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COMMITTEE AGAINST TORTURE

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

Second periodic reports of States parties due in 1994

Addendum

PORTUGAL*

[7 November 1996]

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* The initial report submitted by the Government of Portugal is contained in document CAT/C/9/Add.15; for its consideration by the Committee, see document CAT/C/SR.166 and 167 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 106 to 117.

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Introduction

1. Following the submission of Portugal's first report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture made a number of observations and recommendations. This document was closely studied by the Portuguese authorities and was among the documents taken into account in the drafting of the new Penal Code.

2. Thus the Penal Code has been revised to include new types of offences in particular those deriving from international commitments binding on Portugal. The category of crimes against humanity now includes acts of torture and other cruel, inhuman and degrading treatment or punishment, classified according to the degree of gravity, and failure to report a crime on the part of a superior.

3. New legislation has also been enacted in areas covered by the Convention against Torture, among which mention should be made of the amendments to the Police Force Organization Act, bringing it into line with the principles contained in the Penal Code and Code of Criminal Procedure and establishing an agency to monitor and supervise the work of the police force as it affects citizens' fundamental rights and freedoms. These measures will be described in this report.

4. Portugal signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985; the Convention entered into force for Portugal on 11 March 1989, after its adoption by the Assembly of the Republic in resolution 11/88 of 1 March 1988.

5. Portugal's first report to the Committee against Torture covered the period from 11 March 1989 to 31 March 1992, and was submitted in conformity with the provisions of article 19, paragraph 1 of the Convention.

6. This report covers the period from 31 March 1992 through 31 March 1996, and has been submitted in conformity with the provisions of article 19, paragraph 1, of the Convention and with the guidelines adopted by the Committee against Torture at its 85th meeting.

7. Portugal also submitted, on 11 January 1993, the core document forming part of the reports of States parties (HRI/CORE/1/Add.20), which contains the general political and legal framework for the protection and promotion of human rights in Portugal, including the role of the public administration and national institutions responsible for ensuring observance of human rights and conducting human rights information, education and training activities.

8. No significant changes were made in the general legal framework during the period under review and the initial report (CAT/C/9/Add.15 of 4 June 1993 - general legal framework, paras. 7-46) is still valid. The specific legislative changes made during the period covered by this report will be discussed in connection with the relevant articles.

9. One very important change, however, is the recent publication of Decree-Law No. 48/95 of 15 March 1995, adopting the new Penal Code, which

entered into force on 1 October 1995. The new Code contains a new legal definition criminalizing torture and other cruel, inhuman or degrading treatment or punishment (arts. 243 and 244). This subject will be discussed at greater length in connection with article 4 (see paras. 130 to 145 of this report).

10. It should also be noted that Portugal has been a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment since 29 March 1990, which confirms its commitment to combating torture. In this context, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Portugal from 19 to 27 January 1992 pursuant to article 7 of the Convention. The Portuguese Government authorized the publication of the report prepared following this first visit by the European Committee.

11. In May 1995, the Committee made a second visit to Portugal, at which time it visited the prisons, police premises and juvenile centres.

12. The Portuguese Government's comments on the European Committee's first report describe the efforts made to improve conditions of detention in prisons. These efforts are reflected in the measures described in paragraphs 122 to 133 of this report.

13. In terms of international cooperation, Portugal has recently ratified several international instruments on judicial cooperation between States in criminal matters, at both the regional and multilateral levels:

(a) European Convention on the Transfer of Sentenced Persons - adopted by the Assembly of the Republic in resolution 8/93 of 18 February and ratified by Presidential Decree No. 8/93 of 24 March 1993 - which entered into force for Portugal on 1 October 1993;

(b) United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others - adopted by the Assembly of the Republic in resolution 31/91 of 6 June 1991 and ratified by Presidential Decree No. 48/91 of 10 October 1991 - which entered into force for Portugal on 29 December 1992;

(c) European Convention on Mutual Assistance in Criminal Matters - adopted by the Assembly of the Republic in resolution 39/94 of 17 March 1994 and ratified by Presidential Decree No. 56/94 of 1 June 1994 - which entered into force for Portugal on 26 December 1994;

(d) Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters - adopted by the Assembly of the Republic in resolution 49/94 of 17 March 1994 and ratified by Presidential Decree No. 64/94 of 1 June 1994 - which entered into force for Portugal on 27 April 1995;

(e) European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders - adopted by the Assembly of the Republic

in resolution 50/94 of 3 March 1994 and ratified by Presidential Decree No. 65/94 of 1 June 1994 - which entered into force for Portugal on 17 February 1995;

(f) Convention of the Member States of the European Communities on the implementation of the principle "non bis in idem" - adopted by the Assembly of the Republic in resolution 22/95 of 11 April 1995 and ratified by Presidential Decree No. 47/95 of 11 April 1995 - which entered into force for Portugal on 1 January 1996.

14. There is no doubt that the steps taken by the Portuguese Government to achieve the ratification of such significant legal instruments in the area of judicial assistance between States in criminal matters will enhance the authorities' ability to obtain and provide increased cooperation in criminal matters, in particular in the specific areas dealt with in this report.

Information on each of the articles in Part I of the Convention

Article 1

Definition of torture

15. There has until now been no definition of torture in Portuguese law. It should be noted, however, that on account of the value which the Portuguese legal system attaches to international law, which is considered to be infraconstitutional but supralegal, the definition given in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be considered as having been incorporated in Portuguese law upon its entry into force. Under article 8 of the Constitution:

> "1. The rules and principles of general or ordinary international law shall be an integral part of Portuguese law.
>
> 2. The rules laid down in all duly ratified or approved international conventions shall, immediately on their official publication, be incorporated into domestic law and shall remain in force as long as they are internationally binding upon the Portuguese State."

16. In furtherance of Portugal's commitment to its international obligations, Decree-law No. 48/95 of 15 March 1995, adopting the new Penal Code, introduced such a definition. In accordance with article 243, paragraph 3, of the Code, torture or cruel, degrading or inhuman treatment are defined as "acts inflicting intense physical or psychological suffering or severe physical or psychological fatigue or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim's ability to make decisions or freely express his will".

17. Article 244 of the Code, entitled "Torture and other serious cruel, degrading or inhuman treatment" stipulates:

> "1. Under the terms and conditions mentioned in the preceding article, whosoever:

(a) Causes serious physical injury to another;

(b) Uses particularly harsh means and methods of torture, such as physical abuse, electric shocks, mock executions or hallucinogenic substances; or

(c) Habitually commits the acts mentioned in the preceding article;

shall be liable to a penalty of 3 to 12 years' imprisonment.

2. When the acts described in this or the previous article lead to the victim's suicide or death, the person responsible shall be liable to a penalty of 8 to 16 years' imprisonment."

18. This provision of the new Penal Code confirms the importance Portugal attaches to combating torture and cruel, inhuman or degrading treatment and strengthening the mechanisms designed to do so.

Article 2

Legislative, administrative, judicial and other measures

19. For information on the legislative, administrative, judicial and other measures adopted in Portugal to combat torture, the reader is referred to paragraphs 7 to 46 and 50 to 116 of the initial report (CAT/C/9/Add.15 of 4 June 1993), in which the broad outline of the general legal framework is described.

20. On the basis of this general framework, a few additional aspects of the situation in Portugal are discussed below, in particular the legislative, administrative and judicial measures adopted in the following areas:

(a) Organization of the permanent courts;

(b) Police measures;

(c) Protection of the victims of violent crimes;

(d) Child victims of violence;

(e) Physicians' Code of Ethics;

(f) Physicians' disciplinary regulations;

(g) Clinical experimentation on individuals;

(h) Clinical testing of medicines;

(i) Removal of organs from dead or living persons;

(j) Regulations governing the non-governmental organizations working in the field of cooperation for development.

21. Article 18, paragraph 1, of the Constitution stipulates that the constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable to and binding on public and private bodies. The Constitution also establishes the right to moral and physical integrity of the person as a fundamental and inviolable right.

22. Article 19, paragraph 6, of the Constitution stipulates that the declaration of a state of siege or a state of emergency shall in no circumstances affect the right to life and physical integrity.

23. This provision served as a basis for establishing the regime governing states of emergency (National Defence Act - Act No. 29/82 of 11 December 1982; Basic Civil Protection Act - Act No. 113/91 of 29 August 1991; Act relating to the regime governing the state of siege and state of emergency - Act No. 44/86 of 30 September 1986). There have been no changes in the applicable legislation. Reference is made in this connection to paragraphs 109-115 of the initial report.

24. The above-mentioned regime is supported by the provisions in the Penal Code and Code of Criminal Procedure designating as punishable, and stipulating penalties in respect of, acts falling within the scope of article 1 of the Convention. As mentioned earlier (para. 11), upon its ratification the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was incorporated into Portuguese law pursuant to article 8, paragraph 2, of the Constitution.

Organization of the permanent courts

25. In order to give full effect to the rule of criminal procedure that every arrested person must be brought before an examining magistrate as rapidly as possible after arrest, in order to determine whether the arrest was warranted and in any event within 48 hours following the arrest (see infra, paras. 149-167), Decree-Law No. 167/94 of 15 June 1994 relating to the organization of the judicial courts established rules governing the organization of the judicial service regarding matters of an urgent nature. It stipulates that judges of all courts of first instance must establish a rota in order to provide emergency service during court vacations (art. 1).

26. Article 2 of the same instrument provides that certain courts will be open on Saturdays, Sundays and public holidays, for the purpose of conducting proceedings laid down in the Code of Criminal Procedure and Minors' Protection Regime as well as those of an emergency nature.

Police measures

27. With regard to police measures, article 272, paragraph 1, of the Constitution stipulates that the police shall have the function of defending democratic legality and protecting internal security and the rights of citizens. The measures taken by the police shall be those provided for by law and shall not go beyond what is strictly necessary (para. 2). The prevention of crimes shall be effected only in a manner which respects the rights, freedoms and safeguards of the citizens (para. 3).

28. These principles are reflected in the organization acts of the various police forces.

29. The organizational and statutory regulations governing the police forces and the gendarmerie have been radically changed in order to reinforce the prohibition of torture and other cruel, inhuman or degrading punishment or treatment by imposing severe disciplinary and penal sanctions on persons committing such offences.

30. The police forces established by Portuguese legislation, whose main functions are to protect society and prevent crime, are the Public Security Police, the National Republican Guard and the Judicial Police.

31. Both the Public Security Police and the National Republican Guard come under the Ministry of the Interior.

32. In accordance with the Public Security Police Organization Act, adopted by Decree-Law No. 321/94 of 29 December 1994, the Public Security Police must perform their duties in such a way as to maintain public order, security and peace and prevent crime.

33. It should be noted that the Public Security Police have exclusive responsibility, throughout the national territory, for the control of weapons, munitions and explosive substances and guarantee the personal security of the members of the organs of supreme authority and high-ranking national and foreign figures.

34. The Public Security Police Organization Act takes into account the constitutional rule established in article 29 as far as the use of coercive measures are concerned.

35. The Act contains a list of specific cases in which coercive measures may be used. Under article 9, paragraph 4, of the Act, coercive measures are justified only in situations involving self-defence or the defence of third parties, when they prove to be necessary for the purpose of overcoming violent resistance to the performance of police duties, or in order to preserve the principle of authority, after a clear order to submit has been given and all other means have been exhausted.

36. Article 2, paragraph 1 (a) of Decree-Law No. 231/93 of 26 June 1993 gives the National Republican Guard the role of guarantor of the exercise of the fundamental rights and freedoms of citizens and of the normal functioning of democratic institutions.

37. The regulations governing the National Republican Guard (a military corps), adopted by Decree-Law No. 265/93 of 31 July, establish the Guard's rights and duties and the principles it must obey in performing its duties. Article 13 contains a list of specific cases in which the use of force by members of the Guard is permitted; they include self-defence or the defence of a third party or the need to violent resistance to acts performed in the context of police duties. Under article 14 of the Decree-Law, the duties of the National Republican Guard are to prevent any attempt to commit a crime or arrest any person committing a crime.

38. Under conditions similar to those of the Public Security Police, the National Republican Guard may use coercive measures only in the situations defined in article 30 of its Organization Act.

39. The Judicial Police, on the other hand, is a criminal police body forming part of the justice system. It is overseen by the Public Prosecutor's Office and is an organ of the Ministry of Justice. The functions of this police body are to prevent and investigate crimes. It also works with the judicial authorities (Public Prosector's Office, examining magistrate and trial judge).

40. The Judicial Police are responsible for the prevention of crime, and under article 4 of the Judicial Police Organization Act, have exclusive competence to investigate various crimes listed in the article, which are automatically referred to them. These include crimes against peace and humanity, slavery, unlawful imprisonment or abduction and hostage-taking.

41. Article 91, paragraph 1 (b), of Decree-Law No. 295-A/90 of 21 September 1990, which adopted the organizational regime governing the Judicial Police, stipulates that the special obligations incumbent on the Judicial Police include refraining from inflicting torture or inhuman, cruel or degrading treatment and, if necessary, refusing to execute or disregarding any orders or instructions to apply such treatment, and refraining from the use of force beyond that which is strictly necessary for the performance of a task that is required or authorized by law.

42. Reference should be made to the recent establishment, within the Ministry of the Interior, of a body for monitoring and supervising the legality of the police forces' activities, namely, the Inspectorate-General (Inspecção-Geral da Administração Interna), which was established by Decree-Law No. 227/95 of 11 September 1995.

