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**Communication by the Provedor de Justiça (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

in the case of

**Fernandes v. Portugal**

(application no. 33023/17, judgment of 16 January 2024)

Lisbon, 29 January 2026



## I. Introduction

The Provedor de Justiça was established in Portugal in 1975 and is an independent constitutional body<sup>1</sup>, elected by Parliament, which aims to promote and protect the rights, freedoms, guarantees and legitimate interests of citizens, ensuring, by informal means, the justice and legality of the exercise of public powers.

In addition to its mandate in handling individual complaints, the Provedor de Justiça is accredited with “A” 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 was appointed 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 April 9 1991<sup>2</sup>) establishes the legal framework of this state body, namely its mandate, independence guarantees and competences.

The role of the Provedor de Justiça as a National Human Rights Institution, in particular the monitoring of the implementation by the Portuguese State of international treaties and conventions in the field of human rights is explicitly acknowledged in Article 1 (2) of the Statute. Article 1 (3) establishes the duty of the Provedor de Justiça to cooperate with peer institutions and also with the European and international organizations focusing on the protection and promotion of human rights.

This communication by the Provedor de Justiça is addressed to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.2 of the Rules of the Committee of Ministers<sup>3</sup>, in the context of the supervision of the execution of the judgment of the European Court of Human Rights (hereinafter: the Court) in the case of *Fernandes v Portugal* (2024)<sup>4</sup>.

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<sup>1</sup> Article 23 of the Constitution of the Portuguese Republic of 1976.

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

<sup>3</sup> [Rules of the Committee of Ministers](#) for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 and amended on 18 January 2017).

<sup>4</sup> *Fernandes v Portugal*, application nos. 33023/17 and 56476/17 (ECtHR, 16 January 2024).

## II. General observations on the security regime

1. The monitoring of the conditions of detention and related procedural aspects under the security regime by the Provedor de Justiça has been carried out mainly through regular unannounced visits to prisons. In recent years, the following places where people are serving sentences under the security regime have been visited, either as part of the NPM's regular visits or in complaint handling:

Establishment	Type	Dates of visits
Monsanto Prison	High Security Prison	February 2022 October 2022 June 2023 July 2024 September 2024
Linhó Prison	Security Unit	February 2023 May 2024 July 2025
Paços de Ferreira Prison	Security Unit	December 2023 January 2026
Santa Cruz do Bispo-Feminino Prison (for women)	Security Unit	October 2023

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2. The conclusions drawn from these visits made it possible to identify risk factors which are relevant in light of the findings of the Court. Within the scope of the preventive mandate, all these factors have been communicated to the governors of the prisons visited and to the Director-General for Reintegration and Prison Services (DGRSP) through reports prepared following each visit, as well as to the Portuguese Parliament in our annual activity reports. The concerns raised by the NPM in the context of its preventive visits have been confirmed in complaint-handling procedures submitted by prisoners to the Ombudsman. In particular:

- the detention of prisoners under the security regime for very long periods, in some cases exceeding a decade;
- the lack of meaningful activities and contacts, contributing to prolonged isolation and to the erosion of the personal and social skills of prisoners under the security regime;

- the significant proportion of prisoners under the security regime presenting serious mental health conditions, potentially aggravated by prolonged isolation<sup>5</sup>; and
- the abrupt transition from the security regime directly to liberty, without gradual mechanisms for flexibilization of restrictions.

