

## **PORTUGAL**

### **Follow-up - State Reporting Action by State Party**

**CAT, CAT/C/PRT/CO/4/Add.1 (2007)**

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19  
OF THE CONVENTION

### **Comments by the Government of PORTUGAL\* to the conclusions and recommendations of the Committee against Torture (CAT/C/PRT/CO/4)**

[23 November 2007]

1. Portugal welcomes the successful dialogue it had with the Committee during the presentation of the report. It is determined to work, both now and in the future, to resolve questions concerning the human rights of persons under its jurisdiction, and it will continue to offer the Committee against Torture every assistance as the Committee endeavours to understand the human rights situation in Portugal.
2. In section C of its draft concluding observations, the Committee refers to several subjects of concern and makes a number of recommendations. Portugal would like to address some of the subjects of concern, since it seems that perhaps it did not reply to the Committee's questions clearly.

#### **Definition of torture**

##### **Paragraph 6**

3. Inclusion of discrimination in the definition of torture in article 243 of the Penal Code. In reply to the question raised by the Country Rapporteur, it was pointed out that the definition in article 243 is sufficiently broad to cover discrimination, provided that it is committed by an official in the performance of his or her duties.

#### **Arrest for the purpose of verifying identity**

##### **Paragraph 7**

- (a) In accordance with the law and police practice in Portugal, all police measures are strictly individual and concrete (Constitution, art. 272, para. 2).

"Being taken by force to a police station for the purpose of identification"<sup>1</sup> is a police measure established by law (Code of Criminal Procedure, art. 250). Thus, "collective arrest" or "collective detention" does not exist either in law or in practice.

(b) Article 80 of the Penal Code provides that the time spent in detention for identification purposes (six hours maximum) shall be deducted from the duration of the sentence. Detention for the purpose of identification expires after six hours. In the rare case in which detention is followed by custody, practice would appear to indicate that the six hours are taken into account.<sup>2</sup>

(c) Since they are held in a police station, detainees are placed under the "responsibility and protection" of the police (No. 10.1 Regulation governing physical conditions ...). While legally such persons fall under the responsibility of the prosecuting authorities, they are physically and legally under the supervision of the police. Pursuant to the above-mentioned Regulations, the police are required (non-discretionary power) to provide medical care for the detainees (for details, see Regulations, para. 21). A forensic medical examination is required whenever the crime is of a public nature, and such examinations are always supervised by the Public Prosecutor's Office.

## **Incommunicado regime**

### **Paragraph 9**

4. Incommunicado detention is kept to a minimum and is applicable only in the case of very serious crimes. Pursuant to article 51, subparagraph (a), of the Code of Criminal Procedure, such detention must be immediately notified to the Public Prosecutor's Office with a view to ensuring strict judicial supervision in the matter. Such detention may not exceed 48 hours.

## **Universal jurisdiction**

### **Paragraph 10**

5. In Portugal, the Office of the Attorney-General of the Republic is independent of the Government and is not bound by the executive power for matters of criminal procedure.

6. According to the Statute of the Public Prosecutor's Office (Act No. 60/98 of 27 August 1998), prosecutors are independent and subject only to the criteria of legality and objectivity, and magistrates are subject only to the directives, orders and instructions set out in the Act (art. 2).

7. The Government may not use the Minister of Justice to give instructions to the Attorney General regarding ongoing criminal proceedings (Act No. 60/98, art. 87).

8. With regard to universal jurisdiction, the Advisory Council of the Attorney-General's Office (a government consultative body) has, at the Government's request, issued an opinion concerning the question of Timor.

9. However, the final decision in such matters remains judicial in nature and is a matter for a judge. Under article 5 of the Penal Code, this jurisdiction lies with the courts.

## **Prison conditions**

## **Paragraph 11**

10. There have been no reports of cases of sexual violence between detainees, and no complaint to that effect has been registered. The prison population is tested for AIDS and other infectious diseases, and sick inmates receive appropriate care. The deaths due to AIDS are of natural causes and reflect infection and morbidity rates in the national population; they are not

due to prison conditions. It should be pointed out that the death rate in prisons has been declining continuously, falling from 167 cases in 1997 to 91 cases in 2007. A similar trend has been noted for suicides. Given the country's total prison population of 12,000 inmates, the number of deaths due to illness or homicide, although regrettable, cannot be regarded as high, especially when account is taken of the fact that the prison system annually processes more than 24,000 individuals, a figure which includes inmate incarcerations and releases.

11. The Albino Libânio case is not an instance of torture. It was referred to the courts, and the resulting decision was the subject of an appeal. A disciplinary trial is under way to decide whether to dismiss the prison guard. There are many complex reasons for prison violence, which is constantly being addressed within the prison system.

