



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 3 to 12 December 2019

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 (2020) 34.

Strasbourg, 13 November 2020

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EXECUTIVE SUMMARY

The primary focus of the December 2019 ad hoc visit was strengthening the protection of persons deprived of their liberty from ill-treatment by the Judicial Police (PJ), Public Security Police (PSP) and the National Republican Guard (GNR). This included an examination of the effectiveness of investigations into allegations of ill-treatment by law enforcement officials. A further focus was the treatment of various categories of prisoners, notably those held on remand and in disciplinary segregation as well as vulnerable prisoners. The CPT's delegation also re-examined the situation of patients held at the psychiatric clinic of Santa Cruz do Bispo Prison.

The co-operation received by the delegation throughout the visit was, on the whole, excellent. However, the principle of co-operation set out in Article 3 of the Convention also requires that decisive steps be taken to improve the situation in the light of the Committee's key recommendations. In this context, the CPT trusts that the Portuguese authorities will take concrete measures to address the real and persisting problem of ill-treatment by law enforcement officials. Further action is needed on recruitment, training and management of law enforcement officials as well as ensuring that allegations of ill-treatment are investigated effectively.

Law enforcement agencies

As was the case in 2016, the majority of persons met by the CPT's delegation stated that they had been treated correctly whilst in police custody. However, a considerable number of allegations were again received from detained persons of ill-treatment at the time of apprehension, as well as during time spent in a police station. The alleged ill-treatment consisted primarily of slaps, punches and kicks to the body and/or head as well as, on occasion, the use of batons or sticks. Allegations were also received of verbal insults and excessively tight handcuffing. The CPT requests information on the status of the investigations into at least nine cases of alleged physical ill-treatment detailed in the report.

The findings of the CPT's delegation appear to indicate that the infliction of ill-treatment, particularly on persons of African descent and foreign nationals, is not infrequent. The Portuguese authorities must recognise that the existence of ill-treatment by police officers is a fact, and that it is not the result of a few rogue officers. The CPT puts forward a number of recommendations to tackle ill-treatment which cover recruitment, training (including on interview and investigative techniques), accountability and developing a police culture which views the resort to ill-treatment as unprofessional. Further, all police stations should be equipped with audio-video recording equipment for recording police interviews.

As regards the effectiveness of investigations into allegations of ill-treatment by law enforcement officials, the report outlines the importance of ensuring that such investigations are carried out promptly and thoroughly. To this end, the CPT recommends that the Prosecutor General's Office be provided with additional resources. Protocols are required to ensure that whenever a case of alleged ill-treatment, or of injuries indicative of ill-treatment, is forwarded to the prosecutor's office from the prison authorities, a representative of the Prosecutor General's Office or from the General Inspectorate of Home Affairs (IGAI) interviews the person concerned within 48 hours with a view to determining whether a forensic medical examination is necessary and what further investigative steps are required. Further, the CPT recommends that the disciplinary process should run in parallel with the criminal investigation given the very long periods (five or more years) required for a criminal case to be dealt with by the courts.

As regards safeguards against ill-treatment, the rights of detained persons to notify a family member or a person of confidence about their situation and to have access to a doctor operated generally satisfactorily. However, the majority of persons interviewed stated that they only met an *ex officio* lawyer at the court hearing before a judge. The CPT reiterates that persons detained by the police should have the right of access to a lawyer as from the very outset of the deprivation of liberty. Further, the CPT is concerned that not every instance of deprivation of liberty by the police is registered.

Prisons

The vast majority of prisoners met by the delegation in the establishments visited stated that they had been treated correctly by prison officers. Nevertheless, a number of allegations of ill-treatment of inmates by prison officers were received, notably, at Caxias, Lisbon Central and Porto Prisons. The ill-treatment was said to consist of slaps, punches, kicks and blows with truncheons to the body and/or head. The CPT makes a series of observations to improve the oversight of interventions to quell disturbances in prisons, and it expresses its strong reservations about the use of firearms and other means of coercion such as flash bangs and CS gas within a confined prison setting. The Portuguese authorities are invited to review the 2009 Regulation on the use of means of coercion in prisons.

The CPT was pleased to note the progress made in reducing the overall prison population to within its capacity, while noting that certain prisons continued to operate at 120% or higher of their official capacity. It has also noted that the measures taken to respond to the COVID-19 pandemic have further reduced the prison population and it considers that these measures, designed to keep the prison population within manageable limits, should become a permanent feature.

As regards living conditions, the CPT found a mixture of both decent and poor living areas in the establishments visited. For instance, the induction cells on D Wing at Lisbon Central Prison were particularly dilapidated and dirty, as were the induction dormitories and dormitory used for accommodating prisoners sentenced or accused of sex offences at Caxias Prison. The situation at Caxias Prison was further exacerbated by the overcrowding (e.g. 14 persons in 33m²) and prisoners being confined to their dormitories for 22 hours a day. A similar situation was in evidence for prisoners accused of sexual offences at Setúbal Prison. Such conditions could be considered as amounting to inhuman and degrading treatment. At Porto Prison, overcrowding was a notable feature and the CPT recommends that single occupancy cells of 7m² should accommodate only one prisoner instead of two and that all dormitories should provide 4m² of living space per prisoner, excluding the sanitary annexe. The CPT also recommends that the Portuguese authorities pursue their efforts to offer an appropriate range of constructive activities to all prisoners in Caxias, Lisbon Central, Porto and Setúbal Prisons, and that they develop purposeful activities for remand prisoners at Lisbon Judicial Police Prison, where the regime remains impoverished.

In respect of health care in prisons, the report contrasts the situation between Porto Prison, where there was a properly resourced and well-run health care service, and Lisbon Central Prison, where high levels of staff fluctuation, inequalities in staff members' terms and conditions, diminished motivation and the lack of a team approach were apparent. In respect of the recording of injuries following a violent incident or use of force within a prison, the CPT welcomes the introduction by the Director General of Prisons of Circular No. 1/2017, which reflects the Committee's standards on this subject. At the same time, it considers that there is room for the Circular to be made more effective in practice through enhanced training, the systematic photographing of all injuries and direct reporting to IGAI and the Prosecutor General's Office. Further, the CPT continues to have concerns over the use of chemical restraint in prisons, notably at Lisbon Central Prison.

The staffing complements in the prisons visited continue to be insufficient to cope with the size and type of the inmate population and the CPT recommends that additional staff be recruited.

The disciplinary procedure was generally satisfactory although the safeguards could be strengthened, and the time taken to investigate and decide on a disciplinary offence speeded up. Further, the measure of provisional isolation (*cautelar*) should not last longer than a few hours without formal charges being brought and oversight safeguards being introduced, including the right of an appeal to an independent authority where the measure is required for a longer period. The Portuguese authorities should amend their use of this measure accordingly. As regards solitary confinement as a disciplinary punishment, the CPT acknowledges the policy approach taken by the Portuguese Prison Administration to not impose disciplinary punishments of solitary confinement of more than 14 days pending the amendment of Law 115/2009 on the Execution of Criminal Sanctions. The CPT recommends that the disciplinary punishment of confinement to a cell (POA) also be limited to a maximum of 14 days.

Contacts with the outside world are generally good, whereas there remains a need to introduce a uniform internal complaints system in which prisoners have confidence. The CPT looks forward to being provided with information on the new complaints system being developed.

Psychiatric Clinic of Santa Cruz do Bispo Prison

The findings of the 2019 visit demonstrate once again that the Psychiatric Clinic remains prison-like and unable to provide a therapeutic environment for the care and treatment of psychiatric patients. Indeed, the treatment and conditions of many patients are held in this Clinic may well amount to inhuman and degrading treatment. Having said that, the CPT recognises that the Portuguese authorities are attempting to find an appropriate solution to this unacceptable situation.

Pending the closure of the Psychiatric Clinic, the CPT recommends that every effort be made to reduce further the number of patients held in the facility and to put in place a structured programme of therapeutic activities for patients. Further, a significant increase in nursing and health care assistant staffing levels, as well as the replacement of prison officers working in the wards, are essential steps to combat inter-patient violence and intimidation. In addition, qualified specialists responsible for running therapeutic and rehabilitation activities need to be recruited to improve the range and number of purposeful activities offered to patients at the Clinic.

The CPT's delegation found that there was a frequent recourse to the use of *pro re nata* (PRN) medication (so-called "SOS medication"), particularly during evenings and weekends when no psychiatrist was present. The risks associated with such a practice must be addressed through drawing up guidelines for regulating PRN medication in line with the precepts set out by the CPT. Further, provision should be made for psychiatrists to be remunerated out of hours whenever their presence is required at the Psychiatric Clinic.

The CPT again recommends that specific written guidelines on the use of means of restraint for psychiatric patients in institutions under the Ministry of Justice be drawn up in line with the Committee's requirements. As regards more specifically the measure of seclusion, which is known to cause disorientation and anxiety for certain patients, the CPT recommends that it be properly regulated and subject to a number of safeguards as outlined in the report. Further, as a matter of principle, the CPT encourages the Portuguese authorities to totally abolish disciplinary sanctions vis-à-vis (forensic) psychiatric patients.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7.1 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 an ad hoc visit to Portugal from 3 to 12 December 2019; this was the Committee’s eleventh visit to Portugal. The visit was one that the Committee considered to be “required in the circumstances”, notably as regards the strengthening of protection of persons deprived of their liberty from ill-treatment by law enforcement officials. To this end, the visit built upon the findings and analysis contained in the CPT’s report on its September/October 2016 visit and the response of the Portuguese authorities thereto. Another focus of the 2019 visit was to examine the conditions of detention and treatment of various categories of prisoners, notably those held on remand and in disciplinary segregation as well as vulnerable prisoners. A third objective of the visit was to review the situation at the Psychiatric Clinic of Santa Cruz do Bispo Prison.

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

- Julia Kozma (Head of the delegation)
- Juan Carlos da Silva Ochoa
- Alan Mitchell.

They were supported by Hugh Chetwynd, Head of Division, and Patrick Müller of the Secretariat of the CPT, and assisted by Cyrille Orizet, psychiatrist, Georges Pompidou European Hospital, Paris, France.

3. The list of establishments visited by the CPT’s delegation can be found in Appendix I.

4. The report on the visit was adopted by the CPT at its 102nd meeting, held from 29 *June to 3 July 2020*, and transmitted to the Portuguese authorities on 17 July 2020. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Portuguese authorities to provide within three months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the delegation met Antero Luís, Secretary of State for Internal Administration, Mário Belo Morgado, Secretary of State for Justice, and Rómulo Mateus, Director General of Reintegration and Prison Services, as well as senior officials from the Ministries of Foreign Affairs, Health, Internal Administration and Justice.

The delegation also held an exchange of views with senior officials and prosecutors from the General Prosecutor's Office. Further, the delegation met Anabela Ferreira, Inspector-General of Home Affairs (IGAI). Discussions were also held with the Coordinator from the Office of the Ombudsman responsible for the operation of the National Preventive Mechanism, set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT).

A list of the national authorities and organisations met by the delegation is set out in Appendix II to this report.

6. The co-operation provided by the national authorities in facilitating the visit was, on the whole, excellent. The delegation was granted immediate access to the detention facilities it wished to visit and to the persons it wanted to interview, and most of the information required to carry out its task was promptly provided. In particular, the delegation would like to thank the CPT liaison officers for the assistance provided during the visit.

7. The principle of co-operation set out in Article 3 of the Convention is not limited to steps taken to facilitate the task of visiting delegations. It also requires that decisive action be taken to improve the situation in the light of the Committee's key recommendations. In this respect, the CPT has noted positively the steps that have been taken to address the recommendations made in previous reports, in particular as regards prison conditions, while recognising that serious challenges still remain. The situation of patients in the psychiatric clinic of Santo Cruz do Bispo Prison remains a serious concern for the Committee but it is encouraged by the actions now being taken by the Portuguese authorities to address the situation. As regards policing, the CPT considers that not enough is being done to recognise and address the real and persisting problem of ill-treatment by law enforcement officials that is present in Portugal. More needs to be done regarding the recruitment, training and management of law enforcement officials but also in ensuring that allegations of ill-treatment are effectively investigated.

The CPT trusts that the Portuguese authorities will take concrete measures to address the recommendations in this report, including as regards the specific issues highlighted above, in accordance with the principle of co-operation set out in Article 3 of the Convention.

C. National Preventive Mechanism

8. At the time of the 2019 visit, the National Preventive Mechanism (NPM) within the Ombudsman's Office effectively consisted of one person (the Coordinator) who was supported by staff members from other departments within the Office whenever carrying out monitoring visits. The CPT is not convinced that this is the best way to ensure an optimal functioning of the NPM. In this connection, reference is made to the report of the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) on its May 2018 visit to Portugal,¹ in which it made a series of recommendations to bolster the standing of the NPM, including the necessity to allocate it additional resources. Such resources are essential for the NPM to fulfil its preventative role, notably by paying closer attention to the actions of law enforcement officials when carrying out visits to places of deprivation of liberty.

The CPT would like to be informed of the resources provided to the Ombudsman's Office for 2020 and 2021 to ensure that the NPM can fulfil its mandate properly.

¹ See SPT report on the 1-10 May 2018 visit to Portugal: ref. CAT/OP/PRT/1, paragraphs 11-32.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

9. In the course of the 2019 visit, the CPT's delegation interviewed many persons in prison in the Lisbon and Porto areas, both sentenced and on remand. All of these persons had been apprehended and detained in the recent past by either the Public Security Police (PSP) or the National Republican Guard (GNR), both of which come under the responsibility of the Ministry of the Interior, or by the Judicial Police (PJ), which is subordinate to the Ministry of Justice. Several police stations were also visited (see Appendix I).

10. The legal framework governing the deprivation of liberty by law enforcement officials remains the same as that set out in the report on the 2008 visit. In brief, Article 28(1) of the Constitution and section 254 of the Code of Criminal Procedure (CCP) limit the time for which a person suspected of a criminal offence may be detained in a police station to 48 hours. In practice, other than at the weekends, persons are rarely kept longer than 24 hours in detention and the vast majority are released on police bail after a few hours.

11. At the outset, the CPT wishes to recall that its delegation talked to a great number of inmates in order to provide an assessment of the occurrence of ill-treatment by police forces in the country. The cases raised by the CPT are but an illustration of its findings and, unless specifically stated, is not a request to the authorities to initiate individual investigations. CPT delegations are always careful to triangulate information before raising specific cases of ill-treatment (credible allegations, witnesses, medical evidence, documentation). See for example the cases highlighted in paragraphs 14 and 15 below. At the same time, the CPT receives credible allegations of ill-treatment from persons who do not wish to have their names disclosed or to make an official complaint as they are fearful of the consequences of making a complaint or have no trust in the complaints system.

The CPT is aware of the measures put in place by the Portuguese authorities to combat ill-treatment by law enforcement officials, including as regards training in respect for human rights and legal provisions designed to render forced confessions of no value before a court. These are positive measures. It also very much appreciates the long-standing co-operation it has had with the Ministries of Interior and Justice and with the GNR, PSP and PJ.

Nevertheless, the CPT wishes once again to convey its concern that ill-treatment by Portuguese law enforcement officials is not infrequent. The findings of the 2019 visit reinforce the concerns raised by the CPT in relation to this matter in its three previous visit reports dating back to 2012. The CPT trusts that the Portuguese authorities will have a constructive approach when considering the recommendations laid out below with regard to improving the effectiveness of investigations, strengthening the safeguards surrounding deprivation of liberty and pursuing their efforts to eradicate ill-treatment by law enforcement officials.

12. The CPT is very conscious of the challenging work that police officers must undertake to combat crime and maintain public order. It therefore goes without saying that the State has a duty to ensure that police officers are sufficiently numerous and provided with the necessary resources to carry out their tasks professionally and in accordance with human rights norms.

The CPT would appreciate being provided with information on the number of PSP and GNR personnel and of an outline of their conditions of work (statutory hours, remuneration, access to ongoing training and welfare support, etc.).

