



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

*Your Ref.*

*Your Communication*

*Our Ref.*

*Visit no. 22-2016*

## RECOMMENDATION NO. 7/2017/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, regarding the improvement the conditions of the existing detention zone in the Central Instance of the Judicial Court of *Santarém* and the conditions of carriage of detainees by mobile phone, the following measures should be taken:

- a) The allocation of the cells of furniture suitable for the proper resting of the detainees;
- b) The urgent replacement of older cellular vehicles for prison services.



## II

The following statements are based on the visit made by the National Preventive Mechanism (NPM)<sup>1</sup>, on November 8, 2016, to the Central Instance of the Judicial Court of *Santarém*. According to the scope of intervention of the NPM<sup>2</sup> and the previously planned objects, the conditions of habitability of the detention zone, namely those of the cells and sanitary facilities, were analyzed in terms of their illumination, aeration, their cleanliness and their vigilance. The conditions of the transportation of the persons deprived of their liberty were also verified.

## III

From the observation made during the visit of the NPM to the place of detention we were able to conclude that, in general, its physical and structural conditions are satisfactory, but it was not identified the existence of any furniture for the rest of the detainees.

The detention area visited has three cells, but none of them have any kind of resting seat for the detainees, and they remain standing or sitting on the ground while awaiting for legal action. The absence of any furniture makes it impossible for the prisoner to, at least, have a seat, does not comply with the provisions of article 12, paragraph 1 of the Regulation on the Detention Conditions of the Judicial Police Facilities<sup>3</sup> and existing detention places in courts and public prosecution services, applicable *ex vi* in the article 31 no. 2, so far as that legal provision states, the places

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<sup>1</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>2</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.

<sup>3</sup> This normative document — hereinafter referred to as Regulation on the Detention Conditions — was approved by the order of the Minister of Justice no. 12 786/2009, of May 19, published in «*Diário da República*» no. 104, May 29, 2009.



of detention must respect the dignity of the detainee and satisfy the requirements of habitability and that regards the furniture as well.

It should be noted, however, that even if on the one hand, the Regulation on the Detention Conditions only refer to individual beds as components of cells<sup>4</sup>, the aforementioned provision in article 31 no. 2 prescribes, on the other hand, that provisions are applicable to places of detention in courts and in the services of the Public Prosecutor's Office with the necessary adaptations, considering that there is no overnight stay in these places and that they are destined for very short duration stays. Thus, and proving necessary the availability of furniture to enable persons deprived of their liberty in the cells of the Central Instance, I consider it appropriate to introduce, in the spaces in question, some kind of equipment that allows them to at least seat as they wait for the legal proceedings that concern them<sup>5</sup>.

#### IV

The presence of defendants in the cells during the visit allowed the NPM to verify the conditions of its transportation in the cellular vehicles that, at the moment, were affected to the *Leiria's* Youth Detention Center and the Prison Facility of *Caldas da Rainha*. The vehicles in question were found to be in poor condition, due to their aging — the mobile vans date from 2000 — and the number of kilometers already traveled, which exceed 500,000. The transportation vehicles of the inmates show signs of constant and intensive use, and in addition to insufficient airing, the temperature cannot be regulated.

It should also be noted that one of the cell vans (assigned to the *Caldas da Rainha* Prison) did not have seat belts and had the locks damaged.

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<sup>4</sup> See articles 14, no.1 and article 25, no. 5 of the Regulation on the Detention Conditions.

<sup>5</sup> In accordance with article 14, no. 1 and article 19, no. 1 of the Regulation on the Detention Conditions, a running bench made up of a concrete block with edges and rounded angles, such as furniture suited to a court cell.



As will be easily understood, these circumstances compromise the safety and integrity of all those who travel in them, which contradicts the provisions of article 22, paragraph 4 of the Code of Execution of Sentences and Privative Measures of Freedom<sup>6</sup>. In this sense, I think it is pertinent to promote the necessary measures to replace the vehicles, which can be part of a project to renovate the car fleet at the service of the prison system.

I conclude, being convinced of the personal commitment and cooperation on which your Excellency will receive this recommendation, thus contributing to the improvement of the conditions of detention of this facility and, consequently, to reinforce the appropriate treatment of the persons deprived of their liberty.

The Portuguese Ombudsman  
National Preventive Mechanism

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*José de Faria Costa*

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<sup>6</sup> This legal provision states that «the transportation of the prisoner shall be carried out in conditions which ensure the prisoner's privacy and adequate ventilation, lighting and security».