



Your Excellency
The Minister of Justice
Praça do Comércio
1149-019 Lisbon

Your Ref.

Your Communication

Our Ref.

Visit no. 5-2015

Visit no. 6-2015

Visit no. 13-2015

Visit no. 20-2015

Visit no. 24-2015

Visit no. 25-2015

RECOMMENDATION NO. 2/2016/NPM

I

Under the provision contained in the article 19, paragraph b), of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I recommend to your Excellency that, in order to improve the permanence conditions of the young people in educational centres, the following measures should be taken:

1. That the (re)opening of an educational centre intended exclusively for the reception of young girls should be equated;
2. That, in a concerted act between the General-Directorate for Reinsertion and Prison Services and the General-Directorate for Health, an



exhaustive survey of the main constraints registered on the access and scheduling of specialty appointments by the educated young people should be made;

3. That protocols should be celebrated between the General-Directorate for Reinsertion and Prison Services and the General-Directorate for Health, in order to provide an immediate response to the requests of young people interned in the educational centres regarding medical care;
4. That, in what regards the specific problem of mental health, through the articulation between the General-Directorate for Reinsertion and the Prison Services and the General-Directorate for Health, a survey should be made of the situations which, with more frequency or of superior complexity, are observed in the young persons;
5. That two of the main innovations introduced by the amendment of the Educational Guardianship Law¹, carried out by the law no. 4/2015, of January 15, should be concretized: the «intensive supervision period» and the «post-internment monitoring»;
6. That the re-introduction in our juridical system of a special career for technician of social reinsertion should be considered.

II

This position that I am taking arises as the result of a series of visits that, during the course of the previous year, the National Preventive Mechanism (NPM)²

¹ Approved by the Law no. 166/99, of September 14, and henceforth referred to as EGL.

² The Portuguese Ombudsman was designated National Mechanism of Prevention, through a Resolution of the Council of Ministers no. 32/2013, published in the «*Diário da República*», 1st serie, no. 96, of May 20, following the ratification, by the Portuguese State, of the Optional Protocol to the Convention against Torture and other Penalties or Cruel Treatments, Inhuman or Degrading. This international legal instrument aims to establish a system of regular visits to places of detention, in order to prevent behaviours that could offend the rights of the persons deprived of their liberty.



carried out to all the educational centres, with the purpose of elaborating a special report that provides the portrait of the reality that is lived in these facilities. In order to gather the information to take place on a constant basis, the purpose of those visits was defined in a unitary manner. Among the several aspects that were examined it is included the verification of the spatial and temporal confinement of the educational centres — above all in what regards the educational component and the involvement of third parties (public and private) in the process of social reintegration of the young people —, the follow-up systems of the persons after their leave, the infrastructure conditions, its functioning and administrative organization, as well as the therapeutic programs and the psychological assistance models that are provided to the young people that are interned.

III

From the elements collected during the NPM's visits to the educational centres — and from the complementary information meanwhile requested — it was possible to conclude that the conditions for the implementation of the detention measure in an educational centre can be improved on behalf of a better defense of the rights of the young persons.

§ 1. (Re)Opening a female educational centre

The application of an educational tutelary measure has as purpose «the education of the minor for the right and its insertion, in a dignified and responsible way, in the community life.»³ To reach these desiderata it can be revealed necessary and adequate the internment in an educational centre of a young person that practiced, between the ages of 12 and 16, acts classified as a crime. The determination of an internment measure is, therefore, anchored in a re-educational

³ No. 1 of the article 2 of the EGL.



purpose which, «by means of the temporary withdrawal from its habitual environment and the use of programs and pedagogical methods, [should proportionate] the internalization of values in accordance with the law and the acquisition of resources that allow, in the future, to conduct its life in a socially and legally responsible way.»⁴

The young people that are inserted in educational centres experience — not only by the situations that they lived and that culminated in their deprivation of liberty, but also because of their age — a complex phase in their development. This is, therefore, a period in which therapeutic monitoring is structuring and an educational intervention in a context where there is no gender homogeneity may not be as profitable as desirable. It can, therefore, be considered whether the reception of people of only one gender, with a correlative similarity of relatively specific problems of the aforementioned age group, and without the prejudice of contacting with all of them in various activities — such as school or formative — would not be more productive.

