



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Information received from Portugal on follow-up  
to the concluding observations on its seventh  
periodic report\***

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\* The present document is being issued without formal editing.



### **Follow-up information relating to paragraph 16 of the concluding observations (CAT/C/PRT/CO/7)**

1. The National Preventive Mechanism (NPM) has a support structure that allows it to carry out its tasks. This structure consists of the advisory board, the coordination committee and the core of visitors. It also has its own administrative support.
2. The core of visitors is made up of ten members, all employees of the Ombudsman, who are responsible for visits to places of detention, contributing to drafting the respective reports and presenting proposals for recommendations. The NPM may request the participation of other employees of the Ombudsman, as well as experts with technical and scientific knowledge appropriate to the purpose of each visit and typology of the place of detention in question.
3. In 2019, the NPM signed a protocol with the Order of Physicians to fill the absence of professionals with knowledge in the health field, a fundamental area within the scope of deprivation of liberty. This protocol aims to ensure adequate monitoring of places where people with mental disorders are found, through the integration of a doctor on the NPM visitation team. This contribution has been fundamental, allowing a closer analysis of the issue of mental health in prisons.
4. According to the 2019 Report of the NPM to the Parliament In 2019,<sup>1</sup> the NPM made 45 visits, which are always carried out without prior notice, three more than in 2018, having also increased the average duration of visits. Visits are planned on a quarterly basis, in a meeting of the coordination committee, taking into account different criteria for urgent signalling: last visit, previous reports and references to risk factors, news, follow-up of recommendations, signalling based on complaints to the Ombudsman, among others. It is given priority to the quality of visits rather than its number.

### **Follow-up information relating to paragraph 18 (a) of the concluding observations**

5. Any manifestation of excessive use of force by a member of the security forces and services (SFS) is not only contrary to their mission and contrary to their “Code of Ethics of Police Service”,<sup>2</sup> but also constitutes a violation of the Constitution of the Portuguese Republic. Any allegation of excessive use of force, including racially motivated misconduct, by the police is therefore thoroughly and strenuously investigated and, if proven true, met with adequate sanctions.
6. The Portuguese legal system encompasses a wide range of laws and regulations regarding the use of force by law enforcement personnel, including the Portuguese Constitutional Law, most notably, no.2 of article 266 and Decree-Law No. 457/99 of November 5, 1999.<sup>3</sup>
7. In addition, both the National Republican Guard (GNR) and the Public Security Police (PSP) have in place internal regulations on the use of force. In the case of the GNR, these include: Circular Letter nr. 15/2014-P on the use of force in a police intervention, the Handbook of Operations and the Public Order Maintenance Handbook, among others. By the same token, the PSP has adopted, internally, the Permanent Implementing Rule on Limits on the Use of Coercive Means, dated June 1, 2004, which details and further restricts the provisions of Decree-Law No. 457/99 of November 5, 1999.
8. Aside from and complementary to the regulation, Portugal has a system to control and investigate any allegations of violations of human rights by a member of the Security Forces, encompassing different levels and mechanisms, both internal and external, and independent, so as to guarantee fairness and due process.

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<sup>1</sup> Accessible from: <http://www.provedor-jus.pt/?idc=108>.

<sup>2</sup> Accessible from: <https://dre.pt/application/file/a/254708>.

<sup>3</sup> Accessible from: <https://dre.pt/pesquisa/-/search/693806/details/maximized>.

9. Internally, and under the terms of the Discipline Statutes of the GNR (law no.66/2014 of August 28)<sup>4</sup> and the PSP (Law no. 37/2019 of May 30)<sup>5</sup> all alleged excessive use of force and racially motivated misconduct by a police officer/military are promptly investigated by the respective deontology and discipline services.

10. Similarly, the Portuguese Immigration and Border Service (SEF) emphasises and raises awareness to the principle of non-discrimination as a key element enshrined in its professional Code of Ethics. The applicable disciplinary legal framework (Law 35/14, of June 20) foresees the procedural rules for investigation and disciplinary punishment.

