



Dear Mr.
General Director for Reintegration and
Prison Services
Travessa da Cruz do Torel, 1
1150-122 Lisbon

Your Ref.

Your Communication

Our Ref.

Visit no. 51-2016

RECOMMENDATION NO. 5/2017/NPM

I

1

Under the provision enclosed 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 you to promote the adoption of measures deemed adequate to guarantee the improvement of the accommodation conditions of the *Castelo Branco* Prison, namely:

- a) The adaptation of the separation cell to its purposes;
- b) The operationalization of the alarm system installed in the discipline cell;
- c) The attribution to an element of the board the exclusivity of the opening of the box destined to the deposit of the inmates' complaints, petitions, complaints and expositions of the inmates.



II

The present position is based on the visit made by the National Mechanism (NPM)¹ on December 29, 2016, to the penitentiary of *Castelo*

In accordance with the preventive scope of intervention of the NPM², focused on the conditions of habitability of places of detention — with regard to the occupation of the dwellings and their of ventilation conditions and air conditioning — in the assessment of the exercise of the right to protection of the health of prisoners (above all in the area of mental health) and in the verification of the procedures observed in the communication between the prison population and the direction of the facility.

III

The reality found in the Prison of *Castelo Branco* can be considered, in a general appreciation, satisfactory. However, the NPM has detected three situations that, due to their lack of conformity, are worthy of repair, which relate to the conditions of the separation cell, the alarm system in the disciplinary zone and the communication box of the prison population to the board.

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.

² The objective of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is to establish a system of regular visits by independent international and national bodies to places where persons are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, having been ratified by Portugal in 2012, through Decree no. 167/2012 of the President of the Republic of December 13.



IV

With the visit to the prison area we were able to verify that the space designated and used as a separation cell — which corresponds to the old ward, thus presenting physical and structural conditions similar to other dwellings — has two characteristics of concern: one regarding the difficulty of observation of the entire interior space, from the porthole, and the other, associated with the presence of horizontal bars in the window.

Taking into account that the placement of a person in a cell separation means the adoption of a special means of security³, it is important that a solution should be considered in the shortest possible time - this being the adaptation of the cell in question or the affectation of another for this purpose - in order to ensure the fulfillment of the function assigned to it and to allow adequate monitoring of its interior and of its occupant⁴.

V

The provision of the cells allocated to the execution of disciplinary measures is also subject to redress. Despite the fact that the characteristics and the equipment that compose the disciplinary cells⁵ are compliant, the difficulty, if not the impossibility of triggering the alarm system to call the surveillance staff in case of assistance is noted, whether it is or it is not operational. Since the calling device is installed on the outer wall adjacent to the cell, its contact requires the inmate to be

³ The article 88, no. 4 of the Code of Execution of Sentences and Private Measures of Freedom (approved in annex to Law 115/2009 of October 12) states that «special security means are only used when there is a serious danger of evasion or withdrawal or when, by reason of his or her behavior or psycho-emotional state, there is a serious danger of practice by the inmate of acts of violence against himself or against personal or patrimonial property». The article 5, no. 5 of that law prescribes that «special means of security are of a precautionary nature, they remain only for the duration of the dangerous situation which led to their application and are never used for disciplinary purposes».

⁴ Regarding the accommodation of a prisoner in a separation cell, see article 160 of the General Regulation of the Prison Establishments, approved in annex to Decree-Law no. 51/2011, of April 11.

⁵ See article 176 of the General Regulation of Prison Establishments.



able to move the arm between the grate door (vertical bars) and stretch it, lateralizing it to the right until it reaches the doorbell.⁶ This is, as will be easily understood, a process that does not seem immediate and may prove difficult for some people to execute. In this sense, values derived from the security and protection of the health of the inmates determines that the review of the functioning of the alarm system of the prison's correctional chambers is promoted, so that, if necessary, it could be easily triggered.

VI

The NPM has detected the existence of a box, on each floor of the place destined to the communications that the prison population directs to the board, assuring the inmates' right to present through writing the complaints, petitions, complaints and expositions.⁷ However, we became aware that given that the container is generally opened by the service graduate, the confidentiality of the above-mentioned communications may not be guaranteed.

In fact, the procedure used in the means of communication in use is intermediated in the treatment of strictly targeted correspondence that undermines the secrecy that should be the hallmark of inmates'⁸ internal channels of communication. This may be accentuated by the possibility that the content of these communications may relate to complaints or other concerns expressed by prisoners regarding the performance of surveillance personnel. In this sense, it is pertinent to ensure the opening of the box by an element of the direction of the prison establishment.

⁶ Contrary to what is normatively required. See in this regard, *inter alia*, article 176, no. 1, *in fine*, of the General Regulation on Prison Establishments and article 26, no. 7 of the Code of Execution of Sentences and Privative Measures of Freedom.

⁷ See article 116 of the Code of Execution of Sentences and Privative Measures of Freedom and article 177 of the General Regulation of Prison Establishments.

⁸ See in particular, article 177, no. 2 of the General Regulation on Prison Establishments.



I conclude, being convinced of the personal commitment and cooperation with which you, will receive this recommendation, thus contributing to the improvement of the conditions of detention in the *Castelo Branco* Prison and, consequently, to the reinforcement of the appropriate treatment of the people who are deprived of their liberty.

The Portuguese Ombudsman
National Preventive Mechanism

José de Faria Costa