



Your Excellency
The President of the High Council of
Magistracy
Rua Mouzinho da Silveira, 10
1269-273 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. 5/2016/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 you develop awareness-raising measures for judicial magistrates with competence in the area of Children's Rights, with a view to making regular visits and contacts to the educational centres.



II

This understanding of mine 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 give a picture of the reality in those establishments. In order for the gathering of the information to occur constantly, the purpose of those visits was defined in a unitary manner. Among the various aspects, that were examined, were 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 —, follow-up systems for young persons after their departure, infrastructure conditions, 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 centers — and of the complementary information requested in the meantime — it was possible to conclude that judicial magistrates with jurisdiction in educational processes are regularly contacting establishments where young people are in compliance with a hospitalization measure. I note, however, that they are not as frequent or desirable as they are to travel to educational centres.

The article 39, no. 2, paragraph h) of the Educational Guardianship Law² provides visits to educational centres by judicial magistrates and for maintaining contact with young people. This duty corresponds to the realization of one of the

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.

² Approved by Law no. 166/99 of September 14 and altered by Law no. 4/2015 of January 15.



rights of young people who are admitted to an educational center: «The pupil has the right to make private contact with the judge (...) by telephone, by correspondence or in person.»³

The fulfillment of the obligation of judicial magistrates from time to time to visit the educational centres ensures their knowledge of the actual conditions in which the young learners meet and may in some cases lead to the adoption of actions that, on behalf of the superior and legitimate interest of the young person, should be taken.

For these reasons, I intend to formulate this recommendation, requesting your Excellency to promote the implementation of regular visits to educational centres and the contacts of judicial magistrates with jurisdiction in educational processes, thus guaranteeing the best safeguard of the interests of those who, by virtue of their age and the restriction of the freedom imposed on them, 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, in concomitance, 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

³ See article 47, no. 1 of the General Disciplinary Statute of the Educational Centres (approved by Law no. 323-D/2000 of December 20).