43. The Inspectorate-General, headed by a Deputy Government Attorney, is a high-level inspection and prosecution service whose primary role is to monitor legality, protect citizens' rights and achieve the more effective and prompt administration of disciplinary measures. One of its functions is to receive complaints from citizens regarding police excesses and to initiate the necessary investigatory and disciplinary procedures.

44. In addition to these provisions concerning the police, other legislation has also been enacted to strengthen, either directly or indirectly, protection against torture. They are described below.

Protection of victims of violent crime

45. As stated in Portugal's initial report, Decree-Law No. 423/91 of 30 October 1991 establishes a legal regime for the protection of victims of violent crime. Articles 129 and 130 of the new Penal Code stipulate that there shall be special legislation governing civil liability deriving from a crime and the compensation of the injured party. This mechanism will be described further in the section of this report dealing with article 14 of the Convention (infra, paras. 297 to 317).

46. Mention should also be made of Act No. 61/91 of 13 August 1991, which provides special protection for women who are victims of violence, through the establishment of a system of prevention and support for women who are victims of violent crimes, a telephone hotline, units to deal directly with women within the various police forces and women's associations for the defence and protection of women and through the implementation of a system of appropriate guarantees with a view to ending violence and compensating for any injury suffered.

47. Several ways for victims of violence to obtain compensation will be described in the analysis of article 14 of the Convention (see infra, paras. 292 to 313).

48. Among private associations, the Portuguese Association for the Support of Victims (APAV), a private social welfare agency whose activities were described in Portugal's initial report (see para. 83 of document CAT/C/9/Add.15), - is continuing its activities, and whose goal is:

> "(a) To promote the protection of and support for the victims of criminal offences generally, and in particular for those in greatest need, through information, individual attention and guidance and the provision of moral, social, legal, psychological and financial assistance;
>
> (b) To promote and participate in programmes, projects and activities in the fields of information, training and public consciousness raising."

49. A high percentage of complaints concern female victims and relate to crimes involving bodily injury, domestic violence (not only between husband and wife, but also by drug addicts against members of their families), theft, rape and homicide.

50. According to available statistical data provided by APAV, 1,100 victims availed themselves of this form of assistance in 1994 (604 in Lisbon, 337 in Porto, 42 in Braga, 39 in Coimbra, 59 in Cacais, 3 at the Penafiel hospital and 16 at the Forensic Medicine Institute), as opposed to 860 in 1993, 443 in 1992 and 188 in 1991.

Child victims of violence

51. It is also worthwhile looking at the measures now in effect exist for protecting child victims of torture, ill-treatment and violent crimes, listed in the Penal Code (these will be discussed in connection with art. 4 - paras. 130 to 145 of this report).

52. The physical and psychological recovery and social reintegration of children who have been the victims of negligence, exploitation, ill-treatment or cruel or degrading treatment is increasingly a question of deep concern to the services and agencies that work with children and even to public opinion in general. These situations are being given increasing attention today in order to ensure their early detection and the provision to children and their families of the care they need.

53. At the official level, both the social security services and the Ministry of Justice conduct activities aimed at the physical and psychological recovery of the child victims of ill-treatment or negligence in cases reported to them which come within their competence.

54. The health agencies, especially paediatric departments, have also shown deep concern for the problem of the ill-treatment of children, with particular attention given to identifying children in such situations and providing them with immediate care, often through multidisciplinary teams formed specifically for that purpose, and to reporting them to the competent administrative or judicial agencies in order to provide them with effective protection.

55. Mention may be made here of the international multidisciplinary symposium on stress and violence, held in Lisbon in September 1995. Its final declaration asserts the priority of efficient preventive action which, by promoting universal values of respect for human dignity, priority for children and recognition of the need to find non-violent solutions to problems, will ensure an environment without violence for children.

56. The declaration also recognizes the need to adopt adequate administrative, judicial and rehabilitation measures in order to study situations of violence affecting children.

57. Other activities are also being pursued by private agencies. An interesting example is the “SOS for Children” telephone line established by the Child Support Institute, which is a telephone service, available daily from 9.30 a.m. to 6.30 p.m., providing support, information and guidance for problem situations involving children and families in crisis. Its features are anonymity and confidentiality, and it receives calls from throughout the country on the most varied situations of children in danger, such as ill-treatment, sexual abuse or abandonment and neglect.

58. Since 1989, the Institute has also been conducting a street project involving children at risk or in marginal situations. It involves an open educational process aimed at providing support for children in Lisbon who live more or less permanently on the streets and seeking, together with the children, alternative lifestyles in order to give them a better future.

59. Other private bodies have established agencies intended specifically for taking in child victims of ill-treatment or abandonment, on an emergency basis. One such is the “Children’s Emergency Service”, which runs a “refuge” in the southern part of the country (Faro, Algarve) and provides specialized medical and psychological care for children, and disabled children in particular.

60. Another such agency is the Portuguese Association for Child and Family Law, which, in cooperation with town councils in the Lisbon area, has established care centres for children in such situations where multidisciplinary teams (made up, as appropriate, of paediatricians, child psychiatrists, psychologists, social workers and lawyers) help children organize their lives so as to rise above the traumatic situations they have experienced.

61. Recognizing that the phenomenon of the ill-treatment of children requires interdisciplinary action and that one of the basic means of protecting child victims of ill-treatment or neglect is to support their families, the Council of Ministers, in resolution 30/92 of 18 August 1992, set up the Family and Child Support Project which is gradually taking shape through the coordinated efforts of the Minister of Justice, the Minister of Health and the Minister of Labour and Social Security.

62. This project takes an innovative approach to the overall problem of the ill-treatment of children, not by endeavouring to understand the situation of the child victim of ill-treatment or the adult who ill-treats him in isolation, but rather by considering the family and social environment of such children. The project's main goal is thus to identify situations of children who are ill-treated, diagnose the dysfunctions in the family which are behind this ill-treatment and take the action required to put an end to the situation of risk for the child.

63. This goal is achieved through medical, psychological and educational help and therapy for children who are the victims of physical or mental violence and the provision of therapy and psycho-social support for their families in order to help them to become organized and to develop so that they are able to undertake their tasks as parents with an increasing sense of responsibility and affection.

64. The Family and Child Support Project is initially to be implemented in Lisbon, Porto (north) and Coimbra (centre). Subsequently, it is intended to extend it to the regions of Evora and Faro (south), so that it will cover the five health regions Portugal has recently created.

65. As part of this project, an emergency line has been set up for maltreated children, to respond to urgent requests for help from the children themselves, or from parents, neighbours, friends, or any other person who knows of a situation in which children are being ill-treated. According to the statistics obtained, it is usually neighbours who request help for seven to twelve-year olds who are the victims of ill-treatment.

The Physicians' Code of Ethics

66. The Physicians' Code of Ethics was drafted in 1982 by physicians (through the Medical Association, a State-approved organization).

67. Article 30 of the Physicians' Code of Ethics establishes their right of conscientious objection, whereby a physician has the right to refuse to perform any professional act when it conflicts with his moral, religious or humanitarian beliefs.

68. Article 44 of the Physicians' Code provides that any physician who has treated a child or an elderly, handicapped or legally incapacitated person and observes that such a person has been abused, or subjected to ill-treatment or other form of cruelty shall take the appropriate measures for their protection and, in particular, notify the police or the competent social authorities.

69. In chapter II, concerning life and death, the problems dealt with include:

Treatment involving the risk of termination of a pregnancy (art. 48);

The duty to refrain from providing useless treatment (art. 49);

The decision to put an end to the use of exceptional methods of prolonging survival artificially (art. 50);

The removal of organs from dead or living persons (arts. 51 and 52);

Artificial insemination and sterilization (arts. 53 and 54).

70. Paragraph 2 of article 56 lays down the general principle that it is the duty of the physician always to respect the well-being and physical integrity of the patient, in accordance with the Code of Ethics:

> "The physician shall under no circumstances perform, cooperate in or agree to the perpetration of acts of violence, torture or other cruel, inhuman or degrading acts, whatever the crime committed or imputed to the person arrested or detained, and especially during a state of emergency or a state of war or during a situation of civil conflict."

71. The Code of Ethics also contains provisions concerning the refusal of physicians to hand over equipment, instruments or medicaments, or to transfer their scientific knowledge to enable torture to be inflicted.

72. Chapter III deals specifically with ill-treatment of sick persons deprived of their freedom.

73. Chapter IV relates to the problems arising from experiments on human beings. It lays down safeguards and ethical restrictions applicable to such experiments.

74. It establishes that testing of new medicaments or new technologies on human beings may take place only after thorough testing on animals has shown a reasonable probability of success and therapeutic safety. It also lays down the essential conditions of medical vigilance and safeguards regarding the consent of the patient, his safety and his physical integrity.

Physicians' disciplinary rules

75. Decree-Law No. 217/94, of 20 August 1994, endorsed the physicians' disciplinary rules. All physicians are subject to the disciplinary jurisdiction of the Medical Association. Disciplinary responsibility coexists with all other forms of responsibility for which the law provides.

76. A physician commits a disciplinary offence when, as a result of an action or omission, wilfully or through negligence, he is in breach of one or more of the duties laid down in the Rules of the Medical Association, the Code of Ethics, the Disciplinary Rules, internal regulations or other applicable provisions.

77. Disciplinary penalties are listed by type and include: warning, reprimand, suspension for up to five years and expulsion. Accessory penalties include the loss of fees and publication of the penalty.

Removal of organs from dead or living persons

78. The removal or donation of organs or tissues from dead or living persons, for diagnosis, transplanting or any other therapeutic purpose, is now regulated by Decree-Law No. 12/93, of 22 April 1993.

79. It is important to draw attention to the fact that the removal of matter of human origin may take place only after the donor and recipient have given their consent freely, clearly and without ambiguity. The donor shall have the right to nominate the beneficiary (art. 8).

80. The physician has the duty, however, to inform the donor and the recipient clearly and intelligibly of the possible risks and consequences of the donation (art. 7).

81. The removal or donation of human organs or tissues may take place only as directed and under the responsibility of a physician and in accordance with the leges artis in a public or private hospital (art. 3, para. 1 of the Decree-Law). The anonymity of the donor and the recipient of a human organ or tissue are ensured by article 4 of the Decree-Law.

82. The same text prohibits the marketing of human organs or tissues for therapeutic purposes (art. 5).

83. Chapter II deals with the removal of matter of human origin; such acts, in principle, are permitted only in the case of regenerating matter. The donation of non-regenerating organs or matter is authorized only when there is a blood relationship to the third degree between the donor and the recipient. The donation of non-regenerating matter by minors or legally incapacitated persons is not permitted under any circumstances. Similarly, a donation is not authorized when there is a high degree of probability that it may entail a serious and permanent diminution of the physical integrity or health of the donor (art. 6).

84. Chapter III refers to the removal of organs from dead persons. Article 10 lists as potential post mortem donors all national or stateless persons or aliens residing in Portugal who have not expressly informed the Ministry of Health that they do not wish to be donors. Subsequent to a declaration of this nature, all non-donors are registered in the National Register of Non-Donors.

85. The determination of death comes within the competence of the Medical Association following a notification by the National Council of Ethics for Life Sciences (art. 12). No physician on the transplant team may be involved in verifying the death (art. 13, para. 2).

86. The Government is to launch an information campaign to explain the policy adopted in the Decree-Law and to provide clarification for any persons who may be interested in declaring their unavailability for post mortem donations (art. 15).

87. The subsequent Decree-Law No. 244/94, of 26 September 1994, deals with the organization and operation of the National Register of Non-Donors and the issuance of a personal card attesting that a person is a "non-donor".

88. Total or partial unwillingness to donate certain organs or tissues post mortem or allow them to be used for specific purposes should be expressed by the persons concerned to the Ministry of Health by registration in the National Register of Non-Donors.

89. The National Register of Non-Donors is to compile a computerized file to include all statements of wishes by nationals, stateless persons and aliens residing in Portugal concerning their unavailability for the removal of organs or tissues.

90. It should be mentioned, with reference to article 10 of the above Decree-Law, that any person has the right to be informed of the contents of the entry or entries concerning him or her in the computerized file of the National Register of Non-Donors.

Clinical experiments on human beings

91. Following the Basic Health Act (Act No. 48/90, of 24 August 1990), Decree-Law No. 97/94, of 9 April 1994, established the rules governing clinical experiments on human beings, so as to ensure their physical and mental integrity and the efficacity and safety of medicines.

92. As a general principle, the good of the individual must always take precedence over the interests of science and the community.

93. The researcher must simply intelligibly and faithfully inform the subject of the experiment of the foreseeable risks, consequences and benefits and of the methods and the aims pursued. Consent must be voluntary, informed, specific and in writing.

94. Clinical experiments must follow recognized scientific principles and ensure respect for the physical and mental integrity of the persons concerned. They must also be preceded by experiments on animals and may be carried out on human beings only when the results of such experiments allow it to be concluded that the risks for the persons who will undergo them are in proportion to the foreseeable benefits.

95. Clinical experiments may be performed only by qualified physicians with experience in the field of research concerned, and in particular in the clinical experiments proposed.

96. The above-mentioned experiments may be carried out only in public health establishments or in officially-approved private health facilities, which have the indispensable material and human resources to guarantee the scientific quality of the experiments to be carried out.

