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Communication by the Provedor de Justiça (Portuguese Ombudsman)

under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, concerning the group of cases of

Petrescu v. Portugal

(application no. 23190/17, judgment of 3 December 2019)

Lisbon, 12 May 2026

I. Introduction

The Provedor de Justiça, established in Portugal in 1975, is an independent constitutional body¹ elected by Parliament. Its purpose is to promote and safeguard the rights, freedoms, guarantees and legitimate interests of citizens, ensuring through informal means that public powers are exercised justly and lawfully.

In addition to its mandate to handle individual complaints, the institution has held “A” accreditation status since 1999, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and has been designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Statute of the Provedor de Justiça (Law no. 9/91 of 9 April 1991²) governs the institution, setting out its mandate, guarantees of independence and functions. Its role as a National Human

¹Article 23 of the Constitution of the Portuguese Republic of 1976.

²As amended by Law no. 30/96, of 14 August 1996; Law no. 52-A/2005, of 10 October 2005; and Law no. 17/2013, of 18 February 2013.

Rights Institution — in particular its mandate to monitor the Portuguese State’s implementation of international human rights treaties and conventions — is expressly recognised in Article 1(2) of the Statute. Article 1(3) establishes the duty of the Provedor de Justiça to cooperate with peer institutions and with European and international organisations concerned with the protection and promotion of human rights.

This communication is submitted to the Committee of Ministers of the Council of Europe pursuant to Rule 9.2 of the Rules of the Committee of Ministers³, in the context of the supervision of the execution of the judgment of the European Court of Human Rights (hereinafter: the Court) concerning the group of cases of *Petrescu v. Portugal* (2019)⁴.

II. As Regards Prison Overcrowding

1. Overcrowding within the Portuguese prison system has persisted for decades and has intensified in recent years. The prison population has expanded without any corresponding increase in the capacity of the national prison estate.

	High Level of Management Complexity				Medium Level of Management Complexity			
	2022	2023	2024	2025	2022	2023	2024	2025
Prison population	9,656	9,501	9,736	10,320	2,529	2,511	2,471	2,654
Official capacity	10,373	10,041	10,334	10,235	2,245	2,262	2,274	2,316
Occupancy rate	93.1%	91.3%	94.2%	100.8%	112.7%	111%	108.7%	114.5%

2. On 31 December 2025, only 5 of the 49 prison establishments in the country (10%) operated below 90% of capacity. By contrast, 33 (67%) were overcrowded, with occupancy rates exceeding 100%, and 11 (22%) stood at imminent risk of overcrowding, with rates between 90% and 100%. Of particular concern are Porto Prison and Lisbon Prison, each holding more than 1,000 prisoners despite official capacities of 681 and 887 places respectively, together with Braga Prison, operating at 163.7% (149 prisoners against an official capacity of 91 places).

3. Through its monitoring visits, the Provedor de Justiça has confirmed the systemic nature of overcrowding and its adverse impact on living conditions and the prison environment. All five establishments visited in 2025 within the scope of the preventive mandate gave rise to concern:

³Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted on 10 May 2006 and amended on 18 January 2017).

⁴*Petrescu v. Portugal*, application no. 23190/17 (ECtHR, 3 December 2019).

Faro Prison (104%) and Viseu Prison (107%) were overcrowded, while Funchal Prison (96%), Olhão Prison (98%) and Vale de Judeus Prison (98%) stood at risk of overcrowding.

4. These occupancy rates rest upon official capacity figures approved by the Directorate-General of Reintegration and Prison Services (DGRSP), which do not always comply with international minimum space standards. In practice, cells suitable for one person may be counted as if they accommodated two. Such figures additionally include (i) open-regime accommodation that is not always fully used — thereby concealing overcrowding in standard regimes — and (ii) cells or wings closed owing to poor conditions.

5. Strong indications therefore exist that (i) official and actual prison capacity diverge across several establishments, and (ii) actual occupancy and overcrowding levels exceed those reported in published data.

6. Overcrowding must be addressed holistically. A mere increase in prison capacity, unaccompanied by complementary policies or measures, does not, in itself, constitute an adequate response. Drawing upon the information presented in the Updated Action Plan⁵, the Provedor de Justiça concludes that the Portuguese authorities have adopted no concrete measures to develop a comprehensive strategy — embedded in a rational and coherent penal policy — aimed at identifying and addressing the root causes of overcrowding, as previously recommended by the Committee of Ministers⁶. Such a strategy should encompass broader recourse to alternatives to deprivation of liberty and effective reintegration measures.

