# Criminal Detention in the EU: Conditions and Monitoring

Update of FRA's Criminal Detention Database

(FRANET)

**Country:** Portugal

**Contractor's name**: Centro de Estudos Sociais

**Authors**: Gustavo Veiga, Diana Barros, Carlos Nolasco, Conceição Gomes

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# Part I: National standards

## 1. Cells

### a. Cell space

There have been no changes in the legal standards in Portugal since the 2021 report. The legal framework for the execution of custodial sentences and measures remains contained in two legal acts: the Code on the Enforcement of Custodial Sentences and Measures[1], which outlines the fundamental principles of the executing custodial sentences and measures and establishes that accommodation spaces must respect the dignity of the detainee and meet safety and habitability requirements, particularly regarding hygiene, natural and artificial light, climatic conditions, ventilation, cubic capacity of space, and furniture (Article 26), but fails to stipulate standards for cell space in square metres; and the General Regulation on Detention Facilities[2], which regulates the Code on the Enforcement of Custodial Sentences and Measures, by implementing the fundamental principles defined therein, and also does not specify the national standards for cell space available in square metres in its article on accommodation (Article 34). Both articles state that detainees should preferably be placed in individual accommodation, except when family, treatment, or prevention reasons make collective accommodation advisable, or due to temporary insufficiency of accommodation. The provisions of both documents also apply to people in police custody and remand, with the necessary adaptations (Articles 123 and 124 of the Code on the Enforcement of Custodial Sentences and Measures). In Portugal, police detention is temporary and cannot exceed 48 hours. Police detention can only occur to bring the detainee to a summary trial within a maximum of 48 hours, present the detainee to the competent judge for a first judicial inquiry or the application or execution of a coercive measure, or ensure the detainee's presence before the judicial authority at a procedural act (e.g. a trial hearing), within 24 hours (Article 254 of the Code of Criminal Procedure[3]).

According to the information obtained from the Directorate-General of Reinsertion and Prison Services (DGRSP)[4], the area and cubic capacity of spaces, both individual and collective, currently comply with the indications contained in the CPT recommendation (CPT/INF - 2015 / 44)[5], and all spaces have glass windows that open to the outside, allowing light and air to enter accommodations. In addition, the DGRSP also informed that the so-called "basements" at Lisbon Establishment are closed.

Regarding relevant case law, the cases found concern the general conditions of the establishments. For instance, Judgement n. º 5553/19.7T8LSB-Q.S1 mentions that the cell in which the defendant was held was dirty, cold, damp, unventilated and overcrowded. Judgement n.º 2713/16.6T9PDL-C.S1 from the Supreme Court of Justice also mentions that the defendant was placed in an overcrowded cell. Both

[1] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[2] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[3] Portugal, Decree-Law 78/87, that approves the Code of Criminal Procedure (Decreto-Lei n.º 78/87, que aprova o Código de Processo Penal), 17 February 1987. This law had several amendments. The last one was by Law 52/2023, of 28 August.

[4] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[5] Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2015), Living space per prisoner in prison establishments: CPT standards, 15 December 2015.

cases were dismissed due to the fact that the defendant filed an habeas corpus request and this type of request can only be used in specific situations.

### b. Access to natural light and fresh air, cell equipment, furniture, and facilities

The general provision in Article 26 of the Code on the Enforcement of Custodial Sentences and Measures[6] states that accommodations must respect the dignity of the detainee and meet the requirements of security and habitability, namely as concerns hygiene, natural and artificial light, climatic conditions, ventilation, cubic capacity, and furniture. Article 34 of the General Regulation on Detention Facilities[7] states that individual or collective cells must be furnished with an individual bed, table, chair, and closet. This article also mandates that cells must be equipped with a wash basin and toilet (or equivalent).

As noted above, the DGRSP[8] stated that all cells currently have glass windows that open to the outside, allowing light and air to enter. Additionally, according to the DGRSP, all cells are equipped with a bed, a side table, a chair, and a cupboard for personal belongings, as well as sanitary facilities.

The aforementioned cases, Judgement n. º 5553/19.7T8LSB-Q.S1[9] and Judgement n.º Judgement n.º 2713/16.6T9PDL-C.S1[10], concern the conditions of detention.

### c. Video-surveillance of cells

The General Regulation on Detention Facilities[11] establishes that the use of a video-surveillance system is authorised to ensure the order and security of the establishment only in common spaces and in areas surrounding the establishment, with the safeguarding of the detainees' privacy (Article 155). This reinforces the stipulations in Articles 88 (which classifies video-surveillance as a general security measure) and 90 of the Code on the Enforcement of Custodial Sentences and Measures[12] (which mandates that the use of video-surveillance must safeguard the intimacy of private life).

This point was reiterated by the DGRSP[13], which stated that video-surveillance only takes place in communal areas and never in areas reserved for detainees' accommodation, in order to respect their privacy. The inside of cells is monitored through a viewing window that allows staff to see from the outside.

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[6] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[7] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[8] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[9] Portugal, Supreme Court of Justice (Supremo Tribunal de Justiça), Lisbon/ Judgement n.º 5553/19.7T8LSB-Q.S1, 23 September 2021.

[10] Portugal, Supreme Court of Justice (Supremo Tribunal de Justiça), Lisbon/ Judgement n.º 2713/16.6T9PDL-C.S1, 20 March 2024.

[11] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[12] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[13] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

### d. NPM assessment

As noted in the last two NPM reports (2021 and 2022)[14], visits and observations were limited due to the outbreak of COVID-19. Pandemic control measures were in place for much of the period covered, and their impact was felt in the dynamics of the establishments and the postponement of some material improvements.

Nevertheless, in both reports, the NPM identified prevailing issues, namely overcrowding and unsuitable accommodation conditions ("In general terms, the most sensitive issues remain, which the NPM has pointed out every year, such as (i) the outdated nature of a large part of the buildings, their diversity and asymmetry, (ii) the frequent situations of overcrowding and overfilling of accommodation and (iii) the lack of human and material resources, which affect the conditions of life in detention in various ways."; "Em termos gerais, subsistem as questões mais sensíveis do sistema prisional, que o MNP tem apontado anualmente, como sejam (i) a desatualização de grande parte do edificado, a sua diversidade e assimetria, (ii) as frequentes situações de sobrelotação e a ocupação excessiva dos alojamentos e (iii) as carências de recursos humanos e de meios materiais, que prejudicam, em várias dimensões, as condições da vida em reclusão."[15]).

The NPM expressed great concern about the occupancy rates recorded and reiterated its warning from previous years regarding the problems associated with overcrowding. These include the reduction in space per detainee, difficulties in ensuring privacy and individual accommodation, reduced participation in activities, and the often tenser and unhealthier environments. While national establishments were not overcrowded overall, the NPM expressed concern with the overcrowding in some establishments.

Moreover, the NPM noted that the actual occupancy rate of establishments is an essential aspect of the Portuguese reality and recommended its updating, stressing the importance of considering the available space in accommodation and warned against relying on outdated official capacities, which may obscure instances of actual overcrowding and reduce the accuracy of annual statistics regarding capacity and detainee ratios.

In addition to overcrowding, accommodation still predominantly occurs in collective spaces - cells and dormitories -, and the goal of individual occupancy is far from being achieved. The NPM notes that in some establishments, there are no individual cells and in others, normal accommodation usually involves dormitories, some of which accommodate up to 14-15 detainees. The NPM has observed instances of double and even triple occupancy of individual cells, resulting in a lack of privacy and circumstances where overcrowding reaches unacceptable levels (e.g., in the Leiria Establishment, where some small cells with three occupants didn't allow all detainees to be out of their beds simultaneously).

Additionally, the mechanism reported that many detainees expressed their dissatisfaction with the conditions, particularly in the dormitories, mentioning issues such as having only one bathroom, tensions arising from decisions about shared space and equipment, and the general difficulties of life in overcrowded spaces, where tensions could arise over simple matters such as the choice of television channel.

[14] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[15] Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman, p. 33.

The NPM concludes that either because cells and dormitories are being used with smaller areas per detainee than recommended or due to overcrowding, the observations made in previous years regarding the fact that some establishments do not guarantee the personal space that should be given to each detainee remain valid. The mechanism stressed that the small area available and the lack of privacy hinder decent confinement conditions and urged compliance with CPT accommodation standards to ensure proper treatment and avoid further condemnations. Based on international standards, the NPM found several establishments, notably Bragança, Montijo, and Setúbal, that failed to meet the minimum space per detainee in cells, with two detainees often held in a space insufficient even for one, underscoring the need for action to address the Portuguese state's repeated failure to meet decent accommodation standards, evident in overcrowding, collective accommodation, and inadequate space per detainee, falling below CPT and ECHR guidelines.

Additionally, the NPM stated that particular attention must be paid to the installation and optimization of the use of video-surveillance systems in the common areas ("the video-surveillance system, which is not installed in all the establishments or, even if it is, does not cover all the common areas"; "o sistema de videovigilância, que não se encontra instalado na totalidade dos EP ou, mesmo existindo, não abrange a totalidade das zonas comuns"[16]).

Nonetheless, the NPM confirmed that actions have been taken to improve the conditions of some establishments, and lauded the completion, as of the 2022 report, of the work to separate the sanitary facilities of the cells and dormitories in almost all establishments, resulting in an improvement in the privacy and well-being of detainees, including their hygiene.

Regarding the assessment of the detention facilities, the NPM members interviewed[17] emphasised that conditions are very uneven, making it impossible to provide a uniform evaluation. While some establishments, such as the Santa Cruz Women and Carregueira Establishments, have overall good conditions, others, especially the older ones, are more degraded. Approximately half of the establishments require major interventions. This issue also affects the space available in cells, as the lack of investment in improvements leads to the closure of some units or wings within establishments, causing overcrowding in the remaining available cells (e.g., cells that should only hold one detainee end up with more people in them), despite official capacity being sufficient to house all detainees in existence. Additionally, as the official capacity considers the availability in all different detention regimes, some units may be overcrowded while others do not reach their capacity (e.g., open regime).

The NPM members also reinforced the need to revise official capacities to ensure the compliance with CPT norms. Furthermore, despite the general stipulation that housing must be predominantly individual, collective accommodation remains prevalent in practice. Climatic conditions, privacy fulfilment of the requirement of privacy (especially in collective spaces), and infestations continue to be issues in some establishments, noteworthy the Lisboa Establishment.

[16] Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman, p. 41.
[17] Interview conducted on 09 May 2024.

## 2. Allocation of detainees

### a. Geographical allocation

As per Article 20 of the Code on the Enforcement of Custodial Sentences and Measures[18], the allocation of detainees takes into account (i) the organization of custodial establishments and (ii) the initial assessment of the detainee, as well as their legal and criminal status, gender, age, health, previous sentences, the nature of the crime committed, sentence length, requirements of order and security, execution regime, proximity to family, social, educational, and professional environment, the advantages of promoting it and the requirements of approaching freedom, the need to participate in certain programmes and activities, including educational ones, the need for special protection and the fulfilment of specific needs. It also stipulates that assignment to a custodial establishment or unit is the responsibility of the Director-General and, whenever possible, the sentenced person must be heard about their allocation. Similarly, Article 20 of the General Regulation on Detention Facilities[19] specifies that allocation must consider the initial assessment and the detainee's right to be heard.

The DGRSP informs[20] that it tries to assign detainees to establishments close to their place of residence, to facilitate visits by reducing travel costs and making it less burdensome for family and friends. The exceptions to this procedure are: in the case of detainees on remand, detainees whose proceedings and trials are taking place in courts located in geographical areas other than their place of residence, in order to avoid long and repeated trips; in the case of detainees with long sentences, in the occasions where the establishments close to their place of residence are of a size that hinders their occupation and/or for security reasons.

### b. Allocation within detention facilities

According to Article 9 of the Code on the Enforcement of Custodial Sentences and Measures[21], detention establishments may consist of one or more units, differentiated according to the following factors: legal and criminal status, sex, age, physical and mental health and other factors tending towards specialization or individualization of the detainee's custodial treatment; security requirements; available programmes; regime of execution. Additionally, without prejudice to the previous stipulation there must be establishments or units specifically dedicated to the execution of sentences and measures involving: detainees in remand; b) detainees serving their first sentence; c) young detainees up to the age of 21 or, whenever it is beneficial for their treatment, up to the age of 25; female detainees; and detainees in need of special protection. There may also be establishments or units of a hospital nature or for the provision of special health care, particularly mental health.

Establishments or units also have have designated areas for the placement of detainees after their admission, the placement of detainees in a cell separated from the rest of the population, the placement of detainees in a safe room next to the clinical area, the execution of the disciplinary measure of

[18] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[19] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[20] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[21] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

internment in a disciplinary cell and the placement of a detainee who is in a particularly vulnerable state. This is in line with the special guiding principles set out in Article 4 for (i) young people up to the age of 21, (ii) those over 65, (iii) women and (iv) foreign detainees or those belonging to ethnic or linguistic minorities.

According to the information provided by the DGRSP[22], while some establishments are dedicated to detainees in remand and those in the open regime, as is the case of Torres Novas Establishment, in most cases detainees are assigned to wings in each establishment that allow for this separation. In other words, there are wings for detainees on remand, for sentenced detainees and for detainees serving on open regime. The DGRSP notes that the detainees in each wing do not interact with those in other wings, having recreation time and meals in the respective areas of the facility to which they are assigned. The DGRSP also informs that there are three exclusively female establishments and four establishments with separate sections for women (three of them in the Autonomous Regions). Finally, the Leiria Establishment (Youth) is designed to receive detainees up to the age of 21.

### c. NPM assessment

In terms of allocation, the NPM[23] highlighted the challenging situation faced by detainees convicted of or suspected of sexual offenses - a group particularly vulnerable in custodial settings - at the Lisbon Establishment. Initially housed in wing F, they were relocated to wing D due to the pandemic's impact on wing F's repurposing for quarantine. However, this relocation necessitated housing them alongside other detainees, prompting the need for strict separation. Consequently, to ensure their safety, their cell access was restricted, confining them for 22 hours a day. The two hours they had out of their cell were not just for going to the yard, since during that time they had to perform all activities they couldn't do in their cell, such as showering, going to the canteen or making phone calls. This situation was exacerbated by communal housing, cramped cell dimensions (around 9 m², inclusive of toilets), and the lack of tables and chairs, forcing detainees to eat their meals in their beds.

The NPM members interviewed[24] indicated that while criteria such as proximity are considered, detainee allocation to establishments largely depends on the availability of vacancies in those establishments.

Some establishments, like Torres Novas and Carregueira, distinguish themselves in terms of the custodial treatment and programmes offered. Nevertheless, the overall offering is limited, with few programmes and technicians qualified to implement them. However, with specialization of custodial treatment there is a risk of stigmatization, as seen in the Carregueira Establishment's focus on programmes for individuals convicted of sexual offenses. The NPM stressed that a focus on a more diverse offer in all establishments should be prosecuted.

The case of establishments designated for recently admitted detainees was also mentioned. While there are some potential benefits to such establishments, such as providing an environment more conducive to the reception and integration of detainees, this is not always the current reality. There is a risk that

[22] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[23] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[24] Interview conducted on 09 May 2024.

these facilities become places where individuals are clustered while awaiting transfer or while on remand.

Finally, as mentioned in the interview, transfer requests – regardless of the reason invoked—often lead to complaints due to the lengthy assessment process.

## 3. Hygiene and sanitary conditions (note – section 11 contains specific questions concerning female detainees)

### a. Access to toilets

The Code on the Enforcement of Custodial Sentences and Measures[25] stipulates in Article 27 that detainees shall be guaranteed access to sanitary facilities meeting hygienic standards and ensuring, as far as possible, their privacy. Furthermore, as stated, under the terms and conditions defined by the General Regulation on Detention Facilities[26] accommodation spaces shall be provided with a wash basin and toilet or equivalent (Article 34).

As mentioned above, the information provided by the DGRSP[27] states that all cells are currently equipped with sanitary facilities and that, following Portugal's conviction in the "Petrescu case"[28], the sanitary area inside all cells has been sealed off to ensure complete privacy.

### b. Access to showers and warm and running water

According to the General Regulation on Detention Facilities[29], detainees must be guaranteed a daily hot water bath (Article 43). This also applies to those detainees falling under the security regime (Article 202). This aligns with the Code on the Enforcement of Custodial Sentences and Measures[30] that states that detainees shall be provided with a daily shower, at a temperature appropriate to the season, and shall have access to sanitary facilities meeting hygienic standards and ensuring privacy, as mentioned previously (Article 27).

### c. Access to sanitary products

The aforementioned Article 27 on the Code on the Enforcement of Custodial Sentences and Measures[31] mandates that detainees shall be provided with the articles and utensils necessary to maintain their

[25] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[26] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[27] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[28] ECtHR, AFFAIRE PETRESCU c. PORTUGAL, 23190/17, 3 December 2019.
[29] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[30] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[31] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

hygiene, under the terms and conditions defined by the General Regulation on Detention Facilities[32]. According to Article 43 of the General Regulation on Detention Facilities, detainees are guaranteed daily hot water showers and they may have personal hygiene products provided by the establishment or purchased by themselves through the canteen service, in the quantities and types determined by order of the Director-General. Detainees also have access to the barbershop service at a time and under conditions to be set by the Director, and may only use disposable shaving utensils and razors supplied by the establishment or purchased by the detainee through the canteen service. Detainees who demonstrably lack the means to purchase personal hygiene products are periodically provided with a basic set.

### d. Hygienic conditions in cells

Regarding the cleaning and hygiene of sanitary facilities, the aforementioned Article 27 of the Code on the Enforcement of Custodial Sentences and Measures[33] stipulates that, besides those necessary for their personal hygiene, detainees shall be provided with the articles and utensils necessary to maintain the hygiene of their accommodation. Article 30 further stipulates that the establishment provides bed linen appropriate to the season, which it maintains and replaces to ensure its good state of repair and cleanliness, with the quantities, types, preservation and destruction of clothing for hygiene reasons regulated by the General Regulation on Detention Facilities[34].