97. The terms for carrying out each experiment must be part of a specific protocol establishing the relevant objectives, the conditions under which the experiment will be conducted and the various phases.

98. Prior authorization is required to perform experiments. This will be granted by the administrative body of the institution where they will take place, on application by the promoter. The Ethics Commission is required to take a decision on requests for authorization to carry out experiments and to supervise them, particularly with regard to ethical considerations and the safety and integrity of the subjects of clinical experiments.

99. All persons who have taken part in experiments are prohibited from revealing personal data to which they may have had access through their activities in this regard.

Status of non-governmental organizations for cooperation for development

100. In the sphere of legislative measures adopted to prevent torture, the role of the non-governmental organizations for cooperation for development (NGOD) must be mentioned.

101. Act No. 19/94, of 24 April 1994, defines the status of the NGODs.

102. The NGODs have legal personality in general law and are private law legal entities. Their aims are cooperation and inter-cultural dialogue and support for programmes and projects in developing countries through: (a) development activities; (b) humanitarian assistance; (c) protection and promotion of human rights; (d) provision of emergency relief; (e) dissemination of information and creation of public awareness in order to develop cooperation and intensify inter-cultural dialogue with developing countries.

103. Their activities are performed in compliance with the United Nations Universal Declaration of Human Rights.

104. The State accepts, supports and appreciates the contribution of the NGODs in implementing national cooperation policies defined for developing countries. State support takes the form of technical and financial aid for programmes, projects and activities concerning cooperation for development and the creation of public awareness. State support may not, however, constitute a restriction on the NGODs' right of freedom of action.

105. The NGODs have the right to take part in formulating national and international cooperation policies through their representatives on advisory bodies concerned with cooperation.

106. Recognizing the importance of the role of the NGODs in the defence of human rights and fundamental freedoms, the recent Ministerial Decree

No. 4/MJ/96, of 12 January 1996, sets out the duty of the services of the Ministry of Justice to provide all necessary information as rapidly as possible at the request of some of these organizations (e.g. Forum Justiça e Liberdades, Associação para o Progresso do Direito, Associação Portuguesa dos Direitos dos Cidadãos and CIVITAS: Associação para a Defesa e Promoção dos Direitos dos Cidadãos). Under this decree, the above-mentioned NGODs must in future give an opinion on all draft texts concerning human rights and fundamental freedoms.

Article 3

107. Article 3 of the Convention states that no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

108. With reference to this provision in the context of the Constitution of the Portuguese Republic, there have been no changes since the initial report (paras. 116 to 126).

109. Article 33 of the Constitution contains the following fundamental provisions on extradition, deportation and the right of asylum:

"Extradition, deportation and the right of asylum

1. Portuguese citizens shall not be extradited or deported from the national territory.

2. No one shall be extradited for political reasons.

3. No one shall be extradited for crimes which carry the death penalty under the law of the requesting State.

4. Extradition shall be decided only by a judicial authority.

5. Deportation of persons who have entered or have been residing in Portuguese territory legally, of persons who have obtained a residence permit or of persons who have submitted an application for asylum which has not been rejected, shall be decided only by a judicial authority. The law shall provide for a rapid decision in this respect.

6. The right of asylum shall be guaranteed for aliens and stateless persons who are being prosecuted or seriously threatened with prosecution for their activities on behalf of democracy, social and national liberation, peace between peoples and the freedom and rights of the individual.

7. The status of political refugees shall be defined by law."

110. It should be recalled that the European Convention on Human Rights applies under Portuguese law. This Convention does not guarantee the right of aliens not to be deported or extradited from the territory of one of the

Contracting States (art. 5, para. 1 (f)), while articles 3 and 4 of Protocol 4 to the Convention in fact empower States to deport aliens from their territory. However, the case law of the organs of the European Convention on Human Rights has placed some restrictions on the power of States to deport aliens in cases where the rights guaranteed in article 3 of the Convention might be infringed (prohibition of torture or inhuman or degrading treatment). This interpretation is naturally valid for Portugal.

111. The basic features of the regulations governing extradition and deportation are discussed below.

Extradition

112. The legal regime governing extradition is set out in Decree-Law No. 43/91, of 22 January 1991, which outlines international legal cooperation in criminal matters, and was discussed in the last report submitted by Portugal (paras. 117 to 124). In order to expand this information, the fundamental principles which govern extradition are described below.

113. Decree-Law No. 43/91 has a secondary role. According to its article 3, the forms of cooperation for which it provides are governed by the provisions of the international treaties, conventions and agreements binding on the Portuguese State. This Decree-Law applies only in the event of default or inadequacy. The provisions of the Code of Criminal Procedure are subsidiary to these provisions.

114. Designed as a unilateral political act of Government and an instrument of international legal cooperation, applicable in default of a treaty or convention, the international cooperation regulated by the Decree-Law is based on the principle of reciprocity. However, the absence of reciprocity is no obstacle to the fulfilment of a request for cooperation, if this cooperation (a) proves necessary because of the nature of the fact or necessity of combating certain serious forms of criminal behaviour; (b) may contribute to improving the situation of the accused or his reintegration into society, or (c) may serve to elucidate acts attributed to a Portuguese citizen.

115. The implementation of this Decree-Law is also subject to the protection of the sovereignty, security, public order and other interests of the Portuguese Republic as defined by the Constitution.

116. Cooperation is also restricted in the case of criminal proceedings which do not come within the competence of the judicial authorities of the requesting State.

117. Extradition may take place for the purposes of criminal proceedings or of the application of a custodial penalty for a crime falling under the jurisdiction of the courts of the requesting State. Whatever the case, the person in question may only be extradited in connection with a criminal offence (even if only attempted) which is punishable under Portuguese law and under the law of the requesting State by a custodial penalty of a maximum duration of not less than one year.

118. When extradition is requested for the purpose of executing a custodial penalty, the request can be granted only if the remaining part of the sentence to be served is not less than four months.

119. A request for extradition is refused:

(a) If the procedure does not conform to or observe the conditions set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or in any other relevant international instrument ratified by Portugal;

(b) If there are serious grounds to believe that the cooperation is requested in order to prosecute or punish a person on account in particular of his race, religion, sex, nationality, language, politics or ideological convictions or membership of a particular social group;

(c) If the person's situation is likely to be aggravated for any of the reasons set out in the previous paragraph;

(d) If such cooperation may result in his being tried by a court of special jurisdiction or is connected with the enforcement of a decision handed down by such a court;

(e) If the act to which it relates is punishable by death or life imprisonment;

(f) If such cooperation concerns an offence to which a permanent protective measure is applicable;

(g) If the crime was committed on Portuguese territory;

(h) If the person in question has Portuguese nationality.

120. The provisions of paragraphs (e) and (f) above were the subject of two important decisions by the Constitutional Court. The first of these, concerning the death penalty, is Decree No. 417/95, published in the Official Gazette of 17 November 1995. Briefly, the facts are as follows: China requested the extradition of Yeung Yuk Leung, residing in Macao and accused of a crime carrying the death penalty under Chinese law. When the Supreme Court of Macao was on the point of granting extradition, subject to a guarantee that the death penalty would be replaced by another punishment, the question of constitutionality was raised. Invoking article 33, paragraph 3, of the Constitution, the Constitutional Court decided that extradition should be prohibited when the crime ascribed to the person to be extradited potentially carried the death penalty, since the promise of a substitute penalty could not be considered an adequate guarantee.

121. Constitutional Court Decree No. 474/95, published in the Official Gazette of the same date, concerns life imprisonment and is somewhat similar. Mr. Armando Varizo, a Brazilian national, was accused of drug-trafficking between Brazil and the United States of America. The latter country asked Portugal to extradite him. Under American law, life imprisonment was theoretically applicable in this case. The Constitutional Court decided that

article 6, paragraph 1 (e), of Decree-Law No. 43/91 was unconstitutional and in breach of article 30, paragraph 1, of the Constitution when interpreted as not prohibiting extradition in situations carrying the penalty of life imprisonment, even if the application of the penalty cannot be anticipated because the requesting State has given guarantees in that regard.

122. The above two decisions take as valid the principle whereby the constitutional provision that the death penalty or life imprisonment should not be imposed on any Portuguese citizen should be applicable to aliens living permanently or temporarily in Portugal, given the principles of universality and equality and the equivalence of the rights of aliens and stateless persons, all of which are embodied in the Constitution. The preamble to Decree-Law No. 43/91 had already provided for the unconstitutionality of norms permitting extradition to States where the crime carried the penalty of life imprisonment. That was also the sense of the reservation entered by Portugal when it ratified the European Convention on Extradition.

123. A request for extradition is also refused if the procedure concerns: (a) an act which, under Portuguese law, constitutes a political offence or an offence connected with a political offence; (b) an act which constitutes a military offence which is not simultaneously covered by ordinary criminal law.

124. Taking account of international provisions in this regard, the Decree-Law establishes that the following offences are not considered political offences:

(a) Genocide, crimes against humanity, war crimes and serious crimes pursuant to the Geneva Conventions of 1949;

(b) Offences covered by article 1 of the European Convention on the Suppression of Terrorism, opened for signature on 27 January 1977;

(c) Acts referred to in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984 by the United Nations General Assembly;

(d) Any other crime the political nature of which has been expunged by treaties, conventions or international agreements to which Portugal is a party.

125. The extradition procedure is considered as of an urgent nature and comprises two phases: the administrative phase and the judicial phase.

126. The administrative phase involves the examination by the Government of the application for extradition in order to reach a decision as to whether it should be followed up or immediately rejected, either on political grounds or because it is considered untimely or inappropriate.

127. The Minister of Justice begins by submitting the request for extradition to the Office of the Attorney-General of the Republic for verification of its due and proper form and orders the competent criminal police authorities to keep the person requested under surveillance. The Attorney-General of the Republic must hand down an opinion within 20 days. In the following 10 days,

the Minister of Justice transmits the request, together with his opinion, to the Government for a decision. If the request is refused, the case is simply struck off the list.

128. The judicial phase falls exclusively within the competence of the Court of Appeal and calls for a decision to be taken, after the interested party has been heard, on the extradition agreement, once all conditions have been met concerning its form and its merits. This phase does not involve the presentation of any evidence concerning the acts ascribed to the person to be extradited.

Deportation

129. The grounds for deportation are set out in article 67 of Decree-Law No. 59/93, of 3 March 1993, concerning the entry, departure, residence and deportation of aliens from national territory.

130. Aliens will be deported from Portugal if they:

(a) enter the national territory unlawfully;

(b) commit acts detrimental to national sovereignty, or public order or morals;

(c) engage in activities which threaten Portuguese interests or the dignity of the Portuguese State or its nationals;

(d) interfere in the exercise of the rights of participation enjoyed exclusively by nationals;

(e) fail to comply with Portuguese laws concerning aliens;

(f) have committed acts which would preclude their entry into the national territory.

131. The law also makes provision for an accessory penalty of deportation in the case of:

(a) non-resident aliens, sentenced for wilful crimes to more than six months' imprisonment;

(b) aliens who have resided in Portugal for less than five years, sentenced for wilful crimes to more than one year's imprisonment;

(c) aliens who have resided in Portugal for more than 5 and less than 20 years, sentenced to more than 3 years' imprisonment; and

(d) aliens who have entered the national territory during a period when they were prohibited from doing so.

132. Deportation may also be the result of a sentencing decision handed down in accordance with criminal legislation (new Penal Code, art. 97).

133. Article 34 of Decree-Law No. 15/93, of 22 January 1993, concerning the anti-drugs campaign, provides for the deportation, for a period not exceeding ten years, of an alien convicted of a crime covered by this Decree-Law.

134. An alien may not be deported to a country where he may be subject to prosecution on grounds warranting his being granted asylum, in accordance with article 2 of Act No. 70/93, of 29 September 1993, which defines the regime governing the right of asylum and the status of political refugee. This article states that an alien or stateless person prosecuted or in serious danger of prosecution for his political convictions, i.e. for his activity on behalf of democracy, social and national freedom, peace among nations, freedom and human rights, in the State of which he is a national or in which he habitually resides, or an alien or stateless person prosecuted on grounds of religion, race, nationality or social integration may apply for and be granted asylum.

135. In order to take advantage of this protection, the person in question must invoke the fear of persecution and provide evidence of it within the prescribed time-limit.

136. Deportation may be ordered by a judicial authority or by the competent administrative authority, the Aliens and Frontiers Service.

137. In the event of an accessory penalty or when the alien who is the subject of the decision has entered the national territory lawfully and obtained permission to reside there or has submitted an application for asylum which has not been refused, deportation shall be decided on by a judicial authority.

138. An alien entering the national territory unlawfully may be detained by any authority, referred to the Aliens and Frontiers Service and within not more than 48 hours be brought before the judicial authority with competence to legitimize his detention and decide on the application of enforcement measures. These may be, in addition to the measures listed in the Code of Criminal Procedure (e.g. declaration of identity and residence, mandatory bail, obligation of the alien to present himself periodically before a judicial authority or criminal police body on certain days at specified times, suspension from the performance of duties, the practice of a profession and the enjoyment of rights, prohibition of residence, restricted residence and pre-trial detention), periodic reporting before the Service of Aliens and Frontiers and accommodation in temporary centres, as provided in Decree-Law No. 34/94, of 14 September 1994.

139. As stated in paragraph 126, the Aliens and Frontiers Service is the competent authority for the initiation of deportation proceedings. During the proceedings, the alien must attend a hearing. The deportation decision falls within the competence of the director of the Service and an appeal against it may be lodged with the Minister of the Interior or with the administrative tribunals (art. 87).