2. Ill-treatment

13. It is important to reiterate that, as was the case in the past, the majority of persons met by the CPT's delegation stated that they had been correctly treated by law enforcement officials both at the time of their apprehension and while in police custody. However, the delegation did, once again, receive a considerable number of allegations of ill-treatment. The alleged ill-treatment related to:

- the time of apprehension, after the persons had been brought under control (and handcuffed);
- the time when the suspects were being transported to the police station;
- the time when the suspects were interviewed in the police station.

The ill-treatment was purportedly inflicted as a means to force the suspects to sign certain documents, to confess to particular crimes² or to punish them for the alleged crime committed.³

The alleged ill-treatment consisted primarily of slaps, punches and kicks to the body and/or head as well as, on occasion, the use of batons or sticks. It should be noted that the delegation again heard in particular, many allegations of ill-treatment made by persons of African descent, both Portuguese citizens and foreign nationals. In addition to physical violence, the CPT's delegation received many allegations that police officers (PSP, GNR and PJ) insulted them verbally and referred in derogatory terms to the colour of their skin.

² Notwithstanding Article 126 of the Code of Criminal Procedure on forbidden methods of evidence.

³ By communication received on 12 February 2020, the PSP responded to certain points raised in the preliminary observations made by the CPT's delegation at the end of the visit. It is notable that the PSP reject the idea that a person could be ill-treated to force a confession or to sign certain documents as such acts are optional and have no legal consequences. Regrettably, the clear legal provisions do not appear to act as sufficient deterrent for those police officers who wish to ill-treat detained suspects as a punishment or to obtain information, including in the form of a signed confession.

14. The CPT wishes to highlight the following cases of alleged ill-treatment. While some of the persons met by the delegation stated that they wanted to make a complaint about the ill-treatment,⁴ others provided information on the condition that their names would not be divulged.

- i. On 28 October 2019, AMT was apprehended on the street in Setúbal by the GNR and PJ and taken to his house. He alleged that when he did not reply as to whether he had any drugs, a GNR officer slapped him in the face and hit him three times in the chest, and that when he was slapped a second time across the face, it dislodged his dental braces, which has made it difficult for him to chew ever since. Further, after he was taken to the police station, he claimed that, while still handcuffed, he was repeatedly jabbed on the right leg and in the chest with a stick while being questioned as to where a stash of drugs was hidden. He stated that he was kept handcuffed for nine hours. AMT's wrists still bore marks from the cuffs when he was met by the CPT's delegation nearly six weeks later.
- ii. On 4 October 2019, CP was apprehended by the PSP and taken to Pontinha Police Station where he was allegedly slapped and kicked by three or four officers. Subsequently, he was taken to hospital where he underwent an MRI of the head, an ultrasound and blood and urine tests. When presented to the court he complained to the judge about his treatment by the police. Upon entry to the prison, the nurse had described a number of injuries and concluded that the clinical findings were compatible with the allegations of ill-treatment. Upon examination by the delegation's doctor at Caxias Prison, CP presented the following injuries: two parallel scars, one measuring 3.7 cm and the other 2.1 cm above the left eye; a 1.7 cm linear scar above the right eye, together with another v-shaped scar above the right eye, measuring 1.0 cm and 1.4 cm respectively.
- iii. On 4 October 2019, DBP was arrested by four GNR officers on the street. After he was placed face down on the ground and handcuffed behind his back, the officers allegedly proceeded to kick him in the head and body. He was transported to the GNR police station at Vale Fetal, Charneca de Caparica, where he was allegedly subjected to further kicks to the body and punched around his left eye and in the ribs on the left side of his body. Upon arrival at Setúbal Prison, on 5 October, he was photographed by the prison officer on duty and on 8 October his injuries were recorded as follows by the doctor: "haematoma on the infra-orbital left side; a haematoma on left shoulder; slight haematoma left of sternum; slight redness in posterior part of neck; pain when breathing and pain in left ribs upon palpation; reports that trauma due to aggression." He was sent to hospital on 24 October to be X-rayed, the results of which arrived on 12 November, indicating a suspected fracture of the fourth rib on the left side.

⁴ In this respect, it is incumbent upon each person to lodge a complaint with the relevant authorities as providing the CPT with details of an allegation of ill-treatment does not constitute an official complaint. This was made clear to the persons met by the CPT's delegation during the visit.

- iv. On 3 October 2019, when RV was apprehended by five GNR officers, he alleged that they subjected him to pepper spray both before and after they handcuffed him even though he was not resisting arrest. Further, he stated that each of the police officers proceeded to kick him and that they continued to do so after he had been thrown on the ground. He further stated that, during the transport to the GNR station of Arroda dos Vinhos, the officers sitting on either side of him in the back seat of the vehicle had elbowed him in the torso. At the station, he had allegedly been stripped down to his underwear and hit repeatedly with an iron rod on the sole of his left foot. Upon admission to Lisbon Judicial Police Prison, his injuries had been partially photographed and he was seen by a nurse who recorded haematomas around both eyes, a cut to the left eyebrow and bruising on the neck which were deemed to be compatible with his allegations.
- v. On 9 September 2019, JRCM was arrested on the street by four PSP officers who apparently all had their sidearms drawn. One officer allegedly grabbed the suspect's head and slammed it against an advertisement screen resulting in the glass breaking and JRCM cutting his forehead. After being handcuffed behind his back, two officers bandaged the wound as it was bleeding profusely, and he was transported to the PSP station in Cascais and thereafter to Cascais hospital to have the wound sutured. Upon arrival at Caxias Prison on 10 September, his injury was photographed and a nurse described the wound as "a cut in the frontal region of the left side of the cranium of approx. 5 cm". On 12 September, the prison lawyer took a statement from JRCM detailing the above allegation.
- vi. On 22 August 2019, JB alleged that after he was apprehended by the PSP and brought to Benfica Police Station, he was subjected to slaps and kicks while sitting on a chair with his hands cuffed behind his back. Upon arrival at Lisbon Judicial Prison a guard photographed his injuries. The injury report drawn up by health care staff noted that he had bruising on his head, both forearms and his lower limbs and a haematoma on the dorsal surface of the left foot as well as a non-bleeding wound on the right index finger. The report concluded that the injuries were compatible with his allegations of ill-treatment.
- vii. On 20 August 2019, TEDA alleged that he was arrested in a tattoo parlour by four PSP officers who handcuffed him behind his back and one officer slapped him around the head. He was placed in a vehicle between this same officer and another officer who both allegedly elbowed him in the chest and on both flanks during the journey to the police station, where he again received several slaps to the head. When he was admitted to Lisbon Central Prison that evening, prison staff noted visible injuries on him and photographed them. The nurse noted "a haematoma on the anterior side of the upper limb approximately 1.1 cm and on the left forearm approximately 2.2 cm" and concluded that the injuries were consistent with the statement made by the prisoner.

Although there had been no follow-up since he had given his statement to the prison lawyer on 21 August stating that he wished to file a complaint, he said that the two officers who had allegedly ill-treated him had visited him in prison on 30 August to offer him an alternative measure. Contrary to standard practice, the names of these officers were not recorded upon their entry to Lisbon Central Prison at 15h00 on 30 August.⁵

⁵ The register at the prison entrance only recorded that two police officers had entered the establishment at 15h00 on 30 August 2019.

- viii. On 16 April 2019, PC was arrested on the street in Setúbal by the PSP. He alleged that he was ordered to kneel down in front of the headlights of the police van and that one officer held him from behind with a long rubber baton while four other officers subjected him to blows with batons. He stated that he was subsequently pushed to the ground and subjected to several kicks and baton blows until he momentarily lost consciousness. He was taken to hospital and thereafter to the PSP station in Seixal. At the police station, a PSP officer removed the plastic cuffs from his wrists with a knife but in the process stabbed him in the back which resulted in PC being taken to hospital again to have his wound sutured (at the time of the delegation's visit, he displayed a 3 cm-long pink linear scar in the centre of his lower back where he had received 3 stitches). After two days in the police station he was transferred to prison on 18 April where, upon arrival, his injuries were photographed and noted down by a nurse. They included, notably, haematomas around both eyes and to the left side of his chest and back, upper left leg and left hand.

15. The CPT's delegation received numerous additional allegations of ill-treatment by PSP and GNR officers from persons met in prison, not all of whom had been fully examined by a nurse or doctor upon admission. For example:

- ix. One person alleged that he was apprehended by the PSP on the street on 2 November 2019 and taken to Calvairo Police Station where he was placed in a room and handcuffed to a chair for several hours. During this period, the officer who had arrested him allegedly slapped him across the side of his head and subsequently, while he was on the floor, delivered several kicks to his head and body. He also stated that the officer punched him in the face apparently because he refused to attend a line-up. Upon entry to Lisbon Judicial Police Prison, his injuries had been photographed which included a very visible black eye.
- x. Another person alleged that on 25 June 2019, when he was apprehended on the street in Setúbal by the PSP, he was slapped several times about the head. Thereafter, he stated that he was transferred to the police station where he was handcuffed to a bench in a room and subjected to repeated slaps and kicks to various parts of his body. Purportedly the ill-treatment was administered because he refused to sign any documents or confess to the accusations made against him until he saw a lawyer.

In respect of the cases ii to viii above, a statement taken by the prison jurist, together with the photographs taken upon entry to the prison and the injury report filled out by the prison nurse, were forwarded to the Director General of Prison and Rehabilitation Services (DGPRS) or the relevant Inspection and Audit Service (SAI) for follow-up in accordance with Prison Circular 1/2017. **The CPT would like to be informed about the investigations carried out into cases ii to viii above by the Inspectorate General of Home Affairs (IGAI) or the Public Prosecutor's Office (date when case was opened and status of the investigation including as regards the interviewing of the victim and alleged suspects).**

16. The CPT's delegation also received a number of allegations of ill-treatment inflicted by PJ officers, both in the Lisbon and Porto areas. For example:

- i. A man apprehended in a motel room in the Lisbon area in the last week of November 2019 by a number of officers claimed that a certain inspector punched him three times in the back after he was handcuffed and lying prone on the floor, and that thereafter he was subjected to repeated insults and threats of violence (as was his girlfriend) until another PJ inspector told his colleagues to stop as there should be no ill-treatment.
- ii. A person apprehended on the street in Porto on 18 November 2019 and taken to the PJ headquarters alleged that while in the office being interviewed, he was slapped and punched several times, purportedly to make him talk. Upon entry to Porto Prison, a nurse had noted "left periorbital haematoma".
- iii. A person who was apprehended at his home in Porto on 16 October 2019 stated that, as he was standing with his hands cuffed in front of him, a PJ officer slapped his face and punched him in the ribs in front of his family and threatened him with more violence if he did not give up the drugs he was suspected of concealing. He claimed that his lawyer advised him not to make an official complaint as the judge would take no action.

17. Following the visit, the attention of the CPT was drawn to two additional incidents, both of which were extensively reported in the media.

The first one concerns the case of Cláudia Simões who was allegedly assaulted by a PSP officer on Sunday, 19 January 2020 and had to receive treatment at the Amadora-Sintra Hospital. The woman in question, who had been travelling by public transport with her young daughter, suffered visible injuries to the head during apprehension and also apparently while being transported in a police vehicle. She also alleged that the PSP officer repeatedly insulted her in a racist manner. This incident would appear to reinforce the delegation's findings that not all PSP officers are properly trained to effect an arrest using proportionate force applying techniques of control and restraint in a professional manner (see paragraph 19 for more on this matter). **The CPT would like to be informed of the criminal and/or disciplinary steps being taken to investigate this case in an effective manner.**

The second case concerns the death of a Ukrainian citizen apparently at the hands of three Immigration and Border Service (SEF) officers on 12 March 2020, while he was being detained in a holding cell at Lisbon Airport pending his deportation. **The CPT would like to be informed about the circumstances of the death and the investigation initiated by the Judicial Police and, in due course, the outcome of the criminal and disciplinary proceedings.**

18. In the course of the visit, the CPT's delegation met many persons who complained about excessively tight handcuffing and in a number of instances it met persons who still bore marks caused by the handcuffs weeks and even months afterwards. Further, several persons complained of being handcuffed for prolonged periods and others of being handcuffed to objects such as a bench or chair or the railings on a staircase. **The CPT recommends that the Portuguese authorities ensure that, where it is deemed essential to handcuff a person, the handcuffs should under no circumstances be excessively tight⁶ and should be applied only for as long as is strictly necessary. Further, detained persons should not be handcuffed to fixed objects.**

In addition, in light of many allegations by apprehended persons that their hands had been cuffed behind their backs during transport,⁷ **the CPT recommends that such a practice should be avoided given the potential to cause unnecessary pain to the person concerned and the risk of injury in the case of accident.**

19. The CPT recognises that the arrest of a suspect is often a hazardous task, in particular if the person concerned resists and/or is someone whom the police have good reason to believe may be armed and dangerous. The circumstances of an arrest may be such that injuries are sustained by the person concerned (and by police officers), without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers.

In light of the information gathered during the 2019 visit, **the CPT reiterates its recommendation that police officers be regularly reminded of these basic principles, including through practical training exercises. Further, every use of force by law enforcement officials should be properly documented (description of facts; any injuries sustained; whether the detained person was brought to hospital, etc.).**

20. In light of the delegation's findings and observations in the course of the 2019 visit, which reinforce the findings from the CPT's 2012 and 2016 visits, it appears that infliction of ill-treatment particularly against persons of African descent and foreign nationals cannot be considered an infrequent practice. Indeed, the seriousness of the information gathered in the course of the 2019 visit concerning ill-treatment calls for immediate and determined action by the authorities. The Portuguese authorities must recognise that the existence of ill-treatment by police officers is a fact, and that it is not the result of a few rogue officers. Police culture must be robust enough to firmly reject the practice of ill-treatment within its ranks. The authorities should vigorously explore all means to ensure that the message of zero tolerance of ill-treatment of detained persons reaches law enforcement officials at all levels; they should be made aware, through concrete action, that the government is resolved to stamp out ill-treatment of persons deprived of their liberty. Combating ill-treatment entails not only the adoption of the appropriate legal norms but also taking the necessary steps to ensure their implementation including the timely transmission of information on allegations of ill-treatment to the competent prosecutorial authorities (see paragraphs 34 and 72 below).

⁶ It should be noted that excessively tight handcuffing can have serious medical consequences (for example, sometimes causing a severe and permanent impairment of the hand(s)).

⁷ The application of handcuffs to detainees during transportation should only be resorted to when the risk assessment in an individual case clearly warrants it. When the use of such means is considered absolutely necessary, it should be done in such a way as to minimise any risk of injury to the detained person.

Further, putting an end to ill-treatment by law enforcement officials requires a multifaceted approach, comprising: a competitive recruitment process of police officers based upon clearly defined selection criteria; an educational training course for all new recruits and existing police officers with a particular emphasis on technically advanced methods of crime investigation based on human rights principles (see paragraph 21); the accountability of senior officers for their line management responsibilities; the application of appropriate sanctions (criminal and disciplinary) for the perpetrators of ill-treatment and for those who fail to prevent or report it; and the existence of effective and independent procedures for examining complaints and other relevant information regarding alleged ill-treatment by police officers.

The CPT recommends that the Minister of the Interior and the Heads of the GNR, PSP and SEF deliver a strong message that the ill-treatment of detained persons is illegal, unprofessional, and will be the subject of appropriate sanctions. This message should be reiterated at appropriate intervals at the level of regional police directorates. Further, the relevant authorities should ensure that an effective investigation is carried out into every allegation of ill-treatment and that senior officers are held accountable for their line-management responsibilities. The corollary of this is that law enforcement officials are sufficient in number and adequately resourced to carry out their tasks professionally (see paragraph 12 above).

A similar message should be delivered by the Minister of Justice and the Director of the Judicial Police to all PJ officials.

In addition, the CPT recommends that the PSP and GNR pursue the programmes initiated to strengthen community relations, notably in areas with a high proportion of migrants and citizens of African descent. The Committee would like to be informed of the actions being taken to eradicate racist actions within the law enforcement agencies as well as on the steps being taken to increase the recruitment of law enforcement officials from minority backgrounds.

