right of access to a lawyer during police custody.

24. An examination of the relevant legal provisions confirms that, for persons with '*arguido*' status, Article 64 of the CCP makes provision for the right of access to a lawyer, including a fully-fledged right to a private consultation. However, the Code of Criminal Procedure does not guarantee the right of access to a lawyer for persons arrested by the police who have not yet acquired that status, or for persons obliged to remain on police premises for identification purposes or as a witness.

Article 132 (4) of the CCP does provide for the questioning of a witness in the presence of a lawyer. In addition, Article 15 of Regulation 8684/99 mentions the possibility for any person held in a PSP or GNR station to contact a lawyer by telephone. Nevertheless, in both of these cases, it would appear that the right of access to a lawyer is restricted. For instance, the CCP does not provide for the right of a witness to consult a lawyer in private, whereas such a right is explicitly mentioned with respect to an '*arguido*'; as for Article 15 of Regulation 8684/99, it does not provide for the physical presence of a lawyer.

The CPT calls upon the Portuguese authorities to ensure that the right of access to a lawyer, including the right to talk to the lawyer in private, is enjoyed by all persons obliged to remain with the police, as from the very outset of the deprivation of liberty.

¹³ See CPT/Inf (2007) 13, paragraph 21.

c. access to a doctor

25. In the course of the 2008 visit, the CPT's delegation once again received complaints that requests to consult a doctor were, at times, ignored by law enforcement officials. In this respect, the CPT is aware that a qualified right of access to a doctor is included in Article 21 of Regulation 8684/99. At the same time, the Committee made clear in its report on the 2003 visit that in the framework of the prevention of ill-treatment, the right of access to a doctor should not be limited to persons with physical complaints, and that the Portuguese authorities should amend the Regulation accordingly.

In their response, the authorities indicated that a lack of financial and other resources prevented this recommendation from being implemented. The CPT is not convinced by such a response; in the context of the prevention of ill-treatment, access to a doctor is too important a right to be restricted. **The CPT reiterates its recommendation that Regulation 8684/99 be amended so as to guarantee an unrestricted right of access to a doctor. Further, appropriate steps should be taken to ensure that this right is respected in practice. Law enforcement officials should be instructed that a doctor should always be called without delay if a detained person requests a medical examination; police officers should not seek to filter such requests.**

As regards persons detained by the Judicial Police, **the CPT wishes to be informed of the legal provisions guaranteeing such persons the right of access to a doctor.**

d. information on rights

26. Law enforcement officials should be under a duty to inform all persons deprived of their liberty of their rights. The Code of Criminal Procedure does place an obligation on law enforcement officials to inform '*arguidos*' about their right of access to a lawyer and of other rights contained in Article 61 of the CCP; the CPT's delegation noted that such rights were printed on posters and that information leaflets in various languages were available in all the GNR and PSP stations visited.

However, the CPT's delegation was told that such an obligation to provide information on rights does not exist vis-à-vis other persons obliged to remain with the police. Moreover, several law enforcement officials openly stated that in the absence of a legal obligation, they would not inform witnesses of the possibility of having a lawyer present during questioning.

The CPT recommends that the Portuguese authorities take appropriate measures to ensure that an obligation to inform all persons held by the police of their rights is expressly laid down in law.

27. In all the police stations visited, information related to a person's detention was kept in a personal file (including visits from a lawyer, doctor or family member, etc.). In addition, there was a comprehensive register in place, which in almost all cases was filled out meticulously. Besides spaces to enter information on arrival, departure and other issues, the register contained a box to be ticked by a police officer once he had informed a detained person of his rights.

In all registers seen by the CPT's delegation, this box was ticked; however, a considerable number of detained persons complained to the delegation that they had, in fact, not been informed about their rights. Further, in some of the police stations visited there was a striking discrepancy between the number of detained persons who had apparently been informed of their rights and the number who actually exercised their rights. For instance, of the 438 persons detained in 2007 at the Rua André Resende PSP Station in Benfica (Lisbon), only eight contacted a lawyer, 14 consulted a doctor and about 50% contacted a family member or a third party. In the GNR station in Condeixa-a-Nova, none of the 45 persons detained during 2007 had apparently requested to meet with a lawyer.

In order to ensure as far as possible that persons obliged to remain with the police are duly informed of their rights, **the CPT recommends that all such persons be required to sign a statement indicating that they have been informed of their rights and have understood them. If necessary, the absence of such a signature should be duly accounted for.**

5. Inspection and complaints procedures

28. The CPT considers that the inspection of detention facilities of law enforcement agencies by an independent authority can make an important contribution towards the prevention of ill-treatment of detained persons and, more generally, help to ensure satisfactory conditions of detention. To be fully effective, visits by such an authority should be both frequent and unannounced, and the authority concerned should be empowered to interview detained persons in private.

29. The PSP and GNR are inspected by the *Inspecção-Geral da Administração Interna* (IGAI), which also carries out inspection and auditing tasks of other entities falling under the authority of the Ministry of Interior. The Judicial Police is inspected by the *Inspecção-Geral dos Serviços de Justiça* (IGSJ), which is also responsible for carrying out inspections of prison establishments and courts. In addition, both bodies are entitled to receive, and act upon, complaints about the behaviour of law enforcement officials.

30. The operational powers of the IGSJ are mainly derived from Decree Law 276/2007, while its tasks and internal organisation are described in Regulatory Decree 78/2007. In addition, Article 10 of Regulation 78/2007 provides for IGSJ staff to have access to all necessary documents, including documents falling under the so-called "*segredo da justiça*"¹⁴; this is a welcome development. In the past, the IGSJ has been prevented from having access to information obtained in the course of a criminal investigation as this information is, in principle, always subject to the "*segredo da justiça*".

However, the CPT's delegation was told that the IGSJ tended to devote most of its resources to inspecting prisons and courts, its involvement with the Judicial Police being limited to the investigation of complaints¹⁵. The findings made during the 2008 visit (see paragraph 11) clearly indicate that this is a lacuna which needs to be filled. **The CPT recommends that the IGSJ carry out frequent and unannounced on-site inspections of Judicial Police premises.**

¹⁴ See Article 86 Code of Criminal Procedure.

¹⁵ There were eight complaints in 2007.

31. Complaints against Judicial Police officials are dealt with either by the IGSJ or by the internal investigation service of the Judicial Police (*Departamento de Disciplina e Inspeção da PJ* - DDI). The relationship between the IGSJ and the DDI is not defined by law. However, the CPT's delegation was informed that there is a standing practice whereby investigations into complaints against the JP are mainly carried out by the DDI, with the IGSJ having a monitoring role.

The CPT would like to receive detailed information with respect to the division of tasks between the IGSJ and the DDI, as well as about the tasks, powers and composition of the DDI.

32. As regards the IGAI, its general tasks and powers are described in Decree Law 227/95, and include announced and unannounced inspections as well as investigations into complaints. The Decree Law establishes the duty of police personnel to provide the IGAI with all relevant information that it requests. A further elaboration of the IGAI's powers during inspections is found in Regulation 10/99.

In addition, Regulation 8684/99, which governs the rights of persons detained by the police and material conditions in police cells, assigns the task of verifying the proper implementation of this regulation to the IGAI, and grants to it, inter alia, the right to speak to detained persons in private. The Regulation also reiterates the duty of cooperation with the IGAI incumbent on GNR and PSP personnel, including the submission of reports on ill-treatment of persons detained by law enforcement officials that has been witnessed by other law enforcement officials.

33. As already indicated in the report on the CPT's 2003 visit to Portugal¹⁶, not all complaints related to ill-treatment and other misconduct by PSP and GNR officials are investigated by the IGAI. Leaving aside criminal matters, which are dealt with by the Judicial Police under the supervision of the Public Prosecution Service, since 2000 both the PSP and GNR have their own internal investigation services that deal with issues of a less severe disciplinary nature. Statistics provided by the Madeira PSP¹⁷ suggest that most investigations into allegations of ill-treatment are carried out by the internal investigation services and not by the IGAI. In this connection, **the CPT would like to receive detailed information with respect to the division of tasks between the PSP and GNR internal investigation services and the IGAI.**

34. The CPT understands that there are concrete plans to entrust more responsibilities to these two inspectorates, such as investigations into fraud with European subsidies. In order to guarantee the proper execution of present and future responsibilities, **the CPT trusts that any new tasks assigned to these bodies will be accompanied by a corresponding increase in their resources, in particular in terms of personnel**¹⁸.

¹⁶ See CPT/ Inf (2007) 13, paragraph 16.

¹⁷ See paragraph 12 above.

¹⁸ At the time of the visit, the IGSJ had a complement of 14 staff members and the IGAI had 15.

35. In order for the CPT to obtain a full picture of the current situation as regards complaints and investigations of ill-treatment by law enforcement officials, **the Committee would like to receive the following information in respect of the whole of 2007 and the first half of 2008:**

- **the number of complaints of ill-treatment filed in respect of each law enforcement agency (PSP, GNR, JP), and the body responsible for investigating each complaint (internal investigation service, IGAI, IGSJ, Judicial Police);**
- **details of the disciplinary and/or criminal proceedings instituted against law enforcement officials, in respect of allegations of ill-treatment;**
- **details of the disciplinary and/or criminal sanctions imposed in such cases.**

B. Establishments under the authority of the Ministry of Justice

1. Preliminary remarks

36. In the course of the CPT's visit in 2008, the delegation visited for the first time Coimbra Central Prison, Funchal Central and Regional Prisons and Monsanto High Security Prison. It also paid follow-up visits to the Regional Prison and Judicial Police detention facilities in Coimbra, to the Central Prison and Judicial Police Prison in Oporto and to Sao João de Deus Prison Hospital in Caxias¹⁹.

37. Coimbra Central Prison was originally built as a school in the 19th Century and converted into a prison in 1902; it was extensively refurbished in 1942. The prison consisted of eight wings, of three storeys each, leading off from a central observation tower. In addition, there were four intersecting wings at basement level, including the admissions section, disciplinary cells and security (isolation) cells. Separate buildings housed a protection unit, the prison's open section and various vocational workshops. With a capacity for 421 prisoners, the prison accommodated 382 adult male inmates at the time of the visit. Long sentences were a feature of the establishment, with 60% of the inmates serving sentences of over ten years' duration.

38. Funchal Central Prison was built in the 1980s to a modular design in a series of two-storey blocks and is situated at several kilometres from the town of Funchal (Madeira island). It had a total capacity for 324 inmates, including a section for 30 women. At the time of the visit, the prison accommodated 280 men and 11 women. Approximately one-fifth of the population were remand prisoners.

Funchal Regional Prison is located in the centre of the town in a former flour mill, which was reopened in 1994, and is under the same management as the Central Prison. With a capacity for 78 inmates, the prison held 56 men (7 on remand) and one minor of 17 years at the time of the visit. Vulnerable prisoners were generally transferred to this establishment from the Central Prison.

39. Monsanto High Security Prison in Lisbon had recently undergone extensive refurbishment, and now consisted of two concentric circular buildings, three storeys high. The prison began admitting prisoners on 17 May 2007 and had a capacity of 142; however, at the time of the visit, it was holding only 37 male inmates, of whom 9 were on remand.

40. At the time of the visit, Coimbra Regional Prison, which consisted of two double-storey prefabricated blocks, and had an official capacity for 243 persons, was accommodating 147 male inmates, one third of whom were on remand. The nearby Judicial Police detention facility, under the same management, was holding five men for a capacity of seven.²⁰

¹⁹ In addition, the delegation paid targeted visits to Lisbon Central Prison and Lisbon Judicial Police Prison, for the purpose of interviewing persons recently remanded in custody.

²⁰ See CPT report on the visit in April 1999 (CPT/Inf (2001) 12), at paragraph 39.

Oporto Central Prison has been described in previous CPT visit reports²¹. At the time of the visit in 2008, the prison, which had an official capacity for 686 persons, held 811 male inmates, of whom 201 were on remand. Overcrowding remained significant, though it was less acute than in 2003, with the number of remand prisoners having been considerably reduced (previously, they had formed about two-thirds of the prison's population); further, women were no longer accommodated at the prison.

As for Oporto Judicial Police Prison, it had been relocated to new premises since 2003 and had a capacity for 48 persons²². At the time of the visit, it held 43 men, 25 of whom were on remand, in 28 single-occupancy and 4 multi-occupancy cells. The establishment was also used to accommodate prisoners from the Central Prison who required protection.

"Sao João de Deus" Prison Hospital in Caxias, which the CPT last visited in 1995²³, had an official capacity for 186 patients. During the visit, the CPT's delegation focussed its attention on the psychiatric unit, which could accommodate 18 men and 9 women. The hospital as a whole held around 30 psychiatric patients at the time of the visit (see also paragraph 80).

41. At the time of the visit, the Portuguese prison population stood at 11,675 for 12,416²⁴ available places, which represents a welcome reduction compared to the situation encountered in 2003²⁵. Nevertheless, although the problem of overcrowding was much alleviated, it still persisted in certain prisons, such as Angra do Heroísmo Regional Prison (Açores), where occupancy stood at nearly 200%.

In recent years, there has been greater recourse to alternative measures to imprisonment, particularly for short sentences, due, it would appear, to greater public (and judicial) confidence in such measures as electronic surveillance²⁶. The new Criminal Code and Code of Criminal Procedure, which entered into force on 15 September 2007, have also introduced a number of measures designed to reduce the prison population. For example, pre-trial detention may be prescribed only if the offence, for which a person is accused, is of a particular category and may attract a penalty of imprisonment of 5 years or more (previously the minimum had been 3 years).