Additionally, the Code on the Enforcement of Custodial Sentences and Measures mandates that detainees shall be provided with advice and information to enable them to maintain the hygiene of their accommodation space and other facilities (Article 33). Furthermore, a physician or other legally authorised and technically qualified person shall carry out regular inspections of the establishment and make recommendations to the Director regarding to the hygiene and cleanliness of the establishment and detainees (Article 37).

The General Regulation on Detention Facilities stipulates that detainees are responsible for the hygiene and cleanliness of their cells and should be provided with the products and utensils necessary for that purpose (Article 40), being guaranteed a weekly change and washing of bed and bath linen (Article 44). Detainees placed in security conditions use clothing provided by the establishment, which must be adapted to the weather conditions, must not be degrading or humiliating, must be kept in a good state of repair and hygiene, and must be replaced whenever necessary. The cleaning of common areas is carried out by detainees designated for this purpose by the establishment Director.

The DGRSP[35] reaffirms this information, stating that continuous conservation and maintenance efforts are undertaken to mitigate and rectify damages caused by their occupants or resulting from the aging of buildings. Daily cleaning of communal areas is overseen by the custodial administration, with

[32] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[33] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[34] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[35] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

detainees receiving monetary compensation for their participation in these tasks. Responsibility for cleaning accommodation areas lies with the occupants, who are supplied with cleaning and disinfection products by the facility. Bed linen washing and replacement services are provided by the establishments. Additionally, it is worth noting that, according to the information from the DGRSP, external companies are regularly contracted to disinfect the facilities.

### e. NPM assessment

According to the latest NPM report[36], the aforementioned problem of lack of privacy is also evident in some common spaces, such as the case of the shower rooms at the Aveiro and Faro Establishments, where the showers had no separation between them.

The interviewed members of the NPM[37] stated that showers generally present unsatisfactory and often unsanitary conditions, particularly in larger establishments. Additionally, privacy is often non-existent. Regarding access to hygiene products, those who can't afford them receive a personal hygiene kit every month. The mechanism does sometimes receive complaints concerning the inadequacy and insufficiency of this kit, as well as the insufficiency of female hygiene products in the female kit.

## 4. Nutrition

### a. Quality and quantity of food

As stated in Article 31 of the Code on the Enforcement of Custodial Sentences and Measures[38], detainees shall be provided with meals in the quantity, quality, and presentation that correspond to their dietary requirements, age, health condition, nature of their work, season and climate, and their philosophical and religious convictions. Regular quality control must be ensured, as well as regular control of the composition and nutritional value of the meals provided. Detainees may receive food from the outside in small quantities, except when they are being placed in security conditions. They may also acquire perishable goods and products or objects useful for their daily life at their own expense through the canteen service, provided that health, hygiene, and safety reasons do not advise against it.

Furthermore, a physician or other legally authorised and technically qualified person shall carry out regular inspections of the establishment and make recommendations to the Director regarding the quantity, quality, preparation and distribution of food supplies (Article 37). This stipulation is reinforced by the General Regulation on Detention Facilities[39] where Article 45 states that the establishment provides three meals a day and an evening supplement distributed with the third meal and ensures specific diets that are prescribed by a doctor. As far as possible, the establishment provides specific diets that respect the detainee's religious or philosophical convictions. The establishment shall monitor the quantity and quality of all meals provided on a daily basis and keep a record of this. Each semester, or whenever necessary, the doctor or nutritionist shall inspect and report on the conditions of conservation, storage, and preparation of food, as well as the hygiene of the places where food is prepared and stored (Article 46).

[36] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman.
[37] Interview conducted on 09 May 2024.
[38] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[39] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

Such principles were also reinforced in the information provided by the DGRSP[40], adding that meal preparation is done by external companies that are put out to an internationally competitive tender.

### b. Drinking water

The aforementioned Article 31 of the Code of Enforcement of Prison Sentences and Measures[41] also states that detainees must have permanent access to drinking water.

### c. Dietary requirements

In addition to the aforementioned Article 31 Code on the Enforcement of Custodial Sentences and Measures[42], which mandates that detainees shall be provided with meals in the quantity, quality, and presentation that correspond to their dietary requirements, age, health condition, nature of their work, season and climate, and their philosophical and religious convictions, Article 45 of the General Regulation on Detention Facilities[43] states that the institution also shall provide specific food diets as prescribed by the physician, and as far as possible, the establishment shall provide specific diets that respect the detainee's religious or philosophical convictions.

The information gathered from the DGRSP[44] reinforces that diets provided respect the religious or philosophical convictions of the all detainees, as well as health issues.

### d. NPM assessment

In the NPM reports[45], there are mentions of cases where the kitchen of the establishments needed improvement work ("Insufficiencies that are also felt in other areas of the establishment, such as, in the kitchen and in the pantry (...)"; Deficiências essas que também se fazem sentir noutras áreas do EP, desde logo, na cozinha e na copa (…)[46]) and others where the establishment did not comply with the minimum conditions ("The kitchen degradation at the Montijo Establishment, with the broken floor, humidity on the walls and ceiling, worn furniture and dishes, led the NPM to recommend its deactivation until the realization of repair work. In the kitchen of the Vale de Judeus Establishment, the NPM observed the presence of a rat and some pigeons."; "A degradação da cozinha do EP do Montijo, com o pavimento partido, humidade nas paredes e teto, mobiliário e loiças desgastadas, levaram a que o MNP recomendasse a sua desativação até à realização de obras. Na cozinha do EP de Vale de Judeus, o MNP observou a presença de um rato e de alguns pombos."[47]).

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[40] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[41] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 27/2019, of 28 March.
[42] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[43] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[44] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[45] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[46] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman, p. 38.
[47] Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman, p. 39.

The NPM members interviewed[48] reported that meals are usually adequate, and most complaints concern the evening supplement, particularly its insufficiency, as detainees have dinner early and go for a long period without any meal other than such supplement. However, the interviewees reported the existence of deteriorating and unhealthy conditions in various spaces dedicated to food preparation and storage.

## 5. Time spent outside the cell and outdoors

### a. Time spent outdoors

In accordance with Article 50 of the Code on the Enforcement of Custodial Sentences and Measures[49], activities shall be organised in such a way as to ensure that the detainee has leisure and rest time. The detainees may organise their own leisure time while respecting the discipline, order, and security of the establishment. Furthermore, according to Article 51, the detainee shall be guaranteed the right to stay outdoors for a period of not less than two hours a day, in spaces that offer protection against adverse weather conditions. In exceptional cases, the period may be reduced but may never be less than one hour per day. According to Article 261 of the General Regulation on Detention Facilities[50] the opening and closing times of accommodation spaces and the definition of the quiet period are approved by the Director-General, on a proposal from the Directors of the establishments. The Director of each establishment determines the schedules for meals, time spent outdoors, and visits; the rules for the use of telephones by detainees, which define the terms of access and the time at which they are used; the schedules for activities and the services in the establishments, with the schedules and rules being submitted for approval by the Director-General.

### b. Time spent indoors

As stated, in accordance with Article 50 of the Code on the Enforcement of Custodial Sentences and Measures[51], activities shall be organised in such a way as to ensure that detainee have leisure and rest time, and detainees may organise their own leisure time, while respecting the discipline, order, and security of the establishment. In addition, Article 35 of the General Regulation on Detention Facilities[52] specifies that detainees remain in their accommodation space, except when authorised to move around or be in another area of the establishment, and are forbidden to enter the accommodation of other detainees. As stated, according to Article 261 of the General Regulation on Detention Facilities the opening and closing times of the accommodation spaces and the definition of the quiet period are approved by the Director-General.

[48] Interview conducted on 09 May 2024.
[49] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[50] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[51] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[52] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

According to the information gathered from the DGRSP[53], in addition to outdoor recreation time, detainees are outside their cells during work, school, and educational activities, as well as during sports and cultural activities.

### c. Recreational facilities

Detainees have the right to participate in work, education, training, religious, socio-cultural, civic and sporting activities and programmes aimed at addressing specific problems, as established in Article 7 of the Code on the Enforcement of Custodial Sentences and Measures[54]. Article 49 further establishes that the custodial treatment must include socio-cultural and sports activities, in which detainees are urged to participate in its elaboration and organization. Socio-cultural and recreational activities shall be organized, namely through the existence of libraries, reading services, video libraries and diversified cultural entertainment programmes, to promote detainees' well-being and develop their skills. Additionally, sports activities, under appropriate technical guidance, ensure the physical and mental well-being of the detainees and foster a spirit of orderly social coexistence, with the General Regulation on Detention Facilities[55] laying down the conditions for the organization and enjoyment of these activities.

Furthermore, according to Article 93 of the General Regulation on Detention Facilities the cultural and recreational activities programmed by the custodial services are part of the programme of custodial treatment. These shall organize events at least quarterly such as readings, exhibitions, musical or theatrical performances, considering the detainees' suggestions and involving them in the respective programming. The planning and implementation of activities, whenever possible, involves those who work directly with the detainees, such as teachers and volunteers and the participation of outside entities linked to these activities is encouraged. In each establishment, a reading service shall also be provided for all detainees, with its organization being the responsibility of the custodial services (Article 94).

Likewise, the establishment ensures the necessary material, organisational and technical support to provide detainees with the necessary conditions for the practice of individual or collective sports (Article 95). These activities should be structured according to technical and pedagogical principles and form part of the custodial treatment programme. According to Article 96, all detainees have access to organized sporting activities, subject to a favourable declaration from the clinical services, renewed annually, as well as from the custodial services and the surveillance and security services.

### d. Educational activities

As stated above, the right to participate in educational, vocational training, and civic activities and programmes aimed at addressing specific problems is outlined in Article 7 of the Code on the

[53] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[54] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[55] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

Enforcement of Custodial Sentences and Measures[56]. The detainees' right to educational and vocational training is further emphasized in Articles 38-40 of the Code on the Enforcement of Custodial Sentences and Measures, and Articles 71-76 of the General Regulation on Detention Facilities[57],. According to these provisions, it is the responsibility of the establishment to ensure material support and allocate the necessary spaces for education and vocational training activities, guaranteeing functionality and safety, and providing the appropriate equipment. Furthermore, establishments should ideally provide a multi-purpose room with teaching materials and computers. Additionally, the right to participate in specific programmes for the acquisition or improvement of personal and social skills is enshrined in Articles 47-48 the Code on the Enforcement of Custodial Sentences and Measures and Articles 91-92 of the General Regulation on Detention Facilities.

### e. NPM assessment

As outlined in the NPM reports[58], directorates have encountered challenges in organizing classes with the minimum required number of trainees, which affects vocational training. In establishments where remand detainees or those serving short-term sentences are predominant, the lack of vocational training opportunities was attributed to detainees' inability to complete the courses, prompting the NPM to recommend strengthening the provision of short-term training units to address this issue. Additionally, the NPM has emphasized the frequent lack of spaces for socio-cultural and sports activities, despite consistently highlighting the necessity for such areas. Moreover, besides the shortage of space for sports activities in some establishments, the NPM has observed the absence of partial coverings for the patios in others, preventing their use regardless of weather conditions.

According to the interview with the NPM members[59], while the mandated minimum of two hours in outdoor areas is respected, there is no standardized procedure regarding the duration of detainees' time outside their cells. This variation is primarily influenced by differences in structural capacities among establishments (e.g., availability of indoor or covered patios) and the limited human resources to maintain security and order, resulting in underutilization of existing spaces.

## 6. Solitary confinement

As a disciplinary measure, detainees may be subjected to solitary confinement or compulsory stay in their accommodation. According to the General Regulation on Detention Facilities[60], the solitary confinement cell must meet the essential habitability conditions in terms of dimensions, ventilation, and natural light and artificial light. It must be provided with a bed fixed to the floor, a fixed table and a chair made of flexible and unbreakable material, as well as sanitary facilities made of unbreakable

[56] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[57] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[58] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[59] Interview conducted on 09 May 2024.
[60] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

materials. Additionally, a security wall with vertical railings is required to prevent direct access to the cell door, allowing for handcuffing and meal delivery without opening the cell. Fixation points that could endanger the detainee's life or physical integrity are prohibited (Article 176).

As previously mentioned, open air activity shall take place individually and last for two hours daily, which may be reduced up to one hour, by order of the Director. Detainees who have children in their care shall remain in the solitary confinement cell between the general unlocking and locking up time, after which they shall return to their accommodation to accompany the child during the night. Meals shall be taken in the solitary confinement cell, as well as medication (Article 174). These measures are in line with Articles 98-115 of the Code on the Enforcement of Custodial Sentences and Measures[61].

If there's no dedicated solitary confinement cell available or if it's not foreseeable within 30 days, temporary transfer to another institution is to be requested (Article 171 of the General Regulation on Detention Facilities).

Furthermore, Article 105 of the Code on the Enforcement of Custodial Sentences and Measures states that in case of cumulative disciplinary offences, even if the sum of the disciplinary measures applied exceeds 60 days, the placement in solitary confinement or compulsory stay in the accommodation may not exceed this duration, without prejudice to the provisions of Article 113. According to Article 113, the successive execution of a disciplinary measure of internment in a disciplinary cell may not exceed 30 days and in case the execution of the measure has to be interrupted, it shall be resumed after 8 days.

The detainee may challenge before the Penalty Enforcement Court the decisions of application of the disciplinary measures of compulsory stay in his/her accommodation and of confinement in a disciplinary cell (Article 114).

As stated in our previous report, a non-binding Order of the Director-General was issued in November 2019, which, in line with international recommendations, advises that the imposition of permanence in a disciplinary cell should not exceed fifteen days, that the sanctioned detainee should daily be observed by the medical staff and that the detainee should enjoy two hours of open-air stay daily[62].

Regarding case-law, a ruling - Judgement n. º 437/23.7JELSB-A.S1[63] - mentions solitary confinement as a punishment, but the case was dismissed as the complaint was filed as a habeas corpus, a mechanism applicable only in specific situations.

### a. Monitoring of detainees

According to the General Regulation on Detention Facilities[64], the entry of the detainee into solitary confinement must be registered in dedicated book, kept in the disciplinary sector. This record must include the date and time of entry, the officials in charge of the detainee, and descriptions of any visible

[61] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[62] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 25 May 2021.
[63] Portugal, Supreme Court of Justice (Supremo Tribunal de Justiça), Lisbon / Judgement n.º 437/23.7JELSB-A.S1, 8 November 2023.
[64] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

injuries on the detainee's body, accompanied by photographs. It should also note the duration of solitary confinement and its expiration date, along with any medical assistance provided during this period and any occurrence related to the detainee. Upon entry into solitary confinement, the detainee shall be subject to a full strip-search (Article 174).

Detainees in solitary confinement receive clinical surveillance, with a qualified nurse visiting daily and a physician observing as deemed necessary. If medical observation indicates that the measure may seriously affect the detainee's physical or mental health, the physician can propose, in writing to the Director, to interrupt or modify the measure (Article 175). Additionally, the solitary confinement cell must have an alarm and communication system for contacting staff at all times (Article 176). As previously stated, an Order of the Director-General, issued in November 2019 recommends that the sanctioned detainee should daily be observed by the medical staff[65].

### b. NPM assessment

The NPM observed and reported[66] on the case of the Vale de Judeus Establishment, where the period of stay in the security cell exceeded the limit of 30 days, and in one case extended for more than seven months.

According to the information obtained in the interview with the NPM members[67], with few exceptions, the maximum duration allowed for placement in solitary confinement or compulsory stay in the accommodation is not exceeded, and the non-binding Order of the Director-General issued in November 2019 is followed. Additionally, cells generally comply with the conditions stipulated in the General Regulation on Detention Facilities. However, NPM members noted that in some cases, when the detainee is housed in collective cells, the compulsory stay in the accommodation takes place in the cell designated for solitary confinement. This occurs with or without necessary adaptations, often due to structural conditions. Moreover, the registry of examinations is sometimes kept in the clinical file, as the specific book mandated to be kept in the disciplinary sector is either absent or not properly maintained.

## 7. Work and education of detainees to promote social reintegration

### a. General measures to promote social reintegration

According to Article 2 of the Code on the Enforcement of Custodial Sentences and Measures[68], the purpose of executing custodial sentences and security measures is to reintegrate the detainees into society, preparing them to lead socially responsible lives without committing crimes, to protect legal assets and to safeguard society. Additionally, Article 5 establishes that the execution must be guided by the principle of individualization of custodial treatment, based on an assessment of the needs and risks, and consists of a set of activities and programmes aimed at preparing the detainee for freedom,

[65] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 25 May 2021.
[66] Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[67] Interview conducted on 09 May 2024.
[68] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

developing their responsibilities, and acquiring skills for a socially responsible life, and to provide for their needs after release, in a programmed and phased manner, favouring the progressive approach to free life, through the necessary changes in the execution regime.

As stated above, Article 7 establishes that detainees have the right to participate in work, education, training, religious, socio-cultural, civic and sporting activities and programmes aimed at treating specific problems. Article 21 specifies that when the sentence, the sum of the sentences or part of the sentence not served exceeds a one-year term, custodial treatment is based on an individual rehabilitation plan, which is periodically assessed and updated, under the terms of the General Regulation on Detention Facilities[69].

The individual re-adaptation plan aims to prepare the detainee for release by establishing measures and activities appropriate to the detainee's custodial treatment, as well as their duration and phasing, namely in the areas of education, vocational training, work, health, socio-cultural activities and contacts with the outside world. Regardless of the length of the sentence, the individual re-adaptation plan is compulsory in the case of detainees up to the age of 21 or sentenced to a relatively indeterminate sentence.

The preparation of the individual rehabilitation plan is based on an assessment of the detainee. When drawing up the rehabilitation plan, the detainee's participation and adherence must be sought. In the case of juvenile detainees, their parents, legal representative or guardian may be involved in drawing up their rehabilitation plan. The individual rehabilitation plan and its amendments are approved by the Director and ratified by the sentencing court. A copy of the individual rehabilitation plan and its updates shall be given to the detainee.

The DGRSP[70] reports that it pays special attention to activities promoting the reintegration of detainees, stating that in 2023, 2,570 detainees were engaged in all levels of education, including university, and a further 1,491 were involved in vocational training. Additionally, 5,323 detainees were involved in work activities, some under protocols for external organisations. Currently, 16 different programmes are available in establishments, with an average of 203 implemented per year, involving an average of 1939 detainees. Since 2014, an average of 1,939 detainees have attended specific rehabilitation and social reintegration programmes in custodial settings.