21. Moreover, the Committee considers that it is necessary for the competent authorities to enhance the training provided to GNR and PSP officers regarding methods of police investigation. Officers must understand that first and foremost, the precise aim of the questioning of suspects should be to obtain accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty.

To this end, specific training on professional interviewing techniques should be regularly provided to police operational officers and investigators. The training should place particular emphasis on an intelligence-led and physical evidence-based approach, thereby reinforcing the legal provisions contained within the Criminal Procedure Code of Portugal which state that confessions obtained during questioning have no value for the purpose of securing convictions.

A system of ongoing monitoring of police interviewing standards and procedures should also be implemented in order to facilitate the investigation of any allegations of ill-treatment. This would require an accurate recording of police interviews which should be conducted with electronic video recording equipment. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detained person during an interview, and of the persons present during each interview.

The CPT recommends that the Portuguese authorities act to ensure that law enforcement officials carry out their duties in accordance with the relevant provisions of the Criminal Procedure Code. To this end, professional training for these officials should be provided regularly, which should cover appropriate interview and investigation techniques, as well as the prevention of ill-treatment and policing in a diverse society.

More generally, in view of the large numbers of police officers currently being recruited into the PSP and GNR, the CPT would like to be informed of the different elements that make up the rigorous recruitment procedures for police officers.

Further, the CPT recommends that the Portuguese authorities progressively establish dedicated interview rooms with audio and/or video equipment for recording police interviews and that the electronic recording of questioning by the police be made standard practice, as envisaged by Article 141(7) of the Code of Criminal Procedure.

22. The CPT also considers that the experience of other countries demonstrates that issuing Body Worn Video Cameras to law enforcement officials and their systematic use during any incidents, represent an additional safeguard against abuse by officials as well as a protection against unfounded allegations of ill-treatment. **The Committee would appreciate the comments of the Portuguese authorities on this matter.**

23. In the Committee's view, it is essential to promote a police culture where it is regarded as unprofessional to resort to ill-treatment. There must be a clear understanding that culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring/has occurred and fails to act to prevent or report it. The CPT considers that proper conduct by members of the police vis-à-vis detained persons should be fostered, in particular by doing more to encourage police officers to prevent colleagues from ill-treating detained persons and to report, through the appropriate channels, all cases of violence by colleagues. This implies the development of a clear reporting line to a distinct authority outside of the police unit concerned as well as a legal framework for the protection of individuals who disclose information on ill-treatment and other malpractice.

The CPT recommends that the Minister of the Interior, the Heads of the GNR and PSP and senior commanders actively pursue their efforts to promote a culture change within the ranks of the law enforcement agencies.

3. Effective investigations of ill-treatment

24. The effectiveness of action taken when ill-treatment may have occurred constitutes an integral part of the CPT's preventive mandate, given the implications that such action has for future conduct. The state's credibility in respect of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

Conversely, when officials who order, authorise, condone or perpetrate torture and ill-treatment are brought to justice for their acts or omissions, an unequivocal message is delivered that such conduct will not be tolerated.

25. The CPT recalls that in its reports on the 2012, 2013 and 2016 visits⁸ it raised the case of a serious allegation of ill-treatment of one or more persons by a GNR officer. The lack of effective investigation into this case led the CPT to look more generally at the system in place to investigate allegations of ill-treatment by law enforcement officials during its two most recent visits. The CPT was therefore pleased to learn in 2017 that the above-mentioned case [NUIPC 300/13.0T3STC] had been re-opened and the officer concerned indicted. Subsequently, by letter of 19 July 2018, the Permanent Representative of Portugal to the Council of Europe informed the CPT that the GNR officer concerned had been sentenced to four and half years of imprisonment for four acts of torture. This was a positive, albeit greatly delayed, message that there would be no impunity for such acts. However, the CPT has since learned that the conviction was overturned by the Court of Appeal of Évora on 12 March 2019 on a technicality and that the case would be tried again.*

The CPT would like to be informed of the outcome of the new criminal process. Further, the CPT would like to be informed whether the suspended GNR internal disciplinary proceedings (no. 373/16CTLSB) have been re-opened and concluded. It would also like to be informed about what position the officer currently holds within the GNR, and whether or not the officer's current functions involve any direct contact with persons deprived of their liberty.

26. In its report on the 2016 visit, the CPT looked into the effectiveness of investigations into allegations of ill-treatment undertaken by IGAI as well as by the internal units of the GNR and Judicial Police. The CPT made a number of recommendations to provide IGAI with increased powers (including the ability to order forensic medical examinations) and more resources to ensure investigations were carried out promptly and thoroughly. It also raised concerns that not all allegations of serious ill-treatment by GNR, PSP and SEF officers were being reported to IGAI for investigation. **The CPT would like to receive information on the main changes contained in the new draft Organic Law regulating IGAI, notably as regards its investigative powers and resources.**

⁸ See the reports on these visits: CPT/Inf (2013) 4, paragraph 10; CPT/Inf (2013) 35, paragraphs 54 to 60 and CPT/Inf (2018) 6, paragraph 15.

* *Editor's Note: On 6 October 2020, the Évora Court of Appeal denied the appeal, thus confirming the first instance court's sentence of four and a half years of imprisonment for the GNR officer.*

27. Further, at present, all disciplinary proceedings against a law enforcement official are suspended pending the outcome of the criminal process. In practice, this means that where a case might go to trial the disciplinary proceedings are likely to be suspended for many years as was highlighted in the report on the CPT's 2016 visit.

For example, the case PND-39/2010 concerning a case of alleged ill-treatment of a male student by PSP officers at Bairro Alto Police Station on 24 May 2010 and for which medical evidence existed,⁹ took five years for a court decision to be given and only on 3 March 2016 did IGAI propose a disciplinary punishment of 75 days' suspension. This was subsequently appealed, delaying further the outcome of this case. **The CPT would like to be informed of the outcome of the disciplinary proceedings in this case.**

28. In another case dating back to October 2014, a young lawyer, João Pedro Adrião, was severely beaten by officers from an 11-person PSP intervention unit prior to a football game in Guimarães, which resulted in him losing an eye. In November 2019, the presiding judge at the trial of the PSP officers concluded that although certain members of the unit were responsible for the "barbarous aggression", it was not possible to identify the actual perpetrators of the aggression as they were all wearing helmets and visors, and hence he had to acquit them.

In the light of the facts provided by the court in this case, the CPT would like to be informed of the disciplinary measures taken against the members of the PSP intervention unit. Further, it wishes to be informed of the command and control measures now in place to be able to identify officers from intervention units when they are in the field in full personal protective equipment. At a minimum, all officers must have a visible identification number on their helmets and suits and the commanders of the intervention must know where their officers are deployed and assume responsibility for the actions of their officers.

29. More generally, the findings of the 2016 visit pointed to the fact that disciplinary investigations were usually suspended until the public prosecutor determined whether to pursue criminal proceedings. If the public prosecutor decided that insufficient evidence was available for a criminal process, it appeared to follow that the disciplinary process would be dropped too.

The concerns raised by the CPT in its report on the 2016 visit remain valid.¹⁰ **The CPT recommends that the disciplinary process should run in parallel with the criminal investigation given the very long periods (five or more years) required for a criminal case to be brought to court.** The level of proof required for a disciplinary sanction is lower than that for a criminal conviction, and it is important that the authorities be seen to be acting to punish acts of ill-treatment within a reasonable period of the events taking place. Further, notably as regards IGAI cases, it did not appear that the Public Prosecutor undertook further investigative steps to obtain evidence but relied on the evidence gathered by IGAI. Moreover, it was not clear whether any interim measures were applied to police officers even when *prima facie* evidence lent credence to the allegations of ill-treatment which, in light of the lengthy criminal (and disciplinary) proceedings, increased a perception of impunity. **The CPT would like to be informed whether any measures were taken such as suspension with full pay or transfer to other duties in respect of the officers implicated in the cases raised in paragraphs 17 (1), 25, 27 and 28 above prior to the outcome of the criminal and disciplinary proceedings.**

⁹ The emergency unit of the local hospital diagnosed the person as having a craniofacial trauma with aligned fracture of the left jaw, bleeding head wounds and excoriations in the face.

¹⁰ See CPT/Inf (2018) 6, paragraphs 14 to 21

Further, the CPT would like to receive the statistics on the number of cases relating to alleged ill-treatment (“physical offences”) by law enforcement officials (GNR, PSP and SEF) that were either supervised or investigated directly by IGAI, as well as the number of disciplinary proceedings, including their outcome, for the years 2017, 2018 and 2019.

30. More fundamentally, the CPT is of the view that every alleged case of ill-treatment by law enforcement officials should be criminally investigated thoroughly and promptly. The duty to carry out such investigations lies with the Public Prosecutor who alone is empowered to institute criminal proceedings. However, as the CPT has stated in the past, to avoid a situation of *de facto* impunity, steps need to be taken to fast track the criminal investigation and court procedures concerning cases of alleged ill-treatment by law enforcement officials.

31. In the course of the 2019 visit, the CPT’s delegation had an opportunity to exchange views on this matter with a number of prosecutors responsible for the investigation of cases of alleged ill-treatment by law enforcement officials, notably in the Lisbon region.

The Regional criminal investigation and action department (DIAP) for Lisbon is composed of only three prosecutors and four officials. It is not only responsible for crimes involving the use of force by public officials, but also investigates and prosecutes “violent, economic and financial crimes, which are highly organised or of special complexity”. Since its establishment in 2016, it has dealt with 742 cases. As regards specifically investigations into cases against law enforcement and prison officials, the vast majority of them concerned “(serious) bodily harm” under Article 277, paragraph 2, of the Code of Criminal Procedure. For example, at the time of the visit:

- in 2016, 110 investigations were opened, of which 98 had been archived/dismissed and 5 were still under investigation; in 3 cases indictments were pending and in one case sentencing was still awaited; two cases resulted in a suspended sentence of seven months and of one year, respectively, and one in a fine of 600 Euros;
- in 2017, 168 investigations were opened with 17 cases still pending, 5 cases resulting in an acquittal by the court and in one case a PSP officer was fined 1,080 Euros in lieu of a 10-month prison sentence and in another case a PSP officer was fined 240 Euros;
- in 2018, 133 investigations were opened of which 84 had been archived/dismissed, 35 cases were pending and three had resulted in acquittals by the court; in two cases fines were imposed in lieu of prison sentences, in one case concerning the PSP, a two-year prison sentence was suspended on probation and in three cases the judgment was pending;
- in 2019, 118 investigations were opened of which 22 had been archived/dismissed and 93 were still pending; in three cases, charges had been filed.

32. The CPT is not in a position to examine the proportionality of the sentences handed down by the courts but notes that very few cases result in charges being brought against law enforcement officials in particular. This is not surprising given the limited resources available to the DIAP. Further, as the CPT has repeated on numerous occasions, it is evident that for any case of alleged ill-treatment by a law enforcement official to be successful it is essential that a forensic medical examination is carried out in a timely manner. Where there is no clear medical evidence available it is extremely difficult to prove an allegation of ill-treatment.

Nevertheless, in the light of the CPT's findings that ill-treatment by law enforcement officials is not an infrequent practice, there is a need to improve the promptness by which cases of alleged ill-treatment are investigated by the DIAP in Lisbon and other regions of Portugal. This will require increasing the staffing resources available to the DIAP. Persons met by the CPT's delegation in prison who had complained of police ill-treatment (been photographed and had some of their injuries noted by prison staff) had in most cases not heard from or been interviewed about their cases several months or more after their file had been sent to the Director General of Prisons. The CPT considers that the DIAP, in close co-ordination with IGAI, should ensure that cases of alleged ill-treatment or injuries indicative of ill-treatment forwarded by the prisons are followed up much quicker, within 48 hours, by an interview with the complainant. In parallel, the recording of injuries and their transmission to the appropriate bodies could be made more effective (see paragraph 72 below).

33. The CPT also wishes to reiterate that the first interview with a person who has alleged ill-treatment must not be delegated to the GNR or PSP to conduct.

For example, at Setúbal Prison, the CPT's delegation met a person (MC) who alleged that when he was apprehended by the GNR in Almada on 13 September 2019, he had been repeatedly kicked and subjected to baton blows to his upper body and head while lying on the ground both before and after he was handcuffed. Upon entry to prison, his injuries had been photographed and recorded. At the beginning of December 2019, he was summoned to the GNR station in Trafaria (Almada) but when he arrived at the station, he found that the persons who wanted to note down his complaint were the same officers who had allegedly ill-treated him. Not surprisingly, he stated that he did not want to pursue any complaint.

This was by no means a unique case recounted to the CPT's delegation.

34. In the light of the above remarks, **the CPT recommends that, at a minimum, the Lisbon DIAP, as well as the general prosecutor's regional offices in Coimbra, Evora and Porto, be provided with additional resources in order to ensure that all cases of alleged ill-treatment by law enforcement officials can be investigated effectively, notably in a prompt and thorough manner.**

Further, the CPT recommends that protocols be put in place to ensure that whenever a case of alleged ill-treatment, or of injuries indicative of ill-treatment, is forwarded to the prosecutor's office from the prison authorities, a representative of the relevant DIAP or from the IGAI interviews the person concerned within 48 hours with a view to determining whether a forensic medical examination is necessary and what further investigative steps are required.

In the CPT's view, an even stronger message would be sent in the fight against impunity if a special unit within the Prosecutor General's Office was established which was tasked exclusively with investigating and prosecuting cases of alleged ill-treatment by law enforcement officials. Such a development combined with the other measures proposed in this report would serve to underline the Portuguese authorities' absolute determination to stamp out abusive behaviour by law enforcement officials. **The CPT would appreciate the comments of the General Prosecutor and of the Minister of Justice on these matters.**

4. Safeguards against ill-treatment

35. In the course of the 2019 visit, the CPT's delegation reviewed the safeguards afforded to persons deprived of their liberty by the PSP, GNR and PJ; namely, the rights of such persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor. It also examined whether such persons were informed without delay of all their rights and whether the custody records were properly filled out.

The legal safeguards for detained persons are provided for in the Criminal Procedure Code (CCP), and supplemented by Order no. 5863/2015 of the Minister of the Interior on Material Conditions in Police Premises, which applies to both the GNR and the PSP, and by Order no. 12786/2009 regulating the Conditions of Detention in Judicial Police facilities and in the Courts and Public Prosecution Services.

36. The right of detained persons to notify a family member or a person of confidence of their situation is clearly provided for in law. The vast majority of persons met by the CPT stated that they had been given an opportunity to contact someone about their detention. A few persons stated that they had not been afforded such an opportunity and that no reason had been provided for the refusal. **The CPT recommends that the Portuguese authorities continue to be vigilant in ensuring that the right of persons deprived of their liberty by law enforcement officials to notify their detention to a third party, as from the outset of custody, is effective in practice.**

37. As the CPT has stated in the past, its objective of guaranteeing an effective right of access to a lawyer during police custody is not primarily linked to issues of due process or the right to a defence; it is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty – and, *a fortiori*, when the individual is subjected to police questioning – that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty. The right of access to a lawyer must include the right to talk to him/her in private; the detained person should also in principle be entitled to have the lawyer present during any interview with law enforcement officials.

38. The right of access to a lawyer is guaranteed in the Portuguese Code of Criminal Procedure (CCP) to a person once he or she has formally become the subject of an investigation by law enforcement officials by being declared an "*arguido*". On the basis of both Order no. 5863/2015 on Material Conditions in Police Premises and Decision no. 10717/2000 of the Minister of the Interior, the right of access to a lawyer as from the outset of the deprivation of liberty is extended to all persons deprived of their liberty.¹¹ Further, Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third person informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty is also binding on Portugal.

¹¹ As regards the Judicial Police, Article 5 of Order no. 12786/2009 states that the detained person has the right to immediately contact a lawyer.