The CPT welcomes the impact of the above-mentioned measures and **trusts that the Portuguese authorities will continue in their efforts to eliminate overcrowding in all prisons.**

²¹ See notably CPT/Inf (1996) 31 as well as the reports on the visits in 1996, 1999, 2002 and 2003.

²² Adjacent to the prison's three disciplinary cells, the building also housed a separate police custody section with four cells and a capacity for five persons.

²³ See CPT/Inf (96) 31, at paragraphs 125-127.

²⁴ Figures provided to the delegation by the Portuguese authorities on 14 January 2008. See also Portuguese Penitentiary Administration statistics at <http://www.dgsp.mj.pt/>.

²⁵ On 1 November 2003, the Portuguese prison population stood at 14,035 persons for 12,109 places.

²⁶ Applied to around 480 persons at the time of the visit.

42. At Funchal Regional Prison, the delegation learned that a minor had recently been held for 8 months together with adults in a dormitory. This is a matter of considerable concern to the CPT. To accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation²⁷. In principle, juveniles should not be held in institutions for adults, but instead in institutions specially designed for persons of this age. If, exceptionally, a juvenile is held in an institution for adults, he/she must always be accommodated separately from adults, in a distinct unit. In order to avoid such a juvenile being placed in a situation akin to isolation, one might envisage him/her participating in out-of-cell activities with adults, on the strict condition that there is appropriate supervision by staff. However, the risks inherent in juvenile offenders sharing cellular accommodation with adult prisoners are such that this should never occur.

The CPT recommends that the Portuguese authorities ensure that detained minors never share cellular accommodation with adult prisoners.

2. Ill-treatment

43. The CPT is pleased to note that positive relations between prisoners and staff were observed at most of the establishments visited. Relations appeared to be particularly good at the Judicial Police Prison in Oporto, at Funchal Central Prison and at the Judicial Police detention facility in Coimbra. The CPT also wishes to put on record the evident improvement in staff-prisoner and inter-prisoner relations at Oporto Central Prison, where the levels of violence have manifestly decreased since the visit to that establishment in 2003.

44. Nevertheless, the CPT's delegation did receive a certain number of allegations of physical ill-treatment of prisoners by custodial staff at Monsanto High Security and Coimbra Central prisons, and, to a lesser extent, at Oporto Central Prison. These allegations concerned punches, kicks and blows with batons, after the prisoners concerned had been brought under control, and in certain instances the persons apparently required medical treatment as a result.

For example, an inmate at Monsanto High Security Prison alleged that he had been assaulted in his cell by four prison officers on 19 October 2007, after which he was transferred to solitary confinement. In particular, he alleged that his head was repeatedly hit against a wall until he was semi-conscious. Contemporaneous notes by the prison's doctor recorded bruises to the left eye with ocular orbit blood spill, bruises (measuring 5x5cm and 10x2cm) on the right hip and haematoma on the right of the thorax and the left infra-scapular area. These observations are consistent with the prisoner's allegations. The delegation was told that the prisoner had filed an official complaint. **The CPT would like to be informed of the outcome of the investigation.**

In short, the findings would indicate that although ill-treatment by staff is not a pervasive phenomenon in the prison system, there is a need for constant vigilance in this regard. **The CPT recommends that the Portuguese authorities redouble their efforts to ensure that prison staff at Monsanto and Coimbra Central Prisons, as well as at all other Portuguese prison establishments, understand that ill-treatment is unacceptable and unprofessional, and will result in severe disciplinary sanctions and/or criminal prosecution.**

²⁷ See also Article 10, paragraphs 2(b) and 3, of the International Covenant on Civil and Political Rights, and Article 37 (c) of the Convention on the Rights of the Child.

45. The delegation was informed that inmates were subjected to frequent strip searches at Monsanto Prison. Strip searches were also often carried out on prisoners before - and always after - visits at Coimbra Central, often in sight of female members of staff. In the CPT's view, excessive resort to strip searches can constitute degrading treatment. The CPT understands that the IGSJ had recommended that excessive strip-searching cease at Monsanto Prison. **The Committee wishes to receive further information regarding the implementation of that recommendation.** More generally, **the CPT recommends that the Portuguese authorities ensure that the resort to strip searches is based on an individual risk assessment and subject to rigorous criteria and supervision. Further, inmates should not be required to undress in the presence of custodial staff of the opposite sex.**

46. At the time of the visit, inmates at certain prisons in Portugal, including those accommodated at Coimbra Central Prison in the Protection Annex and in the basement, were obliged to discharge human waste into a bucket in their cell (which was subsequently "slopped out") as there was no in-cell sanitation. The CPT considers the act of discharging human waste, and more particularly of defecating, in a bucket in a confined space used as a living area, to be degrading. It is all the more degrading when the cell is shared with one or more other persons, not only for the person using the bucket but also for the persons with whom he shares a cell.

The other consequences of the absence of integral sanitation - the hours spent in the presence of buckets containing one's own excreta and that of others and the subsequent "slopping out" procedure - are scarcely less objectionable. The whole process is extremely humiliating for prisoners. Moreover, "slopping out" is debasing for the prison officers who have to supervise it.

The Committee notes that the Portuguese authorities have repeatedly pledged over the years to eradicate this degrading practice²⁸. **The CPT calls upon the Portuguese authorities to initiate immediate measures to put an end, as soon as possible, to the use of buckets for discharging human waste: prisoners accommodated in cells which do not include a toilet facility should, if they need to use one, be enabled to leave their cells without undue delay at all times (including at night).**

²⁸ See, in particular, the Portuguese response to the CPT report on the 2003 visit (CPT/Inf (2007) 14), page 16.

3. The management of drug-related problems in prison

47. One of the most thorny challenges facing the Portuguese Prison System is how to deal with the widespread availability of illicit drugs and the very high proportion of drug dependence among the prison population. The CPT has considered this issue during several previous visits to Portugal²⁹ and had noted some improvement during the visit in 2003³⁰.

Despite continued efforts to tackle the pervasive drugs phenomenon, it would appear that drugs continue to infect most of the prison establishments visited in 2008. In view of the extent of the drugs problem, more effective steps need to be taken to implement a three-pronged strategy: to put an end to the supply of drugs, to reduce as far as possible the demand for drugs, and to provide appropriate assistance to prisoners with drug-related problems. Moreover, prison management should consider that its responsibility includes the prevention of prisoners' getting involved in drug use and drug trafficking.

48. At Oporto Central Prison, despite a noticeable reduction in the presence of drugs in the past few years, it would appear (according to information provided by the prison doctor and inmates), that 30% to 50% of prisoners nevertheless continue to consume heroin and/or cocaine. The delegation learned that, in December 2005, four persons enrolled in the prison's methadone programme died within the space of 24 hours, possibly because they had taken buprenorphine in combination with methadone, which proved to be lethal.

At Coimbra Central Prison, both prisoners and prison staff maintained that an interruption of the illegal drugs supply would cause a riot, and so no effective measures were being taken.

At Funchal Central Prison, the director declared to the delegation that, despite certain efforts (e.g. attempts to introduce sniffer dogs and body searches of visitors and staff), he felt limited in his ability to control the influx of drugs into the prison.

49. More generally, it would appear that many prisoners enter the prison system with a history of drug-related problems. However, it was also acknowledged in discussions with inmates and staff in several prisons that a significant number of prisoners had become addicted to drugs only after they had entered the prison system. Such a situation is due to the ready availability of drugs combined with peer pressure and a lack of purposeful activities.

²⁹ See, in particular, the 1999 visit report (CPT/Inf (2001) 12), at paragraphs 56 to 64.

³⁰ See CPT/Inf (2007) 13, at paragraphs 49 to 51.

Moreover, the findings of the delegation would suggest that prison staff are, to some extent, involved in the drugs supply chain, whether due to pressure exerted on staff or to the temptation to supplement their income. For example, three custodial staff members at Funchal Central and Regional prisons had recently been convicted of introducing drugs into those establishments.

The CPT calls on the Portuguese authorities to take the necessary security measures to stop the supply and circulation of illicit drugs in prison. In this context, local management needs to have strong backing from the central level. Further, in order for such steps to be effective, they must be coupled with measures to address and prevent staff corruption. At the same time, care must be taken that these security measures do not unduly impinge on the dignity of inmates or the activities offered to them. Moreover, measures should be taken to prevent prisoners from becoming involved in drugs consumption and/or trade.

50. An effective strategy to combat the scourge of drugs cannot rely solely upon attempting to reduce the supply of drugs, but it must also address the demand for drugs. As already described in the 1999 report to Portugal, specific options offered to prisoners with drug problems should include substitution³¹ and detoxification programmes. Further, such programmes should be accompanied by social and psychological support and educational training.

In this respect, the CPT found that in the prisons visited commendable efforts were being made. Nevertheless, the CPT considers that in order to address the drug problem more effectively, more should be done. In particular, drug-free therapy units should be introduced at Coimbra³² and Funchal Central prisons, in accordance with the national plan for all central prisons. In addition, in the prisons visited, there was a lack of socio-educational support accompanying the reasonably well-developed medico-psychological aspects of treatment.

51. The CPT recommends that the Portuguese authorities enhance the range and reach of therapeutic programmes on offer to address the demand for drugs and to assist prisoners with drug-related problems, in the light of the foregoing remarks. In particular, a drug-free therapy unit should be established as a matter of urgency at Coimbra Central Prison and at Funchal Central Prison.

Further, the Committee requests updated information on the authorities' national plans as regards drug-free therapy units.

52. The delegation was also informed about a pilot project concerning the introduction of needle exchange programmes in two prisons. **The CPT would like to receive updated information on these pilot projects.**

³¹ In terms of national substitution programmes provided to persons with drug-related problems, the CPT was informed that on 31 December 2007 approximately 6.4% of the prison population were benefiting from a substitution programme (methadone or buprenorphine).

³² Despite the efforts of the medical service since 2003, there was still no drug-free therapy unit at Coimbra Central Prison.

4. Material conditions

53. The unrenovated sections of Coimbra Central Prison, particularly at basement level, were in an unacceptable condition, with very poor lighting, bare concrete floors and no in-cell sanitary facilities (see also paragraph 46). The supposedly temporary facilities at Coimbra Regional Prison were also in an unacceptably dilapidated condition, even though some improvements had been made since the previous visit: the exercise yard included a sheltered area and payphones had recently been installed. However, on the whole, the fabric of the buildings, the plumbing and the ventilation installations had greatly deteriorated.

The delegation was informed about long-standing plans to construct a new prison to replace the Central and Regional Prisons in Coimbra. However, these plans had not moved forward for many years.

At the end of the visit, the CPT's delegation informed the Portuguese authorities of the unacceptable conditions observed at Coimbra Regional Prison and in certain parts of Coimbra Central Prison. The Portuguese authorities took swift action in response and formally closed the basement level of Coimbra Central Prison on 19 March, with inmates no longer held there after 14 March 2008; the CPT was also informed by the authorities that they would close Coimbra Regional Prison in the second semester of 2008, upon completion of renovations to a wing at Coimbra Central Prison, which would accommodate some of the inmates, with the remainder being transferred to other prisons.

The CPT welcomes the prompt action taken in response to the concerns expressed by its delegation. **The Committee would like to receive up-to-date information concerning the closure of Coimbra Regional Prison and the relocation of inmates to other prisons. The CPT also trusts that renovation of the whole of Coimbra Central Prison will be treated as a matter of priority.**

54. Cells at the Judicial police detention facility in Coimbra offered inadequate access to natural light (due to the location of the cells in the basement) and the artificial lighting was poor; several persons met had been detained in these conditions for a number of weeks or even months. Admittedly, prisoners did have access, several hours per day, to a small exercise yard. Nevertheless, in the CPT's view, cells should always be equipped with adequate artificial lighting and cells without any access to natural light are only suitable for holding persons for short periods. **The Committee recommends that the necessary steps be taken in the light of these observations.**

55. Material living conditions were generally of a very good standard at the newer establishments of Monsanto High Security and Oporto Judicial Police prisons. The individual cells were well-furnished and offered sufficient space, ventilation, access to natural light and artificial lighting.

Nevertheless, at Monsanto High Security Prison, the delegation received many consistent allegations of problems with the in-cell plumbing, causing showers and toilets to overflow. Further, none of the outdoor exercise yards provided equipment or shelter from the elements and some of them were very small. **The CPT recommends that the necessary steps be taken to remedy these defects.**

As regards Oporto Judicial Police Prison, **steps should be taken to improve both facilities for prisoners to wash their clothes and conditions in the outdoor exercise yards.** Further, the CPT is particularly concerned by the design of the cell windows at this establishment: the window-panes were opaque, thereby generating a potentially oppressive effect. **The Committee recommends that the design of the cell windows be reviewed so as to allow inmates to see outside their cells.**

56. Reasonably good material conditions were, in general, offered at Funchal Central and Regional prisons, and in the renovated sections of Coimbra Central Prison. However, certain shortcomings were observed. At Funchal Central Prison and in the renovated sections of Coimbra Central Prison **the call-bells did not work**, and at Funchal Regional Prison, **inmates complained about the showers either not working at all (due to problems with the water pressure system), or dispensing scaldingly hot water.**

57. Material conditions were not satisfactory in certain sections of Oporto Central Prison. In Pavilion B, for example, the sanitary facilities were very dilapidated and dirty, with no showerheads provided. Cells were often overcrowded and did not include call-bells or lockable spaces. Further, the recently established observation unit (for stays of up to 3 months) lacked a living area separate from the dormitory where prisoners slept.