Article 4

140. According to article 4 of the Convention, each State Party shall ensure that all acts of torture are offences under its criminal law and the same shall apply to any attempt to practise torture and to any act by any person which constitutes complicity or participation in torture.

141. The general legal framework for the prevention and punishment of torture has not undergone significant modification. It is therefore important to take account of the initial report and in particular paragraphs 17 to 25, 50 to 53 and 127 to 129.

142. With regard to criminal law, as already specified at the start of this report (see para. 5), Decree-Law No. 48/95, of 15 March 1995 adopted the new Penal Code, which established torture and other cruel, inhuman and degrading treatment as a new class of crime (arts. 243 and 244).

143. The new Penal Code only came into force on 1 October 1995, but the general regime which provides for the punishment of torture and acts constituting cruel, inhuman or degrading treatment merits description.

144. Article 243 of the new Penal Code, under the heading “Torture and other cruel, inhuman or degrading treatment”, states that:

> “1. Any person responsible for preventing, prosecuting, investigating or trying criminal or disciplinary offences, for the enforcement of penalties in that connection, or for the protection, custody or supervision of detainees or prisoners, who subjects them to torture or to cruel, inhuman or degrading treatment, for the purpose of:
>
> (a) obtaining from them or from third parties confessions, depositions, statements or information;
>
> (b) punishing them for an act committed by them or of which they are suspected, or acts committed by others;
>
> (c) intimidating them or other persons,
>
> shall be liable to imprisonment for one to five years, unless a heavier penalty is applicable under another legal provision;
>
> 2. Any person who on his own initiative or on the orders of a superior usurps the responsibility described in the foregoing paragraph in order to commit one of the acts described, shall be liable to the same penalty;
>
> 3. Torture or cruel, inhuman or degrading treatment, is considered to be an act by which acute physical or mental suffering is inflicted or in which chemicals, drugs or other natural or artificial means are used with the intention of impairing the judgement or the free expression of the victim;

4. The wording of the previous paragraph does not include the sufferings inherent in or stemming from the execution of the penalties for which the first paragraph provides or the legal measures which deprive a person of his freedom or restrict that freedom."

145. Article 244, entitled "Torture and other severe cruel, inhuman or degrading treatment", provides that:

"1. Any person who, under the terms and conditions mentioned in the previous article:

(a) Seriously violates a person's physical integrity;

(b) Makes use of particularly severe methods of torture, i.e. beatings, electric shocks, mock executions, or hallucinogens, or

(c) Habitually commits the acts mentioned in the previous article:

shall be liable to 3 to 12 years' imprisonment.

2. When the acts described in this or the previous article are followed by the suicide or death of the victim, the perpetrator shall be liable to 8 to 16 years imprisonment".

146. Failure to report such acts is punishable in accordance with article 245 which provides that a superior who knows that his subordinate has engaged in the acts referred to in articles 244 and 245 and fails to report him within not more than three days after learning of the fact, shall be liable to six months' to three years imprisonment.

147. The effect of the amendments to the new Penal Code in respect of offences involving torture and other cruel or degrading treatment, is shown in the table below comparing the penalties applicable to the different types of crime:

Type of crime	Sentence applied: old Penal Code	Sentence applied: new Penal Code	Aggravated sentence: old Penal Code	Aggravated sentence: new Penal Code
Torture and other cruel, inhuman or degrading treatment a/	No article exists	1 to 5 years' imprisonment	No article exists	3 to 12 years' imprisonment
Failure to report a/	No article exists	6 months' to 3 years' imprisonment		
Ordinary homicide	8 to 16 years' imprisonment	8 to 16 years' imprisonment		

Type of crime	Sentence applied: old Penal Code	Sentence applied: new Penal Code	Aggravated sentence: old Penal Code	Aggravated sentence: new Penal Code
Aggravated homicide b/	12 to 20 years' imprisonment	12 to 25 years' imprisonment		
Homicide through negligence	up to 2 years' imprisonment	up to 3 years' imprisonment	up to 3 years' imprisonment	up to 5 years' imprisonment
Exposure to or desertion in the face of danger	6 months' to 5 years' imprisonment	1 to 5 years' imprisonment	1 to 5 years' imprisonment	2 to 8 years' imprisonment (offence of serious assault) c/ 3 to 10 years' imprisonment (in case of death)
Ordinary offence against the person c/	up to 2 years' imprisonment	up to 3 years' imprisonment		
Serious offence against the person c/	1 to 5 years' imprisonment	1 to 10 years' imprisonment		
Offence against the person entailing possible danger c/	6 months' to 3 years' imprisonment	article deleted		
Offence against the person aggravated by the consequences	6 months' to 3 years' imprisonment (ordinary offence against the person) 2 to 8 years' imprisonment (serious offence against the person)	1 to 5 years' imprisonment (physical assault) 3 to 12 years' imprisonment (simple assault)		
Ill-treatment of children or spouse	6 months' to 3 years' imprisonment	1 to 5 years' imprisonment	6 months' to 4 years' imprisonment (in the case of a serious offence against the person c/); 3 to 9 years' imprisonment (in case of death)	2 to 8 years' imprisonment (in the case of a serious offence against the person c/); 3 to 10 years' imprisonment (in case of death)

Type of crime	Sentence applied: old Penal Code	Sentence applied: new Penal Code	Aggravated sentence: old Penal Code	Aggravated sentence: new Penal Code
Prohibited use of firearms d/	up to 6 months' imprisonment	article deleted	up to 2 years' imprisonment	article deleted
Threats	up to 1 year's imprisonment	up to 1 year's imprisonment	up to 2 years' imprisonment	up to 2 years' imprisonment
Coercion	up to 2 years' imprisonment	up to 3 years' imprisonment		
Serious coercion (by an official with misuse of powers)	6 months' to 3 years' imprisonment	1 to 5 years' imprisonment		
Illegal detention	up to 2 years' imprisonment	up to 3 years' imprisonment	2 to 10 years' imprisonment	2 to 10 years' imprisonment e/ or 3 to 15 years' imprisonment (in case of death)
Slavery	8 to 15 years' imprisonment	5 to 15 years' imprisonment		
Abduction	4 to 8 years' imprisonment	2 to 8 years' imprisonment	4 to 10 years' imprisonment or up to 15 years' imprisonment (in case of death)	3 to 15 years' imprisonment or 8 to 16 years' imprisonment (in case of death)
Kidnapping of a minor	6 to 10 years' imprisonment	article deleted	8 to 15 years' imprisonment	article deleted

a/ These articles come under the chapter of crimes against humanity, while the others come under that of crimes against life.

b/ In the case of aggravated homicide, the use of torture or acts of cruelty to increase the suffering of the victim may be considered particularly to merit censure or to be particularly perverted.

c/ The references to "offence against the person" will be reworded to read "offence of assault".

d/ The article concerning the prohibition on the use of firearms has been deleted, since it is considered that the characteristics described here are not technically distinct from threats or other types of crimes against persons.

e/ One of the conditions for the aggravation of the crime of illegal detention is if it is preceded or accompanied by offences of serious assault or by torture or other cruel, inhuman or degrading treatment.

148. Article 412 has not undergone any changes. It specifies that any official who resorts to violence, serious threats or any other illegal means of constraint in order to obtain a written or oral statement from an accused person, informant, witness or expert, or to prevent them from making such a statement, will be liable to six months' to four years' imprisonment.

149. Under the old Penal Code, operations and medical and surgical treatment performed according to the leges artis by a physician or a person legally authorized to do so, for preventive, therapeutic or palliative reasons, were not considered to be physical injury (art. 150). The prior consent of the person concerned, however, had to be duly obtained (arts. 38, 149 and 159; presumed consent is the subject of art. 39).

150. Article 150, paragraph 2, further established that a person violating the rules of the leges artis, thus endangering the physical existence, the health or the life of the sick person, would be liable to a maximum of two years' imprisonment. In the new Penal Code, this paragraph has been deleted.

151. Under article 158, arbitrary operations and medical and surgical treatment are punishable by up to three years' imprisonment and by a fine of up to 120-days pay. The new Penal Code keeps the prison sentence and increases the fine to the maximum general limit of 360 days' pay (art. 156).

152. The artificial insemination of a woman without her consent is currently punishable by 1 to 15 years' imprisonment (art. 214). The new Penal Code has introduced an article 168 on "artificial reproduction without consent", which provides for one to eight years' imprisonment for a person who practises artificial reproduction on a woman without her consent.

153. The new Penal Code has deleted the article concerning the use of poison to damage a person's physical or mental health (art. 146), on the grounds that the behaviour described is not independent but part of the crime of aggravated assault.

154. The solutions adopted to punish the various persons involved in carrying out a crime (perpetrator, accomplice or fellow participant) have also been kept. Deliberate complicity is punishable by a specially mitigated version of the penalty imposed on the perpetrator.

Article 5

155. Article 5 of the Convention deals with the territorial application of criminal law. In Portugal, this is the subject of articles 4, 5 and 6 of the Penal Code, as described in the last report (see above, para. 131).

156. The extraterritorial application of Portuguese law, under the new Penal Code, has not been modified with regard to the matters covered by the Convention. Modifications made have extended the scope of extraterritorial application of Portuguese criminal law to certain electoral and computer-related crimes.

Article 6

157. Any State party in whose territory a person alleged to have committed any offence under the Convention is present shall, under article 6, take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State.

158. In Portugal, the rules for the detention of persons suspected of committing the crimes detailed in the Convention vary depending on whether the person is remanded in custody for the purpose of criminal prosecution or remanded in custody for the purpose of extradition.

Remand in custody for the purpose of extradition

159. Remand in custody for the purpose of extradition remains possible if it comes under an international convention or treaty in force in Portugal, and in the absence of an international convention or treaty under Decree-Law No. 43/91, of 22 January 1991, on a basis of reciprocity.

160. In an emergency, the provisional arrest of the person to be extradited may be requested as a prior step to any formal request for extradition. The decision concerning arrest and the maintenance of remand in custody is taken in accordance with Portuguese law. It should be noted that, according to the Constitution of the Republic of Portugal, remand in custody without a conviction will, within a maximum period of 48 hours, be the subject of a judicial decision to validate or maintain it.

161. Remand in custody may be replaced by other forcible measures as the Code of Criminal Procedure provides.

162. The provisional arrest is terminated if the request for extradition is not submitted within 18 days of the arrest, although this deadline may be extended to 40 days if valid reasons are invoked by the requesting State.

163. The criminal police authorities may arrest any person who, according to official information, particularly from Interpol, is sought by the competent foreign authorities for the purpose of prosecution or the execution of a penalty for acts which manifestly justify extradition (art. 38, arrest which has not been requested). Such arrest remains subject, however, to the judicial control referred to in paragraph 151.

Remand in custody for the purpose of criminal prosecution

164. Remand in custody for the purpose of criminal prosecution is governed by article 28 of the Constitution and by the Code of Criminal Procedure.

Remand in custody of persons caught in flagrante delicto

165. The law distinguishes clearly between pre-trial detention as a last resort measure of constraint and the remand in custody of persons caught in flagrante delicto the aims of which are set out in article 254 of the Code of Criminal Procedure:

(a) To bring the detainee before a court within 48 hours following the arrest, or bring him within the same period before the competent examining magistrate for initial judicial questioning or to impose an enforcement measure or bail;

(b) To ensure that the detainee appears immediately before the judge so that a procedural act can be drawn up.

166. Article 255, paragraph 1, of the Code of Criminal Procedure provides that the remand in custody of persons caught in flagrante delicto in respect of a crime punishable by a prison sentence may be effected by:

(a) A judicial or police authority;

(b) Any other person, if the above authorities are not available and if they cannot be summoned in time.

167. If the crime is prosecuted on a private charge, a person caught in flagrante delicto may not be remanded in custody and only the formal identification of the perpetrator of the offence may take place (art. 255, para. 4).

168. The remand in custody of persons who were not caught in flagrante delicto requires a warrant from the magistrate, or the public prosecutor's department in cases where pre-trial detention is admissible (art. 257, para. 1). Article 257 specifies that the criminal police authorities may also order persons who were not caught in flagrante delicto to be remanded in custody:

(a) If pre-trial detention is admissible in the case in question;

(b) If there is a reason to fear that the person may abscond;

(c) If on account of the emergency and the danger of delay it is not possible to await the intervention of the judicial authority.

169. Article 259 establishes that the police have the duty when remanding a person in custody to communicate immediately with the judge or the public prosecutor's department, as appropriate.

170. The authority ordering a person to be remanded in custody or before whom the detainee is brought, has the duty to order his immediate release in the event of mistaken identity, if he was arrested other than in circumstances authorized by the law or in cases in which the measure has become unnecessary (art. 261, para. 1).

Pre-trial detention

171. Article 28 of the Constitution, on pre-trial detention, provides, as has already been said, that remand in custody without charges must be subject to a court decision within a maximum period of 48 hours to validate or continue it. The judge must be informed of the reasons for the remand in custody and communicate them to the detainee, question him and allow him to defend himself

(para. 1). Paragraph 2 establishes that pre-trial detention is not to be continued if it can be replaced by bail or any other more favourable measure provided for by law. The court decision ordering or maintaining the deprivation of freedom shall be communicated immediately to a relative or a person in whom the detainee has confidence and named by him (para. 3).