However, the findings of the visit in 2019 indicate once again that the right of access to a lawyer within the first few hours following deprivation of liberty by PSP or GNR or PJ depends on whether a detained person can afford a private lawyer. The majority of persons interviewed stated that they did not have access to a private lawyer and that they only met an *ex officio* lawyer at the court hearing before a judge, which could take place up to 48 hours after the moment of apprehension.

The CPT reiterates its recommendation that the Portuguese authorities 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. From a practical point of view, this will require putting in place an arrangement with the Portuguese Bar Association to ensure that there is a duty roster of ex officio lawyers who can visit police stations when required.

In addition, the CPT would be like to receive a copy of the evaluation undertaken by the European Commission on the implementation of Directive 2013/48/EU in Portugal.

39. Article 21 of Order no. 5863/2015 relating to the PSP and GNR provides for the right of access to a doctor, including a doctor of one's own choice at the detained person's expense. Article 29 of Order no. 12786/2009 provides for an analogous provision in relation to persons deprived of their liberty by the Judicial Police. In general, the CPT's delegation received very few complaints about access to a doctor by persons deprived of their liberty by the police.

That said, there was still no register in the police stations visited of persons who had been taken to hospital for treatment; such a register should contain information such as the date and time the detained person was examined, the name of the hospital or health care service providing the treatment and a reference to the detention/criminal file (the name of the person would not need to be recorded). Additionally, detained persons were not provided with a copy of the medical information from the hospital or doctor's consultation.

The CPT recommends that the electronic police detention register contains a record of all medical interventions concerning detained persons in each police station and a copy of any medical documentation should be made available to the detained person.

40. The CPT's delegation noted that, in accordance with Order no. 5863/2015 on Material Conditions in Police Premises, a notice explaining the rights and duties as contained in Article 61 of the CCP was displayed in the police stations visited and a leaflet setting out these rights, in several languages, was available. Further, it could verify that detained persons signed a statement indicating that they had been informed of their rights. However, a few persons met by the delegation claimed that they had not been informed of their rights in a language they could understand.

The CPT recommends that law enforcement officials are reminded of their obligation to immediately inform detained persons of all their rights in a language they understand and that such information is accurately transmitted.

41. Custody records examined by the delegation in the police establishments visited were generally well kept and contained relevant information. Nevertheless, in a number of instances no explanation was provided as to why the signature of a detained person was absent regarding one or more rights. The absence of any signature should be duly accounted for in the record. Further, the time of apprehension should be included in each custody record and not just the time of arrival at the police station.

Moreover, the CPT is particularly concerned by the integrity and accuracy of certain documentation drawn up by the police, notably the PSP. In the course of the 2019 visit, the CPT's delegation received an allegation, corroborated independently by a number of witnesses whom the delegation met separately, concerning a university student who was arrested and taken to Lapa Police Station in Lisbon. At the station, he was handcuffed to the railing of the stairs and subsequently slapped and kicked by several PSP officers in an office after asking to contact someone and have the assistance of a lawyer. A little later, the student was released while his companions were transferred to Lisbon PSP Command Headquarters. When the delegation visited Lapa Police Station there was no record at all that the student had been arrested and detained for several hours at the station. The student in question, when met by the delegation, explained that he was too frightened to complain officially as he thought it might have consequences for his studies.

The accurate and full recording of every person arrested and detained at a police station is a fundamental safeguard against any arbitrary deprivation of liberty and of any treatment contrary to Article 3 of the European Convention on Human Rights.

The CPT recommends that the PSP hierarchy reiterate the legal obligation on all police officers and notably those working at Lapa Police Station that every deprivation of liberty must be fully and comprehensively recorded.

5. Conditions of detention

42. In the course of the 2019 visit, the CPT's delegation visited three PSP stations and one GNR station. As was the case during the previous visit, it was clear from interviews with staff and detainees and from consulting the relevant registers that overnight detention in most police stations remains a relatively infrequent occurrence, the exception being the Lisbon PSP Command Headquarters.

The material conditions in the GNR and PSP stations are governed by Regulation 5863/2015 and regularly inspected by IGAI, and also visited by the NPM.

43. The conditions at the Lisbon PSP Command Headquarters and at the Porto Belavista Holding Facility have not changed since the 2016 visit. The main deficiency at both establishments was the poor access to natural light and the insufficient artificial lighting. In addition, at the Porto facility the cells were noticeably cold (15°C at the time of the visit) and the CPT's delegation received a number of complaints about the cold from persons who had been detained overnight in this facility.

The single cell at the GNR station in Gondomar was equipped with a concrete plinth, a sink, and a mattress, blanket and pillow, and each detained person was provided with a sheet if held overnight. The cell was clean, well ventilated and had sufficient artificial lighting. It also possessed a floor-level toilet and a sink.

The CPT recommends that the lighting in all detention cells be sufficient for reading purposes and that cells be adequately heated and/or that detained persons be provided with sufficient blankets to ward off the cold.

B. Prison establishments

1. Preliminary remarks

a. overcrowding in prisons

44. The problem of prison overcrowding has been a long-standing challenge for the Portuguese authorities and the CPT was pleased to note the progress made in reducing the prison population from 14,007 prisoners in September 2016 to 12,697 in December 2019. With an official capacity of 12,934 prison places, the occupancy level stood at 98% and the population rate at 124 per 100,000. The most notable change was at Lisbon Central Prison where the prison numbers had been reduced by one-third. This has also had a positive impact on living conditions. The CPT has also noted that the number of persons committed to prison during weekends under the *Por Dias Livres* (PDL) system¹² has been reduced dramatically and stood at 145 on 15 November 2019.

However, there can be no room for complacency. Despite this positive overall situation, certain prison establishments are continuing to operate significantly above their official capacity such as Caxias (140%) and Porto (145%). Further, some nine smaller regional prisons were still operating between 120% and 140% of their official capacity. The CPT found that the living conditions within parts of those establishments visited by its delegation could be considered as amounting to inhuman and degrading treatment (see paragraphs 52 to 55 below) and also impacted negatively on the regime, staff-inmate relations and good order in the establishments.

Further, the CPT wishes to stress that a prison cannot function effectively if it is operating at 100% of its capacity. There must always be some margin for transferring incompatible prisoners from one wing to another or for receiving additional prisoners or for taking back prisoners on temporary release. The Council of Europe's *White Paper on Prison Overcrowding* states that "if a given prison is filled at more than 90% of its capacity this is an indicator of imminent prison overcrowding. This is a high-risk situation and the authorities should feel concerned and should take measures to avoid further congestion."¹³

45. The Portuguese authorities are well aware of the situation and the 10-year *Strategic Vision for the System on the Enforcement of Sentences and Criminal and Educational Measures* envisages the closure of Lisbon Central and Setúbal Prisons, as well as the construction of a new Ponta Delgada Prison by 2024. The Portuguese authorities also recognise that the building of additional accommodation is unlikely in itself to provide a lasting solution to the challenge of prison overcrowding. Measures to promote policies to limit the number of persons being sent to prison, notably alternatives to imprisonment such as electronic tagging and community service, are being pursued.

¹² See Article 45 of the Criminal Code.

¹³ See Section 20 of the [White Paper on Prison Overcrowding](#) – CM(2016)121-add3, 23 August 2016.

The CPT, while welcoming the recent progress, recommends that the Portuguese authorities pursue their efforts to tackle the phenomenon of local overcrowding in the prisons through promoting greater use of alternatives to imprisonment, and notably as regards short sentences.¹⁴ The CPT would also like to receive updated information on the 10-year strategy and notably on the plans to replace Lisbon Central and Setúbal Prisons and to build a new prison in Ponte Delgado.

46. The CPT has followed closely the impact of the Covid-19 pandemic on prison systems and the measures taken by States to prevent its spread among prisoners and staff alike. To this end, Portugal adopted Law no. 9/2020 which allowed for the application of a partial pardon of sentences of up to two years, defined a special pardon regime, authorised extraordinary administrative exits and contemplated the exceptional bringing forward of conditional release. Persons convicted of certain crimes such as homicide, rape, paedophilia or domestic violence were excluded from being eligible.

The result of these measures combined with a reduction in the resort to remand detention (even for persons suspected of very serious crimes), was to reduce the prison population to 11,093 on 1 May 2020.

The CPT considers that measures of this nature, designed to keep the prison population within manageable limits, should be a permanent feature. It would like to be informed whether any of the measures envisaged by Law no. 9/2020 will be extended even after the Covid-19 pandemic is officially over.

47. The legal framework governing the prison system remains the same as that in force at the time of the 2012 and 2016 visits: namely, Law no. 115/2009 on the Code on Execution of Criminal Sanctions and Measures and, subsequently, the entry into force on 10 June 2011 of the new General Prison Regulations (Legislative Decree 51/2011).

b. prisons visited

48. The CPT's delegation visited Porto Prison for the first time since 2003 and carried out targeted follow-up visits to Caxias, Lisbon Central and Setúbal Prisons. Visits to the Judicial Police Prisons of Lisbon and Porto¹⁵ were also carried out to interview persons on remand and, at the time of the visit, the Lisbon facility was accommodating 136 persons for a capacity of 117 and the Porto facility 36 prisoners for a capacity of 48.

¹⁴ See, for example, the *White Paper on Prison Overcrowding (op.cit.)*, Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures, Recommendation Rec (2003) 22 on conditional release (parole) and Recommendation Rec (2010) 1 on the Council of Europe Probation Rules.

¹⁵ See CPT/Inf (2013)4, paragraph 32 for a brief description of these two facilities.

Porto Prison, located in the suburb of Custoias in Porto, was opened in 1974. The establishment, built to a “telegraph pole” architectural typology, consists of four parallel accommodation wings (A to D), each consisting of three landings, connected by a long corridor. There were two additional smaller units: one for prisoners on protection (RAI); and one for vulnerable prisoners with drug addiction, mental or psychological health challenges (UE). Prisoners ate their meals in a large refectory with two separate seating areas, organised on a wing by wing basis. At the time of the visit, the establishment was accommodating 987 prisoners, of whom 215 were on remand, for an official capacity of 682. Although the prison was operating at nearly 50% above its official capacity, this represented an improvement on the situation three months earlier when the population had been over 1,200.

49. The prisons of Caxias, Lisbon Central and Setúbal were described most recently in the report on the CPT’s 2016 visit to these establishments and remain essentially the same.¹⁶ At the time of the 2019 visit:

Caxias Prison had an occupancy of 548 adult male prisoners, of whom 305 were on remand, for an official capacity of 398.

Lisbon Central Prison was accommodating 817 adult male prisoners – including around 228 on remand – for an official capacity of 886. This represents a significant reduction from the 1,253 prisoners the establishment was holding at the time of the 2016 visit.

Setúbal Prison was accommodating 183 adult male prisoners, of whom 79 were on remand, for an official capacity of 162, which represented a considerable improvement on the overcrowding levels that had existed at the time of the 2016 visit. Nevertheless, given numbers had been as high as 220 only a month prior to the visit, close attention should be paid to ensure that the number in this facility are kept under control.

2. Ill-treatment

50. The vast majority of prisoners met by the CPT’s delegation in the establishments visited stated that they were treated correctly by prison officers and that relations were based upon reciprocity (i.e. if they showed respect to prison officers, they would be accorded respect in return). Nevertheless, a number of allegations of ill-treatment of inmates by prison officers were received at Caxias, Lisbon Central and Porto Prisons and a few at Setúbal Prison. The ill-treatment was said to consist of slaps, punches, kicks and blows with truncheons to the body and/or head.

51. At several of the prisons visited, the delegation received a number of detailed allegations concerning “welcome” beatings for persons who had apparently committed a sexual offence.

¹⁶ See CPT/Inf (2017) 39, paragraph 37.

At Lisbon Central Prison, the alleged ill-treatment consisted of truncheon blows to the legs and slaps to the head and took place in the corridor between the canteen and the entrance to F Wing. Several other complaints were also received of prison officers entering the cells of F Wing at night ostensibly to conduct a search whereupon they allegedly assaulted the inmate, delivering several punches and slaps to the body and head. In one case, an internal inquiry had been carried out by the prison lawyer, who found that the evidence supported the allegation of assault¹⁷ but that it was insufficient to pursue a disciplinary procedure against the prison officers concerned.¹⁸ **The CPT would like to be informed whether the Inspection and Audit Service (SAI) reviewed this case. Further, it would like to know whether the CCTV from Wing F was examined for the night in question.**

At Porto Prison, the alleged ill-treatment was said to occur when the prisoners first entered the establishment and were being searched or in the waiting room. At Setúbal Prison, the alleged ill-treatment occurred when the prisoner was completely undressed and being searched upon admission and consisted of kicks to the abdomen and head and being rapped on the head by the officer's knuckles.¹⁹

Persons in prison for crimes of a sexual nature in all the establishments visited also alleged that some prison officers would call them derogatory names and make verbal threats.

52. In the light of the information gathered during the 2019 visit, the CPT recommends that the Portuguese authorities reiterate to all prison managers and custodial staff that any form of ill-treatment is illegal and unprofessional and will be the subject of appropriate sanctions. This demands that all senior and middle managers pay special attention to the actions of staff, notably prison officers, under their responsibility and take immediate steps to address any indications that staff are abusing prisoners. Failure on the part of supervisory staff to fulfil this role is, in itself, a serious dereliction of duty.

More specifically, the Directorate General of Prisons and Rehabilitation Services (DGPRS) and the management of Lisbon Central, Porto and Setúbal Prisons should monitor closely the situation of persons admitted to prison for sexual offences.

53. At Porto Prison, the CPT's delegation received a number of allegations from inmates that on 5 December 2018, in the course of the prison officer strike, a passive protest in Wing A had been broken up by an intervention group in riot gear in the course of which several rounds of rubber bullets had been fired and a number of prisoners injured. The daily reports of the officer on duty (*Relatório do Graduado de Serviço do dia*), which were neither accurate nor comprehensive, made no mention of any disturbance on that day and nor did the prison possess any incidents logbook. The Director of Porto Prison was unable to provide the CPT's delegation with any information on this event and stated that the prison had not been informed about the SAI Nord investigation into the incident.

¹⁷ The inmate concerned who complained of being punched in the head and kicked in the leg was seen by the health care service on 8 February 2019, six days after the alleged aggression, and his injuries were recorded: "three fading bruises (yellow greenish colour) on the outer upper region of his thigh and on the peri-orbital bilateral region".

¹⁸ See *Processo de Inquérito* no. 5/IT/2019 of 26 March 2019 at Lisbon Central Prison.

¹⁹ The allegations concerned one prison officer who had recently been transferred to another establishment.

After contacting the DGPRS, the delegation was provided with an internal report on the incident drawn up on by the Chief Officer on 6 December 2018 and the SAI Nord report, of 20 February 2019. The SAI Nord report concludes that the intervention was necessary and proportionate. However, there is no information on whether prisoners from Wing A were interviewed about the incident by SAI Nord nor is there any analysis on the use of rubber bullets within a confined space. The purpose of any investigation into the use of force should not only be to verify the legitimacy, necessity and proportionality of the use of force but also to evaluate whether the incident could have been better managed and whether any lessons could be learned to avoid such demonstrations or interventions in the future. The report drawn up on the incident of 5 December 2018 that was shared with the CPT's delegation provided a poor factual description and analysis of what happened on that day. Consequently, based on this information, it is not possible to ascertain whether the conditions set out in the Regulation on the use of means of coercion in prisons issued by the Director General (February 2009) were fulfilled.

The CPT recommends that steps be taken at Porto Prison to ensure that information and reports relating to “extraordinary” incidents be classified in a specific folder or logbook and that the daily reports of the duty officers be accurately and comprehensively completed.

