



PROVEDOR DE JUSTIÇA

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**CONTRIBUTION OF THE
PORTUGUESE OMBUDSMAN**

**to the List of Issues in relation to the fifth periodic report of
Portugal on the International Covenant on Civil and Political
Rights**

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Introduction

The Portuguese Ombudsman, in its capacity as National Human Rights Institution and National Preventive Mechanism, would like to stress the importance it attaches to the collaboration with UN monitoring bodies in the area of human rights and to welcome this opportunity to share with the Human Rights Committee its views on some of the topics covered by the list of issues in relation to the fifth periodic report of Portugal.

For this purpose, the Portuguese Ombudsman would like to present some comments as regards the issues with which it has a particular concern, due to its activity.

1. Constitutional and legal framework within which the Covenant is implemented (art. 2)

Issue 3

The Ombudsman's current structure was approved in 1991, through the Law no. 9/91, of 9 April. In 1999, the Ombudsman was designated as National Human Rights Institution (NHRI) and, since then, it has been accredited with "A" status by GANHRI for being fully in line with the Paris Principles. In 2013, it was appointed as the National Preventive Mechanism (NPM), pursuant to the Optional Protocol to the Convention against Torture. Thus, it also became responsible to monitor all places of deprivation of liberty in the Portuguese territory.

Neither the Ombudsman's designation as NHRI nor its appointment as NPM were followed by measures (namely, the reinforcement of financial and human resources) aimed at strengthening its monitoring functions. As a result, new functions as the promotion of Human Rights, dialogue with international institutions (UN bodies, Council of Europe and others), monitoring duties, visits, coordination, and reports are done by the same staff that deals the traditional tasks of the Ombudsman.

The Ombudsman has repeatedly claimed that its material and human resources are clearly insufficient. This insufficiency has also been highlighted by several international bodies such as, for example, the Committee on the Rights of the Child, which recommended the Portuguese State to "*provide adequate human, technical and financial resources to the Office of the Ombudsman for the effective implementation of its mandated functions*" (Concluding observations on the combined fifth and sixth periodic report of Portugal, CRC/C/PRT/CO/5-6, para. 12 (b)). The Subcommittee on



Prevention of Torture (SPT) has reaffirmed this need, in the report following its visit to Portugal (May 2018): *“recalling that OPCAT article 18 (3) obliges States parties to provide NPMs with the necessary financial and human resources to undertake their work, the SPT reiterates that the NPM shall be provided with a budget sufficient for accomplishing all mandated tasks, in addition to granting the NPM the institutional autonomy to use its resources. This funding should be provided through a separate line in the national annual budget referring specifically to the NPM and not through the general budget of the Ombudsperson. This funding shall be at such a level as to allow the NPM to carry out its visiting programme, to engage outside experts as and when appropriate, to increase its human resources and to regularly access training, in accordance with its own work plan”* (CAT/OP/PRT/R.2, para. 16). Finally, the Committee against Torture (CAT) mentioned in its Concluding Observations on the seventh periodic report of Portugal, from December 2019 (CAT/C/PRT/CO/7, para. 16), that *“The State party should ensure the operational autonomy of the national preventive mechanism and provide it with the necessary earmarked financial and personnel resources for the performance of its work, in accordance with article 18 (1) and (3) of the Optional Protocol (see also CAT/OP/12/5, paras. 11–12).*

It is, then, generally recognised that the Ombudsman is not endowed with the sufficient means that allow it to fully pursue all its competences. As a result, in order to adequately perform its duties as NHRI and as NPM, the Institution would need to strengthen its financial and human resources. In the case of the NPM, it has suggested and will continue to stress the need to create a specific structure within the Ombudsman’s Office, comprised of, at least, a coordinator and two support officers. Currently, the NPM has solely one fully dedicated staff member, who is part of the Cabinet of the Ombudsperson.

2. Non-discrimination (arts. 2, 7, 24, 25 and 26)

Issue 11

The Portuguese legal system provides for various types of social benefits aimed at protecting persons with disabilities. In order to benefit from them, applicants shall present a medical certification of the disability, of the permanent incapacity or of the dependency.