## **Prompt and impartial investigations and compensation**

### **Paragraph 12**

12. Article 4 of Act No. 21/2000 of 10 August 2000 refers to the criminal investigation police crimes against the peace and humanity, including torture.

### **Paragraph 13**

(a) All complaints of torture or cruel, inhuman or degrading treatment brought against the police force are immediately investigated (criminal and disciplinary investigation). As the investigation is automatic (legality of prosecution, non-discretionary power), a complaint is not necessary (for details, see the Code of Criminal Procedure, arts. 241 ff., the Inspectorate General of Internal Administration (Organization) Act, art. 4, para. 2, and the IGAI Regulations, arts. 1 3).

(b) Two laws, the regime of responsibility for acts by public authorities (Decree-Law No. 48,051 of 21 November 1967) and the regime of compensation for victims of violent crimes (Decree-Law No. 423/91 of 30 October 1991) guarantee compensation to the victims in such cases.

### **Paragraph 15**

13. The recommendation does not take into account the extensive information provided to the Committee on efforts to combat domestic violence. The first National Plan to combat domestic violence dates from 1999, and the third National Plan was recently approved. This Plan has carefully defined areas of action and will continue until 2010.

14. Moreover, no mention is made of the legislative and administrative measures taken to address the phenomenon: publicizing the crime, ensuring the necessary conditions for the protection of victims, the creation of specialized services to receive complaints from victims, the opening of shelters (34 of which are already in operation), and the punishment and treatment of offenders. In addition, criminal proceedings have been brought against offenders whenever the authorities have learned of cases of domestic violence.

15. Lastly, no mention is made of the major efforts undertaken by Portugal in recent years to train specialized personnel, including police officers, in domestic violence directed against women and children.

### **Paragraph 16**

16. Contrary to what is stated in the draft concluding observations, human trafficking in Portugal has not assumed proportions comparable to those in other countries of the European Union. Portugal is making considerable legislative and material efforts to combat the practice, by passing new laws and heightening public awareness. Thus the recommendation as formulated seems excessive. Specific legislative measures have been taken to punish the perpetrators of this type of offence appropriately, and some offenders have already been sentenced, as the Committee has been informed.

### **Discrimination**

#### **Paragraph 17**

While discriminatory behaviour occurs in Portugal, as it does in all countries, Portugal is working tirelessly to combat the phenomenon. Reference is made to the reports submitted to the Committee on the Elimination of Racial Discrimination (CERD), and in particular to the eleventh report, which was considered in August 2004. In addition to article 240 of the Penal Code, Portugal had introduced Act No. 144/99 and Decree-Law No. 111/2000 on discriminatory offences of an administrative nature, following up on the recommendations of the Council of Europe's European Commission Against Racism and Intolerance (ECRI) on the subject. If the complaints received by the Commission on Equality and Non-Discrimination are criminal in nature, administrative proceedings give way to criminal proceedings, since the complaint is referred to the prosecuting authorities. Lastly, there is also a system of civil liability for racist acts which focuses on the victim and is based on articles 70 and 483 of the Civil Code. Reference is made to the home page of the Office of the High Commissioner for Integration and against Discrimination (ACIDI) at [www.acidi.gov.pt](http://www.acidi.gov.pt).

#### **Paragraph 19**

17. As Portugal has ratified all the major international human rights instruments, it is difficult to imagine what texts the Committee is referring to in this recommendation. For the international instruments in force in Portugal, see [www.gddc.pt](http://www.gddc.pt).

#### **Paragraph 20**

18. This recommendation does not take account of all the information that Portugal has provided to the Committee both orally and in writing regarding the public dissemination over a number of years of the reports submitted to international treaty bodies, accounts of their consideration and the conclusions and recommendations made with regard to them, notably on the website of the Office of Documentation and Comparative Law of the Attorney-General's Office. All this information has long been made public in Portugal and is thus available to all interested parties, including national non governmental organizations (NGOs).

19. As also reported to the Committee, the current practice is to provide national NGOs with country reports before submitting the documents to the United Nations treaty bodies. Exceptionally, this was not done in the case of the fourth report before the Committee, out of a concern to submit the report by the deadline set by that body.

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\*/ In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1/ This measure does not really constitute an "arrest"; rather, a person suspected of having committed a crime is "taken by force" to a police station for verification of identity, which can involve the producing of an identity document, the suspect's being recognized by a third party or travel to a place where the identity document or the third party can be found (Code of Criminal Procedure, art. 250).

2/ Portugal will provide more definite information to the Committee during the year it has for providing clarifications.