Further, the CPT would be interested to learn whether the SAI Nord, in carrying out their investigation, interviewed prisoners on Wing A and audited the armoury and gun(s) used to fire the rubber bullets. In addition, the CPT would like to be informed whether there were any lessons learned from the way in which the 5 December 2018 incident was managed. It would also like to know whether there was a systematic debriefing after the incident with the officers involved, who led the debriefing and whether any specific conclusions were drawn

54. More generally, **the CPT has strong reservations about the use of firearms, including weapons discharging rubber bullets, and other means of coercion such as flash bangs and CS gas within a confined prison setting. It invites the Portuguese authorities to review the 2009 Regulation on the use of means of coercion in prisons with a view to defining more narrowly the means of coercion that may be deployed within a prison setting.**

Further, the CPT recommends that each time such a weapon is discharged there should be a full separate report relating to its use (including reasons for use, where and how discharged, how many rubber bullets/pellets discharged, any injuries) and that an oversight body such as SAI should evaluate whether the discharge of the weapon was necessary and proportionate in the circumstances.

55. In the course of the visit, the CPT's delegation received many concordant accounts from prisoners concerning strip searches. Prisoners stated that upon arrival in the prison and whenever their cells were searched, they would be strip searched and have to take all their clothes off at once and, while naked, squat down and cough. The CPT considers that prisoners who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and get dressed again before removing further clothing. **The CPT recommends that every time a strip search is deemed necessary that it be carried out in a manner so as to limit embarrassment and preserve the dignity of the person, as described above.**

3. Conditions of detention

a. material conditions

56. *Caxias Prison* continued to have a mixture of both decent and poor living areas, with various renovations ongoing. At the time of the visit, the North section remained severely overcrowded with the 65 cells (measuring some 10.5m² excluding the sanitary annexe) on the second floor continuing to accommodate three or four prisoners, when they were only suitable to accommodate two persons. The eight renovated dormitories on the first floor provided decent conditions but care should be taken to ensure prisoners are offered 4m² of living space each which was not the case at the time of the visit.

On the ground floor, four of the six dormitories were closed for renovation. The conditions in the remaining two remaining dormitories were particularly poor. The main admission dormitory (2B), measuring 38m² (excluding the sanitary annexe) was filthy, dark, damp and dilapidated, and equipped with seven sets of bunk beds, a table and two benches. At the time of the visit, 11 persons were being held in the cell, most of whom had been admitted to the prison within the previous week. One person had been apparently transferred to this dormitory from Cell 505 as an informal punishment for poor behaviour. The adjacent dormitory (1B) was in a similarly poor state of repair; it was equipped with eight sets of bunk beds and was accommodating 12 persons at the time of the visit.

In the South section, the situation had not evolved since the 2016 visit. The multiple-occupancy cell used for accommodating prisoners sentenced for or accused of sex offences was accommodating 14 persons in 33m², with the 8m² sanitary annexe (basins, toilets²⁰, shower and urinals) not partitioned from the rest of the cell. The cell was dilapidated; windows did not close, the flush of one toilet did not function, ventilation was poor and the temperature in the cell cold. Further, there were insufficient places for inmates to eat sitting at the table. Although the other cells were in a similar state, the situation for the inmates in this cell was exacerbated by the fact that they were confined to their cell for up to 22 hours or more each day and had no access to education, work or vocational activities. Some of the prisoners had been held in this cell for in excess of eight months. The conditions in this cell and the ground-floor admission cell in the North Section could be considered as amounting to inhuman and degrading treatment.

The CPT reiterates its recommendation that steps be taken to reduce the overcrowding in the establishment to ensure that each and every prisoner is offered a minimum of 4m² of living space in multiple-occupancy cells. Further, the CPT recommends that the conditions of detention for persons sentenced or accused of sex offences be improved as a matter of urgency. In addition, the sanitary annexes in all multiple-occupancy cells should be fully partitioned.

The Committee would also like to be provided with information on the renovation of the ground floor dormitories in the North Section.

²⁰ The toilet cubicles did have doors on them, although a few were damaged.

57. *Lisbon Central Prison* remained in a state of advanced dilapidation, although the situation had improved since 2016 as the number of prisoners had been reduced by one-third and the basement areas of B, C, D and E Wings had been closed. Nevertheless, only on F Wing could conditions be considered as acceptable and even these cells were in need of maintenance. The conditions in the induction cells on D Wing were particularly poor and cold: dilapidated and crumbling walls which were dirty and covered in graffiti; panes of glass missing from the windows; toilets in double occupancy cells still not partitioned; no functioning artificial lighting.²¹ The foam mattresses were generally thin, worn, dirty and falling apart. In the CPT's view, such conditions could amount to inhuman and degrading treatment. There was also no table or chair and the inmates had to eat their meals sitting on the bed during their induction period. Further, the call bells generally did not function. The CPT considers that the general practice of allowing inmates to eat their meals together in a refectory is positive, but the policy of forbidding inmates to talk during meal-times should be ended.

The CPT reiterates its recommendation that vigorous action be undertaken to maintain the cell accommodation in a decent state of repair, in the light of the above remarks. Further, it would like to receive a detailed timetable for the upgrading of the different areas of the prison. The CPT also recommends that the policy of compelling inmates to eat their meals in the communal dining rooms in silence, with any talking punished, be ended.

58. At *Porto Prison*, the material conditions would be of a generally acceptable standard were it not for the levels of overcrowding, notably in Wing A. Most cells were designed for single occupancy, measuring some 7m², but accommodated two persons and, at times, even three. The cells were equipped with a set of bunk beds, a small table and two stools. Access to natural light and ventilation was adequate and artificial lighting sufficient for the purposes of reading. The toilet in the corner of each cell was shielded by a shower curtain. The larger dormitory cells were equipped with three sets of bunk beds and in most cases did not offer prisoners 4m² of living space each.

As regards the "RAI" wing, which housed 52 persons sentenced or accused of sexual offences, the main deficiencies concerned the overcrowding and the lack of access to activities. For example, a dormitory of 36m² was accommodating 13 prisoners. Toilets and showers were located outside the cells. The cramped conditions for these prisoners were exacerbated by the fact that they were confined to the unit and, due to staff shortages, had regularly not been offered outdoor exercise on a daily basis. Further, due to threats from other inmates they could not attend the gym or education. It was, on the other hand, positive that efforts were made to provide these prisoners with paid work in protected areas of the prison.

The situation in the special UE unit²² was also problematic in terms of living conditions. At the time of the visit, the unit held 33 prisoners for an official capacity of 36 in four multiple-occupancy cells. Three of the cells offered just under 4m² of living space per prisoner while Cell D, with six sets of bunk beds and 11 inmates, offered a mere 2.5m² of living space per inmate. Moreover, the prisoners were only let out of their cells for 1.5 hours in the morning and in the afternoon, and they had no access to any activities or to the gym. Further, the CPT's delegation noted that a member of staff was not always stationed on the unit which meant that the prisoners could not call for assistance as the call bell would ring in the UE unit staff office. Given the particular needs of the prisoners accommodated in this unit, increased efforts should be made to afford them decent living conditions.

²¹ On the day of the visit, staff were handing out small lamps to those cells lacking artificial lighting.

²² The UE unit accommodated prisoners subject to three different programmes: PARET for up to 11 prisoners with a drug addiction for whom abstinence was proving a challenge; URR for up to 11 prisoners who were deemed as presenting a suicide risk; and a Special programme for up to 12 prisoners with a mental health diagnosis.

The CPT recommends that the Portuguese authorities reduce the number of persons held at Porto Prison with a view to ensuring that cells of 7m² accommodate only one prisoner and that all dormitories provide 4m² of living space per prisoners excluding the sanitary annexe. The sanitary annexe in every cell and dormitory should be fully partitioned to the ceiling. Further, a member of staff must always be located on the UE unit given that it is a special unit for vulnerable prisoners.

59. At *Setúbal Prison*, the material conditions throughout the establishment remained poor. The four persons accused of sexual offences were held in a dilapidated and humid cell of some 10m² with no fully partitioned sanitary annexe. In addition to the poor material conditions, these prisoners were confined to their cells for 23 hours a day for months on end with no access to any activities. Such conditions could be considered as amounting to inhuman and degrading treatment.

The CPT recommends that the Portuguese authorities pursue their efforts to decongest the prison and to provide for minimum basic conditions. In particular, the CPT reiterates its recommendation that alternative accommodation must be found for persons accused of sexual offences and other prisoners requiring protection to ensure that they are offered at least 4m² of living space in multiple-occupancy cells, excluding the sanitary annexe, and preferably more given that their out-of-cell time is severely restricted.

b. regime

60. The situation regarding the regime and activities available to prisoners remained largely the same as that found at the time of the 2016 visit.²³ It is positive that the vast majority of inmates in the prisons visited²⁴ could spend much of the day out of their cells (i.e. around 8.5 hours or more) between 8h00 and 19h00. Further, the reduction in the number of prisoners at Lisbon Central Prison meant that proportionately many more prisoners were involved in an organised activity whether work, sport or education. As regards Porto Prison, 447 prisoners had a job (most as a wing cleaner), 273 were enrolled in the school and 64 were undertaking a professional qualification (such as gardening, painting or as a pastry chef).

As regards Lisbon Judicial Police Prison, there were still no purposeful activities being offered to remand prisoners at all, notwithstanding the fact that some of them had spent more than 18 months in this establishment. By contrast, the situation at Porto Judicial Police Prison was better with the provision of organised education, sports and recreational activities.

The CPT reiterates its recommendation that the Portuguese authorities take the necessary steps to develop purposeful activities for remand prisoners in Lisbon Judicial Police Prison, and that they pursue their efforts to offer an appropriate range of constructive activities to all prisoners in Caxias, Lisbon Central, Porto and Setúbal Prisons. Additional efforts should be made to provide prisoners on the RAI and UE units at Porto Prison with access to purposeful activities. The goal should be to ensure that all prisoners (including those on remand) spend a reasonable part of the day outside of their cells (i.e. 8 hours or more) engaged in purposeful activities of a varied nature: work, preferably with vocational value; education, sport; recreation/association.

²³ See CPT/Inf (2017) 39, paragraph 51.

²⁴ One exception being sex offenders in Caxias and Setúbal Prisons.

4. Health care services

a. introduction

61. At the time of the 2019 visit, the CPT's delegation noted that some of the issues surrounding the outsourcing of health care staff to private contractors that were apparent during the 2016 visit were still in evidence. Notably, high levels of staff fluctuation impacting on the continuity of care for patients, inequalities of staff members' terms and conditions within the health care team, diminished motivation and the lack of a team approach. This was most visible in comparing the way in which health care services were managed and delivered at Lisbon Central and Porto Prisons, with the latter being the model to follow.

The CPT understands that following Order no. 1278/2017, a joint Ministry of Health and Ministry of Justice working group was established to look at how best to improve prison health care. In the response to the report on the 2016 visit, the Portuguese authorities provided information on a number of concrete steps that had been taken in 2017, notably regarding the prevention and treatment of infectious diseases such as HIV and hepatitis C and the monitoring of the health of prisoners.

In this context, the CPT would be interested to receive an update on the progress made by the joint ministerial working group and on whether any further consideration has been given to the transfer of responsibility for health care in prisons from the Ministry of Justice to the Ministry of Health.

b. staff and facilities and medical confidentiality

62. As was the case in the past, the health care facilities in the prisons visited were, on the whole, of a good standard. Staffing levels, however, were not always adequate which impacted on access to care.²⁵

At *Lisbon Central Prison*, the permanent health care team consisted of one full-time general practitioner, four full time equivalent (FTE) nurses and two psychologists, which is clearly insufficient for a largely remand establishment holding some 817 prisoners. At the time of the visit, the team was reinforced by a number of private agency staff, notably two part-time general practitioners, six nurses, an orderly and two psychologists. In addition, the prison was visited by three psychiatrists and a dentist attended two days a week. The number of nurses, in particular, was inadequate, especially as those nurses absent for personal reasons were not replaced. In addition, the pharmacist had recently left the prison, placing an even greater work burden on the nursing staff.

Further, the delegation found that where medical and nursing staff were provided by private contractors there was not only a high turnover of staff, due primarily to the lower levels of pay, but also little sense of a motivated team approach.

²⁵ The health care services at Caxias and Setúbal Prisons and at the Judicial Police Prisons of Lisbon and Porto were not examined other than in regard to the recording of injuries.

63. At *Porto Prison*, the health care team consisted of a full-time clinical director supported by a general practitioner (30 hours a week) and 16 FTE nurses (including a nursing manager and eight mental health nurses). Three more nurses will be hired in 2020. There is a 24-hour nursing presence and a general practitioner is always on call. In addition, there are 1.5 FTE psychiatrists, two FTE psychologists and a one FTE dentist. A number of specialists such as a dermatologist and an infectious diseases consultant, visit on a regular basis. In sum, the staffing complement was appropriate for the official capacity of the prison (682 inmates).

The infirmary was very well equipped and maintained, and the multiple-occupancy wards were appropriately furnished, spacious and with good access to natural light and ventilation. The dental surgery was equally suitably equipped, including with an X-ray machine. The routine waiting time to see a dentist was one month.

64. In the light of the above, the CPT recommends that steps be taken to reinforce health-care staffing levels at Lisbon Central Prison in order to ensure that there are the equivalent of three full-time general practitioners and an increased complement of qualified nurses, including those with a mental health qualification. Further, the CPT would like to receive confirmation that a pharmacist has been recruited at Lisbon Central Prison.

Further, the CPT recommends that steps be taken to establish a health care team approach at Lisbon Central Prison, which should include reviewing disparities between the working conditions of public and private sector staff.

65. As regards medication, there appeared to be an adequate supply in the prisons visited and it was appropriately stocked. However, the CPT's delegation did have some concerns that at both Lisbon Central and Porto Prisons the integrity of the dispensing and administration of medication could easily be compromised. This was due to the fact that there was no labelling on the pots, in which each prisoner's medication or methadone was contained, indicating what medication they contained, and the risk of a lid being placed on the wrong pot was very real. **The current system of dispensing medication should be reviewed.**

66. As regards medical confidentiality, the CPT is pleased to note that prison officers were generally not present during medical examinations in the prisons visited and that inmates did not have to write down the reason why they wished to see a nurse or doctor. However, at Porto Prison, prison officers were usually within hearing of consultations carried out by nurses but not of those conducted by the general practitioners.

The CPT recommends that steps be taken to ensure that all health care consultations take place out of the hearing and preferably out of the sight of prison officers.

c. medical screening on admission and drug treatment

67. The CPT has consistently stressed the importance of medical screening of prisoners on admission – especially at establishments which represent points of entry into the prison system. Such screening is indispensable, in particular in the interests of preventing the spread of transmissible diseases, prevention of self-harm and suicide and the timely recording of any injuries.

68. As was the case in previous visits, the prison establishments visited in the course of the 2019 visit had policies in place to ensure that all newly admitted prisoners were screened by a nurse on the day of, or the day after, their arrival. Thereafter, prisoners would normally be seen by a doctor within 72 hours. The screening included the completion of a standard nursing and medical proforma and voluntary testing for communicable diseases including HIV and hepatitis. At Porto Prison, all new arrivals were also assessed by a psychologist within a few days of their admission and particular care was paid to prisoners aged over 50. Medical records were well kept.

69. Concerning the treatment of inmates suffering from drug use, inmates were routinely questioned about substance use as part of the admission process. At Lisbon Central and Porto Prisons, 8% and 15%, respectively, of inmates were in receipt of opiate agonist therapy (OAT) (methadone only) ensuring full conformity with treatment in the community with the possibility of starting OAT during incarceration. Those inmates receiving OAT were subject to intermittent drug testing and the confidentiality of the results was preserved.²⁶ Condoms could be obtained from the infirmary, but no needle or syringe exchange programmes existed at the establishments visited. **Consideration should be given to establishing such programmes.**

d. recording of injuries on admission

70. The CPT welcomes the introduction of Circular No. 1/2017 of 26 January 2017 by the DGPRS which set out how injuries on inmates should be recorded. It considered that the Circular fully reflected the Committee's standards and that this was a good initiative.