In this context, the Ombudsman has received several complaints, mostly concerning constraints in the timely allocation of the social benefits. One of the most affected benefits is the Social Benefit for Inclusion. Its acknowledgment is subject to the verification of a certain degree of disability (equal to or greater than 60%), duly certified by a Multiuse Disability Medical Certificate, issued by the Health Authority (Ministry of Health). Delays in the issuance of these documents hinder the access to this social benefit, since, pursuant to paragraph 5 of article 23 of

Decree-Law no. 126-A / 2017, of October 6, this benefit is only due after the month of delivery of the certification document. Following several complaints received by the Ombudsman, the Social Security Institute, IP informed that, on 01/01/2020, 1.313 citizens were waiting for the issuance of certification to be able to access to the Social Benefit for Inclusion¹. Even though, after this certificate, other delays may affect the procedure. According to the same data provided by the Social Security Institute, IP, 1.596 applications – which were already issued with a medical certificate - were still pending in the Social Security Institute for a final decision.

Another social benefit worth mentioning is the Disability Pension. In addition to other legal requirements, access to this benefit is subject to the certification of the situation of permanent incapacity for work, through the Disability Verification System². According to art. 4 (2) of the Decree-Law No. 360/87, verification commissions and appeal commissions are competent to attest the permanent incapacity for work. The Ombudsman has received complaints on delays also in this context. These delays are related not only to medical examinations by the commissions, but also in the processing and subsequent payment of the respective pensions. The same can be said regarding the dependency supplement (benefit attributed to pensioners who are in a situation of dependency and who need the help of another person to meet the basic needs of daily life), which also must be recognized by the verification commissions and appeal commissions. In all these cases, due to systematic delays, persons with disabilities may have to live unprotected for long periods of time.

Finally, the Ombudsman has also received several complaints regarding the Special education allowance - a subsidy for children and young people (up to the age of 24) with permanent disabilities, which is intended to compensate charges resulting from the frequency of suitable establishments or individual support by a specialized technician. In accordance with the law³, the application must always be accompanied by a statement from the specialist physician that proves the permanent reduction of the applicant's capacity (whether physical, sensorial or intellectual). Nevertheless, social security services can subject children and young people with disabilities to multidisciplinary medical and pedagogical assessment teams. The complaints received refer to the intervention and assessment made by these multidisciplinary teams, which, in some cases, do not confirm the medical declaration submitted by the interested parties, resulting in the rejection of the requirements.

¹ The oldest requirement dated of 2018.

² Article 17 of Decree-Law No. 187 / 2007, of May 3.

³ Article 4 of Regulatory Decree no. 3/2016, of 23 August.

3. Violence against women, including sexual and domestic violence (arts. 2, 3, 6, 7 and 26)

Issue 13

The Ombudsman recognizes all the efforts made during the reporting period to raise awareness and prevent domestic violence and other types of gender-based violence. However, it is still concerned with the extremely high numbers of cases of domestic violence reported in recent years. According to the latest Annual Security Report, 26.483 crimes of domestic violence were reported in 2018⁴.

The Ministry of Justice website presents data on convictions for domestic violence against Spouse/Similar, Domestic Violence against Minors and “other Domestic Violence”. In the reporting period, the following numbers of convictions were published in the Ministry of Justice website:

	2016	2017
Domestic Violence (Spouse / similar)	1.528	1.461
Domestic Violence against Children	47	49
Others Domestic Violence	409	403

The latest update refers to a total number of 1.845 convictions in 2018 (although no detailed numbers according to the types of domestic violence are available yet)⁵.

Although it is worth noting that the State has been developing several measures aimed at raising awareness on domestic violence against women, some victims remain less visible. That is the case of older women, who are also particularly vulnerable to fall victims of such crime. In 2018, the Hotline for Older Persons, run by the Ombudsman, received 39 calls reporting cases of domestic violence. Moreover, they are also particular vulnerable to other types of ill-treatment. The Ombudsman received 76 phone calls on abuse (whether perpetrated by the family or by the

⁴ *The Annual Security Report 2018 of the Portuguese Government*, p. 14. Available at: <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=ad5cfe37-0d52-412e-83fb-7f098448dba7>

⁵ https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Violencia_domestica.aspx

Institutions), 96 calls reporting negligence of care, 27 calls on material and financial abuse, and 10 calls on abandonment. In 2019, there were 63 calls reporting cases of domestic violence, which represented a big increase comparing to 2018. As for other types of ill-treatment, there were also more cases in 2019, which reached a total of 218 (121 calls on negligence of care, 44 on physical and emotional abuse, 42 calls on material and financial abuse, and 11 calls on abandonment).