The DGRSP also informs that it has been developing and consolidating technical methodologies and procedures in the context of the execution of custodial sentences. Based on pilot projects carried out in 2011/12 and 2014/15, the Integrated Technical Intervention Model was developed. This theoretical and practical framework that, based on the Risk-Need-Responsiveness Model, presupposes an intervention adjusted to individual risk and needs assessed. It promotes an intervention centred on the individual, from the pre-sentence phase to release, with close and effective articulation among all the professionals within the same framework of intervention

[69] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[70] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

The model comprises a set of guidelines and technical instruments, including the Remand Prisoner Assessment System and the Criminal Needs Assessment System (SARNC). It also i encompasses the individual rehabilitation plan and other instruments for advising the sentencing court and supporting sentence management. The model establishes that the services responsible for monitoring the execution of sentences (SAEP) work from entry to release. This includes providing technical advice to the courts (pre-sentence and post-sentence), custodial treatment (case management, management of activities, and implementation of programmes) and preparation for release. The intervention is developed with a focus of specialisation and complementarity between SAEP and Social Reintegration Teams.

The process of implementing this model in all establishments took place progressively between 2017 and 2018. During this time technicians were trained, technical guidelines were disseminated and manuals, models, and assessment and technical intervention tools were made available, becoming mandatory from 15 November 2018 onwards.

### b. Access to work

According to article 41 of the Code on the Enforcement of Custodial Sentences and Measures[71], the purpose of the work carried out in this setting is to create, maintain, and develop the detainee's capacity and skills for after release. Detainees must be guaranteed work in productive units of an entrepreneurial nature, considering their aptitudes, abilities, preparation, and preferences, without prejudice to access to education and vocational training and participation in programmes. The work must respect the detainee's dignity and meet the conditions of hygiene, health and safety required for similar work in freedom. Detainees may not be assigned dangerous or unhealthy tasks, nor may their right to rest and leisure be jeopardized. Their work shall not be exclusively for profit or in the economic interest of the establishment or a third party, and they shall be fairly remunerated for their work. The detainee's attendance and commitment to work activities shall be considered for the purposes of reducing the sentence.

Article 42 establishes that work shall be carried out inside or outside the custodial establishment and can also be promoted with the collaboration of public or private entities, under the supervision and coordination of the custodial services. The organization and working methods shall be similar to those in force during release, to prepare the detainee for normal working conditions analogous to life in society. The detainee may be authorized by the Director to work on his/her account as part of the custodial treatment.

According to Article 45, detainees are offered occupational activities of an artisanal, intellectual or artistic nature, depending on what is available in each establishment, with the net proceeds going to the detainee.

These provisions are reinforced by Articles 77 to 90 of the General Regulation on Detention Facilities[72], according to which it is the responsibility of the Director to determine the work activities available, the

[71] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[72] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

location, the schedule, and the respective operating conditions. The Director must also propose, for the approval of the Director-General, the number of occupations, functions and categories corresponding to each work activity.

### c. Access to education

According to Article 38 of the Code on the Enforcement of Custodial Sentences and Measures[73], detainee education is organized in connection with vocational training and work, to promote employability and social reintegration. Mandatory schooling is prioritized for young or illiterate detainees. Detainees should be able to have the opportunity to attend other levels of education, namely through the use of distance learning, and those with special educational needs should receive support to access education under the same conditions as other detainees. Foreign detainees whose mother tongue is not Portuguese should have access to Portuguese language education programmes, at least when their sentence exceeds one year. The ministries responsible for education and higher education are the ones who, under the terms of the law, ensure teaching activities in the establishments.

Furthermore, Article 39 states that attending educational courses is considered working time, and detainees shall be paid an allowance set by order of the member of the Government responsible for the justice area. School performance, attendance, and behaviour in the educational environment are considered for reducing the sentence. Vocational training and advanced training activities are conducted in establishments, considering the needs and aptitudes of the detainees, with a focus on their employability. Like education, attendance at vocational training and advanced training is considered working time and gathers the same benefits.

These provisions are reinforced by Articles 71 to 76 of the General Regulation on Detention Facilities[74], according to which educational and vocational activities are structured according to the same technical and pedagogical principles established outside the custodial setting and framed within the custodial treatment programme. The services responsible for monitoring the execution of the sentence annually assess the educational needs of the population of each establishment and develop the establishment's educational plan.

### d. NPM assessment

According to the NPM observations[75], the percentage of detainees enrolled in educational activities is quite low in some establishments. In the smaller establishments, the NPM observed constraints in offering educational activities due to the requirement of a minimum of 15 students to organize a class. The impact of the pandemic was still evident in in 2022, affecting job opportunities. Many companies that provided work for detainees suspended their activities during the pandemic and had not yet resumed it, with some closing down. Similarly, several protocols between establishments and local authorities were suspended.

[73] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[74] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[75] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.

In addition to the lack of job opportunities, the NPM expressed concern about the significantly lower remuneration earned by detainees compared to the standard wages outside. There is also a great disparity between detainees' wages, depending on whether the work is done for the establishment itself or an external entity. The NPM received several complaints about the lack of a decent income, making it impossible for detainees to save money for their own subsistence upon release. For instance, in the Tires Establishment, female detainees reported earning approximately 70 euros a month despite working six hours a day for an external company. This led the NPM to recall the Ombudsman's 2003 recommendation that remuneration in custodial institutions should be equal to the national minimum wage, minus legally required expenses borne by the detainee, with a guaranteed minimum amount. The NPM highlighted the Torres Novas Establishment as an example of good practice in this regard and suggested replicating this practice elsewhere. The NPM also emphasized the urgent need for the approval, in a separate law, of a special legal instrument for work provided by detainees in productive units of a commercial nature, as provided in the Code on the Enforcement of Custodial Sentences and Measures[76]. The lack of this legal instrument leads to detainees not being protected at work, including the inability to make social security contributions for the work they do.

Furthermore, the NPM highlighted the limited application of programmes that address specific criminogenic needs. Apart from the mandatory Integrated Suicide Prevention Program, several establishments did not implement any other special programme, with the main obstacle being the lack of accredited technicians. The NPM noted with concern that large establishments (e.g., Porto) had a very limited range of special programs, covering a small number of detainees. The NPM suggested creating mobile units at local or regional levels, where a team of technicians applies programmes in several establishments, as was reported in the Lisbon area. This would make the minimum number of trainees more flexible and place detainees in establishments with appropriate programmes.

Additionally, the NPM reported that several directorates warned of a shortage of staff and technicians, compromising access to educational and recreational activities. Technicians play an essential role in monitoring detainees' custodial treatment, promoting and managing activities such as education, training, socio-cultural, sports, and voluntary activities, and implementing skills development programs. Detainees reported difficulties in speaking to the person responsible for monitoring their custodial treatment, infrequent meetings, and a lack of knowledge about their individual cases by the responsible technician. Directorates also pointed out that the amount of time spent on bureaucratic tasks hampers the time available to attend to detainees, affecting the implementation of protocols with external entities and the application of programs. The Setúbal Establishment was particularly concerning, with only one technician carrying out its functions and no programs aimed at specific criminogenic needs since September 2021. The NPM reiterated the need to reinforce the number of technicians to ensure personal accompaniment and the application of programs aimed at criminogenic needs.

During the interview with the members of NPM[77], the low number of detainees engaged in work or educational activities was highlighted. Despite detainees usually preferring to have an occupation, there are limitations and constraints related to the availability of human resources. Additionally, remuneration for work performed is low, whether the work is for an external organization or the

[76] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[77] Interview conducted on 09 May 2024.

establishment itself. There is still no specific legislation for this matter, as provided by law. There is no social protection, and labour contracts are not signed with the detainee, but with the establishments. The Alcoentre and Leiria (Youth) Establishments have the most training programmes.

## 8. Healthcare (note – section 11 contains specific questions concerning female detainees)

### a. Access to healthcare

Detainees have the right to have access the National Health Service under the same conditions as all citizens, as stated in Article 7 of the Code on the Enforcement of Custodial Sentences and Measures[78]. Article 32 reinforces this by stating that after admission and while serving a sentence or measure involving deprivation of liberty, detainees are guaranteed access to healthcare under the quality and continuity as all citizens, and are, for all intents and purposes, beneficiaries of the National Health Service. Healthcare access and provision is ensured under the terms of the relevant statute and the General Regulation on Detention Facilities[79]. Furthermore, detainees who are victims of physical, psychological or sexual abuse, and who suffer from chronic illnesses are guaranteed access to specific and ongoing care. Each detainee is assigned an individual and autonomous medical file, which accompanies them throughout their sentence, including in the event of transfer.

The General Regulation on Detention Facilities stipulates that healthcare requests are made by detainees in writing, and care is provided in the establishment and, when necessary, in outside health units (Article 58). If the required care cannot be provided inside the institution, the Director, upon the proposal of the clinical services, will authorize the detainee's release for that purpose. Detainees are guaranteed free screening tests for contagious and transmissible diseases based on clinical criteria, either during the initial clinical evaluation or periodically. The results are confidential and conveyed by a health professional (Article 61). Additionally, each institution must prepare and submit a health promotion and illness prevention plan for the approval of the Director-General, with a focus on reducing risk behaviour (Article 55).

The DGRSP[80] emphasizes that detainees are, for all intents and purposes, like any other citizen, users of the National Health Service. In addition to care provided by clinical services within the establishments, detainees are regularly taken to National Health Service hospitals and clinics whenever their health warrants it, for both emergency care and specialist examinations and consultations. The recently implemented SNS 24 Counter supports access to National Health Service digital services, including teleconsultation. The Ministry of Justice and the Ministry of Health activated fifty-two SNS 24 Counters in all establishments, allowing detainees to access scheduled teleconsultations at any National Health Service health unit. The first teleconsultation was held in July 2022. Currently, there is a constraint related to the awareness of the Ministry of Health's units and professionals regarding this methodology.

[78] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[79] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[80] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

According to the DGRSP, since May 2023, with the implementation in the Integrated Responsibility Centres, teleconsultations have been possible, namely in the treatment, risk reduction and minimization of damage in addictive behaviours. Protocols have already been established for the implementation of teleconsultations in facilities in the autonomous regions. Besides teleconsultations, efforts are being made to dematerialize clinical information on detainees, aiming to establish a single user file, starting with pilot projects in Braga and Lisboa establishments.

According to the DGRSP information, since May, 2023, with the implementation in the Integrated Responsibility Centres, it has been possible to carry out teleconsultations, namely in the treatment, risk reduction and minimization of damage in addictive behaviours. Protocols have already been established for the implementation of teleconsultations in facilities in the autonomous regions. In addition to teleconsultations, the dematerialization of clinical information on detainees is being worked on, with a view to the establishment of a single user file, starting with two pilot projects (in Braga and Lisboa Establishments).

The DGRSP[81] reports that the Ministries of Health, Justice and Science, Technology and Higher Education have agreed to prepare an Operational Plan for Health in the Context of Deprivation of Liberty for the period 2023-2030, and a working group was set up in March 2023. The plan aims to promote health and prevent illness and access to healthcare based on the following axes: Epidemiological surveillance; Health promotion and disease prevention; Access to healthcare, by remote and face-to-face means; Organizational measures in the National Health Service and the Custodial System; Necessary financial and human resources; Research and development.

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### b. Availability of medical staff

Article 58 of the General Regulation on Detention Facilities[82] establishes that the request for healthcare is made in writing by the detainee on a specific form - which includes a field to briefly describe, if they so wish, the main reason for their request. This form is deposited in a receptacle designed for this purpose, accessible only to members of the clinical services, and collected, whenever possible, on a daily basis. Healthcare is then provided to detainees in the establishments and, when necessary, in outside healthcare facilities. Additionally, detainees are observed at least once a year at intervals set by the physician.

According to Article 59, whenever the care required by the detainee's state of health cannot be provided in the establishment, the Director shall authorize, upon proposal of the medical services, the detainee's admission to an outside healthcare facility. In the event that a detainee's admission to an outside health unit is due to an emergency situation, it is the Director's responsibility to authorize the release, while safeguarding security requirements, and to notify the Director-General.

[81] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[82] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

Apart from the legal provisions already mentioned, there are no national standards defined in any of the documents, the Code on the Enforcement of Custodial Sentences and Measures[83] and the General Regulation on Detention Facilities.

### c. Medical examination upon admission

Under the provisions of the General Regulation on Detention Facilities[84], admission procedures require the adoption of immediate health care if necessary and the recording of any visible injuries or complaints of previous aggressions (Article 4). Immediate medical care shall be ensured to any detainee who claims to need it, who is in obvious distress or who suffers from psychoactive substance or alcohol withdrawal syndrome (Article 10). The discovery of any visible injury or complaint of aggression prior to entry shall be recorded, and if the detainee consents, the injuries shall be photographed. In such cases, a medical examination shall always be carried out, and a report drawn up, ensuring immediate medical care when required. The Director shall immediately send the Director-General a copy of the report and, if the detainee consents, the medical report (Article 11).

Within a maximum period of 24 hours after admission, the detainee shall be seen by the nurse on duty at the admission consultation, who opens the medical file in which the detainee's data and state of health are recorded, adopts the necessary measures and directs the detainee to subsequent consultations. Data concerning the detainee's registration as a user of the National Health Service shall also be collected, and their personal physician shall be contacted, provided that the detainee consents, to obtain information on the medical history. Within 72 hours of admission, the detainee shall be brought for medical consultation, during which the detainee's assessment shall be carried out. During this medical consultation, special attention shall be paid to the following aspects: the presence of mental disorders; risk factors for suicide; abstinence syndromes, signs of aggression or physical or sexual violence; transmissible and contagious diseases and chronic pathologies. When necessary, the physician shall prescribe complementary examinations. If not registered as a user of the National Health Service, the services shall register the detainee (Article 53).

At the time of the initial clinical evaluation, the detainee must be informed of the duties of health professionals, particularly with regard to confidentiality and independence of clinical acts (Article 54). The individual clinical file must always contain the requests for attendance of the detainee, their complaints, and the results of the observation carried out, with a detailed description and, whenever possible, a photographic record of the injuries presented, mentioning the cause indicated by the detainee and a brief technical judgment as to the possible adequacy of the cause indicated for the clinical observation. Records concerning physical injuries compatible with aggression must be immediately brought to the attention of the Director, and such communication shall be recorded in the individual clinical file (Article 56). Access to the individual clinical file shall be carried out in accordance with the law and shall be restricted to detainees and the health technicians responsible for their follow-up (Article 57).

[83] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[84] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

### d. Preventive care

Article 33 of the Code on the Enforcement of Custodial Sentences and Measures[85] decrees that detainees shall be provided with advice and information enabling them to: maintain their personal hygiene, as well as that of their accommodation and other facilities; adopt healthy lifestyles, avoiding risky behaviour and refraining from acts that harm their personal integrity and that of others; collaborate, under the terms of the law, with the prophylaxis actions promoted by the National Health Service and custodial services; and follow, under the terms of the law, the prescriptions and procedures laid down for them by the competent health personnel. Additionally, screening for contagious diseases may be imposed on the detainee, in accordance with the guidelines of the clinical services, whenever public health reasons or the purposes of the execution of the sentence or measure justify it. Screening for transmissible diseases may be carried out, with the detainee's consent, in accordance with the guidelines of the clinical services.

According to Article 37, clinical staff must immediately notify the Director in writing of the existence of illnesses that require special measures to reduce the risk of transmission. As stated, detainees shall be guaranteed screening tests for contagious and transmissible diseases free of charge, according to clinical criteria, either at the time of the initial clinical evaluation or periodically. The results shall be confidential and conveyed to the detainee by a health professional (Article 61).

### e. Specialised care

Article 32 of the Code on the Enforcement of Custodial Sentences and Measures[86] stipulates that detainees who are victims of physical, psychological, or sexual abuse and those who suffer from chronic illnesses are guaranteed access to specific and continuous care. According to Article 37, clinical staff must immediately notify the Director in writing of the existence of symptoms of deprivation due to the consumption of drugs, medicines or alcohol; psychological or emotional pressure related to deprivation of liberty, particularly in the case of detainees in security conditions; signs of physical violence; physical or mental health problems that may hinder the process of social reintegration; altered physical and mental aptitude of detainees for work and other activities offered by the establishment.

The DGRSP[87] informs that the custodial system has a Correctional Hospital with a palliative care unit and a psychiatric and mental health clinic. Additionally, several custodial establishments with infirmaries. Furthermore, as mentioned above, detainees are entitled users of the National Health Service and are taken to National Health Service hospitals and clinics whenever circumstances dictate.

[85] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[86] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[87] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

### f. Treatment of the detainee's choosing

Detainees may, at their own expense, be assisted by a physician of their own choice, in cooperation with the establishment's clinical services (Articles 32 and 60, of the Code on the Enforcement of Custodial Sentences and Measures[88] and General Regulation on Detention Facilities[89], respectively).

### g. NPM assessment

With regard to healthcare and in light of the detainees' main complaint - the delay and postponement of external medical procedures, mainly due to the lack of staff - the NPM[90] expressed its concern, pointing out that the state has a duty to ensure that no detainee's health is jeopardized due to circumstances beyond its control, such as the lack of human resources. Additionally, although the investment in the health area is recognized by the NPM, the mechanism received reports from directorates or clinical professionals about the lack of human resources in this area. Clinical professionals also pointed to the lack of access to the patient database in the National Health Service, affecting the monitoring of detainees' state of health. Considering the insufficient response to specific situations, such as dementia and old age, the infirmary in Porto Establishment was full with such cases. The NPM was also alerted to the insufficient stomatology professionals in some establishments. For example, in the Caxias Establishment, waiting times for an appointment were as long as two years, and in the Bragança Establishment, the absence of a stomatology professional and the lack of a response from the local health unit meant that some detainees had to resort to private services. Finally, the NPM received recurring complaints about the timing of the administration of sleeping pills, with detainees pointing out that all medication was administered between 5pm and 6pm, with the negative result of inducing sleep during the day, resulting in insomnia at night. The time the medication was administered and its negative consequences were corroborated by health professionals.