7. It remains imperative that the national authorities take all necessary steps to mitigate the impact of overcrowding — including in the prisons scheduled for closure (see §§ 11–12 below) — pending more structural interventions.

III. As Regards Material Conditions in Prisons

8. The prison estate in Portugal is markedly heterogeneous, comprising establishments of widely varying capacity⁷ and housed in buildings not originally designed as prisons, including those constructed for military, educational or healthcare purposes. This heterogeneity contributes to persistent difficulties in bringing certain establishments into conformity with contemporary standards of dignity, privacy, ventilation, hygiene and habitability. While some newer or recently renovated establishments provide adequate material conditions, a significant number remain structurally deficient and poorly maintained.

⁵See Communication from Portugal containing the Updated Action Plan (25 March 2026), §§ 24 et seq.

⁶CM/Del/Dec(2023)1475/H46-25, para. 4 and CM/Del/Dec(2024)1507/H46-23, para. 5.

⁷Official capacities range from 17 places (Horta Prison) to 906 places (Carregueira Prison).

9. Although certain improvements have been implemented in recent years — particularly the separation of sanitary facilities in shared accommodation and the refurbishment of certain wings — these measures have proven insufficient. The serious shortcomings identified by the Court in *Petrescu* persist, including dilapidated cells and living areas, lack of sanitary privacy, humidity, inadequate ventilation, poor thermal conditions, deficient hygiene, and insufficient maintenance of the wider estate.

10. Visits conducted since 2023 have revealed serious physical deficiencies across accommodation areas: dilapidated walls and ceilings, water infiltration, damp, damaged windows, insufficient thermal insulation, and inadequate ventilation. In Faro Prison (visited in 2025), for example, the lack of proper ventilation and climate control resulted in extremely high temperatures during the summer, disrupting prisoners' sleep. In Lisbon Prison, the Provedor de Justiça observed recurrent plumbing failures, an unreliable hot water supply, dilapidated sanitary installations, broken windows, damp and water infiltration.

11. The situation at Lisbon Prison has generated concern both in the exercise of the preventive monitoring mandate and in the course of complaint handling, prompting two visits to the establishment in 2025 and a further visit in 2026. Despite the closure of most basement areas, some remain in use, notably for the application of disciplinary precautionary measures. Given that the planned closure of Lisbon Prison has now been postponed until 2028, maintaining the current conditions of detention for a further two years is untenable.

12. As the closure of Lisbon Prison remains contingent upon the progress of the phased expansion of the prison estate envisaged in the Government's Updated Action Plan⁸, the Provedor de Justiça underscores the urgent need for interim measures to prevent any further increase in the prison population.

13. The Provedor de Justiça has likewise identified serious shortcomings affecting hygiene and sanitation in other establishments. In Montijo Prison, deficiencies in hygiene and maintenance were identified within kitchen and food preparation areas, while in Vale de Judeus Prison several accommodation and common areas required structural rehabilitation. Other establishments exhibited dilapidated showers and sanitary facilities, defective drainage systems, damaged furniture, damp and water infiltration, and poorly maintained common areas.

14. The NPM has repeatedly raised concerns regarding sanitary privacy in shared accommodation. Although some prisons have implemented partial improvements, toilets in cells or dormitories frequently remained separated only by low partitions or incomplete dividers, falling short of the standard of privacy and dignity required by the Court. In Braga Prison, for instance, the sanitary area in shared accommodation had been separated merely by a low wall. The NPM subsequently

⁸See Communication from Portugal containing the Updated Action Plan (25 March 2026), §§ 10-14.

identified similar deficiencies in establishments including Linhó, Monsanto, Vale do Sousa, Porto, Izeda, Lisbon and Olhão.

15. Pest infestations — including insects, rats and pigeons in accommodation and food-related areas — were observed across several establishments, among them Linhó, Monsanto, Vale do Sousa, Porto and Lisbon. In Vale de Judeus Prison, the NPM observed rats and pigeons in the kitchen area, together with damaged flooring and inadequate food storage conditions. In Lisbon Prison, bedbug infestations were identified in several cells⁹.

16. In some establishments, including Leiria Prison and Vale do Sousa Prison, prisoners were required to take meals within cells or dormitories owing to the absence or limited availability of communal dining facilities. This practice contributed to hygiene problems, prolonged confinement to accommodation areas, and pest infestations.