172. Before and after charges are brought, pre-trial detention is subject to the time-limits set out in article 215 of the Code of Criminal Procedure. Pre-trial detention ends therefore when the following periods have elapsed from its start:

(a) Six months, if no charge has been filed against the accused;

(b) Ten months, if, after the pre-trial examination has taken place, no decision has been handed down concerning committal for trial;

(c) Eighteen months when no first instance sentence has been handed down;

(d) Two years, when no sentence with force of res judicata has been handed down.

173. There are, however, some legal exceptions to these regulations depending on the nature of the crime, the nature of the procedure, the existence of an appeal before the Constitutional Court or the suspension of the criminal procedure so that a judgement can be handed down by another court on a prejudicial question.

174. Pre-trial detention is recognized as a measure of last resort which is clearly secondary to the other enforcement measures laid down in the Code of Criminal Procedure. It is subject to the general conditions for the implementation of enforcement measures, established in article 204 of the Code and set out below.

175. Pre-trial detention may be applied only when other measures have proved inadequate or insufficient (art. 193, para. 2 of the Code of Criminal Procedure). In such cases, it may be applied if there is strong evidence of a wilfully committed crime punishable by a sentence exceeding a maximum of three years' imprisonment (art. 202, para. 1(a)), or if the person in question has unlawfully entered or resided in the national territory or if extradition or deportation proceedings have been instituted against him (art. 202, para. 1(b)).

176. If the accused seems to suffer from mental abnormality, the judge may hand down a decision of preventive confinement in a psychiatric institution while the abnormality persists, once he has heard defense counsel and, as soon as possible, a family member. The necessary precautions will be taken to prevent the accused from escaping and committing further crimes (art. 202, para. 2 of the Code of Criminal Procedure).

Other enforcement measures

177. According to the principle of legality set out in article 191 of the Code of Criminal Procedure, the freedom of individuals may be restricted, whether totally or partially, only on the basis of procedural requirements, by enforcement measures or bail for which the law provides.

178. The enforcement measures or the bail must be in keeping with the requirements of prevention in the case in question and proportional to the seriousness of the crime and the penalties applicable (art. 193, para. 1 of the Code of Criminal Procedure).

179. Article 193, paragraph 3, of the Code of Criminal Procedure also provides that such measures shall not affect the exercise of fundamental rights which are not incompatible with the requirements of prevention in the case in question.

180. The application of enforcement measures or of bail always as a preliminary require the person to be considered as charged (art. 192, para. 1), this confers the following rights on him:

(a) To be present at proceedings which directly concern him;

(b) To be heard by the court or the examining magistrate when they take any measure concerning him;

(c) Not to be forced to reply to questions from participants in the trial in respect of the acts ascribed to him or in respect of the content of statements already made;

(d) To select his own counsel or request the court to appoint one;

(e) To be assisted by counsel in all proceedings in which he participates and, when in detention, to be able to communicate with him, even in private;

(f) To take part in the inquiry and in the pre-trial investigation, submit evidence and avail himself of such procedures as he may deem necessary;

(g) To be informed of his rights by the judicial authority or by the criminal police body before which he is required to appear;

(h) To appeal, in accordance with the law, against unfavourable decisions.

181. These measures cannot, however, be applied if there are reasons to believe in the existence of causes which absolve him from responsibility or call for the termination of the criminal proceedings (art. 192, para. 2). They must always be applied as the result of a decision handed down by a judge, at the request of the attorney-general’s department during the inquiry, or even on his own initiative following the inquiry, after hearing the attorney-general (art. 194, para. 1).

182. Article 204 of the Code of Criminal Procedure, which lays down the general conditions for the application of enforcement measures, states that none of these decisions can be applied, with the exception of the measure of declaration of identity and residence, unless it is shown that the accused has escaped or may escape or disrupt the inquiry or tamper with the evidence or disturb public order and peace.

183. The enforcement measures shall immediately be revoked by order of the judge when they are applied in situations other than those for which the law provides or when the circumstances which justify their application no longer apply (art. 212). Their modification may be ordered when changes in the circumstances so justify. Their termination is governed by article 214 of the Code of Criminal Procedure which stipulates that they must immediately be revoked if:

(a) The inquiry is closed and the opening of the investigation phase has not been requested;

(b) The order deciding that no charge will be brought has acquired force of res judicata;

(c) The order rejecting the charge for clear lack of evidence under article 311, paragraph 2(a), has acquired force of res judicata;

(d) A dismissal decision is taken;

(e) The sentence has acquired force of res judicata.

184. The enforcement measures admissible under the Code of Criminal Procedure are listed in articles 196 to 202:

1. Declaration of identity and residence (termo de identidade e residência, consisting in the obligation incumbent on the accused to present himself to the competent authority each time that the law requires and not to change his residence or to absent himself from it, without informing the authorities or without leaving a means of contact;

2. Obligation to provide bail. This measure applies when the alleged crime is punishable by imprisonment;

3. Obligation to present himself periodically to a judicial body or a criminal police agency at specified times on pre-determined days. This enforcement measure may be applied in cases in which the alleged crime is punishable by a maximum of six months' imprisonment;

4. Suspension from the performance of his duties, the practice of his occupation or the exercise of his rights. The application of this measure may be combined with another legally applicable measure in cases in which the alleged crime is punishable by a maximum of two years' imprisonment;

5. Prohibition of residence, absence and contact. These measures may be applied, in combination or separately, when there is strong evidence of a wilfully committed offence punishable by more than two years' imprisonment;

6. Restricted residence, except in the case of prior authorization to leave. This measure shall be applied when there is strong evidence of a wilfully committed offence punishable by a maximum of three years' imprisonment;

7. Pre-trial detention, already discussed above (paras. 162 to 167).

185. Provisions of criminal procedure governing custody also apply in other areas.

186. For example, under military discipline regulations, pre-trial detention and substitute measures are covered by the Code of Criminal Procedure, except for those aspects covered by the Code of Military Justice, adopted by Decree-Law No. 141/71, of 9 April 1971 (arts. 363 to 375).

187. With regard to minors, the regulations of the Protection of Minors Act, the current version of which was adopted by Decree-Law No. 314/78, of 27 October 1978, and amended by Decree-Law No. 58/95, of 31 March 1995, state that a minor (under 16 years of age) charged with a crime may not be placed by the police in "appropriate" police premises or in a security establishment unless it is not possible to bring him before the court immediately; he must appear before the court as soon as the cause preventing his appearance has ceased to exist.

188. During the pre-trial examination, only the judge may decide whether a child should be placed in an institution in the most serious cases, i.e. in cases in which it is assumed that placement in a security establishment will be part of the final decision. The duration of this measure, however, may not exceed 20 days, except when it is specifically wished to observe the minor in order to gain an insight into his nature, temperament, abilities, capacities and tendencies and the situation of his family and social environment. In this case, his placement - in an observation and social welfare centre - may be extended to up to three months.

189. Decree-Law 401/82, of 23 September 1982, instituted a special criminal regime for young persons aged between 16 and 21, by allowing the court to reduce the penalty when there are serious reasons to believe that doing so will contribute to the reintegration of the convicted person. However, there are no other special provisions concerning the conditions in which young persons may be remanded in custody by the police or placed in pre-trial detention. They are therefore subject to the general rules of the Code of Criminal Procedure.

190. With reference to article 6, paragraphs 3 and 4, of the Convention, it should be recalled that Portugal is a party to the Vienna Convention on Consular Relations, which stipulates in article 36 that consular officers of a

State must be informed of the provisional arrest of one of their own nationals, if he so requests, and must be free to communicate with him and protect his interests.

191. The obligation to notify other States parties to the Convention of any remand in custody and to inform them of the results of the preliminary investigations will be observed as long as it is not incompatible with commitments flowing from the obligation to protect privacy under the Constitution and the law, for example, the Act on the protection of personal data (adopted by Act No. 10/91, of 29 April 1991, amended by Act No. 28/94, of 29 August 1994) and under such pertinent international instruments as the International Covenant on Civil and Political Rights (art. 17) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 8).

Article 7

192. Under this article, and in conformity with article 31 of Decree-Law No. 43/91 of 22 January 1991, if extradition is refused, the requesting State is called upon to furnish all the elements needed for the institution or continuation of criminal proceedings against the person being prosecuted for the offence that constitutes the grounds for the request.

193. Consequently, if Portugal does not allow the extradition of the person in question, it is bound to bring criminal proceedings against him, according to the principle of aut dedere, aut judicare.

194. In that case, the rights and procedural safeguards of the accused under the Constitution and the law are fully respected, and the terms of the treaty do not entail any special derogation from the general rules on the subject.

Article 8

195. Under this article of the Convention, the offences concerning torture referred to in article 4 must be included in any extradition treaty concluded or to be concluded between States.

196. As stated previously with respect to article 3, extradition in Portugal is governed by article 33 of the Constitution and by Decree-Law No. 43/91 (outline Act on international cooperation in criminal matters), which is applied in the absence of an international treaty on the subject.

197. Decree-Law No. 43/91, like most of the extradition treaties to which Portugal is a party, provides for the possibility of extradition as long as the offence is punishable, under Portuguese law and the law of the requesting State, by a custodial sentence of a maximum duration of not less than one year. Furthermore, when extradition is requested in order to carry out a custodial sentence, it can be granted only if the unserved duration of the sentence is not less than four months.

198. The above-mentioned Decree-Law makes provision for some exceptions to the obligation to grant extradition, such as military and political criminal offences. The same rule can be found in the extradition treaties to which Portugal is a party.

199. However, the acts referred to in the Convention are not considered to be political criminal offences (in this regard see in particular paragraph 114 above).

Article 9

200. International mutual judicial assistance in criminal matters is governed (in ancillary fashion) by Decree-Law No. 43/91 (arts. 135 et seq.), as has been mentioned with regard to extradition (paras. 104-118 of this report, on article 3).

201. Certain international conventions recently concluded by Portugal on the subject, which have already been referred to at the beginning of this report, should nevertheless also be taken into account.

202. Several agreements have also been concluded with African countries whose official language is Portuguese, with the intention of securing the broadest possible cooperation in the criminal procedure field.

203. Decree-Law No. 43/91 incorporates various principles of model treaties concluded by the United Nations, including that on mutual judicial assistance, as well as resolutions adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Article 10

204. Training, information and the development of awareness about torture and other cruel, inhuman or degrading treatment or punishment is one of the most important ways of ensuring the effective prevention of such practices.

205. Paragraphs 63-97 of the previous report, concerning information, publications, training and human rights education, should be recalled here. The initiatives described in that document were taken by the various entities in charge of disseminating information and raising awareness of this crucial subject.

206. One example is the recent translation into Portuguese of the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, prepared by the Office for Documentation and Comparative Law of the Attorney-General of the Republic for the widest possible dissemination among all those involved with the criminal justice system, both at the national level and in all Portuguese-speaking countries.

207. Also noteworthy is the preparation of an information brochure on the rights of the detainee, following on the work done on judicial cooperation within the European Union; written in Portuguese, it has also been translated into English, French, German, Spanish and Romanian. It is expected to be

disseminated in penal institutions housing individuals held in preventive custody and in the Department of Criminal Research and Action of the Attorney-General's Department.

Police officials

208. The recruitment and training of officials in the various forces have evolved considerably, particularly with respect to fundamental rights, freedoms and safeguards, following the 1985 amendment of their organizational statutes.

209. Since 1989 in particular, as the result of a change in the curriculum of the training courses for the police, special attention has been given to the need to treat suspects and detainees humanely.

210. The Public Security Police (PSP) now has a university-level academy - the School of Higher Police Studies, in Lisbon - for the training of senior police officers and offering advanced courses on command and management as well as refresher courses, continuing education classes and graduate courses to the rank-and-file. Human rights, and fundamental rights, safeguards and freedoms, play a leading role in the curriculum, primarily within the legal sciences, social sciences and professional ethics fields.

211. It should also be noted that the School frequently organizes debates, symposiums and seminars on human rights. In March 1993, a seminar was held on public order and fundamental rights. Several eminent law professors from Portuguese universities, deputies, the Attorney-General of the Republic and the Ombudsman (Provedor de Justiça) took part.

212. The PSP also has another training institution - the Police Academy of Torres Novas - designed especially for the basic and further training of the rank-and-file. Its activities, whether in the organization and implementation of programmes in training in ethics, or in the organization of symposiums, seminars and debates, are intended to increase awareness about humanist principles and values.

213. Due to the military organization and structure of the National Republican Guard, since 1991 its officers have been trained by the Military Academy, which created a special university-level course in which law and the socio-political sciences play a very important role (Decree-Law No. 173/91 of 11 May 1991, complemented by Ministerial Decree No. 416-A/91 of 17 May 1991).

214. The Guard also has another training institution - the Guard Academy - focusing particularly on the ethical, cultural, physical, military and technical-professional training of the rank-and-file, as well as on refresher, specialization and further training activities for staff.

215. Courses pertaining to human rights and to fundamental rights, safeguards and freedoms have been one of the top concerns of the Minister of the Interior, senior officers and the heads of the PSP and National Republican Guard training institutions.

216. The training of Judicial Police officers is the responsibility of the National Institute of Police and Criminal Science.

217. Human rights play a significant role in that training and are included in every level. The curriculum includes disciplines intended to strengthen the subject. It also includes the study of professional police ethics.