### **III. Justification and individualised assessment of decisions to maintain the security regime**

3. The Court considered that, in this specific case, the authorities had failed to demonstrate a sufficient assessment of the necessity of maintaining the prisoner under the security regime, nor had they adequately taken into account his individual situation.
4. Dialogue with the prison governors revealed the perception that, in a significant number of cases, decisions to maintain the security regime are determined almost entirely [i] by the seriousness of the crime (or disciplinary offence) that justified the initial placement under the security regime and [ii] by the clinical assessment of the prisoner's psychiatric stability, in cases where they have serious mental health conditions. In addition, the very limited availability of reintegration programmes and occupational activities – an issue also raised in complaint-handling procedures – ultimately renders an assessment of the prisoner's behavioural “progress” or reintegration meaningless. Consequently, it is necessary to develop and consolidate means and procedures that allow for an effective, concrete, up-to-date and detailed assessment of the specific situation of the prisoner, ensuring that the decision to maintain the security regime while in detention is based on an individualised assessment of its necessity.
5. This objective is reflected in the revision of internal guidelines of the DGRSP through Circular No. 7/GDG/2025, which will be applied, at administrative level, by the DGRSP for the purpose of substantiating decisions on placement or continued placement under the security regime. It will therefore be important to understand how this administrative assessment is carried out in practice, given that it will be subject to scrutiny both by the Public Prosecutor – when verifying legality, which is mandatory

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<sup>5</sup> The NPM has identified with concern that serious mental health problems affect a significant and growing number of prisoners. According to the prison governor, “*some prisoners are transferred to Monsanto because they can be better contained there and receive closer psychiatric and nursing supervision than in other prison establishments. A nurse also told the MNP that the Monsanto prison sometimes ends up being the backup for psychiatric services, but without the skills or human resources to do so. Episodes of psychiatric decompensation may give rise to violence, and there are insufficient human resources to respond adequately*”<sup>6</sup>. MNP Annual Report 2024, page 82, note 120, available [here](#).

– and to review by the court of implementation of sentences, whenever prisoners challenge the decision. Considering that the Circular only entered into force in the second half of 2025, the Provedor de Justiça considers it premature at this stage to assess its actual impact in practice.

#### IV. Search procedures (strip searches)

6. In its judgment, the Court attached particular importance to the routine use of strip searches, which can induce feelings of inferiority, anxiety and humiliation in prisoners.

7. As explained in the Communication from Portugal, non-mandatory strip searches may be carried out, subject to authorization of the prison director, in situations of “imminent danger” or when there is a “suspicion” of possession of a prohibited object. However, an analysis of search procedures in different Portuguese prisons shows that searches are often carried out without proper evidence of the actual existence of an ‘imminent danger’ or ‘suspicion’<sup>6</sup>. It is therefore necessary to reinforce awareness among prison staff that strip searches constitute exceptional security measures rather than routine practice, and that their legal grounds (“imminent danger” or ‘suspicion’ of possession of a prohibited object) must be clearly substantiated and duly recorded in writing.

8. During visits – particularly to Linhó Prison – it was observed that strip searches are frequently conducted without adequate guarantees of privacy. Searches were carried out in rooms without CCTV coverage, yet with doors left open and involving more than the two prison officers legally required. At Linhó, prison staff also acknowledged the conduct of searches involving full nudity. The NPM recommended that clear instructions be issued to prison staff requiring that strip searches be conducted through the removal of clothing in stages, in order to avoid full nudity and to safeguard the prisoner’s dignity and sense of modesty<sup>7</sup>, in accordance with the understanding of the Council of Europe’s Committee for the Prevention of Torture (CPT).

9. Moreover, strip searches, since they are carried out in places without CCTV coverage, constitute a high-risk moment for the practice of ill-treatment. A significant proportion of allegations of assault by prison officers concern situations occurring during strip searches. In this regard, the NPM has been recommending the use of

<sup>6</sup> NPM Annual Report 2023, page 29, available [here](#).

<sup>7</sup> Ibid.

audio recording systems in rooms designated for this purpose, in line with practices in other states, a solution which has not yet been implemented.

**10.** As for squatting during strip searches, reports of this practice continue to be received very frequently, and measures should therefore be taken to prevent its routine use, including through training for prison staff.

## **V. Contacts with the outside world and activities**

**11.** The Court underlined the insufficiency of measures aimed at offsetting the effects of isolation in prolonged detention under the security regime.