However, in the course of the 2019 visit, the CPT's delegation found that injuries observed upon arrival as well as those sustained in prison were often not correctly recorded – or even not recorded at all – in the prisons visited. Specific examples were found of cases of prisoners who, in the light of information gathered from other sources, certainly would have displayed injuries on their arrival in prison but whose medical records contained no such evidence (e.g. the prisoners' ID photos taken upon admission by prison officers clearly showed that they had hematomas around the eyes whereas no injuries were recorded in the medical record). The lack of proper recording of injuries undermines the ability to investigate cases of alleged ill-treatment. Further, the compilation of injury reports should be diligently classified in each prison, as was the case at the Judicial Police Prisons of Lisbon and Porto and at Caxias Prison; by contrast, they were randomly classified at Porto and Setúbal Prisons.

²⁶ Those prisoners who tested positive in the 12-place drug-free unit would have to return to an ordinary wing for three months.

71. To remedy this situation, the provisions contained within Circular No. 1/2017 need to be reinforced.

At present, when prisoners arrive at a prison bearing visible injuries, a prison officer will photograph the injury. This action serves both to record the injury and to establish that the injury had been sustained prior to entry to the prison establishment. However, in many cases not all the injuries visible on the body of the inmate are photographed.²⁷ Secondly, when the inmate sees the nurse upon admission, there is no systematic physical examination and some of the injuries are not recorded. In addition, the injuries are often not well described and the body charts too small to provide meaningful information.

In the CPT's view, once a prison officer has identified and photographed the newly arrived prisoner's injuries upon admission, this prisoner should be viewed as a priority by the duty nurse. The nurse should, in accordance with Circular No. 1/2017, note down the statement of the person concerned, make a full account of the objective medical findings (including dimensions and colour of injuries and bruises as well as their exact location) and indicate the level of consistency between the allegations and the objective findings. The Circular also states that as much detail as possible should be provided. The nurse should also photograph all the injuries. This is important as the role of the prison officer and the nurse are distinct: the officer's role is to identify that someone has injuries upon arrival in the establishment whereas the nurse and the prison doctor have the duty to record and treat those injuries as well as to evaluate their consistency with any allegations of ill-treatment as far as possible. This of course requires that health care professionals be provided with training on how to record injuries in line with the 1999 Istanbul Protocol.²⁸ Having such a complete medical record of the injuries also enables the nurse to consult with the general practitioner if required.

Where the injuries were allegedly caused by law enforcement officials, the complete medical file on the person's injuries (including the photographs taken by the nurse) should be forwarded by the Director of the prison directly to the Inspector General of Home Affairs (IGAI) and copied to the relevant Public Prosecutor's Office (DIAP) and to the Director General of Prisons and Rehabilitation Services. This will enable a representative of IGAI or of the Public Prosecutor's Office to visit the prison and interview the person concerned within 48 hours (see paragraph 34 above).

72. The CPT recommends that the effectiveness of Circular No. 1/2017 be strengthened, in the light of the above remarks by:

- **enhancing the training provided to doctors and nurses on how to accurately record and describe injuries;**
- **ensuring that the recording of injuries and assessment of their consistency is the responsibility of the prison doctor;**
- **equipping all health care services with a digital camera to photograph any marks and injuries visible on newly admitted prisoners;**

²⁷ Likewise, photographs taken of bandages and dressings displayed on a newly admitted prisoner serve little purpose.

²⁸ See United Nations Office of the High Commissioner on Human Rights: Professional Training Series N.8/rev 1 of 2004 on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

- **ensuring that all the medical documentation and accompanying photographs relating to a case of alleged ill-treatment by law enforcement officials are forwarded directly by the Director of a prison to the Inspector General of Home Affairs (IGAI) and copied to the relevant Public Prosecutor's Office (DIAP) and to the Director General of Prisons and Rehabilitation Services;**
- **ensuring that the documentation of each case is diligently classified in each prison.**

e. use of chemical restraint in prisons

73. The CPT's delegation found that the concerns raised in the report on the 2016 visit in relation to the forced medication of prisoners at Lisbon Central Prison had not been adequately addressed. Prisoners who refused to take their psychotropic medication and/or were considered to be agitated could be forcibly medicated, in accordance with one of the four protocols pre-authorised by the Director of the Prison and the psychiatrist, each comprising a mixture of antipsychotic and anti-anxiety medicine.

For example; at 20h00 on 31 August 2019, a prisoner who became agitated (and delusional), and who had refused to take his monthly prescribed depot antipsychotic medication, was forcibly restrained by three prison officers while a nurse administered an injection of "SOS" medication. Regrettably, there was no note in the prisoner's medical record of which medication had been administered and in what dosage, nor whether the prisoner had been seen by either a nurse or a doctor in the days after this episode.

As the CPT set out in its report on the 2016 visit, the pre-authorised protocol was effectively a PRN (*pro re nata*) medication to be applied to any prisoner who showed signs of psychomotor agitation or psychosis. The CPT reiterates that such an approach is not acceptable. In paragraph 102 below, the CPT sets out the precepts that need to be effectively applied when administering PRN medication.

The CPT recommends that the use of the pre-authorised protocols at Lisbon Central Prison be ended immediately and that a new protocol be drawn up that is in line with the precepts set out by the Committee in paragraph 102 below. Further, all prisoners who have a serious mental disorder that requires intensive mental health care should be transferred to a mental health facility.

5. Other issues

a. prison staff

74. The CPT has long attached great importance to prisons being adequately staffed and to prison officers receiving both initial and ongoing training. There is arguably no better guarantee against ill-treatment than a properly recruited and trained prison officer, who knows how to adopt the appropriate attitude in his relations with prisoners. In this regard, developed interpersonal communication skills are an essential part of the make-up of such staff. Such skills will often enable them to defuse a situation which could otherwise turn into violence. More generally, they will lead to a lowering of tension and improvement in the quality of life in the institution concerned, to the benefit of all concerned.

By letter of 17 December 2018, the DGPRS informed the CPT both about the nine-month initial training course for new recruits and the five core areas of ongoing training. However, from the information gathered on the ground, staff were not being offered ongoing training courses to develop their interpersonal communication skills, and many prison officers expressed their frustration at the lack of opportunities for further/refresher training.

75. As regards staffing complements in the prisons visited, they continued to be insufficient to cope with the size and type of the inmate population. The recruitment of an additional 400 prison officers in 2017 was positive but, as the DGPRS recognised, further recruitments are necessary.

For example, at the time of the visit, Lisbon Central Prison had 190 prison officers (including the commissioner and chief officer) which is an improved ratio to that existing in 2016, primarily due to the prison population reducing by one-third to 830, but still leaves areas such as the basement unit of F Wing unstaffed.²⁹ At Porto Prison, there was a total of 137 prison officers for 987 inmates which represents a ratio of 1 officer to more than 7 inmates, with a typical day shift of around 30 officers. Wing A with 256 prisoners was staffed by only four officers on the day of the visit (a Friday) and the RAI and UE units appeared often to have no staff assigned to them. Such staffing levels are clearly insufficient.

The CPT recommends that the Portuguese authorities make provision to recruit additional staff after carrying out a review of the current staffing levels in the prisons visited. In carrying out this review, regard should be had to the role and duties of prison staff as they relate to the purpose of sending people to prison. Further, the CPT would like to receive additional information on the ongoing staff training provided notably regarding interpersonal communication skills.

The CPT also reiterates its recommendation that there be a permanent staff presence in the basement unit of F Wing whenever inmates are unlocked from their cells.

²⁹ The CPT's delegation found once again that there was still no permanent presence of prison officers in the unit, leaving prisoners unsupervised for most of the day.

76. The CPT's delegation noted that some prison officers, notably at Lisbon Central and Porto Prisons, were openly carrying truncheons; the truncheon is considered to be part of the uniform and each prison officer can decide whether or not to carry one. As indicated in previous reports, the CPT considers that the open display of batons is not conducive to developing positive relations between staff and inmates. In fact, the visible wearing of batons in a prison setting could well be seen as a sign of weakness rather than one of strength, demonstrating a lack of confidence in the ability of prison officers to control a situation without possible recourse to such a means. **The CPT recommends that the Portuguese authorities phase out the carrying of truncheons by custodial staff in detention areas.**

b. discipline

77. The disciplinary procedures remained the same as that described in the report on the 2016 visit.³⁰ The findings from the files examined in the prisons visited in 2019 (notably at Lisbon Central and Porto Prisons) showed that the procedures were conducted in a professional manner and the registers were well kept. Nevertheless, the CPT's delegation found once again that the time for investigating and taking a decision on a possible punishment appeared too lengthy, with some cases taking up to six months (the maximum provided for by law). Such lengthy delays between an alleged infringement and an adjudication does not serve the needs of maintaining good order in the prison; disciplinary offences should be dealt with rapidly, through fair and transparent procedures. The fact that prisoners only have five days to appeal a disciplinary punishment, which is not suspensive, lends itself as well to shortening the period required to carry out an investigation into a disciplinary offence. Further, prisoners facing disciplinary proceedings were still not given access to the statements of prison officers and so had no opportunity to challenge them.

The CPT reiterates its recommendation that efforts be made to speed up the time taken to investigate and decide on a disciplinary offence. Further, prisoners should have the opportunity to challenge the statements made by prison officers in the context of disciplinary proceedings.

78. In the course of the visit to Caxias Prison, it appeared that the two ground floor admission dormitories in the North section (see paragraph 56 above) were still being used to accommodate prisoners who appeared to be subjected to an informal punishment following an incident on their normal accommodation corridor. The CPT notes that prisoners may be subject to precautionary measures pending disciplinary proceedings in accordance with Article 111 of the Code for the Enforcement of Sentences and Deprivation of Liberty Measures (CEPMPL). In such cases, a precautionary measure must be formally recorded and the prisoner provided with an explanation as to the reason for their transfer. However, no record of such a measure existed. Given the poor material conditions and very limited regime for prisoners in the two ground floor dormitories, the transfers were perceived as being punitive.

The CPT reiterates its recommendation that all transfers from the mainstream accommodation areas to the basement dormitories in the North section of Caxias Prison be clearly reasoned and recorded. Prison management should ensure no prisoner is subject to an informal punishment by staff

³⁰ See CPT/Inf (2017) 39, paragraph 69.

79. Provisional isolation (“cautelar”) can be imposed on a prisoner suspected of having committed a disciplinary offence for a period of up to 30 days. The CPT’s delegation found that this measure was resorted to 106 times at Lisbon Central Prison between 1 January and 31 October 2019 for periods of between six and 26 days. At Porto Prison, in the first 11 months of 2019, the measure of provisional isolation was imposed on 17 occasions for periods of between one and 10 days.

The CPT remains of the view that placing prisoners in provisional disciplinary isolation following a suspicion that they may have committed a disciplinary offence, and prior to a formal charge being brought, should not last longer than a few hours. Isolation for longer than a few hours, in relation to an incident giving rise to a disciplinary procedure, should not occur without the prisoner being charged and being given an opportunity to be heard on the matter and to explain his/her behaviour to a senior prison officer reporting to the Director.

If it becomes clear that the provisional solitary confinement measure is likely to be required for a longer period of time, a body external to the prison holding the prisoner, for example, a senior member of headquarters staff, should become involved. A right of appeal to an independent authority should also be in place.

The CPT recommends that the Portuguese authorities take the necessary steps to ensure that placement in provisional disciplinary isolation be brought into line with the above precepts.

80. According to Law 115/2009 on the Execution of Criminal Sanctions (Article 105), the sanction for a given disciplinary offence may not exceed 21 days of solitary confinement or 30 days in total when it concerns more than one serious offence that has taken place at the same time.

The Portuguese authorities have acknowledged the CPT’s position that the maximum period of solitary confinement as a punishment for an adult prisoner should be no more than 14 days for a given offence, and preferably lower.³¹ Pending the revision of Law 115/2009, the DGPRS has issued an Order providing guidelines to all prisons that the disciplinary punishment of solitary confinement should not exceed 14 days. This is positive.

In addition, the CPT considers that the disciplinary punishment of confinement to cell (POA)³² should also be limited to a maximum of 14 days. Prisoners with a disciplinary punishment of POA are allowed to take all their belongings (including a television if they possess one) to the disciplinary cell and are permitted to make a telephone call every day and to order from the prison canteen. Otherwise, the conditions are akin to punishment of solitary confinement as they are also only permitted to leave their cell for one hour a day for outdoor exercise, cleaning, making a phone call and taking a shower. At Lisbon Central Prison, the disciplinary sanction of POA was applied 230 times between 1 January and 30 November 2019. On 78 occasions the period of the measure lasted longer than 15 days and in two cases 30 and 41 days, respectively.

The CPT recommends that the Portuguese authorities limit the duration of the disciplinary punishment of POA to a maximum of 14 days. The Committee would also like to be informed whether a Government working group established to reflect on the revision of Law 115/2009 has submitted its proposals and what is the timetable for any revision.

³¹ See the 21st General Report of the CPT – CPT/Inf (2011) 28, paragraph 56 (b).

³² A disciplinary punishment of POA (*permanência obrigatória no alojamento*) as defined by Articles 105 (1f) and 107 of Law 115/ 2009 on the Code of Execution of Sentences and Article 173 of Decree 51/2011 on the General regulation of prison establishments should be served in a prisoner’s own cell. However, at Lisbon Central Prison, due to prisoners sharing cells on the ordinary wings, POA was served in a separate part of the prison.

81. At the time of the visit, the disciplinary unit at Lisbon Central Prison consisted of 15 cells located in the basement of A Wing. The cells were cold, dilapidated and sombre (being half underground) with limited access to natural light and no artificial lighting until the day of the visit, when each cell was provided with a small bedside lamp. **The CPT recommends that this basement unit also be closed down** and another area of the prison used for holding prisoners serving a disciplinary punishment.

At Porto Prison, the purpose-built disciplinary unit located at the entrance to D Wing consists of eight cells, six of which are equipped with a bed, two concrete blocks for sitting on and a concrete table and shelves. There is also a floor-level toilet, sink and mirror. The two remaining cells are only equipped with a concrete plinth for sleeping on but also contain a shower in addition to the toilet. Access to natural light was adequate and artificial lighting and ventilation sufficient. The cells were all extremely cold. Prisoners are offered one hour of exercise every day in the unit's spacious courtyard; however, it does not possess any means of rest nor any shelter from the rain or sun. Otherwise, the only activity permitted is reading but only if the prisoner brings a book with him when he enters the unit. Reportedly, the construction of a new disciplinary unit was planned to replace the current unit.

The CPT recommends that all prisoners serving a disciplinary punishment of solitary confinement be permitted to access reading materials. Further, outdoor exercise yards should be equipped with a means of rest and a shelter from the rain or sun. The CPT would also like to receive details about any new disciplinary unit at Porto Prison, including steps taken to ensure that the cells are kept at an appropriate temperature.

c. contact with the outside world

82. The situation regarding contact with the outside world remained the same as that described in the report on the 2016 visit³³ and could be considered as generally satisfactory. Nevertheless, the CPT would like **to be informed of the outcome of the studies announced in 2017 to improve the current phone system and as regards the introduction of new technologies in prisons such as VoIP (Voice over Internet Protocol) to facilitate inmates' ability to maintain contacts with their families, notably for those living abroad.**

d. complaints procedures

83. The situation regarding the system of complaints remains the same as that described in the report on the 2016 visit.³⁴ In their response to the CPT's recommendation that a uniform internal complaints system be introduced for prisons, the Portuguese authorities stated that a new system of requests and complaints was being designed. By letter of 17 December 2018, the CPT was informed that the new system needed to be simplified and that the Committee would be informed in due course once the new system was adopted.

The CPT would like to be informed when the new complaints system will be introduced to prisons and it would like to receive a copy of the draft proposal.

³³ See CPT/Inf (2017) 39, paragraph 76.

³⁴ See CPT/Inf (2017) 39, paragraph 77.