218. It is worth stressing that even in the selection and recruitment of private security personnel (authorized by Decree-Law No. 276/93 of 10 August 1993, as amended by Decree-Law No. 138/94 of 23 May 1994) account must be taken of the candidate's ability to adapt to the functions of private security.

219. The training of security personnel consists of a technical-practical training course of at least 60 hours, which includes the following subjects: basic legal concepts; rights, freedoms and safeguards of citizens; the basics of criminal law, counterfeiting and crimes against property in general; the basics of the organization and duties of internal security forces and agencies and the functions and legal limitations of security activities and their compatibility with the public security system (decree of the Minister of the Interior of 29 October 1993, which was published in the Official Journal on 14 December 1993 and entered into force on 30 October 1993).

220. Decree-Law No. 174/93 of 12 May 1993 approved the regulations governing warders.

221. Under those regulations, prison warders are responsible for guaranteeing security and order in penal institutions.

222. Schooling is mandatory for prison warders, who are selected through competitive examinations. Selection is also based on completion of the training course conducted by the Prison Training Centre.

223. Basic training is compulsory for aspiring prison warders. They must also undergo a medical examination, an interview and a psychological examination, as well as demonstrate their physical fitness and general knowledge.

224. The training course, which lasts at least four weeks, deals in particular with personal and social development, justice and discipline, prison theory and practice, institutional security, drugs and the prison system, and interpersonal relations, and is complemented by lectures in other fields.

225. Decree-Law No. 346/91 of 18 September 1991 created a new job category at the higher technical level in re-education within the Directorate-General of Prison Services, with a view to enhancing those services and requiring higher levels of qualification (a college degree) for eligilility.

Article 11

226. The general framework established for the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment has

already been outlined. As previously stated, acts of torture are subject to criminal and disciplinary sanctions. Effective and concrete monitoring of the application of the law is done by several of the agencies mentioned below.

Ombudsman

227. The office of the Provedor de Justiça (mediator or ombudsman) is an independent institution whose primary function is the defence and promotion of the rights, freedoms, safeguards and legitimate interests of the citizens (see HRI/CORE/1/Add.20, paras. 101-105).

228. Under Act No. 9/91 of 9 April 1991, which describes the functions of the Provedor and lays down the rules governing them, in conformity with article 23 of the Constitution:

> "1. Citizens may present complaints concerning acts or omissions on the part of the public authorities to the Provedor de Justiça. Although having no decision-making power, he shall examine them and make such recommendations as are necessary to the competent bodies in order to prevent and remedy any injustice.
>
> 2. The activities of the Provedor shall be independent of any discretionary or judicial remedies provided for by the Constitution and the laws.
>
> 3. The Provedor's Office shall be an independent organ. The Provedor himself shall be appointed by the Assembly of the Republic.
>
> 4. The agencies and officials of the public authorities shall cooperate with the Provedor in the performance of his duties."

229. It is therefore an independent and irremovable public entity dedicated to the defence of the rights and legitimate interests of the citizens, by the use of informal methods which safeguard the legality and the justice of the administration. By his mediatory action to protect human rights, the Provedor naturally has an impact on the realization of the rights recognized by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are also reflected in the Constitution.

230. In accordance with the regulations governing the office of the Provedor, citizens may submit to him complaints about acts or omissions of the public authorities. The Provedor submits the necessary recommendations to the competent bodies for the prevention or remedying of any injustice.

231. The Provedor's activities may also be exercised on his own initiative and are independent of the discretionary and judicial remedies provided for in the Constitution and the law.

232. The Provedor is required:

- to submit recommendations to the competent authorities for remedying any illegal or unjust acts or improving the services of the administration;

- to point out any flaws he has uncovered in the law and issue recommendations on its interpretation, amendment or revocation, as well as suggestions for the drafting of new laws, which are sent to the President of the Assembly of the Republic, the Prime Minister and those ministers directly concerned and also, if necessary, to the Presidents of the Regional Legislative Assemblies and of the Governments of the Autonomous Regions;

- to deliver opinions on any questions put to him by the Assembly of the Republic with regard to his activities;

- to ensure the dissemination of information on fundamental rights and freedoms, their contents and value, and the purposes of the activities of the Provedor, the courses of action available to him and the procedures for appealing to him;

- to ask for an assessment of the legality or unconstitutionality of any statutory instrument.

233. In the performance of his duties, the Provedor may:

(a) Carry out inspection tours, with or without notice, of any branch of the central, regional or local administration, including public agencies and civilian or military prisons or of any authority under their control, hear the respective agencies and officials and request any information or documents which he deems necessary;

(b) Conduct whatever investigations and inquiries he deems necessary or appropriate, and, with regard to the obtaining and production of evidence, undertake any appropriate procedure, as along as it does not infringe the legitimate rights and interests of the citizens;

(c) Seek, in cooperation with the competent bodies and departments, the most satisfactory means of safeguarding the legitimate interests of the citizens and improving the work of the administration.

234. The Provedor may order the publication of press releases or information on any findings reached, making use of the media where necessary. In addition, he submits annual reports on his activities to the Assembly of the Republic. These reports, which are published in the Official Journal of the Assembly, include statistical data on the number and nature of complaints filed, the complaints of unconstitutionality submitted and any recommendations made, as well as the action taken on them.

235. In recent years the Provedor has systematically monitored the work of the different police forces by launching inquiries into their activities, either on his own initiative or following complaints filed by citizens.

236. Following the adoption of Act No. 9/91, it proved necessary to adapt the organizational structure of the Provedoria de Justiça so as to lend the technical and administrative support necessary for the proper performance of its activities. The Provedoria de Justiça Organization Act was promulgated by Decree-Law No. 279/93 of 11 August 1993.

Right of petition

237. Under article 52 of the Constitution, all citizens may, individually or collectively, submit to the organs of supreme authority or to any other authority, petitions, representations, claims or complaints for the purpose of defending their rights, the Constitution, the law or the general interest.

238. Act No. 43/90 of 10 August 1990, as amended by Act No. 5/93 of 1 March 1993, regulates and safeguards the exercise of the right of petition through the submission of petitions, representations, claims or complaints to the organs of supreme authority or to any other public authority except the courts.

239. The request may also be submitted to the Commission on Rights, Freedoms and Safeguards of the Assembly of the Republic, which may conduct the appropriate inquiries, as well as refer them to the competent authorities.

240. The role of the Portuguese Association for the Support of Victims, referred to above (see paras. 38-40), should also be stressed.

Provisions on the custody and treatment of arrested, detained or imprisoned persons

241. With regard to provisions on the custody and treatment of persons arrested, detained or imprisoned in any manner whatsoever, the Prisons Act (Decree-Law No. 265/79 of 1 August 1979, as amended by Decree-Laws Nos. 49/80 of 22 March 1980 and 414/85 of 18 October 1985), currently in force, has not been amended since the date of submission of the initial report.

242. However, studies for a possible revision of Decree-Law No. 265/79 are under way, particularly with regard to the correspondence of detainees and the strengthening of their safeguards when disciplinary measures are taken.

243. One major concern is to improve the conditions of detention in penal institutions, particularly by increasing their capacity (opening a new prison at Funchal) and medical assistance, principally by instituting a support programme specifically for drug addicts.

244. The Prison Act calls for the continued enjoyment by detainees of their fundamental human rights, except for those limitations arising from a sentence or from the needs of institutional order and security (art. 4, para. 1). Accordingly, their labour is remunerated, they receive social security benefits and, to the extent possible, they enjoy the right to culture and to the integral development of their personality (art. 4, para. 2).

245. Article 6, paragraph 3, of Decree-Law No. 265/79 establishes that a detainee must enter a prison out of the sight of the other prisoners if this is necessary to protect his privacy. The detainee must be informed of the legal and regulatory provisions pertaining to his conduct, and he is guaranteed the right to inform his family or any legal representatives about his situation. Within a maximum period of 72 hours following his admission to

the prison, he must undergo a medical examination to identify any physical or mental illnesses or abnormalities which might justify special or immediate precautions.

246. The principle of respect for the dignity of detainees is found in other provisions, such as the right to visits (art. 29 et seq.), the right to protection against arbitrary or illegal interference with correspondence (art. 40 et seq.), the right to choose an occupation (art. 63 et seq.), the right to privacy (art. 116) and the right to appeal to the European Court of Human Rights (art. 151).

Pre-trial detention

247. Pre-trial detention is governed by the special rules of article 209 et seq. of the Prison Act.

248. Under those provisions, the pre-trial detainee is presumed innocent and must be treated accordingly (art. 209, para. 1). Pre-trial detention is carried out in such a way as to preclude any restriction of freedom not strictly necessary for the purpose of the detention or for maintaining institutional discipline, security and order (art. 209, para. 2).

249. Article 210, paragraph 1, stipulates that pre-trial detainees should normally be held together with small groups with other detainees during the day, and in isolation at night. Under paragraph 2, this regime does not apply to detainees:

(a) Who are being held incommunicado, under the terms of the Act;

(b) Who make such a request to the prison governor, specifically and in writing;

(c) Who do not adapt to the normal regime or who are presumed to be particularly dangerous on account of the acts leading to their detention, or on account of their criminal record;

(d) Whose physical and psychological state does not allow it.

250. In the above-mentioned cases, the detainee may be placed in another type of institution, with the authorization of the Directorate-General of Prison Services, but the pre-trial detention will continue and, as early as possible, the detainee must be separated from other categories of detainees (para. 5).

251. Prisoners under age 25 who are being held in pre-trial detention must be placed as soon as possible in an appropriate institution, and their custody must be primarily educational in nature (art. 216).

252. Generally, detainees may receive visits every day, as often as possible, taking into account the conditions laid down in the internal rules and regulations (art. 212); wear their own clothing (art. 213); and receive, at their own expense, food prepared outside the institution (art. 214); they may not be compelled to work (art. 215, para. 1), but they may, at their own request, be authorized to work, attend training courses and participate in

continuing vocational education, as well as in any other educational, cultural, recreational or sporting activities organized by the institution (art. 215, para. 2).

253. Article 216-A (incorporated into Decree-Law No. 265/79, under Decree-Law No. 49/80) stipulates that the regulations governing custodial sentence are applicable during pre-trial detention, except where otherwise provided by Act, in particular the general regulations in force concerning visits and correspondence.

Special security measures

254. Article 111 of the Prison Act prescribes that special security measures may be applied to detainees if their conduct or psychological state suggests that they may try to commit acts of violence on themselves, other individuals or property.

255. Authorization of these measures is granted if it is impossible to prevent escape attempts by any other means or in the event of a serious disturbance of institutional order and security (para. 3). Nevertheless, the application of special security measures is maintained only as long as the danger giving rise to their application exists (para. 4). Paragraph 5 prohibits such measures from being used as disciplinary measures.

256. The governor of the institution is responsible for verifying in each case the actual existence of the conditions which warrant the application of the measures, without prejudice to the administrative and supervisory powers of the Director-General of Prison Services and the Minister of Justice, with the exception of the right of pre-trial detainees and convicted prisoners to appear before the judge of the court issuing the sentence (art. 139).

257. With regard to the special security cell confinement measure, article 113 prescribes that a detainee may not be isolated in certain cells except for reasons to do with his own personality, or when all other special security measures have proved ineffective or inadequate for dealing with the gravity or nature of the situation (para. 1).

258. The maximum period during which a detainee may be held in uninterrupted isolation in a special security cell is one month. Nevertheless, the consent of the Directorate-General of Prison Services is required in order to isolate a detainee in a special security cell for more than 15 consecutive days (art. 113, para. 4). Such isolation must always be intended solely to restore the situation to normal (para. 2). If after that period the conditions leading to the application of the special measure persist, the detainee must be transferred to a high-security institution or section (para. 3).

259. Under article 113, paragraph 5, “the periods mentioned in the preceding paragraphs may not be interrupted on the grounds that the detainee is participating in religious acts or recreational activities”.

260. All detainees placed in a special security cell must as soon as possible be examined by the institution’s physician, who must report to the governor on the detainees’ physical and mental state of health and, if necessary, on the

need to change the length of the punishment (para. 6). The special security cell must have the same characteristics as all other cells in the institution, except for security-related characteristics (para. 7).

261. In conclusion, during detention no restrictions may be placed on the fundamental rights of detainees unless they are absolutely necessary, appropriate and in proportion to the requirements of institutional order and security.

The use of force

262. Articles 122 and 124 establish proportionality as the rule in all matters pertaining to the use of force, which must be limited to what is absolutely necessary and only for reasons related to the requirements of security and order. The use of force has always been followed by a written investigation into the circumstances.

263. Article 125 requires that prior warning should be given, with a view to intimidation, when physical force is employed.

264. Article 126 lays down the general rules on the use of firearms by prison personnel or persons working in the prisons. The use of firearms in detention centres for young persons is also prohibited (art. 20 of Decree-Law No. 90/83 of 16 February 1983).

265. Provision is made for the use of force in health care. Under article 127, it is prohibited to compel a detainee to undergo medical examinations, treatment or feeding unless his life or health is in danger. Such measures may be prescribed and applied only under medical supervision.

Aliens

266. Decree-Law No. 59/93 of 3 March 1993, on the entry, residence, exit and expulsion of aliens from national territory, calls for the establishment of temporary settlement centres to house aliens who:

(a) Have been sentenced to an accessory penalty of expulsion;

(b) Have breached the obligation to present themselves periodically to the authorities;

(c) Are without resources;

(d) Are suspected of not observing the expulsion decision or of jeopardising other fundamental interests beyond those which gave rise to the expulsion;

(e) Have been refused the right to enter Portuguese territory (arts. 75 and 89).

