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COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE 798th MEETING

Held at the Palais Wilson, Geneva, on
Thursday, 15 November 2007 at 3 p.m.

Chairperson: Mr. MAVROMMATIS

SUMMARY

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

Fourth periodic report of Portugal (*continued*)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5)

Fourth periodic report of Portugal (CAT/C/67/Add.6, CAT/C/PRT/Q/4 and Add.1; HRI/CORE/1/Add.73 (*continued*)

1. *At the invitation of the Chairperson, the members of the Portuguese delegation resumed their places at the Committee table.*

2. Mr. DOS SANTOS PAIS (Portugal) said that his country was following closely the efforts to improve the working methods of the treaty bodies, in particular with respect to the preparation of basic documents by states parties. In preparing its next reports, Portugal would take into account the work on the form and content of states' reports, which was still at an early stage. As a general rule, the Ministry of Foreign Affairs sent out reports for treaty bodies to Portuguese NGOs before submitting them to those bodies, although this could not be done for the present report because it was completed too late. In any case, several NGOs including Amnesty International had been consulted during preparation. The report (CAT/C./67/Add.6) and the government's written responses covered all the matters of concern expressed and the recommendations made by the Committee during its examination of the previous report, without referring expressly thereto.

3. The information available to the Portuguese government concerning aircraft overflying and landing on its territory had been transmitted to the Council of Europe, to the Portuguese Parliament and to the European Parliament. The government had set up an expert commission to examine the question, and its work might lead to the adoption of a manual of procedures for the authorization and control of flights in European and domestic airspace. Complaints had been filed with the Prosecutor General on the matter of illegal transfers, and a criminal investigation had been opened to establish the facts. It was being pursued in collaboration with the anti-banditry office of the judicial police. Portugal thought it essential that the fight against terrorism should be conducted with full respect for human rights and fundamental freedoms.

4. Mr. MARRECAS FERREIRA (Portugal) said that guarantees relating to extradition were governed by article 6 of Law 144/99, which set forth the following criteria for refusing international judicial cooperation: failure to respect the procedures stipulated by the European convention on human rights, well-founded fears of persecution of the person to be extradited on the grounds of race, sex, religion, convictions etc., trial by an exceptional court, application of the death penalty or a penalty of indefinite or life imprisonment. However, the requesting state could agree to commute the death penalty or to exclude life imprisonment, and the decision would be taken on the basis of legislation and practice in the requesting state. The international judicial cooperation service of the prosecutor General's office examined these situations case-by-case, and this frequently involved a visit by a magistrate of the requesting state to prepare the extradition decision, which was taken by the Court of Appeals, with the possibility of appeal to the Supreme Court. Thus, a decision on extradition to India had been taken by the Court of Appeals of Lisbon in July 2004; that court had initially refused the extradition on the grounds that Indian law authorized imprisonment for a term exceeding 25 years. The extradition was granted when it was determined that India was party to the

International Convention for the Suppression of Terrorist Bombings, which prohibited life imprisonment as a penalty. Finally, no complaint had been filed on the matter of applying the law on international judicial cooperation.

5. The delegation was asked whether the granting of a European arrest warrant was limited by the principle of reciprocity. The Portuguese Supreme Court did not consider that the European arrest warrant required reciprocity, in contrast perhaps to certain other countries. The attacks of 11 September had accelerated the decision to implement the European arrest warrant, enshrining mutual recognition and simplifying procedures. The offences listed in paragraph 26 were those for which control for double criminality, a feature of the extradition procedure, was no longer required. European arrest warrants were simpler and much more effective than extradition, and were moreover the exclusive preserve of the magistrates.