11. At the external level, Decree-Law No. 58/2012 of March 14<sup>6</sup> establishes the Inspectorate General of Home Affairs (IGAI) with the mission to ensure high level functions of audit, inspection and control, over the entities and services which answer to, or whose activity is legally supervised or regulated by, the member of the government responsible for the area of Home Affairs.

12. Moreover, article 2, paragraph 2, subparagraphs (c) and (d) of Decree-Law No. 58/2012 of March 14, provides that IGAI is especially focused on controlling the actions of its agents, the legality of their actions, and it is incumbent on it to investigate all reports of serious violations of human rights.

13. Therefore, regardless of their source and origin, IGAI pays special attention to all reports of ill-treatment of citizens by elements of the security forces and services and, where deemed necessary, considering the reported facts and the seriousness thereof, inquiry proceedings always take place by initiative of the Inspector General.

14. Reports of a disciplinary offence always lead to initiate a procedure to establish if there is any liability that may be involved in the case, and the disciplinary action is of an informal nature, not depending on participation, complaint or denunciation (as per articles 71 and 72 of the Disciplinary Statute of the GNR, article 68 of the Disciplinary Statute of the PSP and article 194 of the General Labour Law in Public Functions).

15. It is worth noting that in matters related to racially motivated misconduct, Law No. 93/2017 of August 23<sup>7</sup> – which establishes the legal regimes for the prevention, prohibition and fight against discrimination due to racial and ethnic origin, colour, nationality, ancestry and territory of origin – determined that all inspectorate generals, including IGAI, no longer have the power to instruct processes (in terms of misdemeanour/administrative offences) in matters involving any form of racial discrimination.

16. That power and responsibility (in terms of misdemeanour/administrative offences) now lies solely with the High Commission for Migration (ACM), which according to article no. 20, paragraph 1, subparagraph b) of the Law No. 93/2017, may “request that the body with inspection powers to carry out visits to the services and facilities, in order to determine the facts necessary for the instruction”.

17. The SFS training programs are also aimed at reducing and prevent the likelihood of excessive use of force or racially motivated misconduct. At both initial and continuing levels, law enforcement officials receive human rights training, which place great emphasis on the obligation of police officers to conduct themselves in a manner that is fully cognisant and respectful of every person’s rights.

18. Moreover, officers also receive training on specific human rights-related issues, including intercultural dialogue, migration, discrimination, racism and domestic violence. Regularly, training on these specific matters is conducted by law enforcement-independent professionals, notably, by NGOs and other government bodies with expertise on the given subject.

19. To strengthen their capacity to improve relations with minority communities, in July 2016, the PSP signed a protocol with the ACM creating the program “Juntos Por Todos”

<sup>4</sup> Accessible from: <https://dre.pt/pesquisa/-/search/56376286/details/maximized>.

<sup>5</sup> Accessible from: <https://dre.pt/pesquisa/-/search/122446601/details/maximized>.

<sup>6</sup> Accessible from: <https://dre.pt/pesquisa/-/search/553450/details/maximized>.

<sup>7</sup> Accessible from: <https://dre.pt/pesquisa/-/search/108038372/details/maximized>.

(“Together for All”). This program is aimed at the prevention of conflict within multicultural communities and to ensure the safety of all citizens regardless of their nationality or cultural belonging. This program will be revised in 2020–2021 and will start a new training cycle.

20. The GNR also celebrated a protocol with the ACM in 2017, creating the PAM (Programa de Apoio aos Migrantes – “Migrants support program”), a program designed to support migrants. This protocol is currently under revision in order to improve and broaden with implementation.

21. Portugal’s commitment and efforts to improve the quality and effectiveness of police service and to prevent and combat discrimination are ongoing.