267. The procedure for receiving aliens or stateless persons in the temporary settlement centres is set forth in Act No. 34/94 of 14 September 1994, which

calls for the additional application to aliens, placed in them for reasons of security of the special rules for pre-trial detention called for by the Prison Act.

Article 12

268. Under article 12 of the Convention, each State party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

The right to lodge a complaint

269. Any victim of ill-treatment, abuse of authority or of excessive force is entitled to lodge a complaint, which has to be accepted.

270. The complaint may be lodged with either the administrative or judicial authorities, or simultaneously with both. The acts in question are severely dealt with, either through internal police disciplinary measures or through criminal proceedings before the competent courts.

The police forces

271. Responsibility for deciding to institute disciplinary proceedings and for the proceedings themselves lies with the security forces' hierarchy, including the competent ministry; the possibility of appeal to the competent courts is always available.

272. Even if no complaint has been lodged, disciplinary proceedings may be instituted if it is learned, by any means whatsoever, that police officers have violated fundamental individual rights. The police disciplinary regulations referred to stipulate that disciplinary proceedings are mandatory whenever hierarchy is made aware of any acts liable to require disciplinary proceedings against subordinates.

273. There are no specific penal or disciplinary regulations for the National Republican Guard, although its own Organizational Act (Decree-Law No. 231/93, of 26 June 1993) refers to military regulations and discipline, as approved by Decree-Law No. 142/77, of 9 April 1977.

274. The disciplinary regulations of the Public Security Police (PSP) were adopted by Act No. 7/90, of 20 February 1990. The regulations stipulate that in carrying out their duties, PSP officers may never abuse their authority or exceed the limits strictly necessary for the performance of their duties, provided the use of force or of any other means likely to limit the rights of citizens is indispensable.

275. In performing their duties, PSP officers may not invoke their authority, rank or position in order to exert any form of pressure.

276. Public security police officers who fail to comply with legal requirements when performing their duties are liable to the appropriate disciplinary and accessory penalties according to the circumstances. The

penalties vary in severity and are applied in accordance with the seriousness of the act. Thus, after a spoken or written reprimand, the penalties range from a fine of up to 30 days' pay, 20 to 120 days' suspension, or 121 to 240 days' suspension, to mandatory retirement or dismissal.

277. Failure to observe the specific obligation not to practise acts of torture or, inhuman, cruel or degrading treatment, laid down by article 91 of the Judicial Police Organization Act, as approved by Decree-Law No. 295-A/90, of 21 September 1990, is punishable under the force's disciplinary regulations, as approved by Decree-Law No. 196/94, of 21 July 1994. Police officers guilty of inhuman, degrading or discriminatory acts or of harassing individuals under their protection or in their charge, arrogation of authority not vested in them by law, or abuse of the authority with which they are vested, may be suspended, compelled to take retirement or dismissed.

Action by the Attorney-General and the Public Prosecutor

278. Under article 152 of the Judicial Police Organization Act, responsibility for the Judicial Police's operational conduct lies with the Attorney-General, who may request reports on the force's conduct and order an investigation of it in order to verify compliance with the law, particularly as regards protection of the rights, freedoms and safeguards of citizens and protection of society against crime.

279. On the basis of the information obtained or the investigations conducted, the Attorney-General may issue directives or general instructions regarding the conduct of the Judicial Police in the sphere of crime prevention and investigation, and institute criminal proceedings against police officers suspected of specific offences.

280. Decisions to institute criminal proceedings and their conduct are the responsibility of the judicial authorities. The examination proceedings which begin criminal proceedings are the responsibility of the Public Prosecutor, the administrative authorities being required to cooperate in the inquiry.

281. In conformity with article 122, paragraph 5, of Decree-Law No. 265/79, of 1 August 1979, whenever disciplinary measures are used against detainees, an investigation, followed by a written report on the circumstances that gave rise to such measures, is required.

282. The following table provides statistics on the complaints lodged in 1990 and 1991 concerning ill-treatment by police officers (these are the only years for which statistics are available).

National Republican Guard		
	1990	1991
Complaints lodged	38	57
Complaints dismissed through internal procedure	13	19
Disciplinary proceedings instituted on the basis of complaints	14	23
Disciplinary proceedings dismissed for lack of grounds	14	21
Disciplinary proceedings leading to punishment of those concerned	2	2
Criminal proceedings instituted on the basis of complaints	11	15
Criminal proceedings dismissed on the basis of the complaints	7	7
Criminal proceedings pending	3	12
Criminal proceedings having led to the conviction of the accused military personnel	1	-

Public Security Police		
	1990	1991
Complaints lodged	107	124
Complaints dismissed	52	36
Disciplinary proceedings instituted on the basis of the complaints	107	124
Criminal proceedings instituted on the basis of the complaints	37	50
Disciplinary convictions	24	9
Criminal convictions	7	3

Disciplinary measures against prison warders

283. Whenever an offence is committed, disciplinary and penal responsibility must be determined.

284. If a death occurs, an autopsy is performed to determine the exact causes.

285. In conformity with the above provisions, the Department of Prison Services always conducts a rigorous inquiry whenever there is any suspicion that acts of torture or ill-treatment have been committed by prison officials, including prison warders.

Article 13

286. Article 13 of the Convention stipulates that each State Party shall ensure that any individual who alleges he has been subjected to torture has the right to complain to the competent authorities, who are required promptly and impartially to examine his complaint.

287. Article 20 of the Portuguese Constitution guarantees the right of everyone to access to the courts to defend his or her rights. Justice may not be denied to a person for lack of financial resources. All persons are entitled by law to legal information and counsel, as well as to legal aid.

288. Furthermore, article 21 of the Constitution, entitled “the right to resist” stipulates that “anyone shall have the right to resist an order that violates his rights, liberties or safeguards, and to repel by force any aggression when recourse to public authority is impossible”.

289. Decree-Law No. 387-B/87 of 29 December 1987 defines the conditions of access to the law and the courts in order to ensure that no one encounters any difficulty or is prevented, because of social or cultural status or lack of means, from acquainting himself with, asserting or defending his rights.

290. These goals are achieved by means of systematic measures and machinery to provide legal information and protection. Legal protection takes the form of legal counselling and legal aid.

291. In order to put into practice the legal protection afforded by the above Decree-Law through legal counselling, legal counselling offices (Gabinetes de consulta jurídica) [2] have been established through an agreement between the Bar Association and the Ministry of Justice. The offices are responsible for providing legal guidance and counselling to anyone prevented by lack of means from paying lawyers' fees.

292. Legal aid includes total or partial exemption from advance court and legal fees or their deferral, and from lawyers' fees.

[2] The following legal counselling offices have so far been established: Lisbon and Porto - Ministerial decision No. 1102/89, of 26 December 1989; Guimarães - Ministerial decision No. 1231-A/90, of 26 December 1990; Coimbra - Ministerial decision No. 421/91, of 21 May 1991; Évora - Ministerial decision No. 993/91, of 30 September 1991; Lamego - Ministerial decision No. 1000/91, of 1 October 1991; Covilhà - Ministerial decision No. 1207/92, of 23 December 1992; Ponta Delgada - Ministerial decision No. 679/93, of 20 July 1993; Vila do Conde - Ministerial decision No. 741/93, of 16 August 1993; Faro - Ministerial decision No. 1256/93, of 9 December 1993; Angra do Heroismo - Ministerial decision No. 506/95, of 27 May 1995 and Vila Nova de Gara - Ministerial decision No. 506/95, of 27 May 1995.

293. The right to lodge a complaint to initiate criminal and disciplinary proceedings against offenders is thus established and guaranteed.

294. Application to the Provedor is also provided for and guaranteed as described above.

295. The right of detainees to report the facts, to lodge a complaint and to appeal are described in paragraph 189 of the initial report. Decree-Law No. 265/79, of 1 August 1979, referred to in that paragraph, has not been amended since then.

296. As far as appropriate measures to ensure the protection of plaintiffs and witnesses against ill-treatment or intimidation are concerned, the Portuguese legal system makes no specific provision for the protection of judges, prosecutors, judicial officials, jurors, lawyers, witnesses, experts and criminals who turn State's evidence against criminal reprisals or intimidation. However, attention is drawn to the legislation referred to in paragraphs 292 to 313 regarding article 14 and concerning the right of the victims of violent crime and of civil or military officials to compensation.

297. However, the absence of specific legal provisions for the protection of such persons does not of course mean that it is impossible to adopt practical measures to do so, which may be decided, as appropriate, at the administrative level.

298. It should also be mentioned that Decree-Law No. 43/91 of 22 August 1991, which authorizes international cooperation in criminal matters in the absence of a treaty or international convention binding on the Portuguese State in this sphere and establishes domestic regulations defining the cooperation procedure to be followed and the competent authorities, is still in force and has not been amended.

299. Pursuant to this instrument, and in particular its article 144, when international assistance is requested, Portugal may reject an application for extradition whenever the measures necessary to ensure his or her security are not guaranteed.

Article 14

300. There are several ways in which victims of violence may obtain compensation under Portuguese law. The basic rule is contained in article 483 of the Civil Code, under which anyone who wilfully or negligently causes injury to another person must pay compensation for the injury suffered. The law also provides for risk liability.

The liability of the authorities

301. Where the authorities are concerned, article 22 of the Constitution, entitled “The liability of the authorities” defines their liability in the following terms:

> “The State and other public bodies shall bear civil liability jointly and severally with the members of their agencies, their

officials or employees, for any act or omission committed in the discharge of their duties or in connection therewith, which entails a violation of the rights, liberties and guarantees of another person or injury to another person."

302. Similarly, article 2 of Decree-Law No. 48.051 of 31 November 1967 determines the extracontractual liability of the State for acts of public administration, by determining that the State and other public legal persons shall bear civil liability towards third parties for any violations of their rights or of the legal provisions intended to protect their interests if such violations are attributable to unlawful acts committed by their institutions or administrative agents in the discharge of their duties. The State's responsibility is engaged whenever a State employee is guilty of an unlawful act that causes injury to anyone, or whenever the State commits an abuse in the exercise of its authority.

Civil liability deriving from a crime

303. Portuguese criminal law and procedure provide for civil liability deriving from a crime (Penal Code, art. 129).

304. As regards the obligation to provide restitution, redress and compensation, in conformity with article 71 of the Code of Criminal Procedure applications for civil indemnification in respect of a crime must as a rule be brought before the court which is competent to hear the criminal offence. Acquittal in the criminal proceedings does not necessarily entail refusal of the right to compensation (article 377 of the Code). The rule makes it mandatory for the criminal case to be heard jointly with the indemnification proceedings for damages caused to the victim by the offender.

Compensation of victims

305. The compensation awarded to victims in criminal proceedings is paid by the offender, unless he is unable to do so because of insolvency or if his abode is unknown.

306. Article 130 of the Penal Code stipulates that special legislation shall apply to cases in which compensation cannot be paid by the offender. However, in the absence of such legislation, paragraph 2 of the same article stipulates that the court may, at the request of the injured party, assign as compensation for the injury caused, the property forfeited to the State or the proceeds from their sale, up to the value of the injury caused. If the injury caused by the offence is serious enough to leave the injured party in need and if the offender is unlikely to pay compensation, the court may also assign to the injured party all or part of any fine paid, up to the value of the injury. The State remains the beneficiary of the injured party's right to compensation for any sums it may have paid.

307. It should also be emphasized that in determining the penalty and its length or amount, [3] the court considers, inter alia, compensation for the injury caused to the victim, whenever it orders either a temporary stay of

[3] Penal Code, article 71.

proceedings, [4] a stay of sentence, [5] probation [6] or a caution, [7] or whenever it mitigates the sentence [8] or orders an absolute discharge. [9]

308. Furthermore, in conformity with the act on custodial sentences (Decree-Law No. 265/79 of 1 August 1979, article 72), part of the prisoner's wages may be assigned to pay any compensation awarded against him.

309. In addition, legal rehabilitation will only be granted to an applicant if he provides documentary or any other evidence that he has paid any compensation he has been ordered to pay (Decree-Law No. 783/76 of 29 October 1976 on the enforcement of penalties, article 101).

310. In respect of the actual sentence, in cases in which there are grounds for conditional release, it is the practice of the courts responsible for the enforcement of sentences to make release subject to redress or payment of compensation to the victim by the offender.

311. It should be emphasized that the practice of the courts is to append to non-custodial sentences injunctions relating to the victim's right to compensation.

Victims of violent crime

312. In conformity with article 130 of the Penal Code, Decree-Law No. 423/91 of 30 October 1991 determines the legal regime for the protection of the victims of violent crime.

313. Persons sustaining serious bodily injury as a result of wilful violence and the dependants of persons who have died as a result of such acts may request the State to award them compensation whenever:

(a) The injury has caused at least 30 days' incapacity for work, permanent incapacity or death;

(b) The injury has seriously affected the standard of living of the victim or of his dependants;

(c) Compensation cannot be provided by any other means; payment of compensation for the injury is not possible through the compensatory judgement procedure in respect of an application submitted pursuant to articles 71 to 84 of the Penal Code or if there are serious grounds to believe that the offender and persons who bear civil liability will not pay the compensation and it is not possible to obtain effective and adequate compensation by any other means.

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[4] Code of Criminal Procedure, article 281.