6. Mr. DOS SANTOS PAIS (Portugal) recalled that the question had been raised as to exceptional measures that might be adopted in the case of terrorism. Law 52/2003, mentioned in paragraphs 74 and 103 to 105 of CAT/C/PRT/Q/4/Add.1, did not entail any gap or restriction on the guarantees stipulated for criminal procedure, as the Code of Criminal Procedure applied in all cases. The purpose of that law was to expand the scope of the definition of terrorism to include the protection of international organizations, to increase the penalties for acts of terrorism, and to include the criminal liability of legal persons. The Attorney General's office and the courts were still responsible for overseeing the measures in question. No complaint of torture had been filed with respect to application of that legislation.

7. Apart from torture, the Portuguese criminal code defined several offences that related to the first article of the Convention: involuntary manslaughter (article 131), assault on the physical integrity of persons (article 143 ff), and cruel or inhuman treatment (article 152). It was sometimes difficult, therefore, to appreciate the question in its entirety, which explained why the report provided no statistics on this point.

8. It had been suggested that the report presented torture as a crime against humanity. Indeed, at the time the report was written, torture was included in the portion of the criminal code devoted to crimes against humanity, but there was in fact no link between these two notions, or to crimes committed against civilian populations. In the new criminal code, torture was covered in the section devoted to cultural identity and physical integrity of the person; it could be related with the above-mentioned types of crimes, but it did not have to be.

9. As to the question of whether the Attorney General's office was responsible for investigating cases of torture, the system of legality was applicable, and as soon as an offence was reported to the authorities an investigation must be opened. The Attorney General's office was responsible for overseeing criminal action and must always have access to the complaint, which was transmitted to the office even if the investigation was later entrusted to the police.

10. A regulation on resort to coercive means, and in particular to firearms, by the security forces had been published in 2004. Those rules were fully consistent with the principles of legality, necessity and proportionality. The use of firearms by the national police in vehicle chases had been prohibited since 2005, except in the cases expressly stipulated by the law. This regulation applied to TaserX26 weapons. The security police had acquired 20 of these weapons, reserved to the special units listed

in paragraph 78 of document CAT/C/PRT/Q/4/Add.1, which were allowed to use them only in cases posing grave danger to human life. The Republican Guard had acquired 40 such weapons for the exclusive use of units responding to cases where the use of firearms would be dangerous. Finally, 26 TaserX26 weapons had been acquired by the General Directorate of Penitentiary Services, which would not be distributing them until it had issued strict rules on their use.

11. Mr. MARRECAS FERREIRA (Portugal) said that the definition of torture given in article 243 of the Portuguese criminal code was consistent with the first article of the Convention, and that its scope was sufficiently broad to include discrimination. Moreover, article 240 of the code, which referred only to racial discrimination, would henceforth be applicable to gender and sexual orientation. As to the distinction between torture and cruel or inhuman treatment, article 243 was consistent with the definition in article 3 of the European Convention on Human Rights, and it also specified that these acts must be committed by an agent of the state and must have the purpose of extracting a statement or information, punishing, or intimidating.

12. The statistics from the Ministry of Justice on crimes reported by the police that had been investigated but not yet judged revealed the following facts: no act of torture had been reported between 1998 and 2003, but there had been complaints of abuse of authority: there were 95 such cases in 1994, 24 in 1999, and 23 in 2004. These figures showed that the situation had stabilized.

13. Domestic violence and sexual assault, if not committed by public officials in the exercise of their functions, could not be classified as torture within the meaning of the Convention and the Portuguese criminal code. However, the severity of such acts was fully recognized in Portugal. Sexual abuse of juveniles and trafficking in persons were covered by separate articles of the criminal code: article 132 punished premeditated murder ("qualified homicide") by imprisonment for up to 25 years, depending on the vulnerability of the victim, article 152 punished domestic violence with imprisonment of one to five years, articles 163 and 160 4 dealt with sexual coercion and rape, articles 171 to 176 with sexual abuse of minors, prostitution and in particular the prostitution of children and child pornography, with the penalties increased when the victim was a family member (article 177). As to trafficking in persons, which was precisely defined in article 160 of the code, this was punished by 3 to 10 years imprisonment.

14. Legislation on criminal investigation procedures for terrorist crimes provided that the investigation was