C. Psychiatric Clinic of Santa Cruz do Bispo Prison

1. Preliminary remarks

84. The CPT's delegation carried out a follow-up visit to the Psychiatric Clinic of Santa Cruz do Bispo Prison in Matosinhos (near Porto), which is under the responsibility of the Directorate General of Rehabilitation and Prison Services (DGRPS). The Psychiatric Clinic is within the same compound as the adjoining male prison, and the Director and his team are responsible for both facilities. The Psychiatric Clinic was last visited by the CPT in 2016.

85. It is recalled that under the Portuguese Criminal Code, persons deemed to be not criminally responsible for their crime can be placed by a court in an "institution for care, treatment or security", when there is a serious risk of re-offending, having regard to the mental illness and the seriousness of the person's acts. Such measures can also be applied to persons on remand if it is expected that they will not be found criminally responsible. Further, persons who are found to be responsible at the time the crime was committed but who subsequently developed a mental health problem may be transferred by court order from a prison to a psychiatric hospital facility.

In May 2019, the Code of Enforcement of Sentences and Imprisonment Measures in relation to involuntary patients was amended by Decree Law no.70/2019 with a view to promoting further the placement of persons with psychiatric disorders in mental health facilities under the Ministry of Health. **The CPT welcomes the approach outlined in the Decree and would like to receive information on the practical consequences since its adoption.**

86. At the time of the visit, the Psychiatric Clinic accommodated 175 patients (not including 10 patients who were in the process of being transferred to Magalhães Lemos Psychiatric Hospital). In addition, 13 patients were accommodated in a separate "transition house", located within the grounds of the prison facility.

The large majority of patients (138) had been found by the courts not to be criminally responsible for their crimes and were serving a "security measure of internment" (*medida de segurança de internamento*).³⁵ Of the remaining patients, 31 had been found to be responsible at the time the crime was committed but had subsequently developed a mental health problem³⁶ and six were on remand.³⁷ According to the Director, the average length of stay was eight years, but some patients had been in the clinic for more than thirty years. The majority of patients were diagnosed as suffering from a psychotic illness and/or a learning disability.

³⁵ See Articles 20 and 91 of the Criminal Code (CC).

³⁶ See Articles 104 and 105 CC.

³⁷ See Article 202 (2) of the Code of Criminal Procedure.

87. The findings of the 2019 visit demonstrate once again that the Psychiatric Clinic of Santa Cruz do Bispo Prison remains prison-like and, as already stated in the CPT's reports on the 2012 and 2016 visit, is unsuitable for providing a therapeutic environment for the care and treatment of psychiatric patients. Indeed, the current treatment and conditions in which many of the patients are held in this establishment as described below may well amount to inhuman and degrading treatment. Therefore, **the CPT reiterates its recommendation that the Psychiatric Clinic be closed down, and that the patients be relocated to an appropriate hospital or social care facility.**

88. Having said that, the CPT recognises that the Portuguese authorities are attempting to find an appropriate staged solution to this unacceptable situation. In 2018, a Working Group established by the Ministries of Health and Justice undertook an individual assessment of all patients, including as regards their autonomy and perceived dangerousness. Based upon this assessment, 40 patients were identified for transfer to the Magalhães Lemos Psychiatric Hospital, with 10 patients transferred at the time of the CPT's visit and the remainder to be transferred in groups of 10 in early 2020.

However, many more patients were assessed as being suitable for a transfer but due to a lack of beds and the criterion that the patient had to be from the north of the country, the number was limited to 40. Indeed, discussions with staff and the findings of the CPT's delegation confirm that many other patients also fulfilled the necessary criteria for transfer to a civil hospital or even a care home.

In addition to the transfer of some patients, the CPT's delegation was informed that staffing levels would be increased (see below) and that certain unsuitable accommodation rooms would be taken out of service. Further, at the end of visit talks, the Director-General for Reinsertion and Prison Services indicated that a working group would be set up to discuss the closure of the Psychiatric Clinic of Santa Cruz do Bispo Prison. The CPT welcomes these steps. **The CPT would like to be informed about the functioning of this working group (mandate, composition, timetable, expected results). Further, pending the closure of the Psychiatric Clinic, the CPT recommends that every effort be made to reduce further the number of patients held in the facility, to put in place a structured programme of therapeutic activities for patients and to increase health care staffing levels.**

2. Ill-treatment

89. The delegation received no allegations of physical ill-treatment of patients by prison officers, but it did examine three formal complaints lodged by patients against physical ill-treatment by staff (consisting of punches and kicks) in recent years.

Nevertheless, it is obvious that the practice of employing prison staff in the Psychiatric Clinic of Santa Cruz do Bispo Prison entails a permanent risk of possible ill-treatment, as they are not trained to manage the specific challenges and behaviour posed by psychiatric patients. Prison officers with whom the delegation met complained about their unpreparedness to work with psychiatric patients.

The CPT reiterates its recommendation that prison officers be replaced by health care workers within the Psychiatric Clinic and that any allegation of ill-treatment be investigated effectively. To this end, the CPT would like to be informed of the outcome of the investigation into the three above-mentioned complaints, including a copy of the final decision.

90. The delegation received a number of allegations of violence among patients, mostly for minor issues. According to the patients met, prison officers did not always intervene promptly, primarily because they were not sufficiently present on the wings and because the cells were not equipped with call bells to alert staff rapidly. **The CPT recommends that, pending the closure of the Psychiatric Clinic, the nursing and health care assistant staffing levels in the wards be significantly increased as a primary step towards combating inter-patient violence and intimidation.**

3. Patients' living conditions and activities

91. The aim in any psychiatric establishment should be to offer material conditions which are conducive to the treatment and welfare of patients; in psychiatric terms, a positive therapeutic environment. Creating a positive therapeutic environment involves, first of all, providing sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements.

92. The living conditions at the Psychiatric Clinic were described most recently in the report on the CPT's 2016 visit to the establishment. Although some renovations to the sanitary facilities in certain dormitories had been carried since that visit, the conditions overall remained totally unsuitable. There was still no heating system in much of the Clinic, and most of the cells were dilapidated (e.g. stained walls, flaking plaster, mouldy and dirty). Access to natural light was limited, particularly in the basement areas, and artificial lighting did not function everywhere (poor or absent wiring and missing bulbs) and most cells had no call bell. Many mattresses and bedsheets were dirty. Further, the in-cell toilets in multiple-occupancy cells were often not fully partitioned. In addition, many cells were lacking basic furniture such as tables, chairs, bedside tables and a lockable space for each patient. Cells were austere and impersonal with very little decoration, and therefore not conducive to promoting any sense of privacy and self-esteem or to maintaining individual identity.

93. Overcrowding was an even greater problem than in 2016, with patients squeezed into cells that did not provide adequate living space. For example, two patients shared a cell of 7m² including the sanitary annexe and 10 patients a cell of 44m² where the beds were almost touching one another. The situation was particularly poor in the basement areas of B wing which included two former disciplinary punishment cells being used as single cells due to the overcrowding. These cells were very sombre, cold, humid and small, measuring a mere 4m². The larger cells in this area were also extremely dilapidated.

The Director informed the delegation of his intention to close the basement section 6 (housing 18 persons at the time of the visit), following the transfer of 40 patients to the civil hospital. **The CPT would like to receive confirmation that this section has now been taken out of service.**

Material conditions in the infirmery part of the psychiatric clinic were notably better. It consisted of two multiple-occupancy rooms, one of which accommodated four patients and the other six patients. The cells were well ventilated and there was good access to natural light. There was a separate toilet and bathroom area which was clean and well maintained.

94. The Clinic operated a loudspeaker system, through which the numbers of patients were announced (e.g. when they needed to go to collect medicine). This frequent acoustic annoyance added to the general chaos observed in the clinic. Further, the impersonal approach of calling patients by a number and not their name was demeaning. **The CPT recommends that all patients be addressed by their name and not with a number and that the loudspeaker system be abandoned.**

95. Almost all patients the delegation spoke to complained about the quality of the food provided, and many also complained about the quantity (several patients said they were still hungry after having eaten the food provided, and some also indicated they would prefer to buy food in the “bar”). **The CPT recommends that steps be taken to review the quality and quantity of the food.**

96. The programme of daily activities had not changed significantly since the CPT’s October 2016 visit and remained impoverished.

Patients were still denied access to their dormitories during the day and those who were not engaged in an activity (i.e. the vast majority of patients) had to spend most of the time in the corridors or the small bar (with the exception of one and a half hours after lunch, when patients could opt to be locked in their cells). They were allowed access to an inner courtyard for about three hours every day (from 09h30 to 11h00 and from 14h30 to 16h00), which was only equipped with some concrete benches and possessed no shelter from the rain or sun. Patients alleged that the courtyard would be closed in the event of rain.

97. In conclusion, the CPT’s delegation found once again that the poor material conditions and very limited daily regime at the Psychiatric Clinic of Santa Cruz do Bispo Prison are totally inappropriate for providing an environment conducive to improving the mental health of patients.

The CPT calls upon the Portuguese authorities to take urgent steps, pending the closure of the establishment, to upgrade the material conditions and to improve the range and number of purposeful activities offered to patients at the Psychiatric Clinic. This includes the recruitment of qualified specialists responsible for running therapeutic and rehabilitation activities (see paragraph 107 and 108 below).

4. Treatment

98. Treatment for forensic psychiatric patients should involve a wide range of therapeutic, rehabilitative and recreational activities – including appropriate medication and medical care – and should be aimed at both controlling the symptoms of the illness and reducing the risk they might pose to society. Rehabilitative psycho-social activities should prepare patients for an independent life or return to their families; occupational therapy – as an integral part of the rehabilitation programme – should aim at raising motivation, developing learning and relationship skills, supporting the acquisition of specific competences and improving self-image.

99. As mentioned above, there was an evident lack of structured therapeutic and rehabilitative activities for patients,³⁸ and the treatment consisted essentially of pharmacotherapy. Moreover, only patients detained under Article 104 CC (i.e. 20% of patients) had a therapeutic treatment and rehabilitation plan, which referenced *inter alia* the antecedents, the current clinical situation, integration with the family, a risk assessment, various suggested interventions or targets, and the means to achieve them. The plan was signed by the psychiatrist, the probation worker and the patient.

The CPT reiterates its recommendation that the Portuguese authorities develop the range and number of therapeutic and psycho-social activities available to patients and ensure that every patient has a treatment plan.

100. The CPT's delegation found that there was a frequent recourse to the use of PRN medication³⁹ (so-called "SOS medication"), which in most cases was administered by intramuscular injection. This was particularly the case between 17h30 on Friday evening and 8h00 on Monday morning when no doctor was present or visited the establishment.

During this period, if a patient remained agitated after the application of the PRN medication or no PRN prescription existed, the nurse on duty would call a psychiatrist who would dictate a prescription over the telephone and/or a measure of seclusion. Such a practice had become "institutionalised".

101. The CPT must underline in this context that the injection of rapidly acting tranquillisers is a form of chemical restraint which is associated with significant risks to the health of the patient, in particular life-threatening cardiac arrhythmia, low blood pressure and respiratory depression. Their use therefore requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment. The application of rapid tranquillisers on the basis of a PRN prescription without the explicit re-confirmation by a medical doctor might place too much responsibility on nurses as regards the assessment of the patient's mental state and the provision of an adequate response, in the absence of a medical doctor, to potential complications. It may also reduce the nursing team's motivation to attempt de-escalation of the situation by other means and consequently open the door for abuse.

³⁸ For example, only about 15 patients benefited for up to 10 hours of occupational and therapeutic activities per week; 31 patients attended school; 38 patients had remunerated work as a cleaner or at the café bar; and a few sports activities (football, gym and relaxation workshops) involving around 58 patients a month.

³⁹ (*pro re nata* – "as needed")

102. In the Committee's opinion, in the event of a patient presenting a state of agitation which cannot be dealt with by the nursing staff, the patient's psychiatrist (or the duty psychiatrist) should be called immediately and intervene promptly to assess the state of the patient and issue instructions on the action to be taken. It is the responsibility of the medical doctor/psychiatrist to prescribe the safest medication that serves the purpose of PRN medication, and to know the reaction of the individual patient to the prescribed PRN drug.

Only in exceptional situations, when a patient's agitation cannot be controlled by nursing staff and the intervention of a psychiatrist is not possible within minutes, may the administration by nursing staff of rapid tranquillisers under a "conditional" PRN prescription be justified, meaning that a medical doctor must be contacted (e.g. by phone) and must confirm the prescription prior to its use. Further, a medical doctor must arrive without delay to monitor the patient's response and deal with any complications.

Moreover, the use of a PRN prescription for rapid tranquillisers must be accompanied by specific safeguards: as a minimum, any such PRN prescription should be drawn up by an experienced doctor after having thoroughly assessed the patient's physical status, should only be valid for a limited time (i.e. at least on a monthly basis, preferably more frequently) and should be re-assessed each time it is used or where there is any change in the patient's medication. If it appears that resort to PRN medication is applied to individual patients on a more regular basis, it is no longer a PRN medication, and the actual drug should instead be listed in the regular medication scheme.

The CPT recommends that the Portuguese authorities draw up guidelines for regulating the use of PRN medication, taking into account the above precepts. The Committee would like to be provided with a copy of these guidelines in due course.

Further, it is essential that provision be made for psychiatrists to be remunerated out of hours, notably during weekends, whenever their presence at the Psychiatric Clinic is required, in emergency situations.

103. At the time of the visit, 13 patients were prescribed the medication clozapine but without regular blood tests being taken. It should be recalled that application of clozapine may lead to a potentially lethal reduction of white blood cells (*granulocytopenia*), which can only be detected by carrying out blood tests on a regular basis. **The CPT recommends that the Portuguese authorities ensure that all patients prescribed clozapine are provided with regular blood tests; staff should be educated about the potentially lethal side effects of clozapine and, in particular, the importance of carrying out regular blood tests.**

104. Medical examinations on admission to the Psychiatric Clinic were usually carried out by a psychiatrist as the general practitioner was only present three afternoons a week, during which time he had to cover both the Clinic and the prison, which held around 250 inmates. On the basis of an examination of the relevant documentation and interviews with patients and medical personnel, the CPT considers that there is a need to improve the quality of the assessment made upon admission to the establishment, notably as concerns the recording of injuries. **The CPT recommends that the approach set out above in paragraph 67 in respect of medical screening upon entry to prison be equally followed at the Psychiatric Clinic.**

105. The Clinic was equipped with basic emergency medical equipment such as a first aid kit including a defibrillator, but it did not possess a working electrocardiogram (ECG) machine. Given the profile of the patients and the medication prescribed, **the CPT recommends that the Psychiatric Clinic be equipped with an ECG machine.**

5. Staff

106. At the outset, the CPT wishes to stress that its delegation again met competent and dedicated health care staff who displayed considerable professionalism in their attitude towards patients. However, there were severe shortages of nurses and medical assistants whose number ought to be increased significantly in order to ensure that proper care is provided to the patients.

A manifest illustration of this state of affairs is that patients continue to be directly managed by prison officers. Health care staff usually did not visit the accommodation wards and only saw the patients when they came to the medical unit to take their medication. Such a state of affairs is unacceptable for a psychiatric establishment,⁴⁰ and it is neither acceptable for the patients nor for the prison guards, many of whom expressly stated that they felt unprepared to carry out their duties.

107. At the time of the visit, the Clinic employed three psychiatrists, one psychologist, 16 nurses⁴¹, and two orderlies⁴². Such a staffing complement is totally insufficient for caring for 175 mentally ill patients.

Indeed, the situation had deteriorated further since the 2016 visit, with 25% fewer nursing staff now responsible for 15% more patients. On a typical day shift there were three to four nurses, and one nurse at night; the effective day presence was impacted by the fact that five of the 18 nurses/orderlies were on sick leave at the time of the visit. These low staffing levels meant that some patients were used as orderlies to assist other patients.

The CPT's delegation was informed that staffing levels would be increased in 2020, notably as concerns the provision of two occupational therapists (sixty hours/week), 25 medical assistants (500 hours/week), and 20 nurses (140 hours/week). Such an increase is to be welcomed but it should be borne in mind that a psychiatric hospital with some 150 patients should have a complement of around 80 nurses and orderlies.