**12.** In this context, concerns have been raised about the lack of occupational and training activities and contact with civil society, a matter that has also been the subject of complaints to the Provedor de Justiça. These limitations are particularly serious for prisoners subject to the security regime for long periods, leading to mental deterioration, self-harm and suicide attempts. Both at Monsanto Prison and in the security sections of Linhó, Paços de Ferreira and Santa Cruz do Bispo prisons, a severe lack of meaningful activities was observed, with prisoners' daily routines largely limited to two hours of outdoor exercise and confinement to their accommodation for the remaining hours of the day.

**13.** As regards contacts with the outside world, paragraph 65 of the Communication from Portugal concerning the case of Fernandes v. Portugal states that prisoners under the security regime are entitled to two regular visits per week. Indeed, this is the case. Yet, it should be clarified that such visits take place with physical separation, through a toughened glass partition, thus excluding any form of physical contact. Visits without such separation are only allowed once a year<sup>8</sup>.

**14.** At the same time, one conjugal visit per month is allowed under security regime. As a result, prisoners who do not benefit from conjugal visits — either because such visits have been refused<sup>9</sup> or because they do not have a spouse/partner — may be

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<sup>8</sup> Articles 204(5) and 206(1) and (3) of the General Regulation of Prison Establishments.

<sup>9</sup> With regard to conjugal visits, and in the context of the investigation of a complaint, it was established that Monsanto Prison applied an internal procedure automatically whereby “*in order to continue benefiting from conjugal visits, prisoners must have maintained disciplinary conduct in accordance with the established rules during the six months preceding the scheduling of a new visit*”. In the case under analysis, relating to facts which took place in 2023, the prisoner was subject to a precautionary suspension of conjugal/intimate visits following the initiation of disciplinary proceedings concerning events that occurred in April, which ultimately resulted in disciplinary sanction. A request for a new conjugal visit in August was not authorized, on the grounds that such visits would only resume in October. Although none of the situations provided for under Article 124 of the General Regulation of Prison Establishments—under which the prison director may suspend intimate visits for a maximum period of six months—were applicable to the case at hand, and notwithstanding the legitimate security

limited to direct contact with visitors only once a year. Such restrictions on personal interaction are likely to have a negative impact not only on prisoners but also on their families, especially when there are minor children. According to a recommendation issued by the CPT following its visit to Monsanto Prison in 2016, “*all prisoners [should] be able to receive visits from their family members without physical separation once a week, except in individual cases where there may be a clear security concern*”<sup>10</sup>.

## VI. Prevention of ill-treatment

15. Allegations of ill-treatment by prison officers have been received at Monsanto Prison and in the security units of Linhó and Paços de Ferreira prisons. In light of this, there is still a need for measures to address persistent risk factors, such as:

- repeated allegations of ill-treatment in areas not covered by CCTV (particularly in strip search rooms or accommodation)<sup>11-12</sup>;
- gaps in the coverage by the video-surveillance system<sup>13</sup>; and
- failures in the reporting, recording and prompt investigation of allegations or evidence of ill-treatment, namely:
  - failure to open internal inquiries;
  - failure to report cases to the Public Prosecutor’s Office;
  - failure to photograph injuries and to carry out medical examination.
- reports of a recurrent practice, at Monsanto Prison, of ill-treatment of prisoners transferred there following assaults on prison officers in another

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requirements that Monsanto Prison must uphold, in the occasion of a visit a dialogue was established with the prison governor with a view to considering the feasibility of adopting a case-by-case assessment. Such an approach would allow for a proportionality analysis of the specific circumstances of each situation, rather than the application of an automatic procedure. On that occasion, however, it was not possible to bring about a change in the practice in question.

<sup>10</sup> Recommendation available [here](#).