The CPT recommends that material conditions of cells and sanitary facilities be significantly improved in the older, unrenovated sections of Oporto Central Prison. Bearing in mind that persons placed in the prison's observation unit had no out-of-unit activities except for outdoor exercise, **consideration should also be given to providing inmates in that unit with a separate living area.**

58. In all the prisons visited, including recently constructed or refurbished establishments, the delegation noted that there was a lack of heating in the accommodation areas. This made for cold and damp conditions during winter months. The effects were most pronounced in places such as Monsanto or the Prison Hospital, where prisoners were often confined to their cell or dormitory for 23 hours per day. Further, in most establishments prisoners were not allowed to supplement their clothing with gloves or hats; in particular, at Monsanto, inmates were obliged to wear only the thin clothing issued to them (which did not include pyjamas). Disciplinary sanctions were also frequently imposed at various prisons for the illegal possession of heating elements.

The CPT recommends that the Portuguese authorities take appropriate measures to protect prisoners from cold and damp conditions during the winter. House rules should be adapted in order to allow prisoners to wear warm clothing.

5. Regime

59. The CPT recalls³³ that prison authorities should aim to ensure that all prisoners (including those on remand) spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

A system of classification and allocation of prisoners is a pre-requisite for the organisation of any meaningful regime. The delegation noted that some degree of regime differentiation was in place at Oporto Central Prison, but this was not the case in most of the other prisons visited. The limited differentiation, combined with sentenced and remand prisoners being mixed together throughout the Portuguese prison system, poses clear difficulties for any attempt to draw up individual custody plans for prisoners.

60. At Oporto Central Prison, a good range of activities (work, professional training, education, sports, music, theatre) continued to be on offer and the number of prisoners working inside the prison on maintenance (including gardening) and cleaning had doubled (to 100) since the visit in 2003. Further, certain efforts since 2004 to improve prison order and security had succeeded in giving more structure to the daily regime. A good range of activities (education, work, recreation etc) was also on offer at Funchal Central Prison, which managed to occupy nearly 50% of the prison population in various types of work and around 30% in educational courses.

Woodwork, tapestry and mechanics workshops were functioning at Coimbra Central Prison, though work commissioned from outside companies was insufficient, according to the prison management. Approximately 40% of the inmates did not participate in activities other than those of a recreational nature. Many prisoners complained to the delegation that although they wished to occupy themselves, they were given no work or training opportunities.

61. At Monsanto High Security Prison there was also a dearth of activities. During the fortnight prior to the delegation's visit, a very limited individual programme of activities had been established and distributed to each prisoner. This consisted of daily outdoor exercise of either 60 or 90 minutes and, in addition, on week days, one of the following activities for either 45 or 90 minutes: access to the gym, reading group and yoga, the latter provided by a volunteer.

62. Inmates at Funchal Regional Prison did not benefit from a sufficiently varied regime. Due to limited outdoor facilities, inmates could reportedly partake in more sports at the Central Prison. Seven prisoners worked as cleaners in the prison and eight as road-workers with the local municipality. Educational opportunities were also limited to reading and writing and involved about 12 inmates (primary education only).

Many prisoners at Coimbra Regional Prison complained of a lack of activities. Most of the 147 inmates at the prison were idle, with some work (prison cleaning and maintenance) available to 9 inmates, and educational courses followed by 39. No vocational training was on offer.

³³ See the CPT Report on the visit in 1995 (CPT/Inf (96) 31), at paragraph 103.

There were virtually no purposeful activities on offer at Oporto Judicial Police Prison. Prisoners – some of whom had spent over a year in the establishment – had very little to do, except watch television, play board games, make use of a small library or work out on a rowing machine.

63. The CPT recommends that the Portuguese authorities employ greater efforts to offer an appropriate range of constructive activities, including work of a vocational nature, to all prisoners in the establishments visited, in the light of the foregoing remarks.

64. The delegation also noted that prisoners serving long sentences - as was the case for most inmates at Coimbra Central Prison and Monsanto High Security Prison - were not offered enhanced regime activities as part of an individualised custody plan catering to their special needs.

The CPT would recall that long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way.

The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Moreover, they should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release.

The CPT recommends that the necessary steps be taken to develop custody plans and support offered to long-term prisoners, in accordance with the precepts outlined above.

65. Many foreign inmates in the prisons visited complained of their exclusion from regime activities due to language barriers and of the lack of opportunities to learn Portuguese. Such courses were, on the contrary, available at Oporto and Funchal Central Prisons. **The CPT recommends that the Portuguese authorities make efforts to prevent the exclusion of foreigners from prison regime activities due to language barriers.**

6. Health-care services

66. The CPT's delegation was informed by the Portuguese authorities that it was their intention to transfer the responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health by 2010. This is a welcome development, having regard to the general principle that prisoners are entitled to the same level of medical care as persons living in the community at large (equivalence of care).

The CPT would like to receive confirmation concerning the timing of the transfer of responsibility, as well as detailed information on the manner in which the provision of health care in prisons will be organised once the transfer has occurred.

67. In general, inmates had good *access to health-care services* in the establishments visited. However, a few inmates at Oporto Central Prison alleged that prison staff demanded to know the inmates' health complaint before allowing them to go to the infirmary. Such screening is inappropriate, including in terms of medical confidentiality.

The CPT recommends that the necessary measures be taken to ensure that prison staff at Oporto Prison – or at any other prison establishment - do not screen requests for access to health-care services.

a. somatic care

68. The CPT is pleased to note that good health-care staffing levels were ensured at Oporto Central Prison (4 doctors and 15 nurses, full-time), where a well-equipped, new health-care facility was about to begin functioning.

As regards Coimbra Central Prison, sufficient medical doctors (2 full-time) were available. However, the nursing complement (with an equivalent of less than 4 full-time nurses employed, for potentially more than 400 inmates) was clearly inadequate. As a result, a nursing presence seven days a week was not ensured (let alone a 24-hour presence), and medication was regularly distributed by custodial staff (on Sundays custodial staff even distributed methadone and antiretroviral medication). In the CPT's view, the nursing complement would need to be doubled, in order to attain an acceptable level.

As for Coimbra Regional Prison, the delegation was informed that there was a “full-time” doctor, which would be sufficient given the capacity of the establishment³⁴. However, the delegation learned that the doctor concerned usually visited the establishment only twice a week, for several hours each day. This is not sufficient to provide adequate medical cover for potentially 250 prisoners. The official nursing complement (an equivalent of less than 2 full-time nurses) was also inadequate. As a result of this health-care staff shortage, the first medical screening took place up to three weeks after the prisoner’s admission to the establishment; many prisoners complained of having to wait four weeks before being able to see a doctor, and medication was distributed by custodial staff.

One general practitioner and four nurses worked full-time in the common health-care service for both Funchal Central and Regional prisons. This is insufficient, in the CPT’s view, given the health-care needs in these prisons. Further, no dentist visited either establishment.

Oporto Judicial Police detention facility benefited from the presence of a nurse seven days a week and a doctor was on call. This arrangement could be considered sufficient, given the capacity, provided the doctor attends promptly when needed.

As regards Monsanto High Security Prison, a doctor visited the establishment twice a week, and five nurses were employed full-time. Although sufficient in view of the number of inmates at the time of the visit, the medical staffing levels will clearly have to be increased as the inmate population increases. Whereas the number of nurses would be adequate, even if the prison operated at full capacity, a doctor would be required on at least a half-time basis.

69. The CPT recommends that health-care staffing levels be strengthened in the light of the foregoing remarks. In particular:

- **Coimbra Central Prison should benefit from the services of at least seven full-time nurses;**
- **Coimbra Regional Prison should benefit from the services of at least three full-time nurses, as well as the effective, regular presence of a doctor, in accordance with the doctor’s contractual obligations;**
- **Funchal Central Prison alone should benefit from the services of at least one full-time general practitioner and 6 full-time nurses;**
- **Funchal Regional Prison should benefit from the regular services of a part-time general practitioner and at least one full-time nurse;**
- **the regular services of a dentist should be secured, for both Funchal Central and Funchal Regional prisons.**

³⁴ Including the provision of adequate care at the Coimbra Judicial Police detention facility, for which the same health-care service was also responsible.

b. psychiatric and psychological care provided in the prisons visited

70. The CPT would recall that, in comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health-care service of each prison, and some of the nurses employed there should have had training in this field. The provision of medical and nursing staff, as well as the layout of prisons, should be such as to enable regular pharmacological, psychotherapeutic and occupational therapy programmes to be carried out.

71. The delegation observed adequate provision of psychiatrists and psychologists at Oporto Central Prison (1 full-time psychiatrist; and 4 psychologists), and at Monsanto High Security Prison (1 psychiatrist visited twice a week and 1 psychologist daily). Due to the absence of the doctor during the visit to the Oporto Judicial Police detention facility, the delegation was not able to obtain precise information on the provision of psychiatric and psychological care at this establishment.

72. Psychiatric care should be improved at Funchal Central and Regional Prisons; the cover currently provided by a consultant psychiatrist is not sufficient. Further, the delegation observed that little or no communication occurred between the external drug-dependency staff and the medical services. Finally, prisoners at the two establishments did not benefit from sufficient psychological support. **These deficiencies need to be remedied.**

73. Two full-time psychiatrists divided their time between inmates at Coimbra Central and Coimbra Regional prisons, in what appeared to be adequate provision. However, due to long-term sick-leave, only one out of the two full-time psychologists was effectively working at Coimbra Central Prison, such that the level of psychological support provided was clearly insufficient. **The CPT recommends that this situation be remedied without further delay.**

c. medical screening on admission and recording of injuries sustained in prison

74. It is impossible to overemphasise the importance of medical screening of newly arrived prisoners, particularly in establishments which constitute points of entry to the prison system. Such screening is essential, particularly to prevent the spread of transmissible diseases and suicides, and for recording injuries in good time.

The CPT wishes to stress that every newly-admitted prisoner should be properly interviewed and physically examined by a medical doctor as soon as possible after his admission; save for exceptional circumstances, the interview/examination should be carried out on the day of admission, especially insofar as remand establishments are concerned. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.

In addition, any signs of injuries observed on admission should be duly recorded, together with any relevant statements from the prisoner and the doctor's conclusions. The same approach should be followed whenever a prisoner is medically examined after a violent episode in prison. Furthermore, if a prisoner so requests, the doctor should supply him with a certificate describing his injuries.

75. The CPT is pleased to note that prompt and comprehensive screening was carried out at Monsanto High Security Prison. Records at a number of other establishments, however, showed that medical screening occurred several days or even weeks (notably up to 3 weeks at Coimbra Regional Prison) after a prisoner's arrival.

The CPT calls upon the Portuguese authorities to ensure that medical screening at all prison establishments is carried out within 24 hours of an inmate's arrival in prison.

76. The delegation noted that injuries were not consistently recorded in certain prisons. For example, at Oporto Judicial Police Prison, an examination of the medical and administrative files of prisoners showed numerous instances of lesions and allegations of ill-treatment being noted by custodial staff on the prisoner's arrival; however, such lesions were then either not examined by the prison doctor, due to his frequent absences, or they were qualified by him as "non-traumatic" and therefore unworthy of further scrutiny. Further, at Monsanto High Security Prison, records were somewhat sketchy as regards incidents occurring within the prison: no record was made of the prisoner's statements or of their consistency with any injuries observed.

The CPT recommends³⁵ that, in addition to the doctor's objective medical findings, the record drawn up following a medical examination of a newly admitted prisoner (or following a violent episode in prison) also include:

- **statements made by the prisoner which are relevant to the medical examination (including any allegations of ill-treatment);**
- **the doctor's conclusions, in particular as regards the degree of consistency between any allegation of ill-treatment and the objective medical findings.**

Further, the CPT recommends that existing procedures be reviewed in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant authorities. That record should also be made available to the prisoner and the prisoner's lawyer.

77. No register on violent incidents was in use in the medical services at Funchal Central Prison or Coimbra Central or Regional prisons. In the CPT's view, maintaining such a register would enable the authorities to monitor most of the incidents of violence within the establishment, and to take necessary action to prevent future incidents. **The CPT recommends that such a register be introduced at every prison establishment.**

³⁵ See also the CPT report on the visit in 1999 (CPT/Inf (2001) 12), at paragraph 98.

d. confidentiality and filing of medical data

78. In general, medical confidentiality was being respected and medical records were generally of a good standard in the establishments visited. The delegation was pleased to note that, at Oporto Central Prison, nurses directly supervised the intake of medication by prisoners. However, at Coimbra Central Prison, custodial staff regularly distributed all types of medication (see also paragraph 68, subparagraph 2). The CPT recalls³⁶ that such a practice is not compatible with medical confidentiality requirements.

The CPT recommends that, in principle, medication be distributed by health-care staff and that, in particular, prescription (including psychotropic) drugs never be distributed by custodial staff.

79. At Coimbra Central Prison, individual patients' files were not stored in one comprehensive medical file, but were split: thus each prisoner could have one file kept in the general practitioner's office, another with the psychiatrist and a third file kept with the addiction specialist (psychologist). The situation was not helped by the fact that these three services were located in different parts of the prison. Therefore, neither consistency of care nor communication between the different services was ensured. **The CPT recommends that the above-mentioned deficiencies be remedied by the creation of a single medical file for each prisoner, which is stored in one location.**

e. psychiatric unit of the "Sao João de Deus" Prison Hospital

80. The psychiatric unit at Sao João de Deus Prison Hospital, with a capacity for 27 patients, was treating three categories of patients: persons with acute psychiatric disorders who were sentenced or remand prisoners; persons who were placed preventively under observation; or persons who were sentenced to involuntary treatment (one at the time of the visit). Patients no longer in an acute phase of psychiatric disorder, but who were not ready to return to prison were, in principle, placed in one of 10 beds reserved for psychiatric patients in the hospital's occupational therapy department, situated one floor below the psychiatric unit. At the time of the visit, some 30 persons were receiving psychiatric treatment at the prison hospital as a whole.

