



Your Excellency  
Secretary of State Assistant and of  
Justice  
Praça do Comércio  
1149-019 Lisbon

*Your Ref.*

*Your Communication*

*Our Ref.*

*Visit no. 21-2016*

## RECOMMENDATION NO. 6/2017/NPM

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### 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, with a view to improving the conditions of the *Benavente* Local Instance of the Judicial Court of *Santarém*, the following structural and organizational measures are taken:

- a) The urgent intervention, through the completion of the necessary works, in the detention area, including cells, sanitary facilities and surveillance, in accordance with articles 12 to 21 of the Regulation on the Detention Conditions in the facilities of the Judicial Police and in existing Detention Locations in the Courts and in Public Prosecution Services<sup>1</sup>, applicable *ex*

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<sup>1</sup> The Regulation of the Conditions of Detention in Judiciary Police Facilities and in Detention Sites Existing in the Courts and in Public Prosecution Service — hereinafter referred to by Regulation on the Conditions of Detention — was approved by the order of the Minister of Justice no. 12 786/2009, dated May 19, published in the «*Diário da República*» no. 104, 2nd series, of May 29 2009.



- vi* no. 2 of the article 31 of the same normative document. In the absence of such intervention, a panel of information on the rights and duties of detainees in various languages should be made available, the activation of a second detention cell, the daily cleaning of the premises and regular disinfection and disinfestation, as well as the proper allocation of documents stored in the corridor of the detention zone;
- b) The daily cleaning of all spaces in the court building, the regular and preventive disinfection and disinfestation, the repair of the electrical installation and the replacement of the wooden floors in the areas of circulation of trolleys.

## II

The present statement follows the visit made by the National Preventive Mechanism (NPM)<sup>2</sup> to the *Benavente* Local Instance of *Santarém* Judicial Court, on November 8, 2016.

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According to the scope of intervention of the NPM<sup>3</sup> and with the purpose of the previously planned visit, the conditions of habitability of the detention zone, namely those of cells and sanitary facilities, were analyzed concerning their illumination, aeration, cleaning and vigilance. Other aspects and conditions related to the other areas of the court were also verified.

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<sup>2</sup> 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.

<sup>3</sup> 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.



## III

From the observation made during the visit, it is concluded that the place of detention does not meet the conditions established in the Regulation on the Detention Conditions.

The assessment of the need for intervention at the premises where the court functions — dating from 1982 — was carried out by the respective administration in the years passed for 2015 and 2016. However, it is true that the situations indicated at the time were not followed through, only the works of greater urgency were. In this connection, it should be mentioned that the last works carried out in the holding cell that were active took place in 2003, thus contrary to article 21 of the Regulation on the Detention Conditions which determines the repair and improvement of the cells at least once in every eight-year period in order to remedy deficiencies arising from their normal use and to keep them in good working order.

## IV

The characteristics of the detention area and of the only active cell were dissatisfied with the provisions of the on Regulation on the Detention Conditions, failing to meet security and habitability requirements and thereby compromising respect for the dignity of the person deprived of their liberty<sup>4</sup>.

The cell window, besides having direct exposure to the public highway, has a greater dimension than legally determined — one meter and ten centimeters in height and length — and a height above the pavement (one meter and 30 centimeters) lower than that established in the on Regulation on the Detention Conditions, which is in conflict with the provisions on paragraphs 1 and 2 of article 15 of the aforementioned normative document, applicable by the article 31, no. 2.

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<sup>4</sup> Article 12, no. 1, of the Regulation on Conditions of Detention, applicable *ex vi*, article 31, no. 2, provides that «places of detention shall respect the dignity of the detainee and safety and habitability requirements, in particular in what concerns the hygiene, natural and artificial lighting, suitability for climatic conditions, ventilation and furniture.»



The conditions of hygiene and cleanliness of the entire detention area, and in particular the active holding cell, are also worthy of repair, since no clean-up was carried out during the six-month period, disinfection or disinfestation, which is contrary to the provisions of article 20 of the Regulation on the Detention Conditions on of applicable under article 31.

It should also be noted that the ceramic floor of the active cell was humid and its walls were heavily vandalized, circumstances that did not contribute — rather its opposite — so that the conditions to which persons deprived of their liberty are in the place where they are awaiting their judicial proceedings.