Further, in spite of repeated recommendations, health care and socio-therapeutic staff still did not have regular staff meetings, which would promote a comprehensive therapeutic approach.

108. The CPT calls upon the Portuguese authorities to reinforce the staffing complement, notably as regards the presence of qualified nursing staff, occupational therapists and staff to run therapeutic and rehabilitation activities. Provision should also be made for psychiatrists to be present at the Clinic at weekends when required and for such presence to be remunerated.

⁴⁰ The situation has been described in detail in the CPT's 2016 visit report, paragraph 121 of CPT/Inf (2018) 6.

⁴¹ The nurses were also responsible for the care of 205 prisoners from the adjoining prison establishment.

⁴² Their duties included showering and feeding those who needed assistance in the psychiatric clinic (approximately 10 patients), as well as cleaning the offices and toilet areas.

Further, the CPT reiterates its recommendation that regular team meetings of health care and socio-therapeutic staff be introduced.

The CPT also reiterates its recommendation that prison officers assigned to work inside the Psychiatric Clinic be replaced by trained nursing staff. In those instances when prison officers are required to intervene in security-related incidents, they should be specifically selected and trained to interact with mentally ill patients and always work under the control and supervision of the health care staff. This requires that nursing staff be present on the accommodation wards.

109. In the course of the visit, the CPT's delegation examined the cases of two patients who had recently died. One case in particular raises serious concerns that the Psychiatric Clinic is unable to manage patients with complex health care needs.

In July 2019, DM, a 55-year-old patient, was transferred to a hospital where he was diagnosed with pneumonia and a low blood sodium concentration. Further, while in hospital it was noted that he had dysphagia (an inability to swallow food), and the hospital concluded that it was not safe for him to ingest food or liquid orally as there was a real risk that he would choke. Consequently, a naso-gastric tube was inserted at the hospital on 29 July 2019 and a feeding plan devised. On 6 August 2019, he was transferred back to the Psychiatric Clinic with a discharge letter from the hospital setting out that he should continue to have a catheter *in situ* for his urinary retention and that he should continue to be fed by naso-gastric tube; it concluded that the patient did indeed have severe dementia.

Soon after his return to the Psychiatric Clinic, DM became agitated and pulled out his catheter and naso-gastric tube. However, the psychiatrist decided that the naso-gastric tube did not need to be replaced and that he could be fed orally. On the following morning (7 August 2019) DM was found by nursing staff *in extremis* with a piece of bread lodged in his throat and died.

The case illustrates tragically that the Psychiatric Clinic, with its limited health care resources, is unable to care for a patient requiring close intensive supervision who has complex mental and physical health care needs. **The CPT recommends that patients who are hospitalised should only be transferred back to the Psychiatric Clinic if their care needs can be properly met. Further, the CPT would like to receive a copy of the autopsy report of the patient DM, and the results of any inquiry into this death.**

6. Seclusion and means of restraint

110. The CPT has repeatedly recommended that all forensic psychiatric hospitals/services should establish written guidelines on the use of means of restraint. Such guidelines 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 guidelines should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms; and debriefing. In the CPT's opinion, such guidelines are a major support for staff and the debriefing is especially helpful in ensuring that patients understand the rationale behind a measure of restraint that may be imposed.

In their response to the CPT's report on the 2016 visit, the Portuguese authorities referred to the "Prison Health Care Procedure Manual" and to Circular No. 4/2016 on the compulsory procedures to adopt when using means of control and restraint. However, these documents do not provide clear guidelines on the use of means of restraint for psychiatric patients.

The CPT recommends that specific written guidelines on the use of means of restraint be drawn up for psychiatric patients, in the light of the above remarks.

111. As was the case in the past, there was no recourse to mechanical means of restraint. However, recourse to the use of seclusion remained frequent. In the first 11 months of 2019, there had been 99 instances of patients being placed in a seclusion cell for periods ranging mainly from one to six days but in the case of two patients the periods were as long as 12 and 30 days. The CPT recalls that in its view, a measure of seclusion should normally only be resorted to for a short period (usually hours rather than days until such time as the reason for the placement ceases to exist).

Moreover, any placement of a psychiatric patient in a seclusion cell should be surrounded by a series of safeguards, including the provision and appropriate documentation of regular human contact and continuous direct supervision by staff, as well as regular reviews of the need for continued seclusion. Such supervision was not taking place at the Psychiatric Clinic. Nor was there any running record of the observations made during a period of seclusion in the nursing logbook for each shift. For example, for the patient held in seclusion from 11 to 23 August 2019, there were no entries on his situation on 14 and 15 or after 16 August. The patient himself alleged that staff did not engage with him except when the nurse visited him once a day and that he had only been offered a shower once in 11 days and that he was not allowed access to the telephone or to the courtyard. Further, the conditions in the cell (so-called green room) were totally unsuitable (see paragraph 113 below).

112. The CPT wishes to stress once again that locking up a vulnerable mentally disordered patient alone in a room must be very carefully applied. It may produce a calming effect in the short term, but is also known to cause disorientation and anxiety, at least for certain patients. Whenever recourse to seclusion is necessary, **the CPT recommends that the Portuguese authorities ensure that the measure of seclusion be properly regulated and subject to a number of safeguards, in particular:**

- **placement in a seclusion cell should only be used as a last resort to prevent risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks. It should not be resorted to due to a lack of alternative strategies, staff and regime provision;**
- **any decision regarding the application of a measure of seclusion (or its continuation) must be taken after the doctor has personally seen and examined the patient;**
- **the duration of the measure should be for the shortest possible time;**
- **during placement in a seclusion cell, regular human contact and constant individual staff monitoring should be ensured and documented accordingly; the nurse who monitors the patient should maintain a log or journal, in which the condition of the patient is noted down at regular intervals (e.g. every 30 minutes);**
- **the need for continued seclusion should be regularly reviewed and the measure should be terminated immediately when the reason for it ceases to exist;**
- **persons subject to seclusion should receive full information on the reasons for the intervention as well as on avenues to appeal against the measure and should always be debriefed after the end of the measure, in order to explain the rationale behind it;**
- **resort to seclusion should always be accurately recorded.**

113. At the time of the visit, only one of the four seclusion cells were officially in use. It was commonly referred to as the “green cell” (it had been renovated with green linoleum on the floor and walls and made “suicide-proof”). However, access to natural light was limited by the small opaque window leaving the cell sombre. Further, the cell was equipped with only a mattress on the floor and a bucket for the patient to satisfy his needs which had to be slopped out each day. Secluding a patient in such conditions for more than a few hours could well amount to degrading treatment.

The other three bare cells remained as described in the CPT’s 2016 visit. Although, they had supposedly been taken out of service, the delegation received several allegations that patients were placed in these cells as an informal punishment, usually following an inter-patient dispute. One of the cells had a mattress on the floor and contained signs of having been recently occupied.

It is positive that patients placed in a seclusion cell were now provided with pyjamas and blankets, and not left naked.

The CPT recommends that steps be taken to ensure that the seclusion cell (green room) is not used for periods in excess of 24 hours. Further, patients placed in this cell must be offered ready access to the toilet as required. The remaining three cells should be sealed permanently until such time as they are properly renovated.

114. Patients could on rare occasions also be subjected to formal disciplinary sanctions, such as confinement to a cell with their possessions (POA) or withdrawal of their TV set or other items. In this respect, the same disciplinary rules that applied to prisoners were also applicable to patients at the Psychiatric Clinic. In the first 11 months of 2019, there had been a total of 39 proceedings against patients. Many patients were acquitted and about half of the cases were dismissed due to lack of evidence or the patients lacking insight, but some patients were sanctioned with three to 15 days of POA. In a few cases, patients received longer punishments; for example, 11 days of POA for possession of drugs and 12 days for possessing a mobile phone.

The cell now used for implementing POA, located in a sub-basement in wing 2A, measured less than 7 m² including an unpartitioned sanitary annexe. At the time of the visit, it was holding two patients. The cell possessed no call bell and no staff were present in this area.

The CPT’s delegation found that steps were being taken at the Psychiatric Clinic to ensure that whenever the patients’ behaviour was related to a psychiatric disorder, they should not be disciplined. However, as a matter of principle, the CPT has reservations about the use of disciplinary measures vis-à-vis psychiatric patients. Such measures aim at sanctioning patients’ behaviour, which is often likely to be related to a psychiatric disorder and should be approached from a therapeutic rather than a punitive standpoint.

The CPT encourages the Portuguese authorities to totally abolish disciplinary sanctions vis-à-vis (forensic) psychiatric patients.

7. Safeguards

115. The relevant provisions governing the procedures for placement and discharge for persons deemed irresponsible under the Criminal Code have not changed since the CPT's 2016 visit and are in principle surrounded by sufficient safeguards.⁴³

The CPT welcomed Order No. 5744/2018, which set up a working group to assess the situation of patients at the Psychiatry Clinic of Santa Cruz do Bispo Prison, with a view to a possible review of the patients' situation and their release based on Articles 92, 93 and 94 of the Criminal Code. It views positively the decision to transfer 40 patients to Magalhães Lemos Psychiatric Hospital (see paragraph 86 above). However, according to the hospital management, the 2018 review of all patients at the Psychiatric Clinic found that the majority of patients no longer needed to be detained at the Clinic but that they required supported living in the community. **The CPT would like to be informed about the measures being taken to transition this group of patients to appropriate care structures in the community.**

116. Involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state. Consequently, the need for such a placement should be reviewed at regular intervals.

For the patients placed under Article 104 of the Criminal Code, the placement has to be reviewed every 6 months. However, for the 138 patients found to be irresponsible for their crime by a court, a review is carried out only every two years. This review is carried out by a psychiatrist⁴⁴ from the clinic and a forensic doctor of the National Institute for Forensic Medicine,⁴⁵ and a judge decides whether or not the placement may be terminated. By law,⁴⁶ as well as in practice, a judge visited the Psychiatric Clinic to hear the patient in person.

While welcoming the regular review of the need for placement, the CPT is of the opinion that such a review should be more frequent than every two years. **The CPT recommends that regular *ex officio* reviews of any involuntary forensic placement decision are carried out at least once a year.**

117. The delegation gained the impression that during the assessment, the social situation of the patient was also being taken into account. While this is in principle a welcome practice, the result was that if a person had nowhere to go, his placement would be extended. For persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs.

⁴³ See previous CPT reports CPT/Inf (2013) 4, paragraph 119 and CPT/Inf (2009) 13, paragraph 133.

⁴⁴ See Section 504 (1)(a) of the CCP and Section 158 (2)(a) of the Code on Execution of Criminal Sanctions.

⁴⁵ According to Section 2 of Law 45/2004, Section 159 of the CCP and Section 16 of the Decree Law 123/2011, all forensic expert assessments must be provided by the Institute for Forensic Medicine and Forensic Science (*Instituto Nacional de Medicina Legal e Ciências Forenses*) or, in exceptional cases, by experts contracted by the Institute.

⁴⁶ Article 158 of the Code on Execution of Criminal Sanctions.

The CPT welcomes the efforts to release patients from the Clinic and encourages the Portuguese authorities to continue the assessment and, if necessary, the discharge or transfer of patients.

118. As regards contact with the outside world, the situation remained as described in the report on the 2016 visit and could generally be considered as satisfactory. That said, the automatic cut-off of phone calls after five minutes still remained a problem (see paragraph 82 above).

119. An effective complaints procedure is another basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment. **The CPT recommends that both internal and external complaints procedures, including complaints boxes (to be opened only by specially designated persons, and in confidence), be introduced. Patients should be systematically informed of their right to lodge complaints.**

APPENDIX I

List of the establishments visited by the CPT's delegation

Establishments under the authority of the Ministry of the Interior

- PSP Metropolitan Command Headquarters, Moscavide Avenue, Lisbon
- PSP 4th Police Division/30th Police Station, Travessa de Miguel Lupi, Lisbon (Lapa)
- PSP Bela Vista Holding Facilities, Agostinho José Freire Street, Porto
- GNR Police Station, Rua Padre Andrade e Silva, São Cosme, Gondomar

Establishments under the authority of the Ministry of Justice

- Caxias Prison *
- Lisbon Central Prison *
- Lisbon Judicial Police Prison *
- Porto Central Prison
- Porto Judicial Police Prison
- Santa Cruz do Bispo Prison (Psychiatric Clinic)
- Setúbal Prison *

* Targeted visit primarily to interview remand prisoners and to examine the treatment of vulnerable prisoners.

APPENDIX II

List of the national authorities, other bodies and non-governmental organisations with which the CPT's delegation held consultations

A. National authorities

Ministry of Internal Affairs

Antero Luís	Secretary of State for Internal Affairs
Ricardo Carrilho	Deputy Secretary General in charge of International Relations and Management of EU Funds
Madalena Martins	Head of International Relations Department
Carla Rebelo	Secretariat General of Internal Affairs - Technical support
Andreia Vieira	Captain, National Republican Guard
Francisco Carreira	Captain, National Republican Guard
Hugo Guinote	Deputy Chief Constable of the Public Security Police
João Ataíde	Senior Inspector of the Immigration and Border Service
Rita Penedo	Director, Observatory on Trafficking in Human Beings
Anabela Ferreira	Inspector-General of Internal Affairs
José Vilalonga	Deputy Inspector-General of Internal Affairs
Eurico Silva	Inspector, Inspectorate General of Internal Affairs (IGAI)

Ministry of Justice

Mário Belo Morgado	Secretary of State for Justice
José Carlos Sousa Mendes	Secretary General of the Ministry of Justice
Rómulo Mateus	Director General of Reintegration and Prison Services
Paulo Manuel Sales Moimenta de Carvalho	Deputy-Director General of Reintegration and Prison Services
Mariana Lopes	Re-education Advisor, Centre for Communication and External Relations Skills, Directorate General for Reinsertion and Prison Services
Alfredo Esberard	Director of the Criminal Investigation Information Unit, Judicial Police

Ministry of Foreign Affairs

João Pedro Antunes	Deputy Director-General for External Policy
Teresa Alvarenga	Director, Department of Political Multilateral Organisation
Raquel Chantre	Head of Human Rights Unit, Department of Political Multilateral Organisations
Filipa Pereira	Human Rights Desk Officer
Mara Sousa	Human Rights Desk Officer

Ministry of Health

Carlota Pacheco Vieira	Director of Coordination of International Relations, Directorate General of Health
Dr Teresa Galhardo	Adviser to the Director General of Health
Dr Fernando Vieira	Adviser to the National Programme for Mental Health, Directorate General of Health
Tiago Nunes Martins	Deputy Chief of Staff of the Minister of Health
Victor Martins	Head of Human Rights, Coordination of International Relations, Directorate General of Health

Ministry of Labour, Solidarity and Social Security

Ana Margarida Severino	Head of Department of Health – Director of Coordination of International Relations
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Ministry of National Defence

João Mota Pereira	Lt. Colonel, Commander of the Military Detention Facility
Cláudia Bicho	Desk Officer of the Defence Policy – Directorate of the Ministry of National Defense

Prosecutor General's Office

Joana Ferreira	Director, of Department for Cooperation and International Relations, Office of the Prosecutor General
Maria de Lurdes Lopes	Public Prosecutor, Cabinet of the Prosecutor General
Rosa Maria Rocha	Public Prosecutor, Cabinet of the Prosecutor General
Josefina E. Fernandes	Coordinator, Special Section for violence, Lisbon Regional criminal investigation and action department (DIAP)
Maria Leonor da Silva Magalhães	Assistant Public Prosecutor, Special section for violence, DIAP, Lisbon
Ana Margarida Godinho da Silva	Assistant Public Prosecutor, Special section for violence, DIAP, Lisbon
João Manuel de Vasconcelos	Public Prosecutor, Guimarães Central Criminal Court
Machado Texeira Alves	

B. Other Organisations

João Costa	Coordinator, National Preventive Mechanism (NPM), Ombudsman
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