



Dear Mr.
National Director of the
Public Security Police
Largo da Penha de França, no.1
1170-298 Lisbon

- by protocol -

Your Ref.

Your Communication

Our Ref.

Visit no. 14-2017

RECOMMENDATION NO. 16/2017/NPM

I

Under the provision contained in article 19, paragraph b), of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I recommend the adoption of adequate measures in order to improve the detention conditions in the Public Security Police facilities, guaranteeing:

- a) The improvement of the detention places of the *Benfica* Police Station of the Public Security Police;
- b) The issuing of instructions so that, in case of (over)occupancy of the cells, the persons deprived of liberty can be immediately taken to proper police facilities;
- c) The definition of procedures to be followed when the detainees lack health care and/or remedies, as well as those that are suitable for taking previously prescribed medication;
- d) The provision of meals, properly determined according to the duration of the period of detention;



- e) The establishment and maintenance of properly completed registration of detainees.

II

This position was taken following a visit made by the National Preventive Mechanism¹, on March 29, to the *Benfica* Division of the Public Security Police, which followed another visit dated December 22, 2016, to the detention area of the Justice Campus, in the course of which detainees were interviewed.

In this sense, the visit of the National Preventive Mechanism to the *Benfica* Division of the Public Security Police aimed to verify the procedures to be followed in detention situations, ascertaining compliance with the rights of the detainees, contacting a defender and communicating with a trusted family member or person and, in addition, verifying the habitability conditions of the cells.

III

From the information collected during the visit, it was possible to conclude that the conditions of detention and the facilities of the Public Security Police can be improved, bearing in mind the proper treatment of those who are deprived of their liberty, work or access to those facilities.

a) Conditions of the places of detention

The conditions of the facilities of the *Benfica* Police Station of the Public Security Police may be improved so as to comply with legally established requirements for detention spaces as well as respect for the rights of those who are deprived of their liberty.

¹ In Portugal, the quality of National Preventive Mechanism was attributed to the Ombudsman, through the Resolution of the Council of Ministers no. 32/2013, published in «*Diário da República*», First Series, no. 96, of May 20.



In fact, the two cells of the police station have windows that are not tilting. This circumstance makes it difficult to ventilate and can pose risks to the health its occupants². In addition, the inoperability of the existing call system makes it impossible to the detainees to «call the guard in case of assistance»³. Also, the flushing system in one of the cells and the faucet in the lavatory need of repair, since such equipment ensures, in part, the salubrity and hygiene of the place and of whoever is in it.

b) Transportation of the detainees

The detention of a person is based on a set of assumptions that are legally defined, not depending on the existence or (over)occupancy of cells in the security forces conducting the detention. However, where the duration of the deprivation of liberty requires that the person should be kept in a detention place, then the detainee must be taken to a cell — even if it is located in another police facility — which meets the minimum conditions to that effect. Conditions which may be related to the (over)occupancy.

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The testimonies collected by the National Preventive Mechanism in the visits to the detention camp of the Justice Campus reported the ten-person stay in two cells that each has a capacity for two persons. This capacity was, for male detainees, far exceeded taking into account that, on that day, women were also detained and the cells were used in such a way as to ensure a separation of genders.

However, as it is clear from the article 12, paragraph 4, of the Regulation of Conditions of Detention, «[the] capacity of the cell must not be exceeded», otherwise, if this is the case, several persons be in a small area and without the necessary

² See article 4, paragraph 6, of the Regulation on the Material Conditions of Detention in Police Facility, approved in annex to the Order of the Minister of Internal Administration no. 5863/2015, published in «*Diário da República*», no. 106, Second Series of June 2, 2015 (hereinafter referred to as the Regulation of Conditions of Detention). See also article 3, paragraph 1, of the same Regulation.

³ See paragraph 9 of the article 4 of the Regulation of Conditions of Detention.



equipment to receive them properly (such as the benches or beds necessary for their rest).

c) Healthcare and medication

On the day of the visit, a citizen who, in a confidential conversation with the National Preventive Mechanism, reported that he had not received, during his detention (which had, at time of the visit, for more than ten hours), the medication (methadone and other) that he was taking. Furthermore, the detainee said that he had received the indication that the next dose would be administered to him at the court's facilities, information that was not registered.

According to the article 22, paragraph 2, of the Regulation of Conditions of Detention, «[t]he patient detained in need of specialized care must (...) be provided with medication previously prescribed, taking all measures to protect (...) the health of the detained person.» What in the circumstances described, it did not occur and should not be repeated in other circumstances, otherwise the right to health of the detained person would not be respected.

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d) Meals of the detainees

Until the time when he was interviewed by the National Preventive Mechanism, the detainee had not yet taken any meal. Thus, it was confirmed in the visit made to the Police Station of the *Benfica* Division of the Public Security Police that no breakfast, snack or supper was provided to the persons who are detained there; only lunch and dinner are provided. As a result, citizens may be detained for long hours without being provided with food that is adequate in quantity and quality, as prescribed in paragraph 1 of the article 14 of the Regulation of Conditions of Detention.



e) Registration of detainees

The consultation of the Registration Book of the Third Criminal Investigation Station — belonging to the *Benfica* Division of the Public Security Police — allowed to the National Preventive Mechanism to conclude that the persons interviewed during the visit to the detention area of the Justice Campus were detained there. However, there was a discrepancy between the recording of the time of detention of three of the citizens interviewed and the data contained in the detainees' individual bulletin and the search's and seizure's records. In the present case, it is stated that the search was conducted at 8:20 p.m., which is not consistent with the time of entry to that police station (6:45 p.m.), as read in the records of detainees.

In addition, it was also transmitted by the police officers that the detainees wait in the area of their offices for the time necessary to take the appropriate measures, which is not subject to registration, even if they are in a situation which deprives them of their liberty.

The 12th Principle of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴ determines that:

«1. There shall be duly recorded:

- a) The reasons for the arrest;
- b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- c) The identity of law enforcement officials concerned;
- d) Precise information concerning the place of custody.»

Likewise, the article 17 of the Regulation of Conditions of Detention establishes the obligation to have a proper register of detainees in order to verify, through its consultation, who, where, when and on what grounds the detainee was deprived of its liberty. To that end, that registration must be subject of a correct completion of its data, which, as seen above, did not succeed. However, it should be noted that, completing the registration book not only makes it possible to verify

⁴ Adopted by the United Nations General Assembly's Resolution no. 43/173 of December 9, 1988.



whether or not the rights of the persons deprived of their liberty have been respected, but also to counter any allegations of offenses perpetrated by that security force on those rights (such as exceeding the maximum detention time).

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 the *Benfica* Police Station of the Public Security Police and, consequently, to the reinforcement of the appropriate treatment of the persons who are there.

Yours sincerely,

The Portuguese Ombudsman
National Preventive Mechanism

José de Faria Costa