The members of the NPM interviewed[91] stated that material the conditions available are adequate - particularly the conditions for clinical treatment and care -, and no complaints from health professionals concerning this issue have been received. However, healthcare services struggle, with the overcrowding of facilities. For instance, the infirmary in Porto Establishment, dedicated to long-term care - housing many elderly detainees and cases of dementia, and serious illnesses -, is unable to cope with the requests as it doesn't have the space to accommodate more people. The same is true of the Correctional Hospital, where there is a lack of adequate care for detainees with serious mental health problems, since, due to the volume of requests, there is no capacity to respond.

There are other challenges to the provision of healthcare in this context, such as the lack of specialised care (e.g., paediatricians for children who stay with their mothers in women's establishments), the lack of human resources to ensure transport and surveillance, affecting the use of external health services, and the shortcomings inherent in the National Health Service, which also lacks human resources. Additionally, mental health is severely under sourced, and there is a heavy reliance on psychiatric

[88] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[89] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[90] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.

[91] Interview conducted on 09 May 2024.

medication. Interviewees reported nurses who claim to be exhausted, working almost exclusively to prepare and administer medication to detainees. As reported, the administration of sleep-inducing medication is a concern for the detainees. Because it has to be supervised, it is taken at 6pm, which means that the medication ends up not having the desired effect.

The figure of the informal caregiver is gaining prominence in the custodial context, especially among elderly detainees, in cases of dementia and severe disabilities. These caregivers are usually appointed by technicians who accompany the detainees, who designate another detainee as the most suitable for this role. In these cases, however, issues such as the lack of preparation and the eventual abuse of power on the part of these informal caregivers arise. Only one establishment currently provides remuneration for this role (Carregueira Establishment).

Members of the NPM have also reported complaints about the lack of access by clinical services to the detainee's computerized medical file, which affects liaison with the National Health Service and even the transfers between establishments, forcing them to resort to physical medical files. Additionally, there are complaints from detainees about the lack of privacy in the medical context, with security and surveillance staff frequently entering the room when detainees are being observed or diagnosed by the clinical services.

## 9. Prevention of violence and ill-treatment

### a. Protection from violence by prison staff

According to the Code on the Enforcement of Custodial Sentences and Measures[92], the preservation of order and security within establishments is subject to the principles of necessity, adequacy and proportionality (Articles 86 and 87). The use of coercive means is permissible only when the order and security of the establishment are in danger and cannot be otherwise resolved. Coercive means may only be used for the time period strictly necessary to achieve their intended purpose, and they may not infringe upon the dignity of the detainee, nor may they be used as a disciplinary measure. Additionally, training in the proper use of coercive means must be provided (Article 94). The types and conditions of use of coercive means are specified by the Regulation on the Use of Coercive Means in Prison Services (Article 95). Furthermore, the decision to use of coercive means is rests with the Director (or their substitute in their absence), and if weapons are used, an enquiry process is initiated and immediately communicated to the Director-General (Article 96). The General Regulation on Detention Facilities[93] also mandates that the use of handcuffs must be preceded, whenever possible, by a warning, and if the need persists after one hour, the medical services must be contacted for evaluation and adoption of the appropriate measures based on the detainee's clinical condition (Article 159).

[92] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[93] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

The General Regulation on Detention Facilities does not explicitly mention special measures to protect detainees against violence from custodial staff. However, within 72 hours of admission, the detainee shall undergo a medical consultation, in which special attention shall be paid to signs of physical aggression or physical or sexual violence (Article 53). All contacts of the detainee with the clinical services are documented in the individual clinical file, and physical injuries compatible with a situation of aggression must be immediately brought to the attention of the Director, with this communication being registered in the individual clinical file (Article 56). According to Article 64, in cases of death with signs of violence or unknown causes, the Director must determine the appropriate measures to preserve the scene, signs, and evidence until the arrival of the competent criminal police, restricting access to that place and, if necessary, establishing a security perimeter ensured by elements of the security and surveillance services.

The Code on the Enforcement of Custodial Sentences and Measures[94] also does not explicitly mention special measures to protect detainees from violence from custodial staff, specifying only that clinical staff shall immediately notify the Director, in writing, of signs indicating physical violence (Article 37). Additionally, as stated in General Regulation on Detention Facilities, there are some general safety measures, such as video-surveillance in common areas (Article 155) and emergency call buttons within the cells (Article 34), although the NPM has reported issues with these[95]. In the Annual Planning for DGRSP[96], it was noted that formations such as “Dynamic Security, Professionalism and Human Rights", and "Human Rights: Challenges of Everyday Prison Life and Case Analyses" exist.

The DGRSP[97] has stated that it maintains a zero-tolerance policy for any situation of violence, whether between detainees, from detainees against staff, or vice versa. For this purpose, in addition to opening internal cases under the responsibility of the Audit and Inspection Service of the DGRSP - coordinated by Public Prosecutors - whenever the facts constitute a criminal offence, they are reported to the Public Prosecutor's Office. The DGRSP has also highlighted the implementation of Circular no. 1/2017, which established the procedures to be followed when a medical examination is carried out after the admission of detainees and also whenever they show physical injuries, coercive means are used, or when complaints are made about alleged physical ill-treatment. Additionally, the DGRSP has strictly observed Order no. 11838/2016 of the Ministers of Internal Administration and Justice, published in the D.R., II Series of 4 October, concerning individuals who are presented by police forces, stipulating that communications referred to in Article 11 of General Regulation on Detention Facilities[98] must be made to the General Inspectorate of Internal Administration (if the detainees have been handed over by the police officers) and to the General Inspectorate of Justice Services (if the detainees have been handed over by the judiciary police).Also highlighted was the circular letter no. 1/2016 of 5 September, which

[94] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[95] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.

[96] DGRSP (2023), Relatório de Atividade Formativa 2022 - DGRSP.

[97] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[98] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

mandates that all staff dealing with detainees must display an identification card with a photograph, and the process of issuing and distributing this card is in its final stages.

### b. Protection from violence by other detainees

Article 86 of the Code on the Enforcement of Custodial Sentences and Measures[99] stipulates that order and discipline in the establishment shall be maintained as an indispensable condition for the realisation of the purposes of the execution of custodial sentences and measures, and the detainee's sense of responsibility shall be fostered as a determining factor. Order, security and discipline are to be maintained in accordance with the principles of necessity, adequacy and proportionality. To ensure order and security in the establishment, common means of security such as observation and electronic surveillance are used, along with special means of security such as restriction of socialization with certain detainees/access to common areas and placement in a security room (Article 88). Special means of security shall only be used when there is a serious danger of escape or when, due to the detainee's behaviour or psycho-emotional state, there is a serious danger of the detainee committing acts of violence against himself or others, and only for the duration of the situation of danger that led to their application, never for disciplinary purposes. Decisions on the use and termination of special means of security are substantiated and are the responsibility of the Director. Articles 147-161 of the General Regulation on Detention Facilities[100] concern the operationalisation of such measures.

Additionally, Article 94 of the Code on the Enforcement of Custodial Sentences and Measures permits the use of coercive means to remove a current danger to the order and security of the establishment, such as preventing the detainee from committing acts of violence, but only for the time strictly necessary to achieve the intended objective, in accordance with the principles of necessity, appropriateness, and proportionality, and cannot, either by their nature or the way they are used, affect the detainee's dignity, nor be used for disciplinary purposes. Staff shall receive ongoing training for the correct use of coercive means. Furthermore, as stated in Article 9, all establishments or units have specific areas for detainees to be placed in cells separate from the general population, for detainees to be placed in a security room next to the clinical area, for the disciplinary measure of internment to be carried out in a disciplinary cell, and for particularly vulnerable detainees.

Furthermore, as mentioned in the previous point, the General Regulation on Detention Facilities further stipulates general safety measures, such as video-surveillance in common areas (Article 155) and emergency call buttons within the cells (Article 34), although the NPM as reported issues with these.

The DGRSP[101] stated that all cells doors are fitted with a viewing window to allow staff to monitor from the outside. In addition to the information transcribed in the previous point, the DGRSP also stated that, as mentioned, there is no mixing of female and male populations, since there are establishments strictly for women, and the existing four female sections are physically and structurally independent, as to prevent any possibility of mixing. As already mentioned, young detainees are preferentially allocated to the Leiria Establishment (Youth), while young detainees placed in other establishments, whenever

[99] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[100] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[101] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

proximity to the social spaces they belong to makes it advisable and/or the judicial process obliges it, are housed in separate spaces from those intended for other detainees.

### c. NPM assessment

The NPM reported[102] that in several establishments, directorates warned of a shortage of security and surveillance staff, potentially compromising security and order. For example, the NPM found that in the Vale de Judeus Establishment, many detainees intentionally cause placement in a separation cell because they feel at risk in the common area. The NPM considers it worrying that detainees use segregation cells as a form of protection, since this regime implies restrictions. Additionally, the NPM mentioned that the ageing of the security and surveillance staff may be an issue.

Although the General Regulation on Detention Facilities[103] states that accommodation spaces must be equipped with an alarm and communication system that allows the detainee to contact staff at any time, there are several cases in which the emergency call system was found by the NPM to be missing or broken. Whilst in some situations its inoperability can be blamed on the detainees, the NPM expressed that, regardless of the reasons behind it, repairing the call system should be a priority.

The NPM found that in some establishments such as Porto and Vale de Judeus, the small number of inquiries by use of coercive means did not seem consistent with the reports received from detainees, leading to the recommendation that whenever coercive means are applied, the respective form should be duly completed and the respective investigation opened.

Moreover, the NPM found that in the Monsanto Establishment, the legal obligation of preservation of video-surveillance images for six months was not being fulfilled and in the Porto and Vale de Judeus establishments, many of the processes consulted did not contain any video-surveillance images. The NPM recommended the preservation for six months of the video-surveillance images in cases of investigation by use of coercive means. Additionally, the analysis of the NPM showed that situations in which the use of coercive means occurred in a place not covered by video-surveillance were not rare. Nevertheless, the NPM stated that the images spatially and temporally closer to the moment of use of coercive means should be visualized since they can contribute to the formulation of a judgment about the necessity and proportionality, revealing, for example, the state of agitation of the detainee, the duration of the incident, and the number of security and surveillance personnel involved.

In the Porto Establishment, the NPM pointed to the existence of inquiry processes for the use of coercive means, which did not include the record of aggression/self-mutilation. In other establishments, the mechanism found that the obligation of assistance is being provided by nursing staff and not by a doctor, and often only on the next day. In a process consulted in the Vale de Judeus Establishment, the form for participation of the use of coercive means expressly states that "there was no need" for clinical assistance, despite this assistance being mandatory.

Furthermore, the NPM found inconsistencies between the description of lesions observed in the detainee, made by security and surveillance personnel staff and those made by the clinical services

[102] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[103] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

professionals. The mechanism recommended the fulfilment of the obligation to carry out the immediate photographic record of any visible injury of a detainee who so consented, since it found establishments where this was not the followed procedure. The mechanism also recommended that both the consent and the refusal of the collection of photographs by the detainee be provided in writing and signed.

Finally, the NPM detected significant delays in the inquiry for the use of coercive means, for example in the Vale dos Judeus Establishment, where the mechanism consulted inquiries completed more than two months after its opening and even a process that, after more than six months of the use of coercive means, was still pending.

According to the NPM, in various establishments visited allegations of ill-treatment by detainees are not dealt with in a systematic manner, whereas in other establishments there are not necessarily inquiries to investigate complaints, leading the mechanism to recommend the uniform treatment of all allegations. Similarly, there is no clear and widespread awareness that there is a mandatory duty by the custodial services to report to the Public Prosecutor's Office all crimes witnessed during professional practice.

Finally, the mechanism received complaints from security and surveillance staff regarding the lack of training, with both a low number of training courses and places available in them, leading the NPM to recommend that it be strengthened, especially in areas related to the management of conflict situations and the use of coercive means.

Protection of detainees was highlighted by the members of the NPM interviewed[104] as one of the main flaws currently affecting the custodial system. Reinforcing the observations in the official reports, several insufficiencies were highlighted in the prevention of violence. The implementation and improvement of video-surveillance systems - with a special focus on areas currently not covered - and a fully operational emergency call system were emphasized at a structural level, along with investment in training regarding procedures for reporting ill-treatment and handling allegations. Not only were there cases in which the NPM witnessed video-surveillance footage of assaults, but there are also patterns of mistreatment in spaces that, by definition, cannot have video-surveillance, such as cells, rooms for contact with lawyers, and others. The NPM highlighted the case in the Linhó Establishment, where a corridor with no video-surveillance is colloquially known as the "death row," due to the number of allegations of ill-treatment. The NPM called for, in addition to the coverage of adjacent areas by the video-surveillance system, the revision of practices and procedures, such as strip searches, which are conducted in a private room and face a number of allegations of ill-treatment, pointing to international experiences. Furthermore, the disparity in the means by which allegations may be made, and the heterogeneity of procedures followed thereafter, are of great concern to the mechanism. The NPM stresses that even the obligation to report is not known by all professionals. Consistently, the mechanism reinforces the importance of the investment in training covering this area with all custodial professionals. Additionally, the NPM noted situations where, due to the insufficient number of security and surveillance personnel, violence between detainees (sometimes in large numbers) broke out and ended before any intervention by these professionals. Larger establishments were singled out as being less secure, particularly the Lisbon, Porto, Linhó, and Vale de Judeus cases.

[104] Interview conducted on 09 May 2024.

## 10. Contact with the outside world

### a. Visits

Article 7 of the Code on the Enforcement of Custodial Sentences and Measures[105] states that detainees have the right to maintain contact with the outside world, namely through visits, long-distance communication, or correspondence, without prejudice to limitations imposed for reasons of order, security, and discipline or resulting from the regime of execution of the sentence or measure involving deprivation of liberty. Furthermore, Article 58 stipulates that detainees have the right to receive visits, to maintain and promote the detainee's family, emotional and professional ties. Additionally, visiting hours may not last less than one hour per week, and must take place in a location that respects the dignity and privacy of the detainee and visitors. Children under the age of 16 may only visit if they are the detainee's descendants or equivalent, siblings or people with whom the detainee has a significant personal relationship. The visiting regime applies to contacts that the detainee is authorized by the Director to maintain through the videoconferencing system.

Article 59 states that the detainee has the right to receive regular visits from their spouse or a person of the other or same sex with whom they have a relationship similar to that of their spouse, family members, and other people with whom they have a significant personal relationship. Additionally, detainees may receive extended visits from family members and other people with whom they have a significant personal relationship, on special occasions, for reasons of particular significance, with the exception of detainees placed under security conditions. Detainees who do not benefit from periodical leaves may receive regular intimate visits from their spouse or from a person of the same or different sex with whom they have a relationship similar to that of spouses or a stable affective relationship. According to article 60, the detainee must be allowed urgent visits if they are necessary to resolve personal, legal, economic or professional matters which cannot be dealt with by letter or through a third party or which have been postponed until the date of release.

According to Article 61, a detainee has the right to be visited by a lawyer, notary, registrar, or solicitor, at an agreed time, without prejudice to the authorization of urgent visits. The confidentiality of such conversations is ensured. During the visit, only documentation necessary to deal with legal matters concerning the detainee may be exchanged, and its content may not be monitored. According to Article 62, diplomatic or consular entities may visit a foreign detainee, under the terms of the law and applicable international conventions, at the times and under the conditions set for visits by lawyers. Personal visits shall take place in a dedicated place, under the necessary, proportional and adequate supervision to meet the requirements of order and security, and auditory monitoring of visits may only take place to the extent strictly necessary to ensure order and security in the establishment (Article 63).

### b. Correspondence

According to Article 67 of the Code on the Enforcement of Custodial Sentences and Measures[106], detainees have the right to receive and send correspondence and parcels at their own expense, and

[105] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[106] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

whenever they request it, they will be assisted in writing and reading their correspondence. The detainee's correspondence and parcels shall be checked for reasons of order and security and to detect objects prohibited by law or the General Regulation on Detention Facilities[107] and their reading may be ordered (Article 68).

### c. Visits with children

Regarding visits with children, as stated in Article 58 of the Code on the Enforcement of Custodial Sentences and Measures[108] children under the age of 16 may only visit the detainee if they are the detainee's descendants or equivalent, siblings or people with whom the detainee has a significant personal relationship. No further stipulation is made.

### d. NPM assessment

No relevant information was found on this topic in the most recent NPM reports[109].

According to the information obtained in the interview with the NPM members[110], in some establishments, there are initiatives to make the space designed for visits more pleasant, and efforts are made to accommodate visits from children. Additionally, larger establishments try to have rooms for intimate visits. When such rooms exist, they are in good condition. However, in the Lisbon Establishment, the rooms designed for intimate visits ended up being used as storage for security and surveillance personnel. The mechanism receives some complaints regarding the right to intimate visits, particularly concerning the criteria for eligibility (e.g., having to prove being in a stable relationship with a partner for more than a year).

## 11. Special measures for female detainees

### a. General conditions of detention for women and girls

Women in detention are subject to the same rules and conditions defined for the different regimes, with specific provisions outlined for the following areas: personal hygiene, medical assistance, transport, execution of disciplinary measures such as confinement to their cells and solitary confinement, and release from the institution (Article 237 of the General Regulation on Detention Facilities[111]).

### b. Separation from men

As stated in Article 237 of the General Regulation on Detention Facilities[112], the execution of custodial sentences and measures depriving women of their liberty shall take place in a specific establishment or

[107] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[108] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[109] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[110] Interview conducted on 09 May 2024.
[111] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[112] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

unit. This is in accordance with the stipulate in Article 9 of the Code on the Enforcement of Custodial Sentences and Measures[113].

This was reinforced by the information provided by the DGRSP[114], stating that there is a total separation between male and female detainees.

### c. Hygiene

The establishment shall periodically provide detainees who can prove that they cannot afford it with a basic set of hygiene products, the composition of which shall be approved by order of the Director-General. Furthermore, detainees shall be guaranteed access to hairdressing services, the frequency and timetable of which shall be determined by the Director (Article 238 of the General Regulation on Detention Facilities[115]).