[5] Penal Code, articles 50 and 51.

[6] Penal Code, articles 53 and 54.

[7] Penal Code, article 59.

[8] Penal Code, article 73.

[9] Penal Code, article 75.

314. The compensation will be awarded even if the offender is unknown or cannot be prosecuted or punished.

315. Persons who voluntarily assist the victim or cooperate with the authorities in preventing an offence or in pursuing or detaining the offender may also apply for compensation, provided the conditions set out above are met. Such compensation is independent of any compensation awarded to the victims of the offence.

316. Compensation may be reduced or the application dismissed on account of the behaviour of the victim or applicant prior to, during or after the offence, or of his relations with the offender, or if compensation would be contrary to the interests of justice and public order.

317. Compensation paid by the State is limited to material damage caused by the injury and will be equitably determined. The maximum amount payable to each injured party is determined in the light of article 508, paragraphs 1 and 2, of the Civil Code, in case of death or injury. Any monies received from any other source, either from the offender himself or from social security will be taken into account. Life or personal accident insurance will only apply to the extent that equity requires.

318. Applications for compensation payable by the State must be submitted within one year of the date of the offence.

319. The rights of injured parties in respect of the perpetrators of acts of willful violence and of persons with mere civil liability devolve upon the State, to the extent of the compensation provided.

320. Proceedings for awarding compensation by the State are exempt from advance legal fees and court costs.

321. It should be pointed out that the basis for State compensation of victims is the notion of social solidarity; the theory of State responsibility does not apply. State responsibility for combating crime is limited to providing means, and not results; it is a minimum regime which is not designed to replace other remedies that may be available to victims.

322. The decision to award compensation is the responsibility of the Minister of Justice, in compliance with the instructions issued by the Commission set up for that purpose. Regulatory Decree No. 4/93 of 22 February 1993 stipulates the composition and functions of the Commission. [10]

323. The Commission comprises a judge appointed by the Supreme Council of the Judiciary, a lawyer appointed by the Bar Association and a senior official from the Ministry of Justice, appointed by the Minister of Justice. The Commission's chairman is preferably chosen from among the judges of the Court of Appeal.

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[10] The Commission began operating on 15 April 1993 (Joint Decision No. 7/93 of 10 March 1993, published in Official Gazette No. 82, II of 7 April).

324. According to the Commission, [11] "there have been few applications for this type of compensation. We work on a case-by-case basis and there have so far been no restrictions". In addition, "where violent crime is concerned, one should perhaps expect an increase in the number of complaints: the amount of compensation awarded has not been higher because the number of applications has been low".

325. In 1993, the Commission considered 62 applications for compensation concerning a total of 120 applicants; it awarded compensation in 29 cases to 64 applicants.

326. In 1994, the number of applications fell to 52 and the number of applicants to 97, 76 of whom were the heirs of crime victims. A total of 46 rulings were issued and compensation amounting to 1,500,000 escudos awarded in two cases. Compensation amounting to 11,500,000 escudos was awarded in seven other cases.

327. In this way, the State has already paid out some 70 million escudos in compensation to the victims of violent crimes. [12]

328. At the time when the above legislation was issued, Portugal had not yet ratified the European Convention on the Compensation of Victims of Violent Crimes, drawn up by the Council of Europe, although in drafting the legislation, it had drawn on resolution (77)27, of the Committee of Ministers of the Council of Europe, on compensation for the victims of criminal offences.

Compensation of civil and military officials

329. Decree-Law No. 423/91 does not apply to situations covered by Decree-Law No. 324/85 of 6 August 1985, which also provides for the payment of compensation to civil or military officials who have, in the performance or by virtue of their duties, been victims either of intimidatory criminal acts, or of reprisals putting their lives, physical integrity, or freedom at risk or involving major property damage. The Decree-Law is more restrictive than Decree-Law No. 423/91 as it applies only to public officials. Nevertheless, it is broader in scope as it also makes provision for compensation for major damage to property. The compensation, which is awarded on an a case-by-case basis, by joint decision of the Prime Minister, the Minister of Finance and the submitting Minister, may also be paid to the victim's family or to his dependents, if they have also suffered as a result of the criminal act. [13]

Compensation of jurors

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[11] Comments in the 13 April 1995 issue of the O Semanario weekly magazine by the representative of the Bar on the Commission on Compensation of the Victims of Violent Crime.

[12] Ibid.

[13] Before Decree-Law No. 215/87 of 29 May 1987 came into force, compensation was awarded by decision of the Council of Ministers.

330. Decree-Law No. 387-A/87 of 29 December 1987 extends the applicability of the regime introduced by Decree-Law No. 324/85 to jurors when, in the performance of their duties or on account thereof, they are victims of criminal acts, perpetrated for example by criminal and terrorist groups in order to intimidate them or as a form of reprisal.

Compensation of mayors

331. A similar conclusion was reached in the finding of the Attorney-General's office, published in the Diário da República, II series, No. 168, of 24 July 1987 regarding mayors (Presidente da Câmara Municipal), according to which, under Decree-Law 324/85, mayors are classed as State employees and consequently entitled to compensation on the same terms as public officials who are victims of violent crimes.

Compensation of women

332. In the same connection, Act No. 61/91 of 13 August 1991, already referred to, is designed to strengthen legal protection for female victims of violence.

333. Where compensation for female victims of violence is concerned, the Act refers to Decree-Law No. 423/91, of 30 October 1991, establishing a regime vesting in the Government, i.e. the Minister of Justice assisted by an ad hoc commission, competent to award such compensation.

Article 15

334. Article 32, paragraph 6, of the Constitution stipulates:

> "Any evidence obtained through torture, coercion, violation of the physical or moral integrity of the individual, or wrongful interference in private life, the home, correspondence or telecommunications shall be null and void."

335. Further to the constitutional guarantees, article 126 of the Code of Penal Procedure stipulates that any evidence obtained through torture, coercion or violation of the physical or moral integrity of an individual is null and void and may in no case be used.

336. In conformity with paragraph 2 of the same article, any evidence obtained by the following means constitutes a violation of the physical or moral integrity of individuals, even if they have given their consent:

> "(a) Interference with free will or the capacity to take decisions through ill-treatment, physical injury and the use of any means whatsoever such as hypnosis or other cruel or fraudulent procedures;
>
> (b) Interference, by any means whatsoever, with a person's memory or judgement;
>
> (c) The use of force;
>
> (d) The use of threats or illegal methods or refusal of a lawful entitlement or subjecting it to conditions;
>
> (e) The promise of an illegal advantage."

337. Under paragraph 3, evidence obtained by any violation of privacy, the home, correspondence or telecommunications without the consent of the interested party is null and void.

338. Under article 140, paragraph 1, if the accused is questioned he must be allowed freedom of movement, unless the circumstances require otherwise. The purpose of this requirement is to enhance protection against acts of torture or other cruel, inhuman or degrading treatment.

Article 16

339. As has already been mentioned in the section on article 4 of the Convention in connection with the provisions of the new Penal Code, not only torture but cruel, degrading or inhuman treatment or punishment, are criminalized.

340. The cases referred to throughout this report are not restricted solely to torture as defined in article 1 of the Convention, since the majority of them constitute violations of physical integrity which are punishable, under articles 243 and 244 of the new Penal Code.

341. The Portuguese legal system effectively prohibits any acts that might constitute cruel, inhuman or degrading treatment.

Annexes*

Legislation

1. Constitution of the Portuguese Republic

2. Decree-Law No. 48051 of 21 November 1967 - Extracontractual liability of the State for acts of public administration

3. Decree-Law No. 265/79 of 1 August 1979 - Prisons Act

4. Decree-Law No. 49/80 of 22 March 1980 - Amending Decree-Law No. 265/79 of 1 August 1979

5. Decree-Law No. 400/82 of 23 September 1982 - Penal Code

6. Act No. 29/82 of 11 December 1982 - National Defence and Armed Forces Act

7. Decree-Law No. 90/83 of 16 February 1983 - Juvenile Detention Centres

8. Decree-Law No. 324/85 of 6 August 1985 - Compensation of officials who are victims of violence

9. Act No. 44/86 of 30 September 1986 - State of Siege and State of Emergency

10. Decree-Law No. 48/87 of 29 January 1987 - Incorporating jurors as State employees under the terms and subject to the provisions of Decree-Law No. 324/85 of 6 August 1985

11. Decree-Law No. 78/87 of 17 February 1987 - Code of Criminal Procedure

12. Decree-Law No. 387-A/87 of 29 December 1987 - Extending to jurors the regime introduced by Decree-Law No. 324/85

13. Decree-Law No. 387-B/87 of 29 December 1987 - Legal aid and assistance

14. Decree-Law No. 101-A/88 of 26 March 1988 - Amending the provisions of the Penal Code

15. Resolution 11/88 of 21 May 1988 - Adoption by the Portuguese Parliament of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

16. Decree-Law No. 391/88 of 26 October 1988 - Legal aid and assistance

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* It will be possible to consult these documents in the files of the High Commissioner/Centre for Human Rights when received.

17. Order No. 32/90 of 17 April 1990 - “Citizens and justice” programme

18. Decree-Law No. 295-A/90 of 21 September 1990 - Judicial Police Organization Act

19. Act No. 9/91 of 9 April 1991 - Statutory regulations pertaining to the ombudsman

20. Decree-Law No. 43/91 of 22 January 1991 - International legal cooperation in criminal matters

21. Decree-Law No. 61/91 of 13 August 1991 - Special protection for women victims of violence

22. Act No. 113/91 of 29 August 1991 - Basic Civil Protection Act

23. Decree-Law No. 346/91 of 18 September 1991 - Defining the function of specialists in re-education within the Directorate-General of Prisons

24. Decree-Law No. 423/91 of 30 October 1991 - Special protection for the victims of violent crime

25. Resolution 30/92 of 18 August 1992 - Family and child support project

26. Regulatory Decree No. 4/93 of 22 February 1993 - Regulations on the establishment and operation of the Commission for processing applications for compensation

27. Act No. 6/93 of 1 March 1993 - Amendments to the regime pertaining to the right of petition

28. Decree-Law No. 59/93 of 3 March 1993 - Entry, exit, residence and deportation of aliens

29. Resolution 8/93 of 20 April 1993 of the Assembly of the Republic - Approval of the Convention on the Extradition of Convicted Persons

30. Act No. 12/93 of 22 April 1993 - Removal and transplant of organs and human tissue

31. Decree-Law No. 174/93 of 12 May 1993 - Statutory regulations pertaining to prison warders

32. Decree-Law No. 231/93 of 26 June 1993 - Organization of the National Republican Guard

33. Decree-Law No. 265/93 of 31 July 1993 - Statutory regulations pertaining to the military personnel of the National Republican Guard

34. Decree-Law No. 276/93 of 10 August 1993 - Selection and recruitment of private security personnel

35. Decree-Law No. 279/93 of 11 August 1993 - Statutory regulations pertaining to the Ombudsman's Office

36. Act No. 70/93 of 29 September 1993 - Right of asylum

37. Decree-Law No. 399/93 of 3 December 1993 - Control, purchase and possession of firearms

38. Decree-Law No. 97/94 of 9 April 1994 - Rules pertaining to clinical experiments on human beings

39. Decree-Law No. 138/94 of 23 May 1994 - Amendment of Act No. 276/93 relating to the selection and recruitment of private security personnel

40. Act No. 19/94 of 24 May 1994 - Regulations governing non-governmental cooperation organizations

41. Presidential decree No. 55/94 of 1 June 1994, published in issue No. 160 of the Official Journal of 13 July 1994 - Agreement between the States members of the Community concerning the transmission of criminal proceedings

42. Presidential decree No. 56/94 of 1 June 1994, published in issue No. 161 of the Official Journal of 14 July 1994 - European Convention on Mutual Assistance in Criminal Matters

44. Presidential decree No. 65/94 of 1 June 1994, published in issue No. 186 of the Official Journal, of 12 August 1994 - European Convention on the supervision of Conditionally Sentenced or Conditionally Released Offenders

45. Decree-Law No. 167/94 of 15 June 1994 - Regulating the organization of the judicial service - permanent courts

46. Decree-Law No. 196/94 of 21 July 1994 - Judicial Police disciplinary regulations

47. Act No. 34/94 of 14 September 1994 - Defining the regime for accommodating aliens or stateless persons in temporary accommodation centres

48. Act No. 35/94 of 15 September 1994 - Government authorization for the amendment of the Penal Code

49. Act No. 36/94 of 29 September 1994 - Amendment of the Judicial Police Organization Act

50. Decree-Law No. 321/94 of 29 December 1994 - Public Security Police Organization Act

51. Decree-Law No. 48/95 of 15 March 1995 - Approving the new Penal Code

52. Decree-Law No. 58/95 of 31 March 1995 - Amendment of the Protection of Minors Act

53. Resolution 22/95 of the Assembly of the Republic, dated 11 April 1995 - Approving the Convention among the Member States of the European Communities relating to the application of the principle “ne bis in idem”

54. Presidential Decree No. 47/95 of 11 April 1995 - Ratification of the Convention among the Member States of the European Community on the application of the principle “ne bis in idem”

55. Decree-Law No. 227/95 of 11 September 1995 - Establishing the Inspecção-Geral da Administração Interna

56. Ministerial Order No. 4/MJ/96 of 12 January 1996 - Establishing the responsibility of the Departments of the Ministry of Justice to cooperate with and provide information to certain non-governmental organizations

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