17. In other instances, the prison services failed to adopt even the most basic measures to alleviate inadequate living conditions, as observed in Vale de Judeus Prison during periods of cold and harsh weather. The temperature regulation of prison cells has been a recurring subject of complaints to the Provedor de Justiça, since permission to use a personal heater during winter is conditional upon an average monthly temperature below 10 °C and is, moreover, restricted to prisoners with special needs.

18. In this context, drawing directly upon the Court’s reasoning (*Petrescu*, § 109), the Provedor de Justiça issued recommendations to the DGRSP for the periodic monitoring of temperatures, in coordination with the Portuguese Institute for Sea and Atmosphere (IPMA), and for the adoption of locally appropriate measures to anticipate and mitigate the effects of extreme weather conditions, particularly during the winter months¹⁰. In response, the DGRSP stated that cooperation procedures with IPMA had been implemented; however, it adopted no further measures aligned with the proactive, contingency-planning approach recommended by the Provedor de Justiça.

19. Notwithstanding isolated renovations and localised improvements, the overall picture is marked by a lack of urgency in the adoption and implementation of a consistent programme of structural refurbishment.

20. Moreover, adequate material conditions alone do not ensure that deprivation of liberty is carried out in a manner consistent with human dignity. Even where physical conditions are satisfactory, serious concerns persist regarding insufficient opportunities for purposeful

⁹On the day of the most recent visit to Lisbon Prison (2026), the pest control service was on site; it attends the establishment at least once a month.

¹⁰Provedor de Justiça, 2023 Annual Report, p. 102 et seq.

occupation and reintegration, limited access to education, vocational training and work, and inadequate healthcare provision — particularly in the field of mental health.

IV. As Regards the Establishment of a Convention-Compliant System of Preventive and Compensatory Domestic Remedies

21. In *Petrescu*, the Court was unable to conclude “*with a sufficient degree of certainty, that Portuguese law afforded the applicant a preventive and/or compensatory remedy*” (*Petrescu*, § 88), notably owing to the absence of “*pertinent examples*” of non-contractual State liability proceedings concerning such matters.

22. The Provedor de Justiça considers that no significant progress has been achieved in developing an effective combination of remedies since the last examination of this group of cases by the Committee of Ministers.

23. As regards preventive measures, the Portuguese Government acknowledges the absence of an effective preventive mechanism¹¹.

24. As regards compensatory remedies, the examples of national judicial practice presented by the Portuguese Government do not conclusively demonstrate that judicial proceedings to establish the State’s non-contractual liability are effective in practice. While a number of such proceedings have since been initiated — particularly in relation to conditions of detention in prisons such as Braga, Porto, Setúbal, Montijo and Vale do Sousa — there exists as yet no sufficiently consistent body of final case law capable of dispelling the Court’s concerns and demonstrating the practical viability of this avenue. Furthermore, the Provedor de Justiça considers that seeking compensation for inadequate conditions of detention under the regime of non-contractual State liability does not constitute an effective remedy, owing to the absence of specific regulations, limited access to legal information and assistance¹², and excessively protracted proceedings before administrative courts.

25. In any event, proceedings for non-contractual State liability are primarily compensatory in nature. As the Court has emphasised, a purely compensatory remedy is insufficient where it lacks preventive effect — that is, the capacity to bring an ongoing violation to an end. The availability of both preventive and compensatory remedies is therefore essential, particularly given the structural character of prison overcrowding, which continues to affect a significant number of establishments (see §§ 1–3 above).

¹¹See Communication from Portugal containing the Updated Action Plan (25 March 2026), §§ 50-51.

¹²The Regulation on Complaints and Requests from Prisoners, established by Circular No. 9/2021 of 28 September 2021, remains unpublished and largely inaccessible to interested parties.

26. In this context, it remains doubtful whether the Regulation on Complaints and Requests from Prisoners, established by Circular No. 9/2021 of 28 September 2021, adequately addresses this gap. While it has introduced a framework for the submission of complaints and requests by prisoners, it does not appear to satisfy all the criteria of an effective domestic remedy as envisaged by the Court, given that complaints are examined by the prison governor rather than by an independent authority (*Petrescu*, §§ 77 and 81).