### d. Healthcare

As defined in Article 239 of the General Regulation on Detention Facilities[116], the establishment shall ensure adequate medical monitoring and periodic screening for gynaecological diseases. Female detainees who are pregnant or have recently given birth shall be provided with specialised medical care. Every effort shall be made to ensure that the birth takes place in a hospital outside the institution of detention.

### e. Pregnancy and women with babies or young children

The General Regulation on Detention Facilities[117] states that the accommodation of a detainee with a child shall be located in an area of the institution set aside for that purpose, separated from the accommodation of other detainees. The accommodation space shall be provided with the furniture and equipment necessary for the child to stay and shall be of an adequate additional size (Article 244). Furthermore, detainees may have in their accommodation childcare and hygiene products, the child's clothing and toys, in the quantities and types determined by the Director (Article 245).

### f. NPM assessment

No relevant information was found on this topic in the most recent NPM reports[118].

The NPM members highlighted[119] as a positive aspect the fact that female detainees may stay with their infant until they are five years old, with the good conditions being provided in Tires and Santa Cruz Women Establishments. Efforts are made to have assistance during pregnancy and paediatric

[113] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[114] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[115] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[116] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[117] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[118] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[119] Interview conducted on 09 May 2024.

assistance. In cases where this is not possible, outside services are employed. Additionally, specialized healthcare, such as breast cancer and cervical cancer screening is available. In these establishments most of the security and surveillance staff are female. As mentioned, there are some complaints pertaining the insufficiency of the female hygiene kits.

## 12. Special measures for foreign nationals

### a. General measures for foreign nationals

Article 4 of the Code on the Enforcement of Custodial Sentences and Measures[120], which sets out the Special Guiding Principles, states that the execution of sentences involving deprivation of liberty applied to foreign detainees or those belonging to ethnic or linguistic minorities must, as far as possible, allow them to express their cultural values, mitigate any difficulties in social integration or in mastering the Portuguese language, namely by providing contacts with consular or diplomatic bodies or migrant support organizations, Portuguese language courses, translation of documents, or the intervention of interpreters. This point is reinforced by Article 229 of the General Regulation on Detention Facilities [121], that states that foreign detainees are subject to the rules listed in the General Regulation for the regime in which they are placed, taking particular account of the guiding principles set out in the aforementioned article of the Code on the Enforcement of Custodial Sentences and Measures.

Article 38 of the Code on the Enforcement of Custodial Sentences and Measures states that foreign detainees whose mother tongue is not Portuguese are guaranteed access to Portuguese language teaching programmes, at least when their sentence exceeds one year, and Article 117 states that, in particular, foreign detainees shall be provided with information, on the possibilities of executing the criminal sentence abroad and on its transfer to another country and on the terms of execution of the ancillary penalty of expulsion.

Articles 16 of the Code and 230 of the General Regulation on Detention Facilities states that upon entry, the foreign or stateless detainee shall be informed of the possibility of inform of their situation of detention the respective diplomatic, consular body or another body that may represent their interests, and their expression of will shall be recorded. If this wish is expressed, the detainee is allowed to call free of charge, without prejudice to the other telephone contacts provided for (230 of the General Regulation on Detention Facilities). Furthermore, Article 231 of the General Regulation on Detention Facilities stipulates that when the situation of detention has been brought to the attention of a diplomatic, consular body or another body that may represent the interests of a foreign or stateless detainee, it shall also be informed of the decisions and information concerning the detainee, without prejudice to the other communications to the bodies provided for in the General Regulation on Detention Facilities[122].

[120] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[121] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[122] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

According to Articles 62 of the Code on the Enforcement of Custodial Sentences and Measures and 232 of the General Regulation on Detention Facilities, visits by diplomatic or consular entities do not require authorisation and take place on working days, at a time to be set by the establishment's Director, within the normal working hours. The organisation wishing to carry out the visit must notify the Director 24 hours in advance of the visit, to obtain the detainee consent t. The provisions on communication with a lawyer shall apply to visits by diplomatic or consular organisations, with the necessary adaptations. Article 233 states that a foreign detainee may be visited by a foreign lawyer, subject to the requirements of the Portuguese Bar Association Statute for practising law in Portugal. Article 234 establishes that the rules regarding the duration and frequency of personal visits and telephone contacts may be adapted by order of the Director, whenever the visiting person resides outside national territory. In the event of clear and proven financial need, the detainee is guaranteed two telephone calls a month, each lasting five minutes, to their spouse or someone with whom they have a similar relationship or a significant personal relationship. According to article 235, foreign detainees shall be informed of their right to request transfer to their country of origin to serve the remainder of the sentence they have been sentenced to, under the law or international treaties and conventions, by submitting a request to the Public Prosecutor's Office at the Court for the Execution of Sentences. Article 97 of the General Regulation on Detention Facilities, on monitoring by the institution, states that the services responsible for monitoring the execution of sentences shall monitor detainees with a view in particular to detecting situations in which they do not earn any income, do not receive regular visits or do not have any other type of support from the outside, particularly in the case of foreign detainees. As mentioned above, the General Regulation on Detention Facilities states that a reading service shall be provided in each institution for all detainees, which shall have publications in the foreign languages most commonly spoken in the institution (Article 94). Article 208 of the General Regulation on Detention Facilities on the reception of parcels stipulates that the exception to not being allowed to receive or dispatch parcels by post or direct delivery applies to foreign inmates when it comes to receiving books, newspapers or magazines written in their mother tongue.

The DGRSP[123] informed that detainees of different nationalities share the cellular spaces with each other and with national detainees, and there are no records of conflicts arising from such fact.

### b. Interpretation and translation

Article 9 of the General Regulation on Detention Facilities[124] stipulates that detainees have the right to be informed of their rights and duties, which are explained to them and translated if necessary. The detainee is also given a leaflet setting out their rights and duties, the rules in force relevant to the execution of the sentence or measure, and the information necessary for their integration into the establishment, namely on the services and activities available and the opening hours, as well as the place where legislation and regulations relevant to the execution of the sentence or measure can be consulted, which the establishments have printed in Portuguese and in the foreign languages most commonly spoken by the foreign detainees. No other provisions in the relevant legal documents were found, apart from those specified in the present point.

[123] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[124] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

### c. NPM assessment

The NPM[125] has suggested to directorates the use of the translation hotline of the High Commission for Migration (recently fused with the new Agency for Integration Migration and Asylum) as a good practice, especially for clarifying issues that require greater command of the language, which does not involve any additional costs (apart from those arising from a normal telephone call).

The NPM members informed[126] that some establishments are trying to run a Portuguese course for foreigners. There are few cases reported of foreign detainees unable to establish contact because of their language, and there have only been two cases of detainees who have been notified without translation of the documents. At the Porto Establishment, however, there were situations detected in which the process was all instructed in Portuguese, and the detainee also signed the Portuguese version. When translations are made, it is sometimes other detainees who make them, with no guarantee that they understand what is being signed. In this regard, the NPM has been raising awareness of the existence of a free translation line, as mentioned above. As visits by family members of foreign detainees may take place by videoconference, complaints have been received about the low frequency of these.

## 13. Special measures relating to detention of children and young adults/juvenile detention regime

### a. Age groups

The Educational Guardianship Law[127] regulates the measures applied to young detainees aged between 12 and 16 for acts classified by law as crimes (Article 1). Included in the available measures is internment in an education centre. The measure of internment in an educational centre is applied according to one of the following regimes: open regime; semi-open regime; closed regime (Article 4). The measure may continue until the young detainee reaches the age of 21, when it ceases to apply (Article 5). The measure of internment in an educational centre in closed regime is applicable when the following cumulative requirements are verified: the young person has committed an act qualified as a crime that corresponds to a sentence, abstractly applicable, of more than five years or has committed two or more acts against people qualified as crimes that correspond to a sentence, abstractly applicable, of more than three years; is aged 14 years or more at the date of application of the measure (Article 17).

In Portugal, the age of majority for civil purposes is 18 (Article 122 of the Civil Code[128]), but the age of criminal responsibility is 16 (Article 19 of the Criminal Code)[129]. Children between 12 and 16 who have committed an act that infringes the criminal law may be subjected to an educative measure if it is considered that the offender needs to be educated on fundamental community values. The proceedings that fall under the Educational Guardianship Law are not criminal proceedings, but proceedings which are specially designed for children and which can lead to educative measures. These children are tried by the Family and Youth Courts. Children over the age of 16 accused of having perpetrated a crime are

[125] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[126] Interview conducted on 09 May 2024.
[127] Portugal, Law 166/99 that approves the Educational Guardianship Law (Lei n.º 166/1999, que aprova a Lei Tutelar Educativa), 14 September 1999. Amended by Law 4/2015, of 15 January.
[128] Portugal, Decreto-Lei 47344, que aprova o Código Civil e regula a sua aplicação (Decree-Law 47344, approving the Civil Code and regulating its application), 25 November 1966. This decree-law had several amendments. The last one was by Decree-Law 10/2024, of 08 January.
[129] Portugal, Decreto-Lei 48/95, que aprova o Código Penal (Decree-Law 48/95, approving the Criminal Code), 15 March 1995. This decree-law had several amendments. The last one was by Law 15/2024, of 29 January.

tried by general criminal courts and the general provisions of the criminal procedural law and penal law apply to them, with two particularities. As regards substantial penal law, a special regime was approved for children and young adults from 16 to 21 years old – the Young Adult's Special Penal Regime[130]. It allows for the application of reduced sentences (Article 4) and of corrective measures (Article 6), as an alternative to an up to two-year imprisonment sentence, such as admonition, imposition of obligations, fine and detention in a detention centre. This special regime is not, however, mandatory. As regards criminal procedural law, the general provisions of the Criminal Procedure Code[131] apply to any person over the age of 16. Nonetheless, it has a few dispositions particularly addressed to defendants under the age of 21, enhancing these defendants' rights. For example, defendants under 21 are mandatorily assisted by a defence lawyer in every procedural act (Article 64).

### b. General measures for detained children and young adults

According to the Educational Guardianship Law[132], young detainees aged between 12 and 16, may be subject to internment in an education centre (Articles 1 and 4). The measure may continue until the young detainee reaches the age of 21, when it ceases to apply (Article 5). In Portugal, the age of criminal responsibility is 16. The Decree-Law 401/82[133] establishes the system applicable in criminal matters to young people aged between 16 and 21 years. It also establishes the regime applicable in criminal matters to young people between the ages of 16 and 21. As specified in Article 6, considering the circumstances of the case and where a sentence of imprisonment up to 2 years is applicable, the judge may impose corrective measures, including internment in a detention centre. According to Article 13, the location and functioning of those detention centres shall be the object of a special order, and as long as detention centres are not functioning, internment shall take place in appropriate establishments or in autonomous sections of other establishments. This means that the Law allows that in some cases the young person may stay in a detention centre, instead of a prison establishment.

Finally, according to the Code on the Enforcement of Custodial Sentences and Measures[134], custodial establishments may consist of one or several units, differentiated according to several factors, including age. Without prejudice to these distinctions, there must be prison establishments or units within the establishments especially designed for detainees up to the age of 21 or, where it is beneficial to the individual, up to the age of 25 (Article 9).

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[130] Portugal, Decreto-Lei 401/82, que institui o regime aplicável em matéria penal aos jovens com idade compreendida entre os 16 e os 21 anos (Decree-Law 401/82, establishing the regime applicable in criminal matters to young people between the ages of 16 and 21), 23 September 1982.

[131] Portugal, Decreto-Lei 78/87, que aprova o Código do Processo Penal. Revoga o Decreto-Lei 16489, de 15 de Fevereiro de 1929 (Decree-Law 78/87, approving the Code of Criminal Procedure. Revokes Decree-Law 16489, of 15 February 1929), 17 February 1987. This decree-law had several amendments. The last one was by Law 52/2023, of 28 August.

[132] Portugal, Law 166/99 that approves the Educational Guardianship Law (Lei n.º 166/1999, que aprova a Lei Tutelar Educativa), 14 September 1999. Amended by Law 4/2015, of 15 January.

[133] Portugal, Decree-Law 401/82, that approves the regime applicable in criminal matters to young people between the ages of 16 and 21 (Decreto-Lei n.º 401/82, que aprova o regime aplicável em matéria penal aos jovens com idade compreendida entre os 16 e os 21 anos), 23 September 1982.

[134] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

### c. Separation from adults

As stated, according to the Code on the Enforcement of Custodial Sentences and Measures[135], custodial establishments may consist of one or several units, differentiated according to several factors, including age. Without prejudice to these distinctions, there must be establishments or units within the establishments especially designed for detainees up to the age of 21 or, where it is beneficial to the individual, up to the age of 25 (Article 9).

### d. NPM assessment

In the NPM reports[136], no information was found on separation of children and adults in custodial institutions.

Regarding the juvenile detention centres, the NPM observed that efforts were made to address previously identified insufficiencies in the facilities. However, there were still unresolved issues related to preserving or renovating infrastructure, particularly regarding accessibility for individuals with reduced mobility, the need for waterproofing or heating in residential units, access to the internet, and safety precautions when using sports equipment. Notably, only half of the centres have implemented video-surveillance systems.

Overall, the NPM considered the atmosphere in the centres to be positive, acknowledging the efforts of management, staff, and other employees in providing quality care for the young people despite the challenges of daily operations, particularly the shortage of human resources. Importantly, the NPM had not received any reports of physical abuse of young people.

The NPM members informed[137] that Leiria Establishment (Youth) is the only establishment for young detainees, and with programmes designed specifically for young people. Some other establishments also have some programmes for young detainees, mainly in urban areas, but Leiria Establishment (Youth) is the only one truly equipped with comprehensive programmes for young people.

## 14. Special measures to protect detainees with disabilities or serious medical conditions

### a. Care in detention

As stated, article 32 of the Code on the Enforcement of Custodial Sentences and Measures[138] stipulates that detainees with chronic illnesses are guaranteed access to specific and continuous care. According to Article 37, clinical staff must immediately notify the Director in writing of the existence of symptoms of psychological or emotional pressure related to deprivation of liberty, particularly in the case of detainees in security conditions, the existence of signs of physical violence, physical or mental health

[135] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[136] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[137] Interview conducted on 09 May 2024.
[138] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

problems that may hinder the process of social reintegration, altered physical and mental aptitude of detainees for work and other activities offered by the establishment.

Furthermore, the General Regulation on Detention Facilities[139] (Article 55) establishes that each establishment must have specific clinical intervention programmes in areas such as: drug addiction; infectious diseases; mental health; and the prevention of suicide and harmful behaviour. According to Article 120, it is possible to modify the execution of the sentence by committing the detainee to an appropriate health centre or care facility, and by having the detainee stay in a residential facility. The court may, if necessary, decide to supervise the detainee by technical means of remote monitoring, based on medical advice and advice from the social rehabilitation services.

According to article 216 of the Code on the Enforcement of Custodial Sentences and Measures, the detainee, their spouse, or or the person with whom the detainee maintains a relationship similar to that of spouses or family members, and the Public Prosecutor's Office, are entitled to request a change in the execution of the sentence due to serious, evolving, and irreversible illness, serious and permanent disability, or advanced age.

Additionally, the DGRSP[140] informed has informed that the custodial system has a Correctional Hospital with a palliative care unit and a psychiatric and mental health clinic. Several custodial establishments also have infirmaries. As mentioned above, detainees are entitled users of the National Health Service and are taken to National Health Service hospitals and clinics at all times and whenever circumstances dictate.

### b. Continuity of care

No further specifications, other than the ones mentioned above were found.

### c. Reasonable accommodation and accessibility

No further specifications, other than the ones mentioned above were found.

### d. NPM assessment

No information was found on this topic in the latest NPM reports[141].

According to the NPM members[142], the conditions vary significantly across establishments, with most trying to adapt to the needs of detainees. For example, older detainees or those with reduced mobility are typically housed on the ground floor. When possible, detainees with disabilities are housed together, with the NPM noting that those with fewer disabilities often act as informal caregivers. The Carregueira Establishment has two cells adapted for people with reduced mobility; however, only one is used for permanent housing. Additionally, there are logistical challenges, as the courtyard and infirmary are on

[139] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[140] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[141] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[142] Interview conducted on 09 May 2024.

different floors, requiring detainees to choose between proximity to the courtyard or the infirmary. As a result, detainees must be carried by other detainees to access these spaces.

## 15. Specific measures to protect detainees with special needs or other vulnerabilities

### a. Protection of LGBTI detainees

Other than the guiding principle explained in Article 3 of the Code on the Enforcement of Custodial Sentences and Measures[143], which states that enforcement is impartial and cannot favour, benefit, harm, deprive of any right or exempt from any duty any detainee on the grounds of sex, race, language, territory of origin, nationality, ethnic origin, religion, political or ideological convictions, education, economic situation, social status or sexual orientation, there is no mention of LGBTI detainees in any of the documents, neither the General Regulation on Detention Facilities[144] nor in the Code on the Enforcement of Custodial Sentences and Measures.

### b. Protection of trans detainees

Other than the guiding principle explained in Article 3 of the Code on the Enforcement of Custodial Sentences and Measures[145], which states that enforcement is impartial and cannot favour, benefit, harm, deprive of any right or exempt from any duty any detainee on the grounds of sex, race, language, territory of origin, nationality, ethnic origin, religion, political or ideological convictions, education, economic situation, social status or sexual orientation, there is no mention of trans detainees in any of the documents, neither the General Regulation on Detention Facilities[146] nor in the Code on the Enforcement of Custodial Sentences and Measures.

### c. Protection of other vulnerable detainees

No further mention is made, apart from those already specified. Article 9 of the Code on the Enforcement of Custodial Sentences and Measures[147] states that in establishments or units there are specific areas for detainees to be placed in a cell separate from the rest of the general population, for detainees to be placed in a security room next to the clinical area, for the disciplinary measure of internment to be carried out in a disciplinary cell, and for detainees who are particularly vulnerable.