Children affected by domestic violence in the household also remain particularly fragile. According to annual reports of the National Commission for the Promotion of Rights and the Protection of Children and Youth, in 2017 there were 8.695 children exposed to domestic violence. In 2018, this number rose to 8.801. The Children Hotline, run by the Ombudsman, received, in 2018, 10 calls reporting cases of exposure of children to domestic violence and 102 calls on ill-treatment and negligence. As for 2019, the numbers were of 5 calls on exposure to domestic violence, and 116 calls on other types of ill-treatment, including sexual abuse, and negligence.

The Ombudsman also runs a Hotline for Persons with Disabilities. Although in 2018 there were no calls to the Hotline reporting cases of violence against these persons, in 2019 there were 4 calls. The Ombudsman recalls, nonetheless, that these persons are particularly vulnerable to this phenomenon and, in some cases, face more difficulties in reporting cases that affect them.

Finally, migrants and asylum seekers with temporary, precarious, or irregular status in the country may also be victims of domestic violence or other types of gender-based violence. Their situation is particularly worrisome as, due to lack of information of the Portuguese legal system or fear to report their cases to the authorities (namely for fearing deportation), they may be particularly unprotected.

**4. Right to life, prohibition of torture and cruel, inhuman or degrading treatment, conduct of the security forces and treatment of persons deprived of their liberty
(arts. 6, 7 and 10)**

Issues 14 and 15:

The NPM acknowledges that the time of apprehension and the first days of detention – either with time spent in police stations or in detention centres – are particularly sensitive with

regards to the risk of torture and ill-treatment. These are moments in which the appropriate use of force and firearms by law enforcement and security forces is of key importance. The NPM monitors these situations by visiting police stations and interviewing persons deprived of their liberty therein. In addition, in its prison visits, the NPM seeks to talk to those that have most recently arrived into custody. The NPM has heard some complaints related to the use of force by the police, in particular related to the unnecessary use of handcuffs. Recognizing the difficult balance between protecting the rights of the individual and security concerns, the NPM stresses the need to ensure maximum respect for the rights of all by restricting the use of force to the minimum required and necessary in the particular case, taking into account the proportionality and seriousness of the offense.

Furthermore, the NPM recalls that instances of ill-treatment include but are not limited to abuses in the use of force by the authorities. Degrading material conditions and uncertain or punitive regimes of detention, witnessed by the NPM in some of its visits, are also within the topics to be considered in this context.

In police stations, conditions of cells are often very poor, with insufficient ventilation and lack to access to natural light or even artificial light. During these visits, the NPM observed that there are no clear rules regarding access to outdoor exercise for persons detained for 24 hours or more, being these rights granted on a case-by-case basis. Besides poor conditions of cells, some of these places lack privacy for detainees awaiting identification and interrogation, leading to unnecessary exposure of people who are already vulnerable, exacerbating the psychological pressure that these moments tend to generate. The NPM also recognizes the need to provide better working conditions for agents.

With regards to prisons, some buildings are too old and require urgent intervention to guarantee that minimum requirements of health and safety are complied with. The NPM has visited several prisons with decaying conditions and amongst these are prisons mentioned in the Committee's Report and visited in 2019: as examples, in Montijo there were severe issues with cockroaches and other bugs; in Lisbon Central, cells in some of the wings had decaying conditions, which included, inter alia, being small, humid, lacking adequate lighting, being either too cold or too warm; Caxias prison, contrarily to the Mandela Rules, lacks cells of single occupancy, with implications in terms of space, comfort and privacy, as well as potential impact on prisoners' mental health; other visits, such as the one to Alcoentre, highlighted the fact that

some buildings are simply inadequate to hold persons deprived of their liberty, raising safety and security concerns. Concerns related to overcrowding and solitary confinement will be analyzed under Issues 16 and 17.