22. For instance, on June 9, 2020, the Minister of Home Affairs, Mr. Eduardo Cabrita, as well as the Heads of GNR, PSP and SEF participated in a public event organized by IGAI with the objective to discuss IGAI’s proposal for a Prevention Plan of Risks of Discriminatory Practice.<sup>8</sup>

23. The Plan is being drafted and it will contain programmatic measures, related to the recruitment and training of police officers, and contains measures of immediate implementation, namely those directed to the involvement of police officers in social networks when offering comments of a racist, xenophobic or other discriminatory nature.

24. The Plan is directed to all SFS and quite especially to those professionals involved in the training of the different police forces officers.

25. The Plan has two main objectives: to make police officers more aware of their role in the fight against discrimination and provide a set of resources, good practices and useful information in order to improve the officers’ conduct in their relationship with the citizen.

26. Regarding investigation, inquiries intended to investigate allegations of ill-treatment by law enforcement officials are entrusted to semi-specialised sections of the Departments of Criminal Investigation and Prosecution (DIAP) or assigned to specific, more experienced and highly skilled prosecutors holding office at the said DIAPs.

27. This concentration/assignment is primarily intended:

(a) To allow the investigations of the facts to be carried out by experienced prosecutors, so that the appropriate, investigation-oriented steps are taken promptly and the most relevant testimonies are obtained by the prosecutor;

(b) To concentrate investigations in the Public Prosecutor’s Office and avoid delegation of powers into criminal police bodies, without prejudice to delegating powers to a criminal police body other than the one to which the concerned officer(s) functionally pertain(s) in more complex cases or where the investigation can be carried out swifter in view of the specific challenges of the case or the difficulties experienced by the concerned Department;

(c) To speed up the investigation, namely the investigative steps on the forensic assessment.

28. Efforts have been made to grant priority to such Inquiries and to ensure that all necessary and appropriate steps are taken by the Public Prosecutor’s Office in order to establish the facts.

29. The Prosecutor General’s Office, together with the District Deputy Prosecutors General’s Offices and other involved structures of the Public Prosecutor’s Office, is duly aware of the importance of inquiries regarding ill-treatment by law enforcement officials. That is why it will endeavour to find an appropriate solution, both in terms of magistrates’ assignment and specific orders facilitating an immediate intervention and more effective investigations.

30. Under article 5(a) of the recent Law No. 55/2020 of August 27, 2020 which defines the objectives, priorities and guidelines of criminal policy for the biennium 2020–2022, in

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<sup>8</sup> Footage of the event is available at <https://youtu.be/FoddzB5xiqE> (Portuguese language only).

compliance with Law No. 17/2006 of May 23, which approves the Criminal Policy Framework Law, crimes committed by law enforcement officials are covered by this Law. The Directive to be issued by the Prosecutor General's Office in relation thereto will set out specific procedures on the investigation of such criminal offences and provide guidelines that will consider, in particular, the aspects addressed by the Committee's report.

31. It should also be noted that Circular 4/98 of May 4, 1998, issued by the Prosecutor General's Office concerning the communication of any inquiry against law enforcement officials to the Directorate-General of Reintegration and Prison Services (DGRSP) and the Inspectorate General of Home Affairs (IGAI) remains effective. This is particularly relevant in terms of articulation within the common investigative segments, in particular the collection of pertinent pieces of evidence.

### **Follow-up information relating to paragraph 22 (a) of the concluding observations**

32. Detention procedures and condition of detention are duly framed in legal regulations:

- Portuguese Constitutional Law;
- Criminal Procedure Code (CPP);
- Order nr. 5863/2015<sup>9</sup> of June 2 (Regulation of Material Conditions of Detention in Police Establishment) (RMCDPE);
- External control of police activity (IGAI);
- Universal Declaration of Human Rights;
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the United Nations Human Rights Council (UNHRC), the Association for the Prevention of Torture (APT) and the European Commission against Racism and Intolerance (ECRI) of the Council of Europe.