### d. NPM assessment

[143] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[144] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[145] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[146] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.
[147] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

According to the information obtained in the interview with the NPM members[148], there are reports of transgender people being treated fairly (e.g., in Linhó Establishment) and other situations where there was mistreatment.

The mechanism monitors if the practices in place comply with the 2021 manual drawn up by the DGRSP for the treatment of transgender people. The main non-compliance observed was the failure to fulfill the recommendation that the detainee has the right to decide by what name they want to be called. There were also reports of female members of the security and surveillance personnel who didn't want to be exposed to trans detainees. There was mention of a case of a security and surveillance member being convicted of raping a transgender detainee.

## 16. Specific measures to address radicalisation in prisons

### a. General measures to prevent radicalisation

Article 15 of the Code on the Enforcement of Custodial Sentences and Measures[149] provides that provides that a detainee shall be placed in the security regime if their criminal legal situation or conduct reveals a danger incompatible with any other regime, such as an indictment or conviction for the crime of terrorism or the existence of strong suspicions of involvement in such crimes, supported by written information provided by the court, criminal police organ, or other security force. No other mention of terrorism or violent terrorism is made in the legal documents.

According to information from the DGRSP[150], there is no record of any detainee flagged as a potential recruiter or vulnerable person at risk of radicalisation, nor is there any indicator of the risk of any radicalisation movement or act developing within the country's custodial system.

### b. Risk assessments

As mentioned, an initial assessment is carried out with the detainee, after admission, within no more than 72 hours. This assessment is conducted by the services responsible for monitoring the execution of the sentence and the security and surveillance services, who record the relevant elements. These elements include security requirements, considering the possible danger of escape, risks to the safety of third parties or the detainee himself, and the particular vulnerability of the detainee. Those responsible for monitoring the execution of the sentence, the security and surveillance services and the clinical services shall take such measures as they deem appropriate, in particular: the determination of the future accommodation space of the detainee and regime (e.g., security regime).

### c. Training of staff

According to the annual planning of the DGRSP[151], a new course on "Radicalisation in Prison Context" was created in 2022. Additionally, the DGRSP[152] informed that it is actively involved in formal networks for developing strategies to combat and prevent the phenomenon of violent radicalisation, both at national and European levels. This involvement consolidates its presence in structures that bring

[148] Interview conducted on 09 May 2024.
[149] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[150] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[151] DGRSP (2023), Relatório de Atividade Formativa 2022 - DGRSP.
[152] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

together key players and experts on these matters, including experts from custodial administrations, criminal police bodies, judges and academics. The DGRSP also monitors the indicators that are internationally considered relevant in these areas.

### d. Deradicalisation measures

No specific information on the existence of deradicalisation measures was found. However, as mentioned, the DGRSP[153] informed that it is actively involved in formal networks for developing strategies to combat and prevent the phenomenon of violent radicalisation, both at national and European level.

### e. NPM assessment

No information was found on this topic in the latest NPM reports[154].

The NPM members interviewed[155] stated that the mechanism has no knowledge of any current training provided in this area.

## 17. Inspections and monitoring

### a. Inspections

Article 262 of the Code on the Enforcement of Custodial Sentences and Measures[156] states that a common inspection of establishments is carried out annually by the Audit and Inspection Service, without prejudice to extraordinary inspections that may be necessary depending on events. without prejudice to any extraordinary inspections that may prove necessary in the light of events.

According to the DGRSP[157], the Audit and Inspection, coordinated by a judge and two magistrates from the Public Prosecutor's Office, has been conducting its inspection and disciplinary activities, which can be initiated based on complaints lodged by detainees and/or their families, media reports, or on its own initiative. In this area, any allegation of mistreatment always leads to the opening of an enquiry procedure, and if the facts constitute a crime of a public nature, the Public Prosecutor's Office is informed, and criminal proceedings are initiated.

### b. Access to detention facilities by national authorities

As stated in Article 66 of the Code on the Enforcement of Custodial Sentences and Measures[158], without prejudice to other legal provisions, the following may visit custodial establishments in the performance of their duties: the President of the Republic, the President of the Assembly of the Republic, the Prime

[153] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[154] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[155] Interview conducted on 09 May 2024.
[156] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[157] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[158] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

Minister, the President of the Supreme Court of Justice, the President of the Constitutional Court, the Minister of Justice, the Attorney General of the Republic, the Ombudsman; the President of the Bar Association; other members of sovereign bodies and members of the Public Prosecution Service; Representatives of international organisations with responsibilities in matters relating to the promotion and protection of detainees' rights, under the terms of international conventions in force in Portugal, and persons accompanying the entities referred previously. The Presidents of the Regional Governments, the Representatives of the Republic and the Presidents of the Legislative Assemblies of the Autonomous Regions, as well as persons accompanying them, may also visit prisons located in the respective Autonomous Regions in the exercise of their duties. Other visits may be authorised by the Minister of Justice or the Director-General of Prison Services, including visits by teachers, students and researchers, as part of scientific or academic work and research, and by organisations aimed at promoting human rights.

According to the DGRSP[159], in addition to having an Audit and Inspection Service divided into three delegations (North, Centre and South), coordinated by Public Prosecutors on commission, the DGRSP's activity is under constant scrutiny. Establishments can and have been visited, on a designated and regular basis, by members of sovereign bodies - especially magistrates, members of the government and members of Parliament -, by the Ombudsman (both in this capacity and as the National Preventive Mechanism), and by representatives of international organisations with responsibilities in matters relating to the promotion and protection of detainees' rights, as stated in article 66 of the Code on the Enforcement of Custodial Sentences and Measures[160].

### c. Access to detention facilities by international bodies

As stated, representatives of international organisations with responsibilities in matters relating to the promotion and protection of detainees' rights, under the terms of international conventions in force in Portugal, are entitled entry and visit establishments.

### d. NPM assessment

The NPM reports[161] several establishments where legal processes were delayed and did not comply with all the formalities provided for by law. The mechanism attributes this situation to the lack of specialized training and, in some cases, to the absence of legal experts in the establishments.

According to the NPM members interviewed[162], there are various entities with competences and powers to carry out inspections, and there is no record of any obstacles to visits. However, regarding the Audit and Inspection Services, human resources are scarce for the needs and do not provide an immediate response. Whenever it is necessary for this service to travel to an establishment to investigate a case, a long period of time elapses.

[159] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[160] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[161] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.
[162] Interview conducted on 09 May 2024.

## 18. Access to remedy

### a. Legal remedies

As stated in General Regulation on Detention Facilities[163] and in the Code on the Enforcement of Custodial Sentences and Measures[164], detainees have the right to claim, petition, complain and expose (Articles 177 and 116, respectively). Therefore, in order to defend their rights, detainees have the right to present, in writing, individually or collectively, complaints, petitions, claims, and expositions relating to the execution of the measures depriving them of their liberty. These writings, addressed by the detainee to the Director are registered by the services of the establishment, who then issue a receipt and deliver them to the Director. For that purpose, every institution must have a closed box, placed in an accessible area that guarantees privacy, where detainees may deposit their complaints and petitions. The designated staff member collects the box daily and presents it to the Director (Article 177 of the General Regulation on Detention Facilities). After this procedure the Director may: have recourse to mediation, in order to reach a consensual solution; pronounce on the claims, petitions, complaints, and expositions, within a maximum of 30 days; send them immediately to the competent entities or organisations (depending on the subject of the complaint the competent entity or organisation regarding that subject is contacted), and inform the detainee.

The detainee may also send, by letter, written testimony concerning the exercise of the right of claim, petition, complaint and exposition to the Director-General and to the Audit and Inspection Service of the Directorate-General, which has inspection powers, namely for the assessment of complaints, claims, accusations, statements, and exposures, which may result in recommendations or proposals for measures. Additionally, , without prejudice to the rights already mentioned, the detainee may also present claims, petitions, complaints, and expositions to sovereign bodies and other entities, namely: the General Inspectorate of Justice Services (which has the competence to assess complaints, claims, or accusations from the services and bodies of the Ministry of Justice about delays in service, poor service, bad behaviour of employees, poor conditions of the facilities, and other problems in the services' functioning, which may lead to the opening of a proceeding); the Ombudsman (all citizens may present complaints to the Ombudsman, for actions or omissions of the public authorities and the Ombudsman will examine them, making the necessary recommendations to the competent bodies to prevent and repair injustices); the Bar Association (in particular, the Bar Association's Commission on Human Rights is responsible for ensuring respect for the fundamental rights of citizens, denouncing situations that violate universally accepted principles of human rights, and issuing opinions on issues and questions on which it is consulted, including those relating to the custodial system and the execution of sentences and measures); the European Court of Human Rights;, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; ; and the United Nations Committee Against Torture (Article 116 of the Code on the Enforcement of Custodial Sentences and Measures). This correspondence may not be subject to any control (Article 177 of the General Regulation on

[163] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[164] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

Detention Facilities). Finally, the detainee may also file an administrative action against the Portuguese State for non-contractual civil liability (Law 67/2007 of 31 December[165]).

The DGRSP[166] informs that Circular 9/2021 of 28 September was approved, entitled: Regulation of Complaints and Requests from Detainees. These regulations, which simplify and clarify procedures, are permanently accessible and visible in the library of each establishment for consultation.

Regarding case law, it should be noted that in Judgement n.º 437/23.7JELSB-A.S1[167], already mention, the defendant also complained of the fact that his lawyers were denied access to a recording relevant to the case. In this part of the judgement, the Court explained that all detainees have the right to submit complaints, petitions, grievances and statements concerning the execution of custodial measures, however, the habeas corpus mechanism isn't the appropriated mechanism.

### b. Legal assistance

Receiving information, consultation and legal advice from a lawyer is a detainee's right, as stated in Article 7 of the Code on the Enforcement of Custodial Sentences and Measures[168]. According to Article 61, the detainee has the right to be visited by a lawyer, notary, registrar or solicitor, at a time fixed in conjunction with the respective organisations representing the profession and suitable for resolving legal matters concerning him, without prejudice to the authorisation of urgent visits. During the visit the confidentiality of conversations is ensured.

According to the General Regulation on Detention Facilities[169], detainees have the right to communicate with a lawyer, personally and privately, in a place that ensures confidentiality and purely visual control, and this communication with a lawyer is not subject to authorisation (Article 102). Additionally, this communication with a lawyer may take place outside the fixed hours, provided that the urgent nature of the communication and the risk that postponing it would have on the proper exercise of legal representation are briefly justified, even verbally, by the lawyer (Article 103). Article 104 states that documents carried by the lawyer may under no circumstances be subject to scrutiny as to their content and during the communication the lawyer may hand over to the detainee and receive writings and documents to resolve legal matters concerning the detainee, but no control may be exercised over their content. According to Article 132, the detainee has the right to one telephone call a day to his lawyer or solicitor, lasting no more than five minutes. The call take place under the direct visual control of a member of the security and surveillance services (Article 134).

Additionally, as stated before, any complain, petition, complaint and statement addressed to the entities mentioned in the previous point is registered, including the full name and address of the sender and addressee, the date on which it was sent or received and a receipt is given to the detainee for

[165] Portugal, Law 67/2007, on the non-contractual civil liability of the Portuguese State and Public-Law Legal Entities (Lei n.º 67/2007, sobre a responsabilidade civil extracontratual do Estado e pessoas coletivas de direito público), 31 December 2007
[166] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.
[167] Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n.º 437/23.7JELSB-A.S1, 8 November 2023
[168] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.
[169] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

correspondence delivered for dispatch and may not be checked (articles 130 and 177 of the General Regulation on Detention Facilities).

### c. Request and complaints

As stated before, the detainees have the right to claim, petition, complain and expose is stated in the General Regulation on Detention Facilities[170] and in the Code on the Enforcement of Custodial Sentences and Measures[171] (Articles 177 and 116, respectively). For that purpose, every institution must have a closed box, placed in an accessible area that guarantees privacy, where detainees may deposit their complaints and petitions. The designated staff member collects the box daily and presents it to the Director (Article 177 of the General Regulation on Detention Facilities). In addition, detainees can contact their lawyer in writing or in person (Articles 102 and 134 of the General Regulation on Detention Facilities).

In all libraries, the Code on the Enforcement of Custodial Sentences, the General Regulation on Detention Facilities, and a compilation of the regulations and orders of the Director-General and the Director are available for consultation.

As mentioned above, the DGRSP[172] informed that detainees are entitled to correspond, without any control, with lawyers, notaries, solicitors, diplomatic and consular entities, sovereign bodies, the Ombudsman's Office, the General Inspectorate of Justice and the President of the Bar Association (article 86 of the Code on the Enforcement of Custodial Sentences and Measures). They can also call, free of charge, several organizations, such as the Abraço, SOS Voz Amiga, the Commission for Equality and Women's Rights, the Ombudsman's Office - Children's Line and General Line, SOS Emigrante, the Elderly Line, the Life Line and the Citizen with Disabilities Line and APAR (Portuguese Association for Detainee Support).

### d. Independent authority

Detainees have the right to claim, petition, complain and expose do the Director, the detainees may also exercise this right to the Director-General and to the Audit and Inspection Service of the Directorate-General, which has inspection powers, namely for the assessment of complaints, claims, accusations, statements, and exposures, which may result in recommendations or proposals for measures, as well as sovereign bodies and other entities, as stated previously.

### f. NPM assessment

The NPM praised the adoption of the Regulation on Complaints and Requests from Prisoners in Circular No. 9/2021, in September 2021[173]. However, it sought to assess its implementation and found that the new system was not frequently utilized. Investigations revealed that detainees lacked awareness of the system and had persistent doubts about the confidentiality and effectiveness of complaint handling.

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[170] Portugal, Decree-Law 51/2011, that approves the General Regulation on Detention Facilities (Decreto-Lei n.º 51/2011, que aprova o Regulamento Geral dos Estabelecimentos Prisionais), 11 April 2011. This law had several amendments. The last one was by Decree-Law 58/2022, of 08 September.

[171] Portugal, Law 115/2009 that approves the Code on the Enforcement of Custodial Sentences and Measures (Lei n.º 115/2009, que aprova o Código da Execução das Penas e Medidas Privativas da Liberdade), 12 October 2009. This law had several amendments. The last one was by Law 35/2023, of 21 July.

[172] Directorate-General of Reinsertion and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais), written response by e-mail, 13 March 2024.

[173] Ombudsman (2022), Relatório à Assembleia da República 2021, Lisbon, Ombudsman; Ombudsman (2023), Relatório à Assembleia da República 2022, Lisbon, Ombudsman.

Consequently, detainees continued to prefer other channels such as the APAR (Portuguese Association for Detainee Support) or the Ombudsman's Office, or relied on previously existing communication channels with the establishment directorate.

The NPM pointed out that maintaining multiple channels for submitting complaints to the directorate could lead to confusion for detainees, duplicate complaints, and undermine the intended purpose of Circular No. 9/2021, which aimed to standardize and bring transparency to the complaint submission and assessment process.

Additionally, according to Circular No. 9/2021, each establishment was required to produce a quarterly report detailing the number, subject, and resolution time of complaints and requests submitted. Upon reviewing these quarterly reports, the NPM found deficiencies and delays in handling complaints. For instance, in the Monsanto Establishment, the regulatory 30-day deadline for responses was consistently exceeded, except for one case. Despite a complaint alleging "beatings" by custodial staff towards certain detainees, investigative actions were not promptly initiated, even after two months.

The NPM emphasized the importance of ensuring timely and thorough investigation of all complaints submitted under Circular No. 9/2021, with well-documented procedural steps and reasoned final decisions.

Detainees must be informed of their right to receive advice by a lawyer in the context of any disciplinary proceedings and express, in writing, whether waives this right or intends to exercise it, selecting the respective option with a cross on a specific form. The NPM, however, reports that in some establishments the consulted forms, despite being signed by the detainee, had no mark on any of the options, fact which raised doubts about the information actually provided to the detainee.

The NPM also considered relevant the issue of the impossibility of access to legal aid, since it received complaints from detainees who, due to lack of economic means, were deprived of this right. In some cases, Social Security has rejected the application for legal aid because it believes that the administrative nature of disciplinary proceedings is not included in the scope of the Law on Access to Law. In other cases, the decision granting the application for legal aid was issued beyond the 10-day period that the disciplinary procedure granted the detainees to present a lawyer. Given the systemic nature of the matter, the NPM recommended that this matter should be considered by the DGRSP and suggests the conclusion of a Protocol with the Bar Association in this context.

One significant issue identified by the NPM members interviewed[174] was the lack of guarantees regarding the registration of complaints, as security and surveillance members were allowed to open complaint boxes. Most complaints are made through APAR, indicating detainees' fear of reprisals or lack of confidence in the system's responsiveness.

[174] Interview conducted on 09 May 2024.