81. As to living conditions in the unit, the 4 rooms for women were well-furnished and each had a sanitary annexe. However, the door of one women's room had been removed as a suicide prevention measure, with the result that privacy was not afforded to patients in that room. As for the male patients, they were accommodated in two dormitory-style rooms for nine persons each. The dormitories were sparsely furnished (e.g. lacked cupboard space) and impersonal. The delegation also received complaints from patients concerning insufficient access to hot showers, as the water boiler was too small for the number of persons in the unit. **These deficiencies should be remedied.**

³⁶ See also report on the visit in 2003 (CPT/Inf (2007) 13), at paragraphs 80 and 88, as well as the Portuguese response (CPT/Inf (2007) 14).

82. Turning to treatment at the psychiatric unit, it consisted essentially of pharmacotherapy. The delegation was informed that other forms of therapeutic activities had previously been organised but had ceased more than two months prior to the visit. Both patients and staff lamented the insufficient individual psychotherapy, group therapy and occupational therapy provided in the psychiatric unit. Many patients complained that they had virtually nothing to do. Patients could use a small library when the guards agreed to accompany them. Otherwise they were not provided with reading material such as newspapers and magazines, unless they had the means to purchase them. Occasional activities such as film-screenings and small group activities in an occupational therapy workshop were organised, but they had been discontinued several weeks prior to the visit. Thus, patients were locked in their rooms and the adjacent communal area for 22 1/2 hours per day, apart from their daily outdoor exercise (which they were in fact obliged to take). Further, although it is true that most persons stayed in the unit for a matter of months, two patients had spent over one year in the unit.

The CPT recommends that the necessary steps be taken to develop the range of rehabilitative and therapeutic activities provided to patients at the psychiatric unit of the Prison Hospital. In particular, the occupational therapy workshop should be reinstated without further delay. This will require appropriate staff reinforcement.

83. As regards staffing levels, they appeared to be adequate in numbers: 4 full-time psychiatrists, 15 nurses, 5 orderlies and 2 psychologists. However, in terms of the care actually provided, the effective presence of psychiatrists was insufficient³⁷, and the psychologists were burdened with administrative and other tasks preventing them from providing adequate psychotherapeutic care to patients³⁸. Further, the complement of occupational therapists – one, full-time – was clearly insufficient (see also paragraph 82).

The CPT recommends that the Portuguese authorities ensure:

- **a significant increase in the effective presence of psychiatrists in the unit;**
- **that psychologists are placed in a position to concentrate on providing care to patients; and**
- **the allocation of the services of at least two full-time occupational therapists.**

84. Staff members informed the delegation that they regularly concealed medication in certain patients' food, as this was the only way to ensure that these patients would take their medication. In the CPT's view, involuntary placement in a psychiatric establishment should not dispense with the need to obtain the patient's consent to treatment.

The CPT recommends that the above-mentioned practice cease forthwith, and that the necessary steps be taken to ensure respect for the right to refuse treatment in all prison establishments, including the Prison Hospital's psychiatric unit. Any exceptions to this right must be laid down in law (see also paragraph 135).

³⁷ By way of example, the working schedule for one full-time psychiatrist consisted of 5 days' presence per week, for a total of 19 hours.

³⁸ It would appear that, for this reason, group therapy had been discontinued a few months prior to the visit.

85. The CPT also notes that so-called “SOS-medication”³⁹ was in use at the Prison Hospital, allowing nurses to administer powerful neuroleptic drugs if a patient became very agitated. In the CPT’s opinion, the generalised use of SOS-medication without proper oversight by medical staff places too much responsibility on nurses, and opens the door to possible abuse. **The CPT recommends that the approach towards SOS-medication be reviewed.**

86. Agitated patients could be subject to seclusion in a purpose-built room (including a sanitary annex) next to the infirmary. The CPT is pleased to note that persons subject to seclusion were still provided with an hour of outdoor exercise and could, if they wished, take their meals together with other patients. However, no specific register was kept on the use of the seclusion room. Further, patients’ individual files in which a seclusion measure was noted did not always include a reference to the end of the measure. **The CPT reiterates its recommendation⁴⁰ that recourse to seclusion always be recorded in a specific register, in addition to the individual patient’s file.**

87. The delegation also noted that mechanical restraints were in use. Given the potential for abuse and ill-treatment, such use of means of restraint remains of particular concern for the CPT.

The delegation did not gather any information indicative of an excessive use of mechanical restraints. However, certain aspects of the application of restraints are a cause for concern. No guidelines were available on the use and supervision of restraints. As medical staff explained, the use of means of restraint involved, on occasion, the patient being bound with bed sheets, either to the bed in the seclusion room or to the patient’s own bed, where he or she was in full view of other patients. Further, due to a lack of staff, fixation was at times carried out with the assistance of custodial staff or even of other patients. Finally, no specific register was in use for recording the application of means of restraint.

88. In the CPT’s view, the use of means of restraint should be surrounded by appropriate safeguards. In particular:

- every single case of resort to means of restraint should be authorised by a doctor or, at least, be immediately brought to a doctor’s attention when it is authorised by another member of the medical staff;
- patients should never carry out restraints, and custodial staff should only be involved under the strict supervision of medical personnel;
- if a patient is immobilised with straps or belts, a trained member of staff should be continuously present in order to maintain a therapeutic alliance and to provide assistance. Such assistance may include escorting the patient to a toilet facility or, in the exceptional case where the measure of restraint cannot be brought to an end in a matter of minutes, helping him/her to consume food. Clearly, video surveillance cannot replace such a continuous staff presence. Further, the application of means of restraint should, in principle, occur out of sight of other patients;

³⁹ Medication administered as needed.

⁴⁰ See CPT reports on the visits in 1999 and 2003 (CPT/Inf (2001) 12, at paragraph 109 and CPT/Inf (2007) 13, at paragraph 119).

- in order to enhance oversight over the use of means of restraint for management and inspection purposes, every instance of restraint of a patient should be recorded in a specific register established for this purpose. The entry in this register should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such a measure, the type of measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by inmates or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry. In addition, the entry within the patient's personal medical file should indicate in greater detail the grounds for the use of means of restraint.

The Committee recommends that the Portuguese authorities develop comprehensive guidelines on the use of means of restraint, in accordance with the minimum precepts outlined above.

7. Other issues of relevance to the CPT's mandate

a. staff

89. Custodial staff were generally sufficient in number in most of the establishments visited. One exception, however, concerned Coimbra Central Prison, where an inadequate night-time staffing complement resulted in no prison officers being present at night in the unit housing prisoners who were on protection; the cells had no call-bells, and prisoners in the unit could not be heard by staff if they shouted, as the unit was located at some distance from other buildings. **The CPT recommends that the necessary steps be taken to rectify this deficiency.**

b. use of force in a prison context

90. The CPT recognises that prison staff will on occasion have to use force to control violent and/or recalcitrant prisoners. These are clearly high-risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.

In the course of the 2008 visit, the delegation learned that prison officers and the rapid intervention brigade (BIR) were provided with a variety of means to bring prisoners under control (e.g. handcuffs, batons, teargas and, as an alternative to lethal force, Taser guns). The delegation also received allegations concerning the use of non-authorized means of force, such as telescopic batons. **The CPT recommends that the Portuguese authorities ensure that only authorised means of force are used in prison establishments.**

The CPT would also like to receive a full list of standard-issue and other authorised means of force available to custodial staff and members of the rapid intervention brigade, as well as copies of all relevant guidelines on their use. In particular, the Committee requests information on the criteria for deployment of Taser guns, on the instances of their use in Portuguese prisons and on the oversight procedures in place.

91. The CPT's delegation observed prison officers openly carrying batons at Monsanto High Security Prison and within the Prison Hospital's psychiatric unit. Such a practice is not conducive to developing positive relations between staff and inmates, and is especially out of place in a prison hospital setting. **If it is considered necessary for prison officers to carry truncheons, they should be hidden from view.**

92. The delegation met one prisoner at Coimbra Central Prison who alleged that he had been subjected to tear gas in his cell on 19 July 2007, and had not been seen by health-care staff until two days later.

Tear gas is a potentially dangerous substance and there can be no justification for its use against a prisoner in a confined space such as a cell. Further, prison officers should be able to perform their duties quite effectively without having recourse to this type of means of coercion, in particular when it is a question of exercising control over individual prisoners. In the CPT's view, only exceptional circumstances can justify the use of tear gas inside a place of detention – but never in a confined space such as a cell – for control purposes, and such exceptional use should be surrounded by appropriate safeguards. For example, persons exposed to the spray should be granted immediate access to a medical doctor, officers authorised to use the spray should receive proper training, and adequate reporting and inspection mechanisms with respect to its use should be in place. **The Committee recommends that if, exceptionally, the use of tear gas is permitted in a prison context, its use be circumscribed and appropriate safeguards be put in place, in the light of the foregoing remarks.**

93. The delegation also learned of the use of firearms by custodial staff and by PSP officers⁴¹ during the escape and subsequent recapture, on 23 November 2007, of two patients from the Prison Hospital's psychiatric wing. The delegation was informed by the hospital management that, as the shots were fired outside the hospital perimeter, the management was not obliged to report the use of the firearm by custodial staff. Indeed, the report of the Internal Audit and Inspection Service (SAI), dated 27 November 2007, made no mention of firearms or the firing of shots. **It is self-evident that every discharge of a firearm by a penitentiary official should not only be recorded but also be the subject of a comprehensive report and, if necessary, a thorough and independent investigation.**

⁴¹ NB the Prison Hospital's internal security was ensured by custodial officers, who were also responsible for perimeter security in cooperation with PSP officers. At the time of the escape, however, a PSP patrol car happened to pass by the hospital and offered reinforcement.

c. discipline and isolation

94. The CPT has examined disciplinary procedures in Portuguese prisons and made recommendations on this subject ever since its first visit to Portugal in 1992⁴². It is therefore of some concern that the authorities have still not taken the appropriate steps to improve the procedures in place. In the course of the 2008 visit, the CPT's delegation noted the following deficiencies:

- prisoners are not informed of the charges against them in writing⁴³;
- prisoners are not heard by the prison governor before he/she decides on the disciplinary measure to impose⁴⁴; instead, an investigator meets the prisoner concerned and proposes a measure to the governor;
- the prisoner's statement is generally not reproduced in the disciplinary file;
- there is no opportunity for prisoners to cross-examine evidence given against them as all persons are heard separately;
- the time spent in provisional isolation is not counted in the penalty, although the conditions are very similar⁴⁵;
- disciplinary sanctions are only subject to appeal if they involve 8 days or more of isolation;
- the prison governor's written decision includes no mention of the possibility to lodge an appeal;
- the disciplinary procedure is generally too slow.

Further, allegations were received of prisoners being discouraged from lodging a complaint or an appeal.

In the light of the observations during the visit in 2008, the CPT must reiterate its assessment that there is ample scope for improvement of the fairness of the disciplinary procedure. The Committee understands that legislative reform is under way, which would, inter alia, reinforce the rights of prisoners involved in disciplinary proceedings. **The CPT calls upon the Portuguese authorities to review the procedural safeguards surrounding disciplinary measures, in the light of the above remarks.**

95. The delegation also had a number of misgivings regarding the use of disciplinary sanctions. At Monsanto Prison, the disciplinary register showed six cases in which persons were punished with disciplinary isolation for having attempted suicide. Such prisoners should be provided with support, not punished. Further, several allegations received at both Monsanto and Coimbra Central prisons referred to disciplinary sanctions imposed against prisoners who had complained about the food. Such a practice is unacceptable, in the CPT's view. **The Committee recommends that the necessary steps be taken to ensure that prisoners are never disciplined for acts of self-harm, attempted suicide or for making complaints.**

⁴² See CPT/Inf (94) 9, at paragraph 135.

⁴³ Indeed, the law does not specify that information should be provided in writing (Decree-Law 265/79).

⁴⁴ The law provides that the governor is not obliged to hear the prisoner in person, but must receive written submissions from him/her.

⁴⁵ Provisional seclusion pending a decision in a disciplinary matter was also often found to be longer than the penalty imposed and to be characterised by very similar material conditions and regime; yet the provisional seclusion was not taken into account in the calculation of the penalty and was therefore perceived by prisoners as an additional punishment.

96. The delegation also came across the use of isolation as an apparent *informal disciplinary measure*, e.g. at Funchal Central Prison and Monsanto High Security Prison.

More generally, there appeared to be a degree of confusion over the various measures that could be taken against inmates for good order and discipline. In this respect, it is worth noting that, in the view of the Inspectorate-General of Judicial Services (IGSJ)⁴⁶ there appeared to be a “lack of distinction, in practice, between special security measures and disciplinary measures” in Portuguese prisons. The CPT would tend to agree with this assessment and **requests the comments of the Portuguese authorities on this matter.**

97. As regards material conditions, the cells for disciplinary measures at Monsanto High Security Prison were generally adequate, as were those at Oporto Central Prison, except for the cold and humidity.

At Funchal Central Prison, on the other hand, several inmates alleged that rats and cockroaches entered the disciplinary cells through the hole that served as a toilet. **The CPT recommends that material conditions in the disciplinary cells at Funchal Central Prison be improved, in particular as regards the problem of infestation.**

At Coimbra Central Prison, the material conditions in the disciplinary (and isolation) cells in the basement were grossly inadequate. The CPT welcomes the closure of the basement level since March 2008 (see paragraph 53). **The Committee wishes to be informed about the location where isolation, whether for disciplinary or security reasons, is currently being carried out at Coimbra Central Prison.**

d. contact with the outside world

98. The CPT has consistently reiterated the importance for prisoners to be able to maintain good contact with the outside world. Above all, they must be given the opportunity to maintain their relationships with their family and friends, and especially with their spouse or partner and their children.

In general, the amount of time permitted for visits and the conditions in which such visits took place were acceptable in the establishments visited. However, the exception concerned Coimbra Central Prison where the large visiting hall, with long tables and benches, was extremely noisy when crowded. **The CPT recommends that arrangements be made to improve the conditions in which visits take place at Coimbra Central Prison.**

⁴⁶ Information provided by the IGSJ in writing to the delegation during the visit.

99. As regards, in particular, prisoners serving long sentences (e.g. inmates at Monsanto), the CPT would stress that the negative effects of institutionalisation upon them will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world. The individual risk/needs assessment of this category of prisoners should also allow decisions concerning the granting of open visits to such prisoners to be made on an individual basis.

Family visits at Monsanto were allowed twice a week for 45 minutes, and could be accumulated; the visits were non-contact, with inmates and family members separated by a glass partition, and the delegation observed that the intercom system did not function properly, making it difficult to conduct conversations. The only type of regular direct contact visits available (and benefiting only 5 inmates at the time of the visit) were intimate visits for spouses/partners⁴⁷, once a month for three hours. The CPT is certainly in favour of contact visits. However, they should not be limited to intimate visits, and they should be of a sufficient duration to enable a reasonable level of family contact to take place.

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

100. As regards access to the telephone, it was generally good at Funchal Regional Prison and Oporto Central Prison. However, it would appear that insufficient phones were available for use at Funchal and Coimbra Central prisons, Oporto Judicial Police detention facility, and at Sao Joao de Deus Prison Hospital. **The Committee recommends that the Portuguese authorities improve access to the telephone in these establishments.**

Inmates at Monsanto High Security Prison were allowed to make 5-minute calls to family members twice a week, which somewhat limited their ability to maintain good contact with their family. **The Committee invites the Portuguese authorities to consider increasing access to the telephone for prisoners at Monsanto High Security Prison.**

e. inspection procedures

101. The CPT has consistently reiterated the importance it attaches to regular visits to all prison establishments by an independent body with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises⁴⁸.

At present, three bodies are mandated to visit prison establishments: the Ombudsman's office, the supervisory judge, and the General Inspectorate of Judicial Services (IGSJ)⁴⁹.

⁴⁷ Circular 30/2007 of 14 November 2007 on Rules on Intimate Visits.

⁴⁸ See e.g. the CPT report on the visits carried out in 1995 (CPT/Inf (96) 31, at paragraph 142) and 2003 (CPT/Inf (2007) 13, at paragraph 97).

⁴⁹ See also paragraph 30.

102. The CPT notes that the Ombudsman's office carried out many visits to prisons, including certain of the establishments visited by the CPT's delegation in 2008 (e.g. Funchal Central Prison). **The Committee would like to receive detailed information concerning the nature and duration of the visits to prison establishments carried out by the Ombudsman's office, as well as its relationship with other visiting bodies, such as the supervisory judge and the IGSJ.**

103. In principle, prisons are visited regularly by a supervisory judge. However, it was not clear to the delegation whether such visits were, in practice, regular, nor whether they included visits to the accommodation units, and direct contact with the inmate population. For example, Coimbra Central Prison, which the supervisory judge was scheduled to visit on a weekly basis, had not been visited for three months. Further, the delegation received complaints from prisoners (e.g. at Funchal Central Prison), that, despite having signed up to speak to the judge, they had been given no such opportunity. **The CPT would like to receive the comments of the Portuguese authorities on the role of supervisory judges in inspecting prisons within their remit, including as regards the resources allocated to this task.**

104. The CPT is pleased to note that the IGSJ now carries out more visits to prison establishments and appears to be taking a more pro-active inspecting role. The IGSJ has received an increasing number of complaints concerning prisons (from 60 in 2005 to 82 in 2007), with more complaints being lodged concerning violence - including threats of violence - by prison staff (from 9 in 2005 to 18 in 2007). The CPT notes with interest that the number of inspectors conducting visits will increase from 14 to 30. Such reinforcement will potentially considerably increase the effectiveness of the IGSJ in monitoring prisons, given also the increase in the number of complaints it receives.

The CPT was also informed that an investigation was being carried out by the IGSJ into an alleged assault by a custodial officer on an inmate at Carregueira Prison in December 2007. The IGSJ had also last visited Coimbra Central prison in November 2007 and it informed the delegation that it would carry out a further visit to Monsanto High Security Prison in the first quarter of 2008.

The CPT trusts that the IGSJ shall continue to develop its capacity, with a view to complying with the standards advocated by the Committee, in particular by carrying out frequent and unannounced visits to all prison establishments and by giving wide publicity to its findings in particular establishments.

The CPT would also like to receive a copy of the reports on the IGSJ's most recent visits to Monsanto and Coimbra Central Prisons, and to be informed of the results of the above-mentioned investigation at Carregueira Prison.

f. information provided to prisoners

105. The CPT's delegation noted that an information leaflet was provided to prisoners at Funchal Central Prison and that some information was provided in a written form to prisoners at Monsanto too. However, prisoners at the other establishments visited were not provided with any information on the prison's internal regulations, including complaints mechanisms. Further, even at the two prisons where information was provided, it was available only in Portuguese.

The CPT reiterates its recommendation⁵⁰ that an information leaflet be drawn up and provided to all prisoners upon their admission to a prison establishment, including to patients admitted to the Prison Hospital. Further, prisoners who cannot read Portuguese should be assisted in understanding the contents of the leaflet, if necessary by being provided with a written translation or with the help of an interpreter.

g. deaths in custody

106. The Committee notes that seventy-six persons died in Portuguese prisons in 2007⁵¹. This figure represents a decrease compared to previous years, although the mortality rate remains high compared to other European prison systems⁵². In the CPT's view, any serious incident in prison, such as a death, should trigger an inquiry or other appropriate action aimed at identifying possible means to improve the system of prevention in place. It would appear that, in Portugal, whenever a death occurs in prison, the corpse of the inmate may not be moved until a forensic doctor from the National Forensic Institute has examined the body and provided an opinion on whether or not to carry out an autopsy; thereafter, the Public Prosecutor is responsible for deciding whether an autopsy should be carried out. **The CPT would like to be informed about the criteria applied for deciding whether to carry out an autopsy on a prisoner who dies in custody.**

Further, in respect of two deaths in 2007 which occurred in disciplinary cells at Coimbra and Oporto Central Prisons, **the CPT would like to receive information on the results of the inquiries carried out into these deaths.**

As regards the four prisoners at Oporto Central Prison who died in quick succession in December 2005 (see paragraph 48), the inquiry into those deaths was still under way at the time of the visit. **The Committee wishes to be informed of the results of that inquiry, once they are available.**

More generally, **the CPT recommends that the Portuguese authorities institute a practice of carrying out thorough inquiries into deaths in custody with a view to learning lessons and improving operating procedures within prisons.**

⁵⁰ See report on the visit in 2003 (CPT/Inf (2007) 13), at paragraph 93, as well as the Portuguese Government's response (CPT/Inf (2007) 14), at page 20.

⁵¹ The Portuguese authorities informed the CPT delegation that 10 persons committed suicide and 66 died of natural causes.

⁵² The Portuguese annual prison statistics (<http://www.dgsp.mj.pt/>) report 80 deaths in 2004, 93 in 2005 and 91 in 2006. For a comparison of prison mortality rates in Europe, see the Council of Europe Annual Penal Statistics (SPACE I).

C. Psychiatric institutions

1. Preliminary remarks

107. At the time of the visit, Portuguese psychiatry was in the midst of a process of change. At the beginning of 2008, the Portuguese government approved a National Plan⁵³ on the future of public mental health care. The Plan advocates the need for further integration of psychiatry into the regular health care and social service system and states that it should be achieved, inter alia, through gradually dismantling the public psychiatric hospitals. Nevertheless, apparently some of these hospitals may continue to operate as facilities for forensic psychiatric patients.

The CPT would like to receive updated information on the implementation of the National Plan. Further, the Committee would like to be informed as to whether private psychiatric hospitals are covered by the National Plan.

108. Involuntary patients are accommodated in psychiatric sections of general public hospitals, in a private psychiatric hospital or in one of the six large-capacity public psychiatric hospitals, currently in the process of merger⁵⁴.

The CPT's delegation visited the private Casa de Saúde de São João de Deus in Funchal and the public Miguel Bombarda Psychiatric Hospital in Lisbon. In addition, a targeted visit was paid to the psychiatric section at the Emergency Department of the public Curry Cabral Hospital in Lisbon, which focused primarily on material conditions and the use of means of restraint.

The three hospitals visited accommodate involuntary patients placed under both the Mental Health Act and the Criminal Code.

109. The privately run Casa de Saúde de São João de Deus, located on the outskirts of Funchal, has two sets of buildings separated by a road but connected by an underground passage. At the time of the visit, the hospital accommodated 270 patients, of whom 10 were 'interned'⁵⁵ and six were detained under the Mental Health Act. The delegation focused its attention on these patients, most of whom were placed on the closed São José ward.

110. The Miguel Bombarda Psychiatric Hospital, built in the 19th century and located in the centre of Lisbon, had recently merged with the Julio de Matos Hospital into the 'Centro Hospitalar Psiquiatrico de Lisboa'. At the time of the visit, there was an air of uncertainty over the future of the hospital and the delegation was told that the admission of acute patients would almost certainly cease from the end of 2008, and that the Forensic Unit would move to the premises of the Julio de Matos Hospital.

⁵³ "Reestruturação e Desenvolvimento dos Serviços de Saúde Mental em Portugal; Plan de Acção 2007-2016", published on 2 April 2007 by the 'Comissão Nacional para a Reestruturação dos Serviços de Saúde Mental'.

⁵⁴ In addition, patients sentenced to 'internment' may also be placed in the Santa Cruz do Bispo Hospital, which is under the authority of the Prison Service. This institution was visited by the CPT in 2003.

⁵⁵ Patients involuntarily hospitalised under Articles 91 to 98 of the Criminal Code.

At the time of the visit, the Miguel Bombarda Psychiatric Hospital accommodated 259 patients, of whom 33 were involuntary: 28 in the Forensic Unit; three on the acute wards; and two patients on wards for chronic patients, not visited by the CPT's delegation. The delegation visited the 32-bed forensic unit as well as the acute wards ('Lisboa', 'Sintra' and 'Sul'), which had a combined total of 90 beds.

111. The psychiatric section of the Curry Cabral Hospital emergency department was situated in a modern building on the hospital grounds in the centre of Lisbon. The CPT was told that for legal reasons, all psychiatric patients who are to be involuntarily detained in a hospital in the Lisbon area are brought to the 10-bed psychiatric section at the Curry Cabral Hospital emergency department before being detained elsewhere. On average, a stay in the emergency department lasts one night. At the time of the visit, there was one male patient.

112. The Committee wishes to make clear at the outset that its delegation heard no allegations of ill-treatment of patients by staff in the three hospitals visited. On the contrary, staff-patient relations appeared to be respectful and of a relaxed nature.

2. Living conditions

113. The living conditions in the São José ward at the Casa de Saúde de São João de Deus were generally good. The ward was located in a two storey building with a large, secluded garden to which patients had free access for most of the day. The patients were accommodated in spacious rooms, which were suitable for accommodating three to five persons and which were equipped with beds and bedside tables. The rooms were clean, but rather austere, although this was compensated in some rooms by a panoramic view of the Atlantic Ocean. There was also one room that was used for accommodating patients who had just arrived or who were subjected to a measure of seclusion.

114. The four wards visited by the CPT's delegation at the Miguel Bombarda Psychiatric Hospital provided acceptable living conditions for patients. In the mixed gender acute wards, patients were accommodated in double-occupancy rooms (between 11m² and 14m²) and, in the Sintra ward, triple-occupancy rooms (21m²). All rooms had good access to natural light and were equipped with beds and bedside tables. The Sintra and Sul wards had two and one special rooms, respectively, which were used for calming down agitated patients.

In the Sul and Lisboa wards, the rooms had been created by subdividing a large dormitory through the installation of prefabricated partitions. However, the partitioning in the rooms on the Sul ward did not reach the ceiling, which meant that the rooms were not insulated from noise from adjacent rooms; in particular, patients' conversations carried over the partitions. **The CPT recommends that a proper partitioning wall be installed between the rooms.**

115. The Forensic Unit is located in a closed ward, which occupies one floor on a wing of the hospital's main building. The Unit has an official capacity of 32 patients and contained 12 double or triple-occupancy rooms, as well as an 'intermediate care room' for newly arrived patients and a 'security room' for agitated patients. All rooms had sufficient access to natural light and adequate artificial lighting, and were clean. However, some of the toilets were not functioning at the time of the visit; **the Committee would like to receive confirmation that they have since been repaired.**

116. On each of the four wards visited, patients were offered regular access to outdoor exercise, either in the yards adjacent to the units for those patients not permitted to leave the units by themselves, or within the larger hospital grounds. The one exception concerned patients who were following the induction programme on the Forensic Unit, and who were not permitted to go outside. **The CPT recommends that the necessary steps be taken to ensure that outdoor exercise is offered on a daily basis to all patients at the Miguel Bombarda Psychiatric Hospital.**

117. The living conditions in the Psychiatric Section of the Curry Cabral Hospital Emergency Department were also acceptable. The section contained a room with five beds for male patients, a room with four beds for female patients, and an observation room with one bed; with little space between the beds in the male and female rooms, the section appeared to be somewhat cramped. In the absence of any possibility for recreational activities, including access to outdoor exercise, the section is indeed only suitable for very short stays.

3. Treatment

118. For the CPT, it is essential that psychiatric treatment is not only based on the administration of medication, but that it involves a wide range of therapeutic, rehabilitative and recreational activities. Further, psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient, indicating the goals of treatment, the therapeutic means used and the staff member responsible. The treatment plan should also contain the outcome of a regular review of the patient's mental health condition and a review of the patient's medication.

For patients involuntarily hospitalised under the provisions of the Criminal Code, individual rehabilitation plans had been developed for the majority of patients at the Casa de Saúde de São João de Deus and at the Miguel Bombarda Psychiatric Hospital. Further, in both hospitals, patients were provided with a variety of therapeutic programmes (occupational therapy, individualised psychological support, ergo-therapy, etc.). However, at the Forensic Unit of Miguel Bombarda Psychiatric Hospital, group therapy was not offered to patients due to a lack of qualified staff. **The CPT recommends that efforts be made to provide group therapy to patients at the Forensic Unit of Miguel Bombarda Hospital.**

119. The practice of continuously dressing patients without proper clothing in pyjamas as observed on the São José ward at the Casa de Saúde de São João de Deus is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process. **The CPT recommends that other means than pyjamas are sought to dress patients without proper clothing.**

120. A lack of financial resources had also resulted in the suspension of vocational training courses for patients at the Forensic Unit of the Miguel Bombarda Psychiatric Hospital. For able patients, vocational training is essential for successful reintegration into society and thus an important safeguard against re-offending. **The CPT recommends that the Portuguese authorities allocate the necessary resources to enable vocational training courses for patients to resume.**

121. The delegation noted that SOS-medication⁵⁶ was administered in the Casa de Saúde de São João de Deus and the Miguel Bombarda Psychiatric Hospitals. At the latter hospital, its use was authorised in respect of a large majority of patients hospitalised under the Mental Health Act. In the CPT's opinion, the generalised use of SOS-medication places too much responsibility on nurses, and opens the door to possible abuse. **The CPT recommends that the approach towards SOS-medication be reviewed.**

122. At the Casa de Saúde de São João de Deus, the delegation met a newly admitted patient who demonstrated clear signs of over-sedation; the patient was drowsy and had delayed responses to outside stimuli. When asked for an explanation, the Clinical Director explained that it was hospital policy that newly admitted involuntary patients receive high doses of sedative medication. The CPT has serious misgivings about such a practice and **recommends that the necessary steps be taken to put an end to the practice of over-sedating newly arrived patients at the Casa de Saúde de São João de Deus.**

123. The CPT was informed that modified ECT had been administered to a number of patients resident at the Miguel Bombarda Psychiatric Hospital in 2007⁵⁷. As the hospital does not possess the necessary equipment, ECT took place at the Julio de Matos Hospital. However, in the absence of a comprehensive register or of a protocol or of any other policy document, the information provided on statistics, medical indications and conditions of administration could not be verified.

In order to enhance supervision over the use of ECT for management and inspection purposes, **the CPT recommends that a clear written policy on recourse to ECT be elaborated and its use be properly recorded.**

⁵⁶ Medication administered as needed.

⁵⁷ Amongst these were four or five patients from the Sintra ward. Previously, ECT had also been administered to patients accommodated on the Forensic Unit.

4. Means of restraint

124. In the three hospitals visited, the means applied by staff to patients who needed to be restrained were straps or seclusion in a room.

Generally, a patient would be restrained, in a specific room reserved for this purpose (named 'calming down', 'security' or 'observation' room). However, the delegation was informed that in the acute units of both the Miguel Bombarda Psychiatric Hospital and the Curry Cabral Hospital, a patient could also be strapped to his own bed in the presence of other patients.

As a rule, a restrained patient should not be exposed to other patients, unless he/she explicitly requests otherwise or when the patient is known to have a preference for company. **The CPT recommends that the necessary steps be taken to ensure that application of means of restraint in principle occurs out of sight of other patients.**

125. In the Forensic Unit at the Miguel Bombarda Psychiatric Hospital, the rooms used for the administration of means of restraint had 24-hour camera surveillance and the delegation was told that nursing staff would verify the patient's condition every 30 minutes.

The seclusion rooms on the Sao José ward at the Casa de Saúde de São João de Deus did not possess camera-surveillance, but staff were apparently always present in the room with the restrained patient. In the Curry Cabral Hospital the location of the nurse's station meant that patients inside the rooms could be directly observed. However, on all beds the straps for restraining patients were already attached in order to be used immediately when necessary. **The CPT recommends that straps for restraining patients be kept out of sight of patients.**

126. The CPT considers that when the limbs of a patient are held with straps or belts, a trained member of staff should be continuously present in order to maintain the therapeutic alliance and to provide assistance. Such assistance may include escorting the patient to a toilet facility or, in the exceptional case where the measure of restraint cannot be brought to an end rapidly, helping him/her to consume liquids and food. Clearly, video surveillance cannot replace such a continuous staff presence. In cases where a patient is secluded (but not mechanically restricted), the staff member may be outside the patient's room, provided that the patient can see the staff member and the latter can continuously observe and hear the patient. **The CPT recommends that the Portuguese authorities ensure that the practice with respect to the application of means of restraint is fully in line with the above-mentioned precepts.**

127. For the CPT, it is imperative that every single case of resort to means of restraint be authorised by a doctor or, at least, be brought without delay to a doctor's attention in order to seek approval for the measure. This appeared generally to be the case in the hospitals visited. However, the CPT's delegation observed that, in the acute wards at Miguel Bombarda Psychiatric Hospital, it was standard practice, in respect of certain patients, for nursing staff to receive an authorisation from the doctor in charge of the unit to apply means of restraint whenever it was considered necessary ('SOS-restraints'). Consequently, in the absence of the ward doctor, nurses would not consult the doctor on duty before applying means of restraint to an agitated patient, and would only inform the ward doctor, when he returned, that such a measure had been applied.

The CPT's delegation did not note any abuse of the authorisation for nurses to use 'SOS restraints'. However, the lack of prompt control by a doctor represents, in itself, a risk which cannot be neglected.

The CPT recommends that the approach towards 'SOS-restraints' in the acute wards at Miguel Bombarda Psychiatric Hospital be reviewed. In particular, a doctor should be immediately notified of any instance in which SOS-restraints are applied.

128. According to both patients and members of staff interviewed by the delegation, the use of means of restraint was a rare occurrence in the three hospitals visited. However, the CPT's delegation was informed by staff of a particular incident which occurred in 2006 on the Forensic Unit at the Miguel Bombarda Psychiatric Hospital. A patient, who stabbed a nurse, was isolated in the security room for a period of between 15 and 21 days⁵⁸, during which time he was restrained to a bed for seven days, because the staff feared for their safety.

The delegation discussed the matter with the psychiatrist in charge and it was agreed that restraining a patient for such a long period for no other reason than the fear of staff amounts to ill-treatment. However, it is important to note that the Forensic Unit has a particularly low level of external and internal security. More specifically, staff are inadequately equipped to deal appropriately with aggressive patients; for instance, they do not possess a mobile alarm nor have they been given courses on how to de-escalate violence. **The CPT recommends that the necessary measures be taken to remedy this situation. In particular, it is important that the Forensic Unit benefits from a sufficient number of qualified staff, who are appropriately trained to deal with potentially violent patients.**

⁵⁸ The precise length of the period of restraint could not be verified, due to the absence of a register.

129. The application of means of restraint was registered in the nursing file and the personal medical file of a patient (albeit at times cursorily, as was the case in the Miguel Bombarda Psychiatric Hospital). However, in none of the hospitals visited was there a specific register on the application of the means of restraint. The lack of such a register meant it was difficult to verify the frequency of resort to means of restraint. The CPT made similar observations on this matter in its reports on the 1999 and 2003 visits to Portugal.

In order to enhance oversight over the use of means of restraint for management and inspection purposes, **the CPT reiterates its recommendation that every instance of restraint of a patient should be recorded in a specific register established for this purpose. The entry in this register should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such a measure, the type of measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry. In addition, the entry within the patient's personal medical file should indicate more clearly the grounds for the use of means of restraint.**

130. More generally, the CPT considers that every psychiatric establishment should have a comprehensive, carefully developed, policy on restraint. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing.

In this context, the CPT has noted that the May 2007 Ministry of Health protocol⁵⁹ 'on the use of means of restraint as a preventive measure against aggression and violence by patients' generally complies with the Committee's standards on this issue. The CPT welcomes the adoption of the protocol.

However, neither the application of manual restraint⁶⁰ nor that of chemical restraints appears to have been addressed in the protocol. Further, as the implementation of the protocol is voluntary and not all relevant parties have been involved in its drafting⁶¹, the CPT is concerned that without a proper implementation plan, the use of the protocol in practice may be limited. It is also not clear whether the protocol applies to private hospitals such as the Casa de Saúde de São João de Deus.

The CPT recommends that the Portuguese authorities take the necessary steps to ensure that all psychiatric hospitals have their own written policy on the use of means of restraint or implement the above-mentioned Protocol. This recommendation applies equally to private psychiatric hospitals.

⁵⁹ *Circular Normativa Nr 08/DSPSM/DSPCS medidas preventivas de comportamentos agressivos/violentos de doentes – contenção física.*

⁶⁰ Manual restraint is the use of physical force to control a patient.

⁶¹ For instance, the Portuguese Association of Psychiatrists was not involved in the drawing up of the protocol.

5. Safeguards

131. On account of their vulnerability, the mentally ill warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.

a. initial placement and discharge

132. The relevant provisions governing involuntary admission to a psychiatric hospital have not changed since the CPT's previous visits to Portuguese psychiatric establishments in 1999 and 2003. Patients may be involuntarily placed in a psychiatric hospital on grounds contained in Article 8 of the Mental Health Act or, for offenders held criminally irresponsible, under Articles 91 to 98 of the Criminal Code.

133. With respect to procedures of placement and discharge under the Criminal Code, the CPT has indicated that these are in principle surrounded by sufficient safeguards⁶².

134. The legal provisions of the Mental Health Act relevant to the involuntary placement and discharge of a patient in a psychiatric hospital have been described previously by the CPT.⁶³ The Committee in particular welcomes the fact that throughout both the placement and discharge procedures, a patient has the statutory right of access to a lawyer. However, in the course of the 2008 visit, both patients and health-care staff frequently stated that, in practice, few patients could rely on meaningful support from a lawyer. The lack of legal assistance significantly compromises the effectiveness of this legal safeguard. Similar remarks were made by the CPT in the report on the 1999 visit to Portugal. **The CPT recommends that steps be taken to ensure, in practice, the effectiveness of the right of access to a lawyer, in the context of involuntary placement under the Mental Health Act.**

135. Where a patient is involuntarily placed in a psychiatric hospital following the emergency procedure under Section IV of the Mental Health Act, judicial confirmation of the detention must follow within 48 hours from the moment of the placement⁶⁴. However, the delegation was told that, in practice, if a patient has already consented to voluntary admission before the judicial scrutiny could take place, the judicial procedure will be abandoned (even if the patient has already received involuntary treatment). The CPT considers that this practice deprives patients of an important legal safeguard and opens the door to abuse. **The CPT recommends that in all cases where a patient is involuntarily placed in a psychiatric hospital under Section IV of the Mental Health Act, the process of judicial scrutiny of the placement as indicated in Article 26 (2) of the Mental Health Act be completed.**

⁶² See CPT/Inf (2007) 13, paragraph 123 and the response by the Portuguese authorities in CPT/Inf (2007) 14, page 22.

⁶³ See CPT/ Inf (2001) 12, paragraphs 111 and 116.

⁶⁴ See Article 26 (2) of the Mental Health Act.

b. consent to treatment

136. In the report on the 1999⁶⁵ visit, the CPT expressed concern that the Mental Health Act does not require involuntary patients to give their consent to treatment⁶⁶. Similar remarks were made in the report on the 2003 visit to Portugal with respect to the treatment of patients involuntarily hospitalised under the Criminal Code⁶⁷.

With reference to the responses received to date from the Portuguese authorities on this subject, the CPT fully accepts that the requirement of consent to treatment does not arise vis-à-vis a person suffering from a mental illness for as long as she/he lacks the necessary discernment to give such consent⁶⁸. However, many - if not the majority of - patients involuntarily placed under the Mental Health Act, or Criminal Code, will have the necessary discernment to give or to refuse consent to treatment. Article 12 (1) of the Mental Health Act should not be interpreted by health-care staff as providing them with a mandate to treat such patients without their consent.

Once again, the CPT wishes to stress that psychiatric patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis - be it in the context of civil or criminal proceedings - should not preclude seeking informed consent to treatment. Every competent patient, whether voluntary or involuntary, should be fully informed about the treatment which it is intended to prescribe and be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

The CPT calls upon the Portuguese authorities to review the relevant legislation in the light of the remarks above.

c. other safeguards during placement

137. The statutory rights afforded to patients under Articles 5 and 11 of the Mental Health Act appeared to be adhered to. Contact with the outside world was adequate in both the Casa de Saúde de São João de Deus and the Miguel Bombarda Psychiatric Hospital; patients were allowed to keep their mobile phones and visits could take place on a daily basis. The CPT welcomes such a state of affairs.

⁶⁵ See CPT/ Inf (2001) 12, paragraph 104.

⁶⁶ The exceptions concern the administration of Electro-Convulsion Therapy (ECT) and psychosurgery (see Articles (1) d and 5 (2), respectively, of the Mental Health Act).

⁶⁷ See CPT/Inf (2007) 13, paragraph 126.

⁶⁸ In this context, reference should be made to the Oviedo Convention on Human Rights and Biomedicine where in Article 6 (3) it is stated that in the case a person does not have the mental capacity to consent to a medical intervention, the individual concerned shall nevertheless as far as possible take part in the authorisation procedure.

Moreover, most patients stated that they had been informed about their rights and obligations, albeit orally. In its report on the 2003 visit, the CPT recommended that a brochure containing patients' rights and obligations be drawn up. In their response, the Portuguese authorities appeared to accept the necessity of such a measure. However, in none of the establishments visited in the course of the 2008 visit was such a brochure available for patients.

The CPT reiterates its recommendation that an information brochure, available in an appropriate range of languages, setting out the facility's routine and patients' rights - including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures - be drawn up and issued to all patients on admission, as well as to their families. Patients unable to understand this brochure should receive appropriate assistance.

138. In contrast to the Mental Health Act, the Criminal Code contains no safeguards for patients during placement and no provisions concerning a patient's rights and obligations, and there was confusion amongst health-care providers met by the delegation as to whether the patient's rights in the Mental Health Act were applicable to patients involuntarily hospitalised under the Criminal Code. For instance, on the Forensic Unit at the Miguel Bombarda Psychiatric Hospital, the internal regime was 'inspired' by the Prison Act⁶⁹, while in the Casa de Saúde de São João de Deus, involuntary patients appeared to possess rights equal to those of other patients. **The CPT would like to be informed about the statutory rights and obligations afforded to patients involuntarily placed in a psychiatric hospital under the Criminal Code.**

6. Inspection

139. Under Section VIII of the Mental Health Act, a Commission has been established to monitor the proper implementation of the Act. The Monitoring Commission is tasked with receiving and examining complaints by patients hospitalised on an involuntary basis under the Act, and with visiting psychiatric hospitals (public and private); there is a general duty for hospitals to cooperate with the Commission.

However, there are no provisions concerning the possibility of the Commission to have access to all relevant data or to meet patients in private. Moreover, patients involuntarily hospitalised under the provisions of the Criminal Code fall outside the mandate of the Commission.

Further, it would appear that the main focus of the Commission, to date, has been checking the legality of involuntary placements. By contrast, in its ten years of existence, it has carried out only a few on-site visits and it has not addressed issues such as the application of means of restraint.

⁶⁹ For instance, the Prison Act provisions with respect to leave were applied.

140. The CPT considers that an effective supervision of the application of the Mental Health Act by independent bodies, such as the Monitoring Commission, can make an important contribution towards ensuring satisfactory conditions and treatment for involuntary patients. However, to be fully effective, such supervision should include frequent and unannounced visits to places where involuntary patients are hospitalised, and the authority concerned should be empowered to interview detained patients in private and have access to all necessary documentation.

The CPT recommends the Portuguese authorities take the necessary steps to ensure that the Monitoring Commission can effectively carry out its supervisory tasks, in the light of the above remarks. Further, the Committee would like to receive the views of the Portuguese authorities on the possibility of extending the remit of the Commission in order to cover patients involuntarily hospitalised under the provisions of the Criminal Code.

7. Other issues under the CPT's mandate

141. Several patients accommodated in the Miguel Bombarda Psychiatric Hospital had been partially or fully deprived of their legal capacity, and for a few of them the director of the Miguel Bombarda Psychiatric Hospital had been nominated as their guardian. Such a situation may easily lead to a conflict of interests and, potentially, compromise the independence and impartiality of the guardian, considering that part of the role of a guardian is to defend the rights of the incapacitated person for whom he or she is responsible vis-à-vis the host institution. **The CPT recommends that the Portuguese authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.**

142. In relation to staff issues, the CPT's delegation observed, in the course of the 2008 visit, the consequences of a lack of qualified psychiatrists in certain regions of Portugal. In Madeira, the Casa de Saúde de São João de Deus employed only four psychiatrists for 259 patients, which meant that there was no doctor on call during the night. Further, due to a lack of psychiatrists, in the Southern regions of the Algarve and Beja, patients were on occasion transported hundreds of kilometres to the psychiatric section of the emergency department at the Curry Cabral Hospital, in Lisbon, in order to be assessed for involuntary hospitalisation under the Mental Health Act in those regions.

The CPT would like to be informed of the measures being taken to ensure that appropriate psychiatric resources exist in all regions of the country.

APPENDIX I

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

Cooperation between the CPT and the Portuguese authorities

comments

- the CPT trusts that the Portuguese authorities will take the appropriate steps to ensure that, in future, effective access to medical files is guaranteed in all institutions the Committee visits, and that visiting delegations are provided with full information on all places where persons may be deprived of their liberty (including private psychiatric hospitals, holding cells in court premises, etc.) prior to the commencement of a visit (paragraph 5).

Law enforcement agencies

Preliminary remarks

requests for information

- the observations of the Portuguese authorities on the question of reducing from six hours to two the maximum period of detention allowed for the purpose of establishing a person's identity in a law enforcement establishment (paragraph 7).

Ill-treatment

recommendations

- a thorough, comprehensive and independent study into the prevalence of ill-treatment by law enforcement officials to be carried out (paragraph 12);
- the Portuguese authorities to install CCTV in the public area, cell blocks and interrogation rooms of police stations (paragraph 13);
- the Portuguese authorities to review the training provided to law enforcement officials, in the light of the remarks made in paragraph 14 (paragraph 14).

comments

- the CPT trusts that the Portuguese authorities will ensure that the instructions to store and label all unauthorised objects in every Public Security Police station are strictly adhered to (paragraph 11).

requests for information

- the outcome of the investigation being undertaken by the IGAI into the case of alleged ill-treatment in the Public Security Police (PSP) station in Cacém, described in paragraph 10 (paragraph 10);
- the outcome of the IGAI investigation into allegations of ill-treatment of teenagers in Aveiro in 2007 by four GNR officers (paragraph 10);
- whether instructions to store and label all unauthorised objects have been issued in respect of GNR stations (paragraph 11).

Conditions of detention

recommendations

- a formal regulation to be adopted governing conditions in detention facilities run by the Judicial Police and in holding facilities at criminal courts (paragraph 16).

comments

- in the PSP station at Rua Brandoa in the Lisbon area, the artificial lighting was defective and there was no call-bell (paragraph 17);
- none of the police stations visited had an outdoor exercise yard, which would be problematic in the case of deprivation of liberty of longer than 24 hours (paragraph 17).

Safeguards against ill-treatment

recommendations

- the Portuguese authorities to take appropriate steps to ensure that the right of persons deprived of their liberty by law enforcement officials to notify their detention to a third party is effective in practice (paragraph 21);
- the Portuguese authorities to ensure that the right of access to a lawyer, including the right to talk to the lawyer in private, is enjoyed by all persons obliged to remain with the police, as from the very outset of the deprivation of liberty (paragraph 24);
- Regulation 8684/99 to be amended so as to guarantee an unrestricted right of access to a doctor. Further, appropriate steps should be taken to ensure that this right is respected in practice. Law enforcement officials should be instructed that a doctor should always be called without delay if a detained person requests a medical examination; police officers should not seek to filter such requests (paragraph 25);

- the Portuguese authorities to take appropriate measures to ensure that an obligation to inform all persons held by the police of their rights is expressly laid down in law (paragraph 26);
- all persons obliged to remain with the police to be required to sign a statement indicating that they have been informed of their rights and have understood them. If necessary, the absence of such a signature should be duly accounted for (paragraph 27).

comments

- exceptions to the right to notify one's custody to a third party should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor) (paragraph 22).

requests for information

- confirmation that persons held by the Judicial Police, for reasons other than identification purposes, are guaranteed the right to notify their detention to a third party, and to be informed of the relevant legal provisions (paragraph 21);
- confirmation that persons detained by law enforcement officials may notify their detention to another third party if notification of a close family member is not appropriate or feasible (paragraph 21);
- the legal provisions guaranteeing persons detained by the Judicial Police the right of access to a doctor (paragraph 25).

Inspection and complaints procedures

recommendations

- the IGSJ to carry out frequent and unannounced on-site inspections of Judicial Police premises (paragraph 30).

comments

- the CPT trusts that any new tasks assigned to the IGSJ and the IGAI will be accompanied by a corresponding increase in their resources, in particular in terms of personnel (paragraph 34).

requests for information

- the division of tasks between the IGSJ and the DDI, as well as information about the tasks, powers and composition of the DDI (paragraph 31);
- the division of tasks between the PSP and GNR internal investigation services and the IGAI (paragraph 33);

- in respect of the whole of 2007 and the first half of 2008:
 - the number of complaints of ill-treatment filed in respect of each law enforcement agency (PSP, GNR, JP), and the body responsible for investigating each complaint (internal investigation service, IGAI, IGSJ, Judicial Police);
 - details of the disciplinary and/or criminal proceedings instituted against law enforcement officials, in respect of allegations of ill-treatment;
 - details of the disciplinary and/or criminal sanctions imposed in such cases (paragraph 35).

Establishments under the authority of the Ministry of Justice

Preliminary remarks

recommendations

- detained minors never to share cellular accommodation with adult prisoners (paragraph 42).

comments

- the CPT trusts that the Portuguese authorities will continue in their efforts to eliminate overcrowding in all prisons (paragraph 41).

Ill-treatment

recommendations

- the Portuguese authorities to redouble their efforts to ensure that prison staff at Monsanto and Coimbra Central Prisons, as well as at all other Portuguese prison establishments, understand that ill-treatment is unacceptable and unprofessional, and will result in severe disciplinary sanctions and/or criminal prosecution (paragraph 44);
- the resort to strip searches to be based on an individual risk assessment and subject to rigorous criteria and supervision. Further, inmates should not be required to undress in the presence of custodial staff of the opposite sex (paragraph 45);
- the Portuguese authorities to initiate immediate measures to put an end, as soon as possible, to the use of buckets for discharging human waste: prisoners accommodated in cells which do not include a toilet facility should, if they need to use one, be enabled to leave their cells without undue delay at all times (including at night) (paragraph 46).

requests for information

- the outcome of the investigation into the alleged assault of an inmate at Monsanto High Security Prison by four prison officers on 19 October 2007 (paragraph 44);
- on the implementation of the recommendation of the IGSJ that excessive strip-searching cease at Monsanto Prison (paragraph 45).

The management of drug-related problems in prison

recommendations

- the necessary security measures to be taken to stop the supply and circulation of illicit drugs in prison. In this context, local management needs to have strong backing from the central level. Further, in order for such steps to be effective, they must be coupled with measures to address and prevent staff corruption. At the same time, care must be taken that these security measures do not unduly impinge on the dignity of inmates or the activities offered to them. Moreover, measures should be taken to prevent prisoners from becoming involved in drugs consumption and/or trade (paragraph 49);
- the range and reach of therapeutic programmes on offer to be enhanced to address the demand for drugs and to assist prisoners with drug-related problems, in the light of the remarks made in paragraph 50. In particular, a drug-free therapy unit to be established as a matter of urgency at Coimbra Central Prison and at Funchal Central Prison (paragraph 51).

requests for information

- on the authorities' national plans as regards drug-free therapy units (paragraph 51);
- on the pilot project concerning the introduction of needle-exchange programmes (paragraph 52).

Material conditions

recommendations

- the necessary steps to be taken to ensure that cells at the Judicial police detention facility in Coimbra are equipped with adequate artificial lighting and that those cells without any access to natural light are only used for holding persons for short periods (paragraph 54);
- the necessary steps to be taken to remedy the defects found at Monsanto High Security Prison in relation to the in-cell plumbing and the outdoor exercise yards (paragraph 55);
- the design of the cell windows in Oporto Judicial Police Prison to be reviewed so as to allow inmates to see outside their cells (paragraph 55);
- the material conditions of cells and sanitary facilities to be significantly improved in the older, unrenovated sections of Oporto Central Prison (paragraph 57);
- appropriate measures to be taken to protect prisoners from cold and damp conditions during the winter. House rules should be adapted in order to allow prisoners to wear warm clothing (paragraph 58).

comments

- the CPT trusts that renovation of the whole of Coimbra Central Prison will be treated as a matter of priority (paragraph 53);
- steps should be taken in Oporto Judicial Police Prison to improve both facilities for prisoners to wash their clothes and conditions in the outdoor exercise yards (paragraph 55);
- the call-bells did not work at Funchal Central Prison and in the renovated sections of Coimbra Central Prison, and at Funchal Regional Prison, inmates complained about the showers either not working at all (due to problems with the water pressure system) or dispensing scaldingly hot water (paragraph 56);
- consideration should be given to providing inmates in the observation unit of Oporto Central Prison with a separate living area (paragraph 57).

requests for information

- on the closure of Coimbra Regional Prison and the relocation of inmates to other prisons (paragraph 53).

Regime

recommendations

- greater efforts to be employed to offer an appropriate range of constructive activities, including work of a vocational nature, to all prisoners in the establishments visited, in the light of the remarks made in paragraphs 59 to 62 (paragraph 63);
- the necessary steps to be taken to develop custody plans and support offered to long-term prisoners, in accordance with the precepts outlined in paragraph 64 (paragraph 64);
- efforts to be made to prevent the exclusion of foreigners from prison regime activities due to language barriers (paragraph 65).

Health-care services

recommendations

- the necessary measures to be taken to ensure that prison staff at Oporto Prison – or at any other prison establishment – do not screen requests for access to health-care services (paragraph 67);
- health-care staffing levels to be strengthened in the light of the remarks in paragraph 68. In particular:
 - Coimbra Central Prison should benefit from the services of at least seven full-time nurses;
 - Coimbra Regional Prison should benefit from the services of at least three full-time nurses, as well as the effective, regular presence of a doctor, in accordance with the doctor's contractual obligations;
 - Funchal Central Prison alone should benefit from the services of at least one full-time general practitioner and 6 full-time nurses;
 - Funchal Regional Prison should benefit from the regular services of a part-time general practitioner and at least one full-time nurse;
 - the regular services of a dentist should be secured, for both Funchal Central and Funchal Regional prisons(paragraph 69);
- the situation described in paragraph 73 to be remedied without further delay (paragraph 73);
- medical screening at all prison establishments to be carried out within 24 hours of an inmate's arrival in prison (paragraph 75);
- in addition to the doctor's objective medical findings, the record drawn up following a medical examination of a newly admitted prisoner (or following a violent episode in prison) also to include:
 - statements made by the prisoner which are relevant to the medical examination (including any allegations of ill-treatment);
 - the doctor's conclusions, in particular as regards the degree of consistency between any allegation of ill-treatment and the objective medical findings.(paragraph 76);
- existing procedures to be reviewed in order to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record is systematically brought to the attention of the relevant authorities. That record should also be made available to the prisoner and the prisoner's lawyer (paragraph 76);
- a register on violent incidents to be introduced at every prison establishment (paragraph 77);
- in principle, medication to be distributed by health-care staff and, in particular, prescription (including psychotropic) drugs never to be distributed by custodial staff (paragraph 78);

- the deficiencies described in paragraph 79 to be remedied by the creation at Coimbra Central Prison of a single medical file for each prisoner, which is stored in one location (paragraph 79);
- the necessary steps to be taken to develop the range of rehabilitative and therapeutic activities provided to patients at the psychiatric unit of the “Sao João de Deus” Prison Hospital. In particular, the occupational therapy workshop should be reinstated without further delay. This will require appropriate staff reinforcement (paragraph 82);
- the Portuguese authorities to ensure, at the Prison Hospital’s psychiatric unit:
 - a significant increase in the effective presence of psychiatrists;
 - that psychologists are placed in a position to concentrate on providing care to patients; and
 - the allocation of the services of at least two full-time occupational therapists(paragraph 83);
- the practice of concealing medication in certain patients’ food to cease forthwith, and the necessary steps to be taken to ensure respect for the right to refuse treatment in all prison establishments, including the Prison Hospital’s psychiatric unit. Any exceptions to this right must be laid down in law (paragraph 84);
- the approach towards SOS-medication at the Prison Hospital to be reviewed (paragraph 85);
- recourse to seclusion always to be recorded in a specific register, in addition to the individual patient’s file (paragraph 86);
- comprehensive guidelines to be developed on the use of means of restraint, in accordance with the minimum precepts outlined in paragraph 88 (paragraph 88).

comments

- the deficiencies described in paragraph 72 as regards psychiatric and psychological care provided at Funchal Central and Regional Prisons should be remedied (paragraph 72);
- the deficiencies described in paragraph 81 as regards living conditions in the Prison Hospital’s psychiatric unit should be remedied (paragraph 81).

requests for information

- confirmation concerning the timing of the transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health, as well as detailed information on the manner in which the provision of health care in prisons will be organised once the transfer has occurred (paragraph 66).

Other issues of relevance to the CPT's mandate

recommendations

- the necessary steps to be taken to rectify the deficiency highlighted in paragraph 89 as regards staffing levels at night in Coimbra Central Prison (paragraph 89);
- only authorised means of force to be used in prison establishments (paragraph 90);
- if, exceptionally, the use of tear gas is permitted in a prison context, its use to be circumscribed and appropriate safeguards to be put in place, in the light of the remarks in paragraph 92 (paragraph 92);
- the procedural safeguards surrounding disciplinary measures to be reviewed, in the light of the remarks in paragraph 94 (paragraph 94);
- the necessary steps to be taken to ensure that prisoners are never disciplined for acts of self-harm, attempted suicide or for making complaints (paragraph 95);
- material conditions in the disciplinary cells at Funchal Central Prison to be improved, in particular as regards the problem of infestation (paragraph 97);
- arrangements to be made to improve the conditions in which visits take place at Coimbra Central Prison (paragraph 98);
- all prisoners to be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern (paragraph 99);
- access to the telephone to be improved in Funchal and Coimbra Central prisons, Oporto Judicial Police detention facility, and at Sao João de Deus Prison Hospital (paragraph 100);
- an information leaflet to be drawn up and provided to all prisoners upon their admission to a prison establishment, including to patients admitted to the Prison Hospital. Further, prisoners who cannot read Portuguese should be assisted in understanding the contents of the leaflet, if necessary by being provided with a written translation or with the help of an interpreter (paragraph 105);
- a practice of carrying out thorough inquiries into deaths in custody to be instituted with a view to learning lessons and improving operating procedures within prisons (paragraph 106).

comments

- if it is considered necessary for prison officers to carry truncheons, they should be hidden from view (paragraph 91);
- every discharge of a firearm by a penitentiary official should not only be recorded but also be the subject of a comprehensive report and, if necessary, a thorough and independent investigation (paragraph 93);

- the Portuguese authorities are invited to consider increasing access to the telephone for prisoners at Monsanto High Security Prison (paragraph 100);
- the CPT trusts that the IGSJ shall continue to develop its capacity, with a view to complying with the standards advocated by the Committee, in particular by carrying out frequent and unannounced visits to all prison establishments and by giving wide publicity to its findings in particular establishments (paragraph 104).

requests for information

- a full list of standard-issue and other authorised means of force available to custodial staff and members of the rapid intervention brigade, as well as copies of all relevant guidelines on their use. In particular, the CPT requests information on the criteria for deployment of Taser guns, on the instances of their use in Portuguese prisons and on the oversight procedures in place (paragraph 90);
- the comments of the Portuguese authorities on the view of the IGSJ that there appeared to be a “lack of distinction, in practice, between special security measures and disciplinary measures” in Portuguese prisons (paragraph 96);
- the location where isolation, whether for disciplinary or security reasons, is currently being carried out at Coimbra Central Prison (paragraph 97);
- on the nature and duration of the visits to prison establishments carried out by the Ombudsman’s office, as well as its relationship with other visiting bodies, such as the supervisory judge and the IGSJ (paragraph 102);
- the comments of the Portuguese authorities on the role of supervisory judges in inspecting prisons within their remit, including as regards the resources allocated to this task (paragraph 103);
- a copy of the reports on the IGSJ’s most recent visits to Monsanto and Coimbra Central Prisons, and information on the results of the investigation being carried out by the IGSJ into an alleged assault by a custodial officer on an inmate at Carregueira Prison in December 2007 (paragraph 104);
- the criteria applied for deciding whether to carry out an autopsy on a prisoner who dies in custody (paragraph 106);
- the results of the inquiries carried out into the deaths which occurred in disciplinary cells at Coimbra and Oporto Central Prisons in 2007 (paragraph 106);
- the results of the inquiry into the deaths of the four prisoners at Oporto Central Prison who died in quick succession in December 2005 (paragraph 106).

Psychiatric institutions

Preliminary remarks

requests for information

- on the implementation of the National Plan. Further, the Committee would like to be informed as to whether private psychiatric hospitals are covered by the National Plan (paragraph 107).

Living conditions

recommendations

- a proper partitioning wall to be installed between the rooms on the Sul ward of the Miguel Bombarda Psychiatric Hospital (paragraph 114);
- the necessary steps to be taken to ensure that outdoor exercise is offered on a daily basis to all patients at the Miguel Bombarda Psychiatric Hospital (paragraph 116).

requests for information

- confirmation that those toilets in the Forensic Unit of the Miguel Bombarda Psychiatric Hospital that were not functioning at the time of the visit have since been repaired (paragraph 115).

Treatment

recommendations

- efforts to be made to provide group therapy to patients at the Forensic Unit of Miguel Bombarda Hospital (paragraph 118);
- means other than pyjamas to be sought to dress patients without proper clothing on the São José ward at the Casa de Saúde de São João de Deus (paragraph 119);
- the necessary resources to be allocated at the Forensic Unit of the Miguel Bombarda Psychiatric Hospital to enable vocational training courses for patients to resume (paragraph 120);
- the approach towards SOS-medication to be reviewed in the Casa de Saúde de São João de Deus and the Miguel Bombarda Psychiatric Hospitals (paragraph 121);
- the necessary steps to be taken to put an end to the practice of over-sedating newly arrived patients at the Casa de Saúde de São João de Deus (paragraph 122);
- a clear written policy on recourse to ECT to be elaborated and its use properly recorded (paragraph 123).

Means of restraint

recommendations

- the necessary steps to be taken to ensure that application of means of restraint in principle occurs out of sight of other patients (paragraph 124);
- straps for restraining patients to be kept out of sight of patients (paragraph 125);
- the practice with respect to the application of means of restraint to be fully in line with the precepts laid out in paragraph 126 (paragraph 126);
- the approach towards 'SOS-restraints' in the acute wards at Miguel Bombarda Psychiatric Hospital to be reviewed. In particular, a doctor should be immediately notified of any instance in which SOS-restraints are applied (paragraph 127);
- the necessary measures to be taken to remedy the situation described in paragraph 128. In particular, it is important that the Forensic Unit benefits from a sufficient number of qualified staff, who are appropriately trained to deal with potentially violent patients (paragraph 128);
- every instance of restraint of a patient to be recorded in a specific register established for this purpose. The entry in this register should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to such a measure, the type of measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry. In addition, the entry within the patient's personal medical file should indicate more clearly the grounds for the use of means of restraint (paragraph 129);
- the necessary steps to be taken to ensure that all psychiatric hospitals have their own written policy on the use of means of restraint or implement the May 2007 Ministry of Health Protocol. This recommendation applies equally to private psychiatric hospitals (paragraph 130).

Safeguards

recommendations

- steps to be taken to ensure, in practice, the effectiveness of the right of access to a lawyer, in the context of involuntary placement under the Mental Health Act (paragraph 134);
- in all cases where a patient is involuntarily placed in a psychiatric hospital under Section IV of the Mental Health Act, the process of judicial scrutiny of the placement as indicated in Article 26 (2) of the Mental Health Act to be completed (paragraph 135);

- the Portuguese authorities to review the relevant legislation in the light of the remarks made in paragraph 136 (paragraph 136);
- an information brochure, available in an appropriate range of languages, setting out the facility's routine and patients' rights - including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures - to be drawn up and issued to all patients on admission to a psychiatric establishment, as well as to their families. Patients unable to understand this brochure should receive appropriate assistance (paragraph 137).

requests for information

- the statutory rights and obligations afforded to patients involuntarily placed in a psychiatric hospital under the Criminal Code (paragraph 138).

Inspection

recommendations

- the necessary steps to be taken to ensure that the Monitoring Commission can effectively carry out its supervisory tasks, in the light of the remarks made in paragraphs 139 to 140 (paragraph 140).

requests for information

- the views of the Portuguese authorities on the possibility of extending the remit of the Monitoring Commission in order to cover patients involuntarily hospitalised under the provisions of the Criminal Code (paragraph 140).

Other issues under the CPT's mandate

recommendations

- the Portuguese authorities to strive to find solutions which would better guarantee the independence and impartiality of guardians (paragraph 141).

requests for information

- the measures being taken to ensure that appropriate psychiatric resources exist in all regions of the country (paragraph 142).

APPENDIX II

LIST OF THE NATIONAL AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

A. National authorities

Ministry of Interior

José MAGALHÃES	Deputy Minister of the Interior
Rita FADEN	Director-General of the Directorate-General of Internal Affairs
Marianna SOTTO MAIOR	Deputy Director of the Directorate-General of Internal Affairs, liaison officer for the CPT
Paulo CALDAS	Head of Department for International Relations and Cooperation of the Directorate-General of Internal Affairs
António CLEMENTE LIMA	Inspector-General of the Inspectorate General of Internal Affairs (IGAI)
Mário Augusto MOURATO CABRITA	Deputy General Commander of the National Republican Guard
Orlando ROMANO	National Director of the Public Security Police
Francisco CORREIA DE OLIVEIRA	Deputy National Director of the Public Security Police
PEREIRA	
Guilherme José GUEDES DA SILVA	Lisbon Metropolitan Police Commander of the Public Security Police
Francisco MARQUES ALVES	Deputy National Director of the Service for Aliens and Borders

Ministry of Justice

José CONDE RODRIGUES	Deputy Minister of Justice
Manuel BRANCO MENDES	Deputy Director of the Probation Department
Américo BRÁS CARLOS	Inspector-General of the Inspectorate General of Judicial Services (IGSJ)
Paula CARVALHEIRA	Policy Advisor at the Probation Department
Rui SÁ GOMES	Director-General of the Prison Service
Inês HORTA PINTO	Legal adviser to the Minister of Justice, and liaison officer for the CPT
Rómulo MATEUS	Coordinator of the Prison Service Auditing and Inspection Service – South
Maria José MATOS	Director of External Relations Prison Service
Baltazar PINTO	Deputy Director of the Judicial Police
Graça POÇAS	Responsible for health care in prisons

Ministry of Health

Maria DO CÉU SOARES MACHADO
José Miguel CALDAS DE ALMEIDA

Helena MARTINS ALVES
Fernando VENTURA

Fernando VIEIRA

High Commissioner for Health
Chairman of the Commission for the Restructuring
of Mental Health
CPT's liaison officer
Member of the Mental Health Act Monitoring
Commission
Chairman of the Mental Health Act Monitoring
Commission

Ministry of Foreign Affairs

João MOURA

Directorate General for External Policy

* *
*

Jorge NORONHA e SILVEIRA

Deputy National Ombudsman

B. Non-governmental Organisations

Amnesty International
Portuguese Association of Psychiatrists
Portuguese Bar Association