33. Regarding detention and use of police detention rooms, in addition to the provision of rights and duties, Portuguese Criminal Law and Procedure Criminal Law require a set of measures to safeguard and uphold the rights of a person at the moment of apprehension, including measures such as:

- Need for written information about the detention and full explanation about rights and duties;
- Access to a state attorney even if the detainee cannot afford it;
- Where necessary, an interpreter is provided for those detainees who do not speak/understand the Portuguese language;
- A detention has the goal to present the detainee to a judge, as soon as possible, without exceeding 48 hours;
- Detention done by police requires validation by judiciary authority;
- The activity of Police officers always under internal supervision in order to verify if all the legal procedures have been undertaken;
- Internally, PSP provides disciplinary regulation, internal procedures and Human Rights training;
- The detention rooms must meet a wide set of requirements prior to be able to accommodate detainees in order to respect the natural rights of a human being (Articles 3 to 8 of the RMCDPE).

34. Since April 2018 the PSP has in place in its Strategic Information System (SEI) the "Cell and Detainee Management Module".

<sup>9</sup> Accessible from: <https://dre.pt/home/-/dre/67374133/details/maximized>.

35. This feature ensures that all information relating to an arrest is inserted in the “Cell and Detainee Management Module”, and there are dozens of information fields such as “Date/Time of Rights Information”, “Date/Time of Information of the Judicial Authority”, “Date/Time of detention”, “Detention Deadline”, “Physical State of detainee”.
36. In addition, there is information regarding the “Detention Area”, such as “Unit”, “Date/Time of Entry”, “Date/Time of Departure”, “Holding Area Entity”. Subsequent to these fields there is exclusive information about the detention “Cell”, identifying in this field “Unit”, “Date/Time of Entry”, “Date/Time of Departure”, “Cell Number” and “Responsible for Driving”. There is also information on “Contacts/Visits”, “Food”, “Incidents”, “Medical Care” (in which there is a field for recording the “Input/Episode Number” and “Exit”).
37. The PSP Strategic Information System also provides forms with the rights of detainees in 17 languages (German, Arabic, Bulgarian, Czech, Chinese, Croatian, Spanish, French, Greek, Dutch, English, Italian, Polish, Portuguese, Romanian, Russian and Swedish).
38. At the GNR and PSP stations, there are information leaflets that contain a summary of the rights and duties of the detainee in several languages.
39. In the context of its activities, IGAI is also permanently vigilant of the need to guarantee the rights of citizens detained by police officers, including the right to communicate the detention to a third party (a relative or a friend); the right of access, be it, to a lawyer or medical care (checking whether there is a record of having been granted the access to those rights); and also the right to have the communication being carried out in a language the detainee understands (understand and make oneself understood in a language that one can master).
40. These rights, related to the conditions of detention facilities in police stations, are also monitored by IGAI through their inspections, in particular the unannounced visits carried out to several territorial posts (GNRs) and police stations (PSPs) throughout the country every year, which refer to Article 23 of the RMCDPE.
41. Portugal has sought to improve the habitability conditions of the prison system and has been striving to reduce the number of prisoners.
42. The decrease in the prison population is a statistically demonstrable fact that has been taking place over time, and Law No. 9/2020 of April 10 has helped to speed up and accentuate this process.
43. Thus, on November 1, 2019, the prison population was 12.743 inmates, setting the occupancy rate at 98,5%. This figure dropped to 12.628 and an occupancy rate of 97, 6% on December 31 and dropped again to 12.553 inmates and an occupancy of the prison system of 97,1% on April 1, 2020. A few days before the publication of Law 9/2020, it was evident that the prison population was gradually decreasing and there was no longer, in general terms, overcrowding in the prison system.
44. With the publication and implementation of the abovementioned Law, which allowed the release under pardon (article 2) of 1.314 prisoners and pardon (article 3) of 14 prisoners, the prison population was, on October 15, 2020, of 11.112 inmates and the occupancy rate of 86%.
45. Of these 11.112 inmates, there are 703 inmates temporarily in their homes enjoying an Extraordinary Administrative Exit License (article 4). Therefore, despite considered as prison population, they are not putting pressure on the daily occupation of spaces.
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