# Part II: National case-law

## Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon/ Judgement n.º 5553/19.7T8LSB-Q.S1, 23 September 2021

| **Thematic area** | ***1. Cells*** |
|---|---|
| **Decision date** | 23-09-2021 |
| **Reference details** | Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon/ Judgement n.º 5553/19.7T8LSB-Q.S1, 23 September 2021 |
| **Key facts of the case** | Within the context of a European Arrest Warrant, the defendant, A., filled an *habeas corpus* petition, alleging inhuman treatment to which he has been subjected since he was imprisoned in a cell without the minimum conditions of human dignity (dirty, cold, damp, unventilated, and overcrowded cell), a circumstance which, combined with his age and state of health (cancer patient), constitutes a violation of the provisions of article 222 (2, (b), of the Code of Criminal Procedure – imprisonment motivated by a fact for which the law does not allow it – since Portugal has been condemned by the European Court of Human Rights for prison conditions. |
| **Main reasoning/argumentation** | The law lays down exhaustive grounds for granting an application for *habeas corpus*, - the arrest has been ordered by an incompetent body; it has been ordered for a fact that the law does not allow; or the maximum period of deprivation of liberty has been exceeded. Given the facts of the case, the Supreme Court of Justice considers that there is no basis for the application. The defendant's allegations that the European Arrest Warrant should not have been executed because the prison conditions are degrading and inhumane or unsuitable to A.'s state of health would be an argument to raise in any appeal against the decision that executed the warrant, and therefore does not constitute grounds for a habeas corpus application. |
| **Key issues (concepts, interpretations) clarified by the case** | The Supreme Court explained under which grounds an application for *habeas corpus* can be granted and applied them to the case, finding there was no violation. |
| **Results (sanctions) and key consequences or implications of the case** | The Supreme Court of Justice dismissed the *habeas corpus* petition on the grounds that it was unfounded. |
| **Key quotation in original language and translated into English with reference details** | «Todavia, o requerente vem agora alegar que a prisão é ilegal porque não é motivada por facto pelo qual a lei a permite, invocando o disposto no art. 22.º, n.º 2, al. b), do CPP. Ora, sabendo que o arguido foi condenado em 1.ª instância pelo crime de tráfico de estupefacientes agravado, e sabendo que tal constitui conduta punida por lei, e que a prisão preventiva foi determinada por se considerar que se mantinha o perigo de fuga e o perigo de continuação da atividade criminosa dado que desde o primeiro despacho que a aplicou "nenhum facto ou circunstância ocorreu suscetível de alterar os pressupostos que a determinaram" (...), estão verificados todos os pressuposto legais para que necessariamente tenhamos que concluir que a prisão foi determinada por facto pelo qual a lei a permite.»<br><br>«However, the applicant now claims that the detention is illegal because it is not motivated by a fact for which the law allows it, invoking the provisions of Article 22(2)(b) of the CPP [Code of Criminal Procedure]. Now, knowing that the defendant was convicted for the offence of aggravated drug trafficking, and |

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| | knowing that this is a conduct punishable by law, and that pre-trial detention was ordered because it was considered that the danger of flight and the danger of continuing criminal activity remained, given that since the first order that applied it "no fact or circumstance has occurred that could alter the assumptions that determined it" (. ...), all the legal preconditions have been met so that we must necessarily conclude that the arrest was ordered because of a fact for which the law allows it. »<br><br>"As alegações do arguido de que, por um lado, o Mandado de Detenção Europeu não devia ter sido executado porque as condições da prisão são degradantes e desumanas seria um argumento a alegar num eventual recurso da decisão (prolatada em Tribunais do país executante) que executou aquele mandado, pelo que não constitui fundamento de um pedido de providência de habeas corpus à luz do disposto no art. 222.º, n.º 2, do CPP; por outro lado, a alegação de que as condições da prisão são completamente desadequadas ao estado de saúde do requerente também não constitui fundamento de admissibilidade da providência de habeas corpus à luz da lei."<br><br>“The defendant's allegations that, on the one hand, the European Arrest Warrant should not have been executed because the prison conditions are degrading and inhumane would be an argument to be raised in any appeal against the decision (handed down in the courts of the executing country) that executed that warrant, and therefore does not constitute grounds for an application for a writ of habeas corpus in the light of the provisions of article 222(2) of the CPP [Code of Criminal Procedure]. On the other hand, the allegation that the prison conditions are completely unsuitable for the applicant's state of health also does not constitute grounds for admissibility of the writ of habeas corpus under the law." |

## Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Oporto/ Judgement n.º 2216/22.0JAPRT-B.P1, 12 October 2022

| **Thematic area** | ***10. Contact with the outside world*** |
|---|---|
| **Decision date** | 12 October 2022 |
| **Reference details** | Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Oporto/ Judgement n.º 2216/22.0JAPRT-B.P1, 12 October 2022 |
| **Key facts of the case** | During the first judicial interrogation of the detained defendant, A. was ordered to refrain from contact with the co-accused, contact with the victim's family and with the identified witnesses. Whilst in detention, A. was informed that he was also prohibited from contacting his partner, his daughter and his sister because they had been made defendants in the same case. A. appealed against this decision on the grounds that it not only aggravated the coercive status applied, but was also illegal due to the fact that he had not been heard or notified, thus constituting a nullity. It is therefore asked that this decision be revoked and that A.’s right to contact his family be restored. |
| **Main reasoning/argumentation** | The Court of Appeal explained that the law establishes that the judicial decision that applies a coercive measure in criminal proceedings must be specifically reasoned and expressed in a clear and unequivocal manner, and the same decision cannot be interpreted extensively or broadly in terms of its scope and effects. Thus, an order that provides information according to which A. would be subject to the coercive measure of prohibiting contact with more people than |

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| | those specifically determined in the decision that applied that measure, corresponds to an extension of the scope and limits that are validly determined for the coercive measure in question and, to that extent, such an order should be considered null and void. Furthermore, the order is faced with a double nullity since A. was not heard regarding chances to its coactive status. |
| **Key issues (concepts, interpretations) clarified by the case** | The court explained the principles and rules relating to the application of coercive measures in criminal cases, with special emphasis on the need for explicit and clear reasonings on the choice of measures to be applied and the prior hearing of defendants. |
| **Results (sanctions) and key consequences or implications of the case** | Allows the appeal and, consequently, revokes the contested decision, replacing it with the present one, which declares the nullity of the decision handed down by the investigating judge as well as the information that was subsequently provided to the prison, information that should be rectified in due course, clarifying that the measure prohibiting contacts to which the defendant A. is subject for the time being in the case only covers contacts with the co-accused, and not any other person. |
| **Key quotation in original language and translated into English with reference details** | "A determinação e aplicação de uma medida de coacção em processo criminal não é um negócio, mal se compreendendo o apelo que na resposta do Ministério Público se faz ao regime da interpretação negocial plasmado no Código Civil para sustentar aquela interpretação alargada que defende dever ser a da decisão do Juiz de Instrução no final do interrogatório judicial do arguido. Em sede de apreciação sobre a escolha e concreta configuração das medidas de coacção a aplicar em cada caso concreto, estamos perante a ponderação do recurso a meios processuais restritivos da liberdade do arguido, e que contendem, assim, com os direitos, liberdades e garantias fundamentais do mesmo (...). Donde terem as medidas de coacção natureza meramente cautelar, apenas podendo ser aplicadas quando, em concreto se verificar, no momento da respectiva aplicação, pelo menos uma das circunstâncias expressamente estatuídas no art. 204º do Cód. de Processo Penal (fuga ou perigo de fuga do agente ; perigo de perturbação do decurso do inquérito ou da instrução do processo ; ou perigo de que o arguido continue a actividade criminosa ou perturbe gravemente a ordem e a tranquilidade públicas)."<br><br>“The determination and application of a coercive measure in criminal proceedings is not a business deal, and it is hard to understand the appeal made in the Public Prosecutor's reply to the regime of negotiated interpretation set out in the Civil Code to support the broad interpretation that it argues should be the decision of the investigating judge at the end of the judicial interrogation of the defendant. When it comes to assessing the choice and specific configuration of the coercive measures to be applied in each specific case, we are faced with weighing up the use of procedural means that restrict the defendant's freedom, and which therefore conflict with the defendant's fundamental rights, freedoms and guarantees (...). Hence the coercive measures are merely precautionary in nature and can only be applied when, in concrete terms, at least one of the circumstances expressly set out in article 204 of the Code of Criminal Procedure (flight or danger of flight of the agent; danger of disturbing the course of the enquiry or the investigation of the case; or danger that the defendant will continue criminal activity or seriously disturb public order and tranquillity) is verified at the time of their application.”<br><br>«Depois, e por outro lado, nos termos das disposições conjugadas dos nºs 1 e 4 do art. 194º do Cód. de Processo Penal, e à excepção do termo de identidade e residência, a aplicação de qualquer outra medida de coacção ou de garantia patrimonial "é precedida da audição presencial do arguido, ressalvados os casos de impossibilidade devidamente fundamentada, e pode ter lugar no ato de primeiro interrogatório judicial, aplicando-se sempre à audição o disposto no n.º 4 do artigo 141.º". No caso, não existiu qualquer audição do arguido previamente |

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| | à ampliação do concreto âmbito da medida de proibição de contactos a que o mesmo se mostra sujeito, não mostrando também fundamentada (muito menos devidamente) essa omissão.»<br><br>"Next, and on the other hand, under the terms of the combined provisions of paragraphs 1 and 4 of article 194 of the Code of Criminal Procedure, and with the exception of the term of identity and residence, the application of any other measure of coercion or patrimonial guarantee "shall be preceded by a face-to-face hearing of the accused, except in cases of duly substantiated impossibility, and may take place at the time of the first judicial interrogation, and the provisions of paragraph 4 of article 141 shall always apply to the hearing". In this case, there was no hearing of the accused prior to the expansion of the specific scope of the no-contact measure to which he is subject, and this omission is not substantiated (let alone duly)." |

## Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n. º 155/20.8JELSB-M.S1, 22 June 2023

| **Thematic area** | ***8. Healthcare*** |
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| **Decision date** | 22 June 2023 |
| **Reference details** | Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n. º 155/20.8JELSB-M.S1, 22 June 2023 |
| **Key facts of the case** | A., held in custody, filed a *habeas corpus* petition for unlawful imprisonment, arguing, among other, that he is suffering in prison due to serious health problems such as hypertension, skin psoriasis, adenomatous hyperplasia of the prostate, hepatic steatosis and diverticulosis, gastritis and duodenitis, having suffered a heart attack, although not recent, but which requires constant vigilance beyond the age of 71. A. further adds that Portugal has been condemned by the European Court of Human Rights for prison conditions, which considering his health status, makes his imprisonment motivated by a fact for which the law does not allow it, one of the requirements to grant a *habeas corpus* petition. |
| **Main reasoning/argumentation** | The Supreme Court of Justice explained that the grounds for habeas corpus are only those that are exhaustively set out in the law, and cannot be used to investigate other grounds that may jeopardise the regularity or legality of the arrest. Furthermore, allegations of poor prison conditions, serious illness or failure to provide adequate treatment must be made during the execution of the measure before the bodies that control and apply it. These reasons can be used to request a transfer for a different prison, but can never be used as grounds for *habeas corpus*. |
| **Key issues (concepts, interpretations) clarified by the case** | The Supreme Court explained the requirements for the grating of a *habeas corpus* petition and applied them to the case. |
| **Results (sanctions) and key consequences or implications of the case** | The Supreme Court of Justice dismissed the *habeas corpus* petition on the grounds that it was unfounded. |
| **Key quotation in original language and translated into English with reference details** | "A alegação de más condições prisionais, doença grave ou o não uso de meios de tratamento adequado deve ser efectuada na fase de execução da medida perante as entidades que a controlam e aplicam, podendo sempre ser solicitada a mudança de estabelecimento prisional, se com fundamentos atendíveis, perante o EP [estabelecimento prisional] ou o próprio tribunal que decretou a medida, quiçá a sua alteração, mas nunca por nunca pode servir de fundamento para |

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| | habeas corpus. A jurisprudência internacional citada pelo requerente é a eventualmente aplicável em caso de cooperação penal internacional ou quando estejam em causa pedidos de entrega a outros estados, o que não é o caso."<br><br>"Allegations of poor prison conditions, serious illness or failure to provide adequate treatment must be made during the execution of the measure before the bodies that control and apply it, and a request for a change of prison establishment can always be made, if there are justifiable grounds, before the EP [prison] or the court that ordered the measure, perhaps for its alteration, but it can never be used as grounds for habeas corpus. The international case law cited by the applicant is that which may apply in the case of international criminal co-operation or when requests for surrender to other states are involved, which is not the case here."<br><br>"O incumprimento de convenções ou acordos internacionais em matéria de condições prisionais é problema que se coloca apenas a jusante da medida de coação ou das penas aplicadas e deve ser aferido em sede de responsabilidade extracontratual do Estado Português e/ou pelas entidades que supervisionam os termos de execução das medidas de detenção/ aprisionamento, podendo o recluso reclamar junto do EP e ou da Direcção-Geral dos Serviços prisionais ( ou mesmo do TEP quando se trate de execução de penas) bem como da Provedoria de Justiça para que lhe sejam asseguradas as condições devidas mas não como requisito de admissibilidade (a montante) de aplicação da prisão preventiva."<br><br>"Non-compliance with international conventions or agreements on prison conditions is a problem that only arises downstream of the coercive measure or the sentences imposed and should be assessed in terms of the non-contractual liability of the Portuguese state and/or the entities that supervise the terms of execution of detention/imprisonment measures, The prisoner can complain to the EP or the Directorate-General for Prison Services (or even to the TEP when it comes to the execution of sentences), as well as to the Ombudsman's Office, so that he is provided with the necessary conditions, but not as an admissibility requirement (upstream) for the application of pre-trial detention." |

## Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgment n.º 437/23.7JELSB-A.S1, 8 November 2023

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| **Thematic area** | ***6. Solitary confinement; 18. Access to remedy*** |
| **Decision date** | 08 November 2023 |
| **Reference details** | Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n.º 437/23.7JELSB-A.S1, 8 November 2023 |
| **Key facts of the case** | A., a 19-year-old pre-trial detainee bearer of a psychic anomaly, filed a *habeas corpus* request for illegal imprisonment. A. was first held on a school prison, where he was suddenly approached by three prison guards while he was asleep. The guards, looking for a "blunt object", strip-searched A. and nothing was found in his possession. However, A. was handcuffed with his hands forward, thrown onto the bed and slapped in the face and punched in the abdomen because, the guards found a "spear" in the cell's toilet. After this, A. was transfer to a prison, where he was put in solitary confinement as a form of punishment for 22 hours a day. It should also be noted that the defendant does not understand Portuguese and that, afterwards, through his representatives, he requested a copy of the |

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| | video recording in which he spent 7 minutes inside the cell being beaten by the guards, but it was denied access to the content of the recordings. For all of this, A. considers his imprisonment to be not only inappropriate and disproportional but also a violation of his human rights and damaging to his health. |
| **Main reasoning/argumentation** | The jurisprudence Supreme Court of Justice has held that the grounds for *habeas corpus* proceedings are those that are exhaustively laid down by law- carried out or ordered by an incompetent entity; motivated by a fact for which the law does not allow it; and it continues beyond the time limits set by law or by a court decision-, and that this procedure cannot be used to investigate other grounds that may jeopardise the regularity or legality of the detention. The court also emphasised that all detainees have the right to submit, in writing, individually or collectively, complaints, petitions, grievances and statements concerning the execution of custodial measures, however, *habeas corpus* proceedings are not the appropriate mechanism to assert their claims. |
| **Key issues (concepts, interpretations) clarified by the case** | Although all detainees have the right to submit complaints, petitions, grievances and statements concerning the execution of custodial measures, they have to use other mechanisms to assert their claims, since *habeas corpus* proceedings can only be used in the cases foreseen by law. |
| **Results (sanctions) and key consequences or implications of the case** | The Supreme Court of Justice decided to reject the *habeas corpus* petition, judging it manifestly unfounded. |
| **Key quotation in original language and translated into English with reference details** | "A jurisprudência deste Supremo Tribunal vem considerando que constituem fundamentos da providência de habeas corpus os que se encontram taxativamente fixados na lei, não podendo esse expediente ser utilizado para a sindicância de outros motivos suscetíveis de pôr em causa a regularidade ou a legalidade da prisão…"<br><br>"The jurisprudence of this Supreme Court has held that the grounds for habeas corpus proceedings are those that are exhaustively laid down by law, and that this procedure cannot be used to investigate other grounds that may jeopardise the regularity or legality of the detention…"<br><br>«Na defesa dos seus direitos, qualquer recluso tem direito a apresentar, por escrito, individual ou coletivamente, reclamações, petições, queixas e exposições relativas à execução das medidas privativas da liberdade (artigo 116.º do CEPMPL), e bem assim, enquanto arguido, o direito de apresentar exposições, memoriais e requerimentos, em qualquer fase do processo, embora não assinados pelo defensor, desde que se contenham dentro do objeto do processo ou tenham por finalidade a salvaguarda dos seus direitos fundamentais (artigo 98.º do CPP). Porém, não estando em causa qualquer dos fundamentos de habeas corpus – como acontece, manifestamente, no caso em apreço -, não é nesta providência que o arguido / peticionário poderá encontrar o mecanismo adequado para fazer valer as suas pretensões.»<br><br>«In defence of their rights, any prisoner has the right to submit, in writing, individually or collectively, complaints, petitions, grievances and expositions regarding the execution of custodial measures (article 116 of the CEPMPL [Code on the Enforcement of Custodial Sentences]), as well as, as a defendant, the right to submit expositions, memorials and applications, at any stage of the proceedings, although not signed by the defence counsel, provided that they are within the scope of the proceedings or are aimed at safeguarding their fundamental rights (article 98 of the CPP [Code of Criminal Procedure]). However, if none of the grounds for habeas corpus are at issue - as is clearly the case here - it is not through this procedure that the defendant / petitioner will be able to find the appropriate mechanism to assert their claims.» |

## Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Oporto/ Judgement n.º 891/22.4TXPRT-B.P2, 7 February 2024

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| **Thematic area** | **8. Heathcare; 14. Special measures to protect detainees with disabilities or serious medical conditions** |
| **Decision date** | 07 February 2024 |
| **Reference details** | Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Oporto/ Judgement n.º 891/22.4TXPRT-B.P2, 7 February 2024 |
| **Key facts of the case** | B., sister of A., the person who is incarcerated, filled an appeal following the rejection of the request to modify the execution of a sentence (of a person with disabilities), on the grounds, among others, that the court did not consider the impact of prison conditions on A.'s already weakened state of health. B. claims that A. is being held in degrading and inhumane conditions, as a result of having had his right upper limb amputated (in consequence of cancer). A. is no longer able to perform his personal hygiene, depending on third parties, and has difficulty feeding himself. In addition, B. claims that the prison did not ensure that the execution of the sentence was adapted to the hindrances arising from A.'s medical condition. |
| **Main reasoning/argumentation** | The Court of Appeal, explained that, upon requests to modify the execution of a sentence, and in obedience to the principles of investigation and material truth, the courts should ascertain the situation of the convicted person's detention as a way to protect their fundamental rights. This imposes on the courts the duty to carry out itself, of its own motion, the steps it deems necessary with a view to assess the protection of fundamental rights and delivering a materially fair judgement. Something that was not done in this case. |
| **Key issues (concepts, interpretations) clarified by the case** | The Court explained the rules behind granting a request to modify the execution of a sentence of a person with disabilities, highlighting the need for the Court to consider the situation of the convicted person's detention. |
| **Results (sanctions) and key consequences or implications of the case** | The Court upheld the appeal and revoke the order appealed against, which has to be replaced by another ordering the carrying out of the medico-legal examinations necessary to characterise the degree of disability or illness, its irreversibility, degree of autonomy and mobility of A. |
| **Key quotation in original language and translated into English with reference details** | "Invocando a requerente, factualmente a deficiência grave e permanente e a doença oncológica, e bem assim a dependência de terceiros, e a não adequação das condições do estabelecimento prisional, para a situação clínica do condenado, (...) Impunha-se que o tribunal em obediência aos princípios da investigação e verdade material, perante a situação de detenção do condenado averiguasse as efectivas limitações advenientes da amputação e doença invocadas, num juízo actual, e compatibilidade das mesmas com a permanência em meio prisional, se necessário através da realização de exames médicos ou perícia médico-legal, munindo-se além do mais dos elementos (...) que se mostrem aplicáveis ao caso dos autos (...). Só assim ficará assegurada a efectiva tutela dos direitos fundamentais do condenado (...) e o direito a um processo equitativo de acordo com o disposto no artº 6º da Convenção Europeia dos Direitos Humanos (...)."<br><br>"Since the petitioner factually invokes serious and permanent disability and oncological disease, as well as dependence on third parties, and the unsuitability of the prison conditions for the convict's clinical situation, (...) it was necessary for the court, in obedience to the principles of investigation and material truth, to ascertain the actual limitations arising from the convict's amputation and |

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| | illness.) It was necessary for the court, in obedience to the principles of investigation and material truth, in view of the convict's detention situation, to ascertain the actual limitations resulting from the amputation and illness invoked, in a current judgement, and their compatibility with remaining in prison, if necessary by carrying out medical examinations or medico-legal expertise, providing itself with the elements (...) that are applicable to the case in hand (...). Only in this way will the effective protection of the convict's fundamental rights (...) and the right to a fair trial in accordance with Article 6 of the European Convention on Human Rights (...) be ensured." |

## Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n.º 8115/21.5T9LSB.L1.S1, 21 February 2024

| **Thematic area** | ***14. Special measures to protect detainees with disabilities or serious medical conditions*** |
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| **Decision date** | 21 February 2024 |
| **Reference details** | Portugal, Supreme Justice Court (*Supremo Tribunal de Justiça*); Lisbon / Case n. º 8115/21.5T9LSB.L1.S1, 21 February 2024 |
| **Key facts of the case** | The Lisbon District Court sentenced A. to 6 years and 6 months in prison for sexual offenses against children. Based on A.'s advanced age of 82, mental health (which includes memory loss and hallucinations), and the fact that he is bedridden and completely dependent on others, the court also decided that A. would serve out his sentence in an institutionalised setting. The Public Prosecutor's Office, in response, filled an appeal against the ruling, criticising the court for using "dangerousness" as a justification to rule out the possibility of imposing a suspended sentence. |
| **Main reasoning/argumentation** | In the Public Prosecutor's Office opinion, the possibility of imposing a suspended sentence as established by law, is necessary due to A.'s mental state and complete lack of autonomy, and that these conditions do not justify any legitimate concern of criminal recidivism. |
| **Key issues (concepts, interpretations) clarified by the case** | The Supreme Court of Justice started by explaining that, when it comes to people that suffer from a post-crime mental disorder, they can either serve their sentence in an institutionalised setting – if there is a probability of criminal recidivism due to the post-crime mental disorder – or benefiting from a suspended sentence - if the condition does not make the defendant criminally dangerous in a way that, if they were incapable of committing the offence at the time, it would lead to their actual confinement. Therefore, the court found that, given the proven factuality, it was not feasible to prove a well-founded fear of criminal recidivism, a prognostic judgement that lacked a factual basis, given A.'s condition. |
| **Results (sanctions) and key consequences or implications of the case** | The Supreme Court of Justice upheld the appeal, suspending the sentence of 6 years and 6 months in prison, until the condition that justified the suspension ceases, and with the tutelary supervision of the social reintegration services. |
| **Key quotation in original language and translated into English with reference details** | «Como ensina Figueiredo Dias (…), acompanhando Maria João Antunes (…), "o internamento de imputáveis em estabelecimentos de inimputáveis e a suspensão da execução da pena previstos nos arts 104.º e 105.º do CP [Código Penal]" (actualmente, 104.º a 106.º do CP), "traduzem-se na imposição de medidas que podem crismar-se, em certo sentido, como medidas de diversão na execução da pena".<br>Quanto à natureza do internamente e da suspensão, Figueiredo Dias, acompanhando sempre Maria João Antunes, considera tratar-se de "um instituto de natureza especial que constitui uma medida de diversão da execução da pena sem que, todavia, ele perca por isso natureza penal". E acentua que "o regime |

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| | previsto na lei para o internamento e para a suspensão da execução da pena traduz a introdução do princípio da necessidade da pena na fase da execução: a execução efectiva da pena privativa da liberdade ocorre somente quando tal se revelar necessário do ponto de vista das finalidades preventivas assinaladas à punição".<br>É então na coerência deste regime que o art. 106.º, n.º 1, do CP determina que se a anomalia psíquica sobrevinda ao agente depois da prática do crime, determinante da incapacidade de compreensão da pena, não determinar simultaneamente a perigosidade do agente, "a execução da pena de prisão a que tiver sido condenado suspende-se até cessar o estado que fundamentou a suspensão".<br>Ora esse juízo de perigosidade, no presente caso, carece de um mínimo de base factual que o sustente.»<br><br>«As Figueiredo Dias (...) teaches, following Maria João Antunes (...), "the institutionalisation of incapable people in establishments for the incapable and the suspension of the execution of the sentence provided for in articles 104 and 105 of the CC [Criminal Code]" (currently, 104 to 106 of the CC), "translate into the imposition of measures that can be characterised, in a certain sense, as diversionary measures in the execution of the sentence".<br>As for the nature of intitucionalisation and suspension, Figueiredo Dias, always in agreement with Maria João Antunes, considers it to be "an institute of a special nature that constitutes a diversionary measure in the execution of the sentence without, however, losing its criminal nature". And she emphasises that "the regime laid down in the law for institutionalisation and the suspension of the execution of the sentence reflects the introduction of the principle of the necessity of the sentence in the execution phase: the effective execution of the custodial sentence only takes place when this proves necessary from the point of view of the preventive purposes assigned to the punishment".<br>It is therefore in line with this regime that Article 106 (1) of the Criminal Code states that if the psychic abnormality of the offender after the commission of the offence, which determines the incapacity to understand the penalty, does not simultaneously determine the dangerousness of the offender, "the execution of the prison sentence to which he has been sentenced shall be suspended until the state that justified the suspension ceases".<br>This judgement of dangerousness, in this case, lacks a minimum factual basis to support it.» |

## Portugal, Oporto Court of Appeal (Tribunal da Relação do Porto), Oporto/ Judgement n.º 891/22.4TXPRT-B.P2, 7 February 2024

| **Thematic area** | **8. Heathcare; 14. Special measures to protect detainees with disabilities or serious medical conditions** |
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| **Decision date** | 07 February 2024 |
| **Reference details** | Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Oporto/ Judgement n.º 891/22.4TXPRT-B.P2, 7 February 2024 |
| **Key facts of the case** | B., sister of A., the person who is incarcerated, filled an appeal following the rejection of the request to modify the execution of a sentence (of a person with disabilities), on the grounds, among others, that the court did not consider the impact of prison conditions on A.'s already weakened state of health. B. claims that A. is being held in degrading and inhumane conditions, as a result of having had his right upper limb amputated (in consequence of cancer). A. is no longer able to perform his personal hygiene, depending on third parties, and has difficulty feeding himself. In addition, B. claims that the prison did not ensure that |

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| | the execution of the sentence was adapted to the hindrances arising from A.'s medical condition. |
| **Main reasoning/argumentation** | The Court of Appeal, explained that, upon requests to modify the execution of a sentence, and in obedience to the principles of investigation and material truth, the courts should ascertain the situation of the convicted person's detention as a way to protect their fundamental rights. This imposes on the courts the duty to carry out itself, of its own motion, the steps it deems necessary with a view to assess the protection of fundamental rights and delivering a materially fair judgement. Something that was not done in this case. |
| **Key issues (concepts, interpretations) clarified by the case** | The Court explained the rules behind granting a request to modify the execution of a sentence of a person with disabilities, highlighting the need for the Court to consider the situation of the convicted person's detention. |
| **Results (sanctions) and key consequences or implications of the case** | The Court upheld the appeal and revoke the order appealed against, which has to be replaced by another ordering the carrying out of the medico-legal examinations necessary to characterise the degree of disability or illness, its irreversibility, degree of autonomy and mobility of A. |
| **Key quotation in original language and translated into English with reference details** | "Invocando a requerente, factualmente a deficiência grave e permanente e a doença oncológica, e bem assim a dependência de terceiros, e a não adequação das condições do estabelecimento prisional, para a situação clínica do condenado, (...) Impunha-se que o tribunal em obediência aos princípios da investigação e verdade material, perante a situação de detenção do condenado averiguasse as efectivas limitações advenientes da amputação e doença invocadas, num juízo actual, e compatibilidade das mesmas com a permanência em meio prisional, se necessário através da realização de exames médicos ou perícia médico-legal, munindo-se além do mais dos elementos (...) que se mostrem aplicáveis ao caso dos autos (...). Só assim ficará assegurada a efectiva tutela dos direitos fundamentais do condenado (...) e o direito a um processo equitativo de acordo com o disposto no artº 6º da Convenção Europeia dos Direitos Humanos (...)."<br><br>"Since the petitioner factually invokes serious and permanent disability and oncological disease, as well as dependence on third parties, and the unsuitability of the prison conditions for the convict's clinical situation, (...) it was necessary for the court, in obedience to the principles of investigation and material truth, to ascertain the actual limitations arising from the convict's amputation and illness.) It was necessary for the court, in obedience to the principles of investigation and material truth, in view of the convict's detention situation, to ascertain the actual limitations resulting from the amputation and illness invoked, in a current judgement, and their compatibility with remaining in prison, if necessary by carrying out medical examinations or medico-legal expertise, providing itself with the elements (...) that are applicable to the case in hand (...). Only in this way will the effective protection of the convict's fundamental rights (...) and the right to a fair trial in accordance with Article 6 of the European Convention on Human Rights (...) be ensured." |

## Portugal, Supreme Justice Court (Supremo Tribunal de Justiça); Lisbon / Case n. º 8115/21.5T9LSB.L1.S1, 21 February 2024

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| **Thematic area** | ***14. Special measures to protect detainees with disabilities or serious medical conditions*** |
| **Decision date** | 21 February 2024 |

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| **Reference details** | Portugal, Supreme Justice Court (*Supremo Tribunal de Justiça*); Lisbon / Case n. º 8115/21.5T9LSB.L1.S1, 21 February 2024 |
| **Key facts of the case** | The Lisbon District Court sentenced A. to 6 years and 6 months in prison for sexual offenses against children. Based on A.'s advanced age of 82, mental health (which includes memory loss and hallucinations), and the fact that he is bedridden and completely dependent on others, the court also decided that A. would serve out his sentence in an institutionalised setting. The Public Prosecutor's Office, in response, filled an appeal against the ruling, criticising the court for using "dangerousness" as a justification to rule out the possibility of imposing a suspended sentence. |
| **Main reasoning/argumentation** | In the Public Prosecutor's Office opinion, the possibility of imposing a suspended sentence as established by law, is necessary due to A.'s mental state and complete lack of autonomy, and that these conditions do not justify any legitimate concern of criminal recidivism. |
| **Key issues (concepts, interpretations) clarified by the case** | The Supreme Court of Justice started by explaining that, when it comes to people that suffer from a post-crime mental disorder, they can either serve their sentence in an institutionalised setting – if there is a probability of criminal recidivism due to the post-crime mental disorder – or benefiting from a suspended sentence - if the condition does not make the defendant criminally dangerous in a way that, if they were incapable of committing the offence at the time, it would lead to their actual confinement. Therefore, the court found that, given the proven factuality, it was not feasible to prove a well-founded fear of criminal recidivism, a prognostic judgement that lacked a factual basis, given A.'s condition. |
| **Results (sanctions) and key consequences or implications of the case** | The Supreme Court of Justice upheld the appeal, suspending the sentence of 6 years and 6 months in prison, until the condition that justified the suspension ceases, and with the tutelary supervision of the social reintegration services. |
| **Key quotation in original language and translated into English with reference details** | «Como ensina Figueiredo Dias (…), acompanhando Maria João Antunes (…), "o internamento de imputáveis em estabelecimentos de inimputáveis e a suspensão da execução da pena previstos nos arts 104.º e 105.º do CP [Código Penal]" (actualmente, 104.º a 106.º do CP), "traduzem-se na imposição de medidas que podem crismar-se, em certo sentido, como medidas de diversão na execução da pena".<br>Quanto à natureza do internamente e da suspensão, Figueiredo Dias, acompanhando sempre Maria João Antunes, considera tratar-se de "um instituto de natureza especial que constitui uma medida de diversão da execução da pena sem que, todavia, ele perca por isso natureza penal". E acentua que "o regime previsto na lei para o internamento e para a suspensão da execução da pena traduz a introdução do princípio da necessidade da pena na fase da execução: a execução efectiva da pena privativa da liberdade ocorre somente quando tal se revelar necessário do ponto de vista das finalidades preventivas assinaladas à punição".<br>É então na coerência deste regime que o art. 106.º, n.º 1, do CP determina que se a anomalia psíquica sobrevinda ao agente depois da prática do crime, determinante da incapacidade de compreensão da pena, não determinar simultaneamente a perigosidade do agente, "a execução da pena de prisão a que tiver sido condenado suspende-se até cessar o estado que fundamentou a suspensão".<br>Ora esse juízo de perigosidade, no presente caso, carece de um mínimo de base factual que o sustente.»<br><br>«As Figueiredo Dias (...) teaches, following Maria João Antunes (...), "the institutionalisation of incapable people in establishments for the incapable and the suspension of the execution of the sentence provided for in articles 104 and 105 of the CC [Criminal Code]" (currently, 104 to 106 of the CC), "translate into |

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| | the imposition of measures that can be characterised, in a certain sense, as diversionary measures in the execution of the sentence".<br>As for the nature of intitucionalisation and suspension, Figueiredo Dias, always in agreement with Maria João Antunes, considers it to be "an institute of a special nature that constitutes a diversionary measure in the execution of the sentence without, however, losing its criminal nature". And she emphasises that "the regime laid down in the law for institutionalisation and the suspension of the execution of the sentence reflects the introduction of the principle of the necessity of the sentence in the execution phase: the effective execution of the custodial sentence only takes place when this proves necessary from the point of view of the preventive purposes assigned to the punishment".<br>It is therefore in line with this regime that Article 106 (1) of the Criminal Code states that if the psychic abnormality of the offender after the commission of the offence, which determines the incapacity to understand the penalty, does not simultaneously determine the dangerousness of the offender, "the execution of the prison sentence to which he has been sentenced shall be suspended until the state that justified the suspension ceases".<br>This judgement of dangerousness, in this case, lacks a minimum factual basis to support it.» |

## Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon / Judgement n.º 2713/16.6T9PDL-C.S1, 20 March 2024

| **Thematic area** | ***1. Cells*** |
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| **Decision date** | 20 March 2024 |
| **Reference details** | Portugal, Supreme Court of Justice (*Supremo Tribunal de Justiça*), Lisbon/ Judgement n.º 2713/16.6T9PDL-C.S1, 20 March 2024 |
| **Key facts of the case** | A., sentenced to 15 years and 3 months in prison, filed a *habeas corpus* petition for unlawful imprisonment, due to the fact that parole was not grated. A. added that he had not been notified by the Sentence Enforcement Court (*Tribunal de Execução de Penas*) to substantiate the reasons for his non-release, making it impossible for the applicant to exercise his legitimate right to appeal. A. also claims that he was transferred to a prison without his consent, and that the material conditions of this prison were inhumane, with overcrowded cells. Also, despite his request, A. never benefited from an individual cell in that prison, because there are no individual cells in that prison. |
| **Main reasoning/argumentation** | The Supreme Court of Justice started by explaining that placing a convicted person on probation when half of their sentence had been served was not an automatic process, and that the decision falls within the competence of the Sentence Enforcement Court. Since the information provided by the competent Sentence Enforcement Court was that A.'s case was being assessed, the imprisonment was in no way illegal. As for the rest of the applicant's allegations, the Court also considered them to not constitute grounds for granting the application, and were therefore manifestly unfounded. |
| **Key issues (concepts, interpretations) clarified by the case** | The Supreme Court explained how the non-granting of parole halfway through the sentence cannot be considered a matter of unlawful imprisonment, since the decision at this stage of the sentence is always dependent on a court decision. At the same time, the Court also dismissed the imprisonment conditions as a way to justify unlawful imprisonment. |

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| **Results (sanctions) and key consequences or implications of the case** | The *habeas corpus* petition was rejected for manifest lack of grounds. |
| **Key quotation in original language and translated into English with reference details** | «(…) a colocação de um condenado em liberdade condicional quando se encontrar cumprida metade da pena (e no mínimo 6 meses) não é de aplicação automática, dependendo de ser fundadamente de esperar, atentas as circunstâncias do caso, a vida anterior do agente, a sua personalidade e a evolução desta durante a execução da pena de prisão, que o condenado, uma vez em liberdade, conduzirá a sua vida de modo socialmente responsável, sem cometer crimes, e a libertação se revelar compatível com a defesa da ordem jurídica e da paz social (Cfr. art. 61.º n.º 2 a) e b), do Cód. Penal).»<br><br>«(the) placement of a convicted person on parole when they have served half of their sentence (and at least 6 months) is not automatic, but depends on whether it is reasonable to expect, in view of the circumstances of the case, the agent's previous life, their personality and how it will evolve during the execution of the prison sentence, that the convicted person, once free, will lead their life in a socially responsible manner, without committing crimes, and that their release will be compatible with the defence of the legal order and social peace (Cfr. Article 61(2)(a) and (b) of the Penal Code).» |