<sup>11</sup> At Monsanto Prison, the NPM observed CCTV footage showing seven guards entering and taking turns in a prisoner’s cell to apply coercive measures over a period of eleven minutes. The NPM questioned the security team about these events, which were aggravated by the fact that the prisoner claimed to have been assaulted. A member of the guard corps acknowledged that there may have been an excessive number of guards in the prisoner’s cell, admitting that this could be the result of ‘human curiosity’. The mere observation, as a spectator, of the use of coercive measures affects the dignity of the prisoner and should therefore not be allowed. Thus, the NPM recommended that, in accordance with the principle of proportionality, the number of members of the surveillance team participating in the use of coercive measures should be strictly necessary. In NPM Annual Report 2022, page 62, available [here](#).

<sup>12</sup> “*(...) at Monsanto Prison, the MNP consulted a case in which a search had been carried out without authorisation from management and without identification of the person who ordered it, which is why it recommended that a record be kept of all searches, identifying who ordered them and the reasons for them*”. In NPM Annual Report 2022, page 67, available [here](#).

<sup>13</sup> “*At Monsanto Prison, the video surveillance system does not cover the antechambers leading to the cells and some sections of the corridors on different floors (which security staff referred to as ‘blind spots’)*”. In NPM Annual Report 2022, page 41, note 31, available [here](#).

prison<sup>14</sup>;

- prison officers repeatedly identified, at Monsanto Prison, as alleged perpetrators<sup>15</sup>.

## VII. Final considerations

**16.** Considering the findings and the conclusions of the Court in the case of *Fernandes v. Portugal* and the information gathered during NPM visits and also in the assessment of complaints submitted by prisoners, it is the view of the Provedor de Justiça that full implementation of the Court's judgment by the Portuguese State implies procedural changes, with a view to:

- develop and consolidate means and procedures that ensure an effective, up-to-date and individualised assessment of each prisoner's situation, so that decisions to maintain the security regime are based on current necessity and take into account the prisoner's behaviour and evolution over time, rather than being determined by the seriousness of the original offence or by single clinical considerations;
- strengthen mechanisms for the prevention, detection and investigation of ill-treatment, including improved CCTV coverage in areas of risk, enhanced safeguards during strip searches, and the systematic recording, investigation and documentation of allegations, with referral to the Public Prosecutor's Office where appropriate;
- ensure that security procedures, in particular searches, comply with the principle of proportionality, while safeguarding the dignity of prisoners (*inter alia*, it is necessary to reinforce awareness among prison staff that strip searches constitute exceptional security measures rather than routine practice, and that their legal grounds ('imminent danger' or 'suspicion' of possession of a prohibited object) must be clearly substantiated and duly recorded in writing);

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<sup>14</sup> According to reports received by the NPM, “*prisoners who arrive at this prison with problems with other guards in other prisons are brutally beaten*”. In this regard, the NPM recommended that the Commissioner – or his substitute – always personally monitor the procedures relating to the admission of a prisoner who has been transferred to the Monsanto Prison following an assault or dispute with a member of the security staff at another prison. It also recommended that, in such cases, the Director of the prison should arrange for the prisoner to be interviewed within 48 hours of their admission, specifically investigating matters related to the prevention of ill-treatment.

<sup>15</sup> The NPM was informed of the existence of a “climate of terror, fear and panic”, with “assaults occurring inside the cells” by the prison guards themselves, “who number only four or five”. In this regard, the NPM recommended that concrete measures be taken to ensure [i] the strengthening of training for surveillance staff on the inadmissibility and prevention of ill-treatment and [ii] the allocation of surveillance staff repeatedly reported as aggressors to duties that do not involve direct contact with prisoners.

- ensure concrete measures to mitigate the effects of prolonged isolation, including expanding meaningful activities and facilitating contact with the outside world, in line with CPT standards, notably through a reassessment of restrictions on visits without physical separation;
- promote strategies for the gradual reduction of restrictions associated with the security regime, where compatible with security requirements, including the introduction of transitional arrangements and progressive easing of measures, so as to avoid abrupt transitions from highly restrictive detention conditions directly to liberty.