The sanitary facilities located outside the cell are, in turn, equipped with toilets, and the lavatory has a faucet not and the channeling in sight, which is also the case inside the cell. In addition to that described, the cistern is a backpack. The circumstances found do not therefore comply with the provisions of article 17, paragraph 2 and article 19, paragraph 3 of the Regulation on the Detention Conditions, applicable *ex vi* article 31 no. 2. The NPM also pointed to the absence of any alarm or sound equipment that could be activated to signal the need for assistance in the place of detention, as well as the presence of a wooden chair in the active cell, along with its poor state of conservation, translates into furniture that is unsuitable for the place and the characteristics it should observe. Regarding the first of these aspects, there is a breach of the article 16 of the Regulation on the Detention Conditions<sup>5</sup> (applicable *ex vi* no. 2 of the article 31 and, for the second, there is a disrespect in accordance with the article 12, paragraph 2<sup>6</sup>, in an articulated reading, such as article 19, paragraph 1<sup>7</sup>, both of the aforementioned regulation and with application to the type of place visited in the terms already mentioned.

<sup>5</sup> This provision stipulates that «cells must be fitted with alarm equipment and must be provided with a device for the sounding of a signal enabling the detainee to call the official in case of need of assistance».

<sup>6</sup> It stipulates that «in places of detention, no objects may be stored that may be used dangerously by the detainees, in particular when they may be detrimental to one's life or the life of another.»

<sup>7</sup> It informs us that «the materials to be applied [inside the cells] must be resistant to fire».



In addition to the above, this state body identified that the access corridor to the detention zone of the visited place was partially obstructed by black bags in which several documents were stored. This situation must, however, be changed, allowing, on the one hand, free passage through space and, on the other hand, giving the correct destination to documents that are restricted reading<sup>8</sup>.

During the visit to the *Benavente* Local Instance of the Judicial Court of *Santarém* it was also possible to verify that there is no panel with information on the rights and duties of detainees or defendants in several languages, the article 4, paragraph 1 and paragraph 2 of the Regulation on the Detention Conditions.

More noted the NPM that only a set of sheets in A4 format, hanging in the window by a wire, was available, which, with the humidity in the space, compromised the readability of its contents.

In the light of the foregoing, I consider it appropriate to correct the situation in the short term in such a way as to ensure that the rights and duties of persons deprived of their liberty are known and that the conditions under which they are found while in the detention area of the judicial body visited are appropriate and guarantee their safety<sup>9</sup>.

## V

Regarding the building to which the court is attached, the NPM has identified certain circumstances which are worthy of reparation and which therefore need to be amended. The problems identified by the NPM are related, first of all, to the lack of daily cleaning of all the areas of the building — which in turn determines

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<sup>8</sup> The regime for the preservation and elimination of documents on file in the judicial bodies, provided for in article 143 of Law no. 62/2013, of August 26 (Law of the Organization of the Judicial System), is regulated in Administrative Rule no. no 368/2013 of 24 December, article 9, no. 4 of which states that «the decision on how to delete documents shall take into account confidentiality criteria».

<sup>9</sup> It should also be pointed out that the completion of the remodeling works necessary for the proper functioning of the place of detention of the *Benavente* Local Instance of the Judicial Court of *Santarém* is supported by the article 34, no. 1 of the Regulation on the Detention Conditions.



the allocation of resources necessary for the execution of that task — as well as failure to carry out regular and preventive disinfection and disinfestation operations.

As will be easily understood, the omission of the abovementioned actions may therefore entail risks for the protection of the health of the persons deprived of their liberty, as well as of the officials and magistrates who work there signaled by the NPM: one that is based on the need to repair the electrical installation and the second on the replacement of the floor. In both cases, improvements are made that affect the physical conditions of the building and are reflected in the safety — in the electrical network and in the circulation of people and goods (*v.g.*, carts of the processes) — and in the cleaning of the space.

In view of the above-mentioned facts, the adoption of measures to correct the situations identified is urgent, in order to ensure that the facilities visited can meet the conditions of habitability and decent work and consequently respect the rights of the people who are deprived of their liberty.

I am convinced of the personal commitment with which your Excellency will receive this recommendation and thus contributing to the improvement of the conditions of the *Benavente* Local Instance.

The Portuguese Ombudsman  
National Preventive Mechanism

*José de Faria Costa*