The NPM is further worried as some of these issues were at the basis of the decision by the European Court of Human Rights in the case of *Petrescu v. Portugal* (application no. 23190/17) that held that there had been several violations to Article 3 of the European Convention of Human Rights (prohibition of inhuman or degrading treatment) on account of the conditions of detention in the Lisbon police prison and in Pinheiro da Cruz prison, where the applicant was detained between 2012 and 2016.⁶ The judgment also considered that Portuguese domestic law did not provide sufficiently accessible and effective complaint mechanisms and remedies to prevent the continuation of the alleged ill-treatment⁷. Given the fact that the problems raised by the applicant affect other prisons and their inmates, the NPM will continue monitoring Portugal's response to the case, both its judicial aspects and its practical consequences, as the State is recommended to adopt different measures to improve the detention conditions it offers to citizens. Its impact, thus, remains to be seen.

With reference to the information available on the number of complaints lodged and cases initiated against officials who have disrespected the safeguards to persons deprived of their liberty, the NPM reiterates its position that this data is of the utmost importance, as it is related to violations of the detainees' guarantees and is an important instrument to monitor the compliance with all these guarantees. As did the Committee's Report, it urges further data collection and publicity of such data.

Finally, when it comes to prompt medical examinations being carried out during the investigations of allegations of inflictions of torture or ill-treatment, the NPM has witnessed situations in prisons in which the legal framework is complied with when it comes to the flagging

⁶ Under Articles 43 and 44 of the Convention, the Chamber judgment is not final. During the three-month period following its delivery in early December 2019, any party may request that the case be referred to the Grand Chamber of the Court.

⁷ In the context of measures taken to raise awareness of detainees about the existence of complaint mechanisms regarding cases of alleged torture or ill-treatment by State officials, the Ombudsman applauds the measure adopted by the Directorate-General for Reinsertion and Prison Services for reinforcing the diffusion of the Ombudsman's Blue Line number, usually placed near telephone booths. However, the NPM has already been to prison facilities where the connection to the Ombudsman's office was not successful. Therefore, it is paramount to reinforce the information of the NPM / Ombudsman's role, and to confirm that all means to address this entity are effectively granted. The NPM has started distributing leaflets during its visits, to increase its visibility. In the *Petrescu v. Portugal* case, the Court's decision argued that Portugal had not shown that the Ombudsman's non-binding recommendations would make it possible to secure rapid improvements in the conditions of detention that lead to the complaints.

of such situations, with adequate reporting that includes the use of photographs. However, it has received reports that at times such exams are conducted by nurses instead of doctors, due to unavailable staff at the time of arrival to the prison. This can have negative consequences for the adequacy of proper evaluation.

Issue 16

The Ombudsman welcomes the measures that have been leading to a decrease of the Portuguese prison population since 2016. The reduction in the number of prisoners has ensured that, despite being close to 100% occupancy rate, there is no overall overcrowding in the Portuguese prison system. Nonetheless, while overall there is no overcrowding, there are numerous overcrowded prisons, in particular smaller institutions, which requires rethinking the distribution of prisoners within the system. Further, Portugal is still well above European average and median in number of prisoners per 100,000 inhabitants. The Ombudsman believes that reducing the prison population is fundamental to preventing situations of torture and ill-treatment, and thus applauds the current trend that was supported by recent legal developments (namely, the adoption of the Law No. 94/2017, of August 23, referred to in the Portuguese State's response to the Committee's Report) that created non-custodial alternatives to enforce prison sentences under two years. The same can be said regarding the revocation of the prison punishment carried out on free days.

The Ombudsman also takes the opportunity to welcome the 2017 multi-annual strategy for requalification and modernization of the prison system (also referred to in the State's response), including the closure of eight prison establishments. The NPM has noted in its visit reports that other establishments not mentioned therein – such as the psychiatric clinic at Santa Cruz do Bispo Prison, the main block of Alcoentre Prison and Montijo prison – also lack adequate conditions for housing detainees and should thus be either closed or subject to significant reform in the near future. In addition, as stated by the Portuguese State's response, there are advanced plans to build two new prisons for around 600 inmates each, with innovative designs inspired by evidence-based research on prison architecture. This is, of course, encouraging news and a step in the right direction.

Despite these developments, the uncertainty about how and when the changes will occur, with no clear schedule for their implementation, can block efforts to improve the prisons that are to be closed, something that the NPM observed during recent visits to the Lisbon and Setúbal

prisons. Without knowing for how long they will remain open, it becomes harder to decide what investments to make. Furthermore, it would be useful to understand when the two new prisons are expected to open, as it could better inform the allocation of resources within the prison system as well as the distribution of the prison population. Indeed, the distribution of inmates can lead to added strains to the prisons' network, both between prisons and within prisons. It has led to some challenges in separating remand and convicted detainees, vulnerable populations, young and older offenders, among others. Moreover, the lack of clear purposes and criteria can be detrimental to the effective sense of progression within the system, impacting both life in custody and reintegration efforts. Due to the heterogeneity of the Portuguese prisons – in terms of size, occupancy rate, and occupational opportunities (labor, education, leisure) – and its impact on (different) incarceration experiences, rethinking these matters is all the more relevant and could add more consistency to the prison system as a whole.

With regards to the fact that the inmate is a user of the National Health Service like any other citizen, as stated in the State's report, the NPM notes with apprehension that, while this is true, the lack of human resources – most notably prison guards – and also material resources, has had negative consequences on inmates' access to health care. There were multiple occasions in which medical (and other) appointments had to be cancelled or postponed, sometimes last minute, due to the absence of available staff to supervise transportation, generating feelings of frustration and anger in the prison population, who often reported not being looked after. The potential health consequences cannot be taken lightly. As various prison staff explained to the NPM, there is a need to prioritise urgent appointments, which often means overlooking others. The lack of prison guards is indeed one of the themes the NPM is most concerned with in relation to prisons, as its effects are felt in multiple areas of prison life.

When it comes to drug abuse in prisons, the NPM ought to praise successful initiatives in this regard that have been implemented. The therapeutic programs that include drug-free units that separate those who suffer from addiction from the rest of the prison population are good examples, such as the G Wing of the Lisbon Prison: in a separate building and with conditions that greatly contrast with the grave deficiencies of the main building, the atmosphere itself felt humane. The NPM knows that for logistical reasons such initiatives are not always possible, but they do point towards the desirable path when thinking of penal reform. These initiatives, among others that have been recently discussed by the Directorate-General, such as measures that facilitate contact with the outside world, or legislative changes as the Decree-Law No. 97/2019, that regulates the prioritizing of non-carceral alternatives to the deprivation of liberty of

unimputable individuals, are also noteworthy positive developments.

Issue 17

As mentioned in the State's Report, a recent recommendation issued in November 2019 by the Director-General has exhorted prison establishments' directors to refrain from imposing the disciplinary sanction of solitary confinement for periods over 15 days. In practice, this aligns Portugal with international jurisprudence on the matter and represents a positive change. However, the law has yet to be amended, as the article 105 of the Code of Execution of Sentences and Custodial Security Measures was not changed pursuant to this recommendation. Thus, the legally maximum duration for the sanction continues to be 21 days, although the SPT has recommended that "ensure, including through changes in legislation if necessary, that the maximum period of placement in solitary confinement does not exceed 15 consecutive days" (CAT/OP/PRT/1, para. 81). In addition, its regime is no different for minors under the age of 18, even if its application is "very exceptional and usually does not exceed 15 days", as argued in the State's Report. The NPM believes that the content of the recommendation and its practice should be enshrined in the Code and should not include in its provisions the possibility of its application to minors.

Indeed, the NPM is particularly worried, in the realm of the Administration of child justice, that child confinement in a disciplinary room may still be applicable. Although such disciplinary measure is not foreseen as such in the cast of disciplinary measures enshrined in art. 194 of the Educational Guardianship Law, it is still referred in art. 205 (3)(a)), and disciplinary rooms exist in the Educational Centres that were visited by the NPM. Moreover, art. 183 foresees the precautionary isolation measure, which may take place in a specific room. Recently, the Committee on the Rights of the Child urged the State to prohibit and abolish the use of solitary confinement to punish children and immediately remove all children held in solitary confinement (CRC/C/PRT/CO/5- 6, para. 44 (c)).

The Ombudsman has received several complaints regarding disciplinary procedures in prisons over the recent years. As its 2018 annual report points out, the role that the legal protection system plays in the disciplinary action is not clear, in particular at the stage prior to any appeal to the Courts. Although several local social security services show due diligence in analysing the submitted applications, their articulation with the disciplinary proceedings is not always straightforward. On the other hand, the length of the procedures is usually long and

unpredictable. This contributes to the perception that the disciplinary procedures are obscure and not transparent to inmates. In this context, the Ombudsman highlights that the SPT recommended Portugal that “the disciplinary proceedings in prisons are speedily processed and that measures are put in place to allow prisoners to appeal against the imposition of disciplinary sanction” (CAT/OP/PRT/1, para. 81).

5. Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10, 13, 24 and 26)

Issue 20:

Over the last two years, the Ombudsman’s activity, in its quality as NPM, has focused with special acuteness on migrants’ temporary detention centres. Its main attention has been devoted to the detention centres located at the external borders (airports). In Portugal, there is only one “ordinary” reception centre – the Santo António do Porto Housing Unit (UHSA). All other centres are detention centres located at the airport’s external borders (EECIT). The UHSA is intended primarily for the detention of immigrants awaiting the execution of a removal order or expulsion decision. As a rule, foreigners whose entry into the country is refused, as well as asylum seekers to whom detention applies, are held in the airports’ EECIT.

These centres present several challenges that may encompass risks for the personal integrity of the detainees. They have only two wings, which separate asylum seekers and other migrants whose entry in the national territory was refused (in Lisbon) or Men and Women migrants (as it is the case in Porto). In the case of the Lisbon’s EECIT, each wing has only two dormitories: one for men and other for women, which have several bunk beds and also accommodate children. These places are often overcrowded. In the worst cases, migrants have to sleep in mattresses on the floor – both in the dormitories, the corridors and the dining room. There are no leisure areas, apart from a small concrete patio. Moreover, detainees barely hold personal goods besides clothes, and contacts by phone are severely restricted⁸. The NPM is extremely concerned with the manifestly insufficient contacts with the outside world and the lack of psychological monitoring. Besides the periodic visits of the *World Doctors* NGO, no regular health care is provided to detainees. These conditions are particular worrisome due to the fact

⁸ In this aspect, see the National Preventive Mechanism Annual Report of 2018 (p. 43), which states, *inter alia*, that phone contacts were allowed, in the Lisbon EECIT, only for a maximum period of 5 minutes during the whole stay.

that, according to the Portuguese Immigration and Asylum laws, detention can last for a maximum period of 60 days.

Following NPM's visits and conclusions, which were dully discussed with the Ministry of Internal Affairs, the latter has made a compromise to open a new detention centre in Almoçageme during 2019, mostly to receive people that currently are admitted by the Lisbon's airport EECIT. However, to the present date, the new centre has yet to open (mostly due to a judicial injunction decision, following a request by the residents living in the area), and detained migrants and asylum seekers are maintained in the EECIT's facilities for up to 60 days in most of the cases, according to reports received by the NPM during its visits.

Issue 21

The Ombudsman is also concerned with the fairness of administrative procedures on immigration and asylum, due to the high number of complaints received due to delays on the decision-making process. Most complaints received in 2019 concerned delays in decisions on the regularisation of the migrants' status due to humanitarian grounds (art. 123 of the Immigration Law⁹). This regularisation possibility does not correspond to a subjective right of the applicant, but to a discretionary power of the Minister of Home Affairs. Even though, its procedure frequently starts with an application from the interested person. After this application, the Administration is taking many months – sometimes even more than a year – to reach a final answer. The high number of complaints against this situation (169 complaints in 2019) is worrisome, especially due to the lack of transparency of this particular procedure.

A high number of delays is also verified in decisions on regularisations for work purposes, foreseen in art. 88 of the Immigration Law (the Ombudsman has received 67 complaints in 2019), in decisions on family reunification (26 complaints, in the same year), and on the renewal of residence permits (22 complaints). The reported delays in these realms may also last from several months up to one year. Cases of family reunification and residence permits' renewals are particularly troubling, since they compromise the enjoyment of the human rights to family unity and to private life, as enshrined in Article 17 of the Covenant. Although the majority of these complaints are related to immigration law, there are also some complaints on delays regarding authorisations for family reunification of refugees or renewals of the international protection's

⁹ Law no. 23/2007, as last amended by Law no. 28/2019, de 29/03.

status. Finally, although less abundant, the Ombudsman has also received some complaints about delays in the recognition of refugee or subsidiary international protection status. This last scenario is also of the utmost importance, since asylum seekers may remain in the territory for large periods of time without them being recognised as refugees of subsidiary protection holders.

As for measures taken to ensure that every person seeking asylum enjoys all existing procedural guarantees, several asylum seekers who were detained reported to the NPM that they were unaware of whether a decision had already been taken on their case, or which was its content. Legal information to asylum seekers is normally given by the Portuguese Refugee Council, an NGO that provides support to asylum seekers and assists them during the judicial appeal phase. However, this organisation only participates in the procedure *after* a decision refusing to grant asylum has been issued. Thus, until such decision, asylum seekers are fully dependent on the information provided by the Aliens and Borders police.

The right to promptly access to a lawyer is also jeopardized in some cases where migrants are detained. Although the law guarantees that detainees must be informed at the outset, in a language that they understand, of the right to a lawyer at all stages of the procedure and of the right to contact with them in private, some practices have been adopted – mainly in the Lisbon EECIT centre – that hamper this right. According to the understanding of the Aliens and Borders Police, a foreigner may only contact a lawyer after lodging an asylum application. As a consequence, the administration prevents migrants to be accompanied by a lawyer while making their first statements at the borders. Notwithstanding, legal assistance at that stage may be essential, as it helps to articulate a consistent justification for international protection. The presence of a lawyer can also contribute to the proper registration of an asylum application. In fact, in the latest NPM's visit to the centre Lisbon EECIT, two women claimed that they had requested asylum for several times, but the Aliens and Borders Police had not yet registered the application – a situation which was corrected during the NPM visit. Although the lack of registry was not proven, assuring that a lawyer may be present may provide legal certainty to both parts. This is especially serious because, until the registration of an asylum application, migrants may remain in the EECIT's wing of entry refusals and be returned to their country of origin at any time.

Nonetheless, the right to access to a lawyer may be hindered at the Lisbon EECIT even at later stages of the procedure. In order to enter into the international airport's international area, lawyers must be accredited by the airport's administration and pay a daily fee – which currently amounts to 13 euro. This accreditation procedure is often lengthy. The Ombudsman received reports of detainees who claimed that their lawyers had to wait several hours before being allowed to enter in the EECIT. In cases concerning to aliens detained in entry refusals' wing, this led to situations where lawyers were only admitted entering after the migrant had already been removed to his or her country of origin.

Issue 22

According to Article 35-A, §1, of the Asylum Law¹⁰, asylum seekers are not subject to detention solely based on the fact that they have applied for international protection. However, n. 3 of that Article allows the detention of asylum-seekers who have lodged their application at the border posts or in the context of applications made following a decision on removal from the national territory. These provisions were added by the Law no. 26/2014, which amended the Asylum Law. While Article 35-A states that such measures can only be applied in cases where “no other less serious alternative measures can be effectively implemented”, the Ombudsman has witnessed that detention is applicable in a systematic basis and by default to every irregular migrant or asylum seeker that presents themselves at the border.

Stays in these temporary centres that exceed 48 hours must be authorized by the competent court. Yet, this guarantee has not been sufficient to reduce the number nor the frequency of administrative detentions. That is because – as already confirmed by the Aliens and Borders Service and by judges of the competent court – judicial authorisations to remain in the centre are requested and given by fax, without hearing the detainee in person. Judicial control may then be reduced to a mere formal step. Without hearing the person whose claim is at stake, the judge will be prevented from achieving a broad understanding of the personal circumstances of the detainees, including accompanying family members, their possible consideration as “especially vulnerable persons”, and so forth. It may also prevent the application of alternative

¹⁰ Law No. 27/2008, of 30 June, as last amended by Law n. 26/2014, of 05 May.

measures to detention, thus contributing to the systematic detention of migrants at the border posts.

In its visits to EECIT's detention centres, the NPM has constantly asked the administration whether there were any procedures put in place in order to systematically identify particular vulnerable persons. The Aliens and Borders Service informed that no standards existed and that such an identification would depend on the *ad hoc* evaluation made by official. The Ombudsman is particularly concerned with detention of migrant children – whether accompanied or unaccompanied. Although in its response to the list of issues, the Government claims that such detention is not allowed, in almost all visits conducted to the Lisbon's airport EECIT the NPM could witness children – who were often very young – detained therein. In this context, the Minister of Home Affairs issued, in 2018, an order stating that the maximum stay in the EECIT of minors under 16 years would be of seven days. After this deadline, children must be received by the Refugee Shelter House managed by the Portuguese Refugee Council and their parents should accompany them. Despite recognizing that this development is positive, the NPM considers that the best interests of children always conflicts with their deprivation of liberty, even though it understands the difficulty of pondering some situations, namely regarding suspicions of human trafficking or fear of escape.