For this reason, allied combined with the fact that the educational centres (*Bela Vista* and *Navarro de Paiva*) that which host young people of the female gender are being fully prepared for this purpose, it is pertinent to reconsider the (re)opening of an educational centre with exclusive accommodation for the young girls.

§ 2. *Specialty Medical Appointments*

The internment of a young person in an educational centre requires that the rights of those who are compatible with the implementation of the educational

⁴ No. 1 of the article 1 of the General Disciplinary Statute of the Educational Centres, approved by the Decree-Law no. 323-D/2000, of December 20, and henceforth referred to as GDSEC. See also no. 1 of the article 17 of the EGL.



tutelar measure that was applied to him are respected⁵; the right to health is paradigmatic. In this sense, it is important to mention that it is the responsibility of the educational centre to «ensure the health and well-being of the learner, promoting, in particular, their regular clinical supervision (...)»⁶.

The specificity of the medical care in certain areas calls for the access to specialized consultations addressed to the young people in educational centres. It is, however, not uncommon, for constraints of several natures to occur and, for this reason, the young persons are unprotected, even if this lack of protection is not total, but rather constitutes a protection of the diagnosis and the treatment.

Since «the minors have hospital assistance or other whenever health needs so require»⁷ and, as mentioned before, it is the responsibility of the centre to provide regular and necessary medical monitoring, I consider important to understanding the main difficulties regarding the scheduling of specialized consultations. Therefore, I recommend their gathering by the competent entities.

§ 3. *Celebration of protocols*

In the following of what was mentioned in the subsequent paragraph, I believe it is pertinent the celebration of protocols between the General-Directorate for Reintegration and Prison Services and the General-Directorate for Health. These protocols should, therefore, guarantee an immediate response to the needs that, in this matter, the young people interned in the educational centres express, not discriminating against them, in front of others, based on their deprivation of liberty.

⁵ See numbers 1 and 2 of the article no. 159 of the EGL and no. 1 of the article no. 2 of the GDSEC.

⁶ No. 1 of the article 56 of the GDSEC. See, equally, the no. 3 of the article 171 of the EGL.

⁷ No. 1 of the article 174 of the EGL.



§ 4. *Specific mental health problem*

The problematic challenge of mental health is one of the issues to which the NPM has dedicated its particular attention to the execution of the visits that were made to the educational centres, as well as requesting for collaboration in completing a questionnaire on that subject. After analysing the collected information, I concluded that there are still deficiencies in the identification and diagnosis of childhood and juvenile pathologies, as well as in the prevention of behaviors contrary to the law. I registered, equally, the existence of a specific deficit in the case of young people who present, at the same time, mental health problems and profound behavioural pathologies.

Therefore, in what regards the specific problem of mental health, I believe it is urgent to collect a survey of the situations that, more frequently or with greater complexity, are observed in young learners, a work that will best be done in coordination between the General-Directorate of Reinsertion and Prison Services and the General-Directorate for Health.

§ 5. *«Intensive supervision period» and «post-hospitalization monitoring»*

The aforementioned amendment to the EGL, dated mid-January 2015, has brought important changes in the cut of the legal tutelary educational regime that affect the implementation of the internment measure, among which is found the introduction of the concepts of «intensive supervision period» and of «post-hospitalization monitoring». Regarding the first, the EGL will provide the possibility of, by judicial decision, the implementation of the internment measure being integrated by an «intensive supervision period», during which the competences acquired by the young person and the way they reflect in their behavior are



evaluated.⁸ Regarding the second, and in case there has not been an «intensive period of supervision», it is the responsibility of the social reintegration services to accompany the young learner after the cessation of their internment measure.⁹

The concepts recently inserted in the EGL are related, therefore, to the monitoring of the execution of the internment measure and the subsequent follow-up of the young person after its execution. By the importance they have, it is important to clarify the ways in which they should be implemented, through the respective articulation with the central services, as well as the allocation, in short and long-term, of the necessary human resources. The criteria for participation and involvement of the educational centres in the follow-up of young people after the termination of their internment measures should, in the same way, be established following and, still, fostering the creation of transitional residential units assigned to them legally.

The time of leaving the educational centre is particularly complex for the young person. In this phase of (re)insertion in the community, the young learner should be able to count on mechanisms of orientation and professional support that allow the completion of their personal educational project. It is, therefore, important to develop such mechanisms, being pressing to ponder the celebration of protocols with some entities that provide professional alternatives and a better consolidation and integration in the community.

§ 6. Special career of social reinsertion technician

The re-education and social (re)insertion purposes that preside the implementation of tutelary educational measures imply the constant monitoring of the young people who are inserted in educational centres, a function that is

⁸ See article 158 A of the EGL.

⁹ See article 158, paragraph b) of the EGL. For this purpose, it is foreseen the possibility of setting up transitional residential units.



performed by the technicians (superior and professionals) of social reintegration. Given the specificity of the tasks they develop — and which are not exhausted in caring for the young people they are responsible for, in fact, they are rather spreading to another level: the one of their re-education —, I understand that one can advocate for a career different than general, as it was the case until 2007.¹⁰

The article 84, no. 3 of the of the General Law of Work on Public Service (GLWPS)¹¹ determines that «the careers whose functional content characterizes jobs that only one or a few organs or services require for the development of their activities are special». The activities that are carried out by technicians (superior and professional) of social reintegration in the educational centres are, by their diversity, complexity and finality, defense to the mentioned establishments. These professionals integrate what is now known as the technical-pedagogical sector, the service of the educational centres competent to «assure all the tasks related to the reception and the residential framework, educational, formative and therapeutic of the learners, through the management of the residential units and the development of programs and actions resulting from the educational intervention project of the centre, bearing in mind the execution of the judicial decisions and the social reintegration of the learners.»¹² It is, therefore, verified the singularity of the functional content of their career and, as consequence, the first requirement for the creation of a special career is fulfilled, as it is justified in the case of the social reintegration technicians.

¹⁰ The legal diploma that restructured the (until then) Institute for Social Reinsertion — Decree-Law no. 204-A/2001 of July 26, and its amendments — provided in the articles 61 and 62, as the careers of superior technician of social reintegration and of professional technician of social reintegration.

¹¹ Approved by the Law no. 35/2014 of June 20, in the drafting of its most recent amendment operated by Law no. 18/2016, of June 20, referred as GLWPS.

¹² See no. 1 of the article 132 of the GDSEC. See, for this purpose, the annexes II and III of the alluded Decree-Law no. 204-A/2001 of July 26.



The no. 4 of the article 84 of GLWPS requires, nevertheless, two or more prerequisites for conceiving a special career: more demanding functional duties (point b) and specific understanding courses or, alternatively, possession of a particular academic qualification (point c). Given the type of functions developed, the social reintegration technicians are already subject of a greater exigency regarding the obligations to which they are functionally related. To have at their care persons who, along with their minority are deprived of their freedom with the purpose of being re-educated to the right implies the compliment of more rigorous duties. In addition, the concretization of the personal educational projects involves a degree of knowledge and experience that is consistent with the frequency and conclusion of formative course or the holding of a certain (higher, I mean) literary qualification.

I also consider that the requirement of the duties in question is difficult to reconcile with those of a general career, which has been the subject of a number of constraints concerning the system of recruitment (*v.g.* age limit for admission, gender specificities, psychological aptitude or physical requirements). Constraints that can be dissipated with the creation or the recovery — with the distinction between those who work within educational centres and those who work in prison establishments — of the special career¹³ of social reinsertion technician.

For the referred reasons, I intend to formulate the present recommendation, requesting your Excellency the adoption of the measures described previously, thereby, ensuring the best safeguard of the interests of those who, by virtue of their age and the restriction of their freedom are in a situation of particular vulnerability.

¹³ See no. 1 of the article 132 of the GDSEC. See, for this purpose, the annexes II and III of the alluded Decree-Law no. 204-A/2001 of July 26



I conclude, being convinced that your personal commitment will greatly contribute to strengthening the defense of the rights of the young people and, at the same time, to improve the educational guardianship system.

The Portuguese Ombudsman
National Preventive Mechanism

José de Faria Costa

Annex: The National Preventive Mechanism and the educational centres — Report of the visits carried out during the year 2015