27. Moreover, during its visits to prison establishments — both in the context of the preventive mandate as NPM and in the course of complaint handling — the Provedor de Justiça has identified challenges in the implementation of the Regulation, including:

- limited dissemination among prisoners of the rights and guarantees it affords;
- recurrent concerns voiced by prisoners regarding possible reprisals for submitting complaints;
- frequent allegations by prisoners that prison officers either refuse to collect complaints or actively discourage their submission;
- pervasive mistrust in the complaints system, particularly as to whether complaints to prison governors are effectively submitted and registered;
- operational constraints impeding the Regulation’s consistent promotion and application;
- the handling of complaints on a largely informal or ad hoc basis, without systematic investigative procedures; and
- the archiving of a significant number of complaints without proper examination and follow-up.

V. Conclusions

28. The findings documented in this communication, across all three thematic areas, demonstrate that Portugal has not yet achieved compliance with the requirements flowing from the *Petrescu* judgment and the related decisions of the Committee of Ministers. The deficiencies identified in respect of overcrowding, material conditions of detention, and domestic remedies are structural and interconnected, and have persisted in the years since the Court’s ruling. While the Provedor de Justiça acknowledges the partial improvements achieved in certain establishments, it considers these measures insufficient to address the systemic character of the problems at hand. Decisive and comprehensive action, grounded in a coherent long-term strategy, must be undertaken without delay.

29. Overcrowding across the Portuguese prison estate is systemic and continues to deteriorate. With two-thirds of prison establishments operating above their official capacity as of 31 December

2025 — and with actual occupancy levels likely exceeding published figures, given the methodological limitations of official capacity measurements — the true scale of the problem almost certainly surpasses what official data reveals. The Provedor de Justiça reiterates that an effective and durable response requires a comprehensive penal policy addressing the root causes of overcrowding (including broader recourse to alternatives to deprivation of liberty and effective reintegration measures) and cannot be confined to an expansion of prison capacity alone. Pending more structural interventions, all available measures to mitigate the impact of overcrowding must be vigorously pursued.

30. The material shortcomings identified by the Court in *Petrescu* remain largely unaddressed across a significant part of the Portuguese prison estate, as confirmed by direct monitoring visits conducted by the Provedor de Justiça. The situation at Lisbon Prison is of particular urgency: notwithstanding the closure of most basement areas, current conditions — including persistent infrastructure deficiencies, recurring pest infestations and dilapidated sanitary facilities — are incompatible with human dignity and cannot be allowed to persist until the now-postponed closure date of 2028. The Provedor de Justiça urges the adoption, without further delay, of a structured and properly resourced plan for the systematic rehabilitation of the prison estate. In the meantime, all available measures to reduce the prison population and improve living conditions — most urgently at Lisbon Prison — must be pursued as a matter of priority. Even where physical conditions are adequate, the authorities must ensure that persons deprived of their liberty have access to purposeful activities, education, vocational training and adequate mental healthcare.

31. No meaningful progress has been achieved towards the establishment of an effective combination of preventive and compensatory domestic remedies since the last examination of this group of cases by the Committee of Ministers. The absence of an effective preventive mechanism is acknowledged by the Portuguese Government itself. The compensatory route through non-contractual State liability proceedings before administrative courts remains uncertain in outcome, excessively protracted, and practically inaccessible. The internal complaints mechanism established in 2021 falls short of the independence and effectiveness required by the Court, and is beset by significant deficiencies in its practical implementation. The Provedor de Justiça calls upon the Portuguese authorities to take immediate steps to ensure that persons detained in conditions incompatible with the Convention have meaningful means of redress at their disposal.

32. The Provedor de Justiça remains firmly committed to the continued monitoring of conditions of detention in Portugal, in the exercise of both its mandate as National Preventive Mechanism and its competence in handling individual complaints. These findings are the product of direct and systematic monitoring conducted over a sustained period, and reflect the institution's assessment that the situation in Portuguese prisons demands determined and sustained action by the national authorities, underpinned by firm political commitment to structural reform. The Provedor de

Justiça will continue to address recommendations to the competent national authorities in the discharge of its constitutional mission to protect and promote the fundamental rights of all persons under Portuguese jurisdiction, including those deprived of their liberty. In accordance with the duty established in Article 1(3) of its Statute to cooperate with European and international organisations concerned with the protection and promotion of human rights, the Provedor de Justiça stands ready to contribute to the Committee of Ministers' work in supervising the execution of the *Petrescu* judgment, and remains available to provide any further information or clarification that may assist the Committee in its deliberations.