

## 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 33m<sup>2</sup>) 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 7m<sup>2</sup> should accommodate only one prisoner instead of two and that all dormitories should provide 4m<sup>2</sup> 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.