



Your Excellency
The Minister of Health
Av. João Crisóstomo 9 – 6.º
1049-062 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. 4/2016/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 that, in order to improve the conditions of the facilities, the following measures should be taken:

1. That it should be carried out the designation of family doctors for the young people who are admitted to educational centres or, in the meantime, the creation of a response that ensures homogeneous and rapid medical follow-up;



2. That, in a concerted action between the General-Directorate for Health and the General-Directorate for Reintegration and Prison Services, an exhaustive survey of the main constraints on access and scheduling of specialist consultations by the young people should be made;
3. That protocols be promoted between the General-Directorate for Health and the General-Directorate for Reintegration and Prison Services so that an immediate response to the requests of young people in educational centres can be given;
4. That, with regard to the specific problem of mental health, through articulation between the General-Directorate for Health and the General-Directorate for Reintegration and Prison Services, a survey should be made of those situations which, more frequently or with greater complexity are observed in young people;
5. That, even with regard to the matter previously mentioned, the difficulties arising from the absence of specialized medical staff, particularly in pedopsychiatry, should be overcome, as part of the process of setting up an autonomous therapeutic unit for acute cases, currently in progress and with a date of expected completion for this year.

II

This positioning follows a series of visits that the National Preventive Mechanism (NPM)¹ made to all educational centres in the course of the year, with the purpose of producing a special report that would provide a picture of the reality in those establishments. In order for the collection of information to occur on a

¹ In Portugal, the quality of NPM was assigned to the Ombudsman, through the Resolution of the Council of Ministers no. 32/2013 of May 20. After the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this international juridical instrument aims to establish a system of regular visits by independent international and national bodies to places where the rights of the persons deprived of their liberty are assured.



constant basis, the purpose of those visits was defined in a unitary manner. The verification of the spatial and temporal confinement of educational centres - above all with regard to the educational component and the involvement of third parties (public and private) in the process of social reintegration of young people —, post-discharge follow-up of pupils, conditions of infrastructures, their functioning and administrative organization, as well as the therapeutic programs and models of psychological assistance provided to young people interned.

III

From the elements collected during the NPM visits to the educational centres — and of the complementary information that has been requested in the meantime — it has been possible to conclude that the medical care provided to the young people in the educational centers suffers from some shortcomings that need to be eliminated.

§ 1. *Homogeneous and fast medical monitoring*

The placement of a young person in an educational center requires that the rights of those who are compatible with the implementation of the educational guardianship measure applied to him are respected²; the right to health is paradigmatic. In this sense, it is important to mention that it is the responsibility of the school to «ensure the health and well-being of the young people, in particular by promoting their regular clinical supervision (...)»³. In order to achieve this goal, it is essential to appoint a family physician to the young students, which, as I have testified, is not always the case.

² See no. 1 and no. 2 of article 159 of the Educational Guardianship Law (approved by Law no. 166/99 of September 14, reviewed by Law no.4/2015 of January 15, also referred as EGL) and paragraph 1 of article 2 of the General Disciplinary Statute of Educational Centres (approved by Law no. 323-D/2000 of December 20, referred as GDSEC).

³ See article 56, no. 1 of the GDSEC. See also article 171, no. 3 of the EGL.



In order to enable young persons to have the regular medical care they need — and which, it is stressed, they lack because they are in a complex phase of their development — it is necessary to adopt the necessary measures to enable homogeneous and rapid medical follow-up, preferably provided by the family doctor.

§ 2. *Specialty Medical Appointments*

The specificity of medical care in certain areas calls for access to specialist consultations, targeting young people in educational centres. However, it is not uncommon to find constraints of a different nature and, for this reason, the young learners are unprotected, even if this lack of protection is not complete, but is consubstantiated in the postponement of diagnosis and treatment.

Since «minors have hospital or other assistance when health needs so require»⁴ and, as mentioned earlier, it is the educational centre's responsibility to provide regular and necessary medical follow-up, I consider it important to understand the main difficulties encountered. Make sense when scheduling specialty queries. For this reason, I recommend that they be collected by the competent entities.

§ 3. *Celebration of protocols*

Following what has been mentioned in the previous paragraphs, I believe it is pertinent to sign protocols between the General-Directorate for Health and the General-Directorate for Reintegration and Prison Services. Such protocols must therefore guarantee an immediate response to the needs of young people in educational facilities, not discriminating against them, on the basis of their deprivation of liberty.

⁴ See article 174, no. 1 of the EGL.



§ 4. *Specific mental health problems*

The issue of mental health is one of the issues to which the NPM has paid particular attention to the visits it has made to the educational centres, as well as the request for collaboration in completing a questionnaire on the subject. I concluded, after analyzing the information collected, that there are still deficiencies in the identification and diagnosis of childhood and juvenile disorders, as well as the prevention of behaviours contrary to the law. I also noted the existence of a specific deficit in the cases of young people who present at the same time mental health problems and profound behavioral pathologies.

With regard to the specific problem of mental health, I consider it urgent to carry out a survey of the situations that, with more frequent or more complex situations, are observed in young persons, a work that will best be done in articulation between the General-Directorate of Reinsertion and Prison Services.

§ 5. *Specialized medical staff*

The difficulties mentioned above are at least partly due to the lack of specialized human resources. It is important, therefore, that the constraints imposed by the absence of specialized medical staff, in particular in the area of pedopsychiatry, should be removed shortly. This is a particularly important circumstance within the framework of the process of setting up an autonomous therapeutic unit for acute cases, currently under way and with an expected completion date for this year.

For these reasons, I intend to formulate this recommendation, requesting your Excellency to adopt the measures set out above, thereby ensuring that the interests of those who are safeguarded by reason of their age and the restriction of their freedom are in a situation of particular vulnerability.



I conclude, being convinced that your personal commitment will greatly contribute to strengthening the defense of the rights of young persons and 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