

Follow-up responses

of the Portuguese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Portugal

from 14 to 25 January 2008

The Portuguese Government has requested the publication of these follow-up responses to the CPT's report on the visit to the Portugal in January 2008. The CPT's report (CPT/Inf (2009) 13) and the initial response of the Portuguese authorities (CPT/Inf (2009) 14) were published on 19 March 2009.

Follow-up to the Response of the Portuguese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Portugal from 14 to 25 January 2008

September 2009

INTRODUCTION

Following up the Response of the Portuguese Government to the Report of the CPT on its visit to Portugal from 14 to 25 January 2008, presented in January 2009 (*Doc. no. CPT/Inf (2009) 14*), the CPT has requested the Portuguese Government to update certain information contained in such Response.

The Portuguese Government wishes now to convey to the CPT the required updated information.

The Portuguese authorities remain at the disposal of the CPT to clarify and give whatever additional information it may consider necessary.

For the Ministry of
Interior,
The liaison officer,

For the Ministry of
Justice,
The liaison officer,

For the Ministry of
Health,
The liaison officer,

Mariana Sotto Maior

Inês Horta Pinto

Helena Martins Alves

A. Law Enforcement agencies

The CPT wishes to be informed about the outcome of the disciplinary procedure against a police officer conducted by IGAI, after allegations of ill treatment perpetrated by PSP officers in Cacém (§ 10 of the Portuguese Government's Response).

As referred to in the Portuguese Government's Response to the CPT's report, related to the case of alleged ill-treatment which has occurred at the PSP station of Cacém regarding two detainees, the Minister of Interior (by order of 15 February 2008) has requested IGAI to open an inquiry; this inquiry (which has run as PND, n. 11/2008) was concluded on 6 June 2008 and from the outcome of this investigation the following evidence was found: one of the detainees already showed injuries when he entered the cell; nonetheless, the police officer in charge did not inquire about such wounds nor has reported them in the "detention report" and in the "detainee's personal file", as is laid down by law; the police urged the detainee to receive medical assistance, which he has denied; the following day, the two detainees were tried and convicted for libel by final decision of the County Court of Sintra. By order of the Minister of Interior, of 6 June 2008, a disciplinary procedure was carried out by IGAI, against the police officer in charge at this PSP station, owing to omission of inspection and recording of injuries (which has run as PND n. 42/2008).

The process was concluded, by order of the Ministry of Interior dated 28 January 2009, and, according to the Disciplinary Code of the PSP, the police officer in charge received a disciplinary verbal reprehension.

The CPT requests information on the implementation of the guidelines for the use of Judiciary Police detention facilities and Court holding facilities (§ 16 of the Response).

The CPT has recommended in its Report that formal regulation, governing conditions in detention facilities run by the Judicial Police and in holding facilities at the courts, be adopted.

In its Response, the Portuguese Government has agreed with this recommendation. As such, it has already approved a Regulation on the Detaining Conditions at the Judicial Police Facilities and Court and Public Prosecution Premises (*Regulamento das Condições de Detenção em Instalações da Polícia Judiciária e em Locais de Detenção Existentes nos Tribunais e em Serviços do Ministério Público*), encompassing the CPT's recommendations on this matter.

The aforesaid Regulation, which is already in force, is enclosed.

The CPT asks for the outcome of the assessment (by means of an inspection and analysis of collected incident reports) by the IGSJ in respect of prevalence of ill treatment by PJ officers (§ 12 of the Response).

As referred to in the Response of the Portuguese Government, the IGSJ has foreseen, in its Activities Plan for 2009, an inspection to the detaining facilities within the remit of the Judicial Police.

This inspection was carried out (in February) and has focused on the procedures related to the rights and guarantees of the detainees as well as on the material conditions in the detention facilities.

All the detention facilities used by the Judicial Police were inspected, without prior notice.

Following this inspection, the IGSJ has made several recommendations, some linked to procedures and others related to the material conditions. The Judicial Police has already given its general consent to these recommendations.

A significant part of these recommendations were meanwhile set forth in regulations, being now part of the Regulation on the Detaining Conditions at the Judicial Police Facilities and Court and Public Prosecution Premises. Both IGSJ and the PJ agree that the approval of this Regulation shall contribute to improve the use of the detention facilities at PJ and shall better guarantee the rights of the detainees.

The Minister of Justice has already ratified the final report of the IGSJ's inspection and has required the PJ to carry on with the adoption of the IGSJ recommendations.

The CPT requests information on the outcome of the evaluation concerning the introduction of video surveillance devices in police stations (§ 13 of the Response).

The Portuguese authorities shall continue considering and evaluating the introduction of video-surveillance devices, taking into account the adequate and necessary balance between private issues and measures that involve the treatment of personal data.

As regards the Judicial Police, it must be referred that in all the PJ departments where detention facilities are used, there are video-surveillance devices. These devices are being improved in accordance with the IGSJ recommendations, following its Report on the inspection carried out in February.

Lastly, as concerns the Prison Services, it should be referred that the procedure (compulsory by law) to obtain the National Commission for Data Protection's authorization for the installation of video-surveillance devices at the Prison Establishments is already running.

B. Prison Establishments

Review of penitentiary legislation

With respect to the enforcement of sanctions and deprivation of liberty measures, it should be mentioned that the Draft-Law, presented by the Government to the Parliament on the approval of the new Code on Enforcement of Sanctions and Deprivation of Liberty Measures, has been approved on the former 23 July. At the moment, we await its ratification by the President of the Republic.

The CPT requests information on the outcome of the investigation of the SAI/Lisbon Public Prosecution Service about one case of allegation of ill treatment at Monsanto Prison (§§ 43-44 of the Response)

As referred to in the Response of the Portuguese Government, the case has been investigated by the Audit and Inspection Services of the DGSP, but not enough evidence was found that pointed to acts of ill-treatment against the detainee X.¹ by prison guards or even that unnecessary or excessive force, given the circumstances, had been committed upon him by the prison guards.

As to the criminal procedure no. 6059/07.2TDLSB04, running at the 4th section of the Criminal Investigation Department, at the Lisbon Public Prosecution (a case which was opened following a complaint by the detainee X. against several elements of the prison guard of the Monsanto Prison Establishment), it should be referred that, on the former 27 January, the Public Prosecution has filed the case (on the terms of article 227, par. 2 of the Criminal Procedure Code, which states that “the inquiry is also filed if the Public Prosecution could not obtain enough evidence on the occurrence of a crime or of its agents”).)

The CPT requests updated information on the provision of health care in prisons (§§ 66 and forth of the Response).

As previously mentioned, it has already been approved by the Parliament the review of the penitentiary legislation. In that Law, besides being established that the detainee is entitled, to all effects, to the National Health Service, it is also foreseen that detainees be granted the right “of access to the National Health Service in identical conditions to those provided to all the other

¹ The name of the person has been deleted in accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

citizens". The Law also establishes that each detainee shall have an individual clinical file, throughout his/her prison stay, even if he/she is transferred, and that its confidentiality shall be ensured, in general terms.

To improve the quality of the provision of health care to the detainees, as well as to increase its efficiency and efficacy levels, have been a continuous concern to the Portuguese authorities.

Hence, with the purpose to ensure the detainees equity in the access to health care, and following an International Tender for the Provision of Health Care (referred to in the Response of the Portuguese Government), the Prison Services have entered into agreements with health care companies.

The contracts have entered in force on 1 July and as such, in addition to the health professionals which are part of the board of staff of DGSP, there is now a wider range of professionals working in the clinical services of several Prison Establishments, such as Nurses, Diagnosis and Pharmacy Technicians, Psychologists and Doctors (with different specialties: General Practice, Contagious Diseases, Psychiatric Health, Dental Care and Gynecologic Services).

These contracts have reinforced the clinical staff at the Prison Establishments and have set up conditions for the daily permanence of a nursing service in all prison facilities (which guarantees that the screening on admission to new prisoners is made in 24 hours following their entry and ensures the daily controlled-taking of medication), as well as the regular presence of a general practice doctor (3 times a week) that examines the detainees within 72 hours, at the most, following their entry.

With the reinforcement of the health staff at the Prison Establishments, the asymmetries were reduced and the whole prison population has now access to health care in several areas. It was also set up an internal network of reference for psychiatric and contagious diseases, to which the detainees may go to whenever they do not have them at their disposal in their own prison establishment. Concomitantly, the Prison Hospital São João de Deus also provides a multi-specialized assistance as regards medical examinations, exams and complementary means of diagnosis (anesthesiology, cardiology, general surgery, plastic surgery, dermatology, physiotherapy, gastroenterology, hepatology, internal medicine, neurology, ophthalmology, orthopedy, otorhinolaryngology, clinical pathology, radiology).

As it was mentioned in the Response of the Portuguese Government to the CPT Report (§§ 68-69 and 72), the Prison Establishment of Coimbra has already daily nursing care between 8 a.m. and 1 p.m. and between 2 p.m. and 9 p.m.; the Prison Establishment of Funchal keeps on having 168

hours of weekly nursing care and has now a general practice doctor (15 hours per week) and a dental doctor (9 hours per week); the psychiatric care has been strengthened and is now available for 6 hours per week. At the Prison Hospital of São João de Deus, besides the psychiatric care, which is ensured by two psychiatrists of the DGSP board of staff, there are now two clinical psychologists. They were given instructions to extend their stay at the psychiatric clinic (§ 83 of the Response).

Another relevant development, as already referred to in the Portuguese Government's Response, was the approval of the Manual for the Provision of Health Care in the Prison Setting by the Directorate-General for the Prison Services. This Manual comprises and details, in just one document, of easy access and consultation, the rules and proceedings to be adopted in the provision of health care in the Portuguese penitentiary system; it is based on deontological principles, on the respect for the human dignity, on the right to privacy and on the principle of equality of access to health care.

The Manual has entered in force on 1 July and is being gradually implemented in the Prison Establishments.

It should be referred that the Manual sets up a large set of rules that comply with the recommendations that the CPT has made in its last Report, such as:

- A single clinical file, which is opened within 24 hours after the detainee's entry, containing his/her clinical background (where medical examinations, observations, complementary diagnostic exams, treatments, prescribed medication and other relevant elements are recorded); such file follows the detainee throughout his/her stay in prison, even if he/she is transferred. The Prison Establishments are already gradually implementing this orientation (§ 79 of the Response);
- The first medical screening on admission shall be made as soon as possible. In any case, it shall not exceed 72 hours following the detainee's entry; in the Prison Establishments that have a doctor on a daily basis, the medical screening shall occur in the first 24 hours (§§ 74-75 of the Response);
- The internal flow of requests for medical examination is regulated and the detainee may now request the provision of health care directly to the Clinical Services; such request may be made at a single point to which only the Clinical Services have access; the requests are collected daily (§ 67 of the Response);

- The proceedings that grant the detainee the right to be assisted by a doctor of his confidence, at his own expenses, are regulated;
- The detainees' medication is daily ensured by a pharmacy technician or, in alternative, by the nurses. The medication is given, by the nurses, through a Directed Controlled Taking of Medication, to all the detainees and as regards all types of therapies. These proceedings equally bind the Prison Hospital of São João de Deus (§ 84 of the Response);
- All the incidents that feature violent situations are now duly registered in a proper form and immediately communicated to the Clinical Services (§ 77 of the Response);
- In every Prison Establishment, there is an emergency kit, which contains some equipment and several drugs. This is the only medication that can be administered without medical prescription. These proceedings equally bind the Prison Hospital of São João de Deus (§ 85 of the Response);
- As regards a detainee's aggressive or disruptive behavior, in cases of psychomotor agitation, mental confusion, aggressiveness and violence, the provisions laid down in the Law for Mental Health (Law n. 36/98), as well as the provisions set forth in the Normative Circular n. 08/DSPSM/DSPCS, of 25/05/2005, of the Directorate-General for Health Care of the Ministry of Health shall apply (§§ 86, 87 and 88 of the Response).

The CPT requests information on the elaboration of the *Regulation for the Use of Coercive Means in the Prison Services* (§ 92 of the Response).

The Regulation was concluded and approved. Training courses on this theme to the prison staff shall start in the next month.

As requested by CPT, a copy of the Regulation is attached.

The CPT requests information on the elaboration of the new Monsanto Prison's Regulation (§§ 99-100 of the Response)

A new Regulation for High Security Prison and Security Sections has already been concluded and approved.

As requested by CPT, a copy of the Regulation is enclosed.

C. Psychiatric Institutions

The CPT requests information on the review of the Decree-Law n. 35/99 (§ 136 of the CPT Report)

A new version of the Decree-Law 35/99 was prepared by the *Coordenação Nacional para a Saúde Mental*, the Mental Health Unit in the Ministry of Health. Given the fact that the Ministry of Labour and Social Security participates in activities regulated by this Decree-Law, this proposal is currently being discussed by the two Ministries.

Appendix

- Regulation on the Detaining Conditions at the Judicial Police Facilities and Court and Public Prosecution Premises (*Regulamento das Condições de Detenção em Instalações da Polícia Judiciária e em Locais de Detenção Existentes nos Tribunais e em Serviços do Ministério Público*);
- Regulation for the Use of Coercive Means in the Prison Services (*Regulamento de Utilização dos Meios Coercivos nos Serviços Prisionais*);
- Regulation for High Security Prison and Security Sections (*Regulamento sobre o Internamento de Reclusos em Estabelecimento Prisional de Segurança Máxima e em Secções de Segurança*).

Note:

These Appendices (in Portuguese) are available in PDF format on the CPT's website (www.cpt.coe.int).

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– ADDITIONAL INFORMATION

September 2009

In its reports, the CPT has called upon the Portuguese authorities to take immediate measures to put an end, as soon as possible, to the use of buckets for discharging human waste in Portuguese prisons, considering this as a degrading practice (*see § 46 of the 2008 Report*).

In the last years, Portugal has developed all efforts to comply with the Council of Europe standards of humanity and dignity in prisons. Particular attention has been devoted towards guarantying sanitary facilities for all prisoners.

This Government has developed a program to abolish the use of buckets, which involved 1429 cells.

In the *Response of the Portuguese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Portugal from 14 to 25 January 2008*, the Portuguese Authorities informed the CPT that the plan to put an end to this practice was under conclusion.

We now wish to inform the CPT that, presently, all prisoners in Portugal are lodged in cells with sanitary facilities.

For the Ministry of Justice,
The liaison officer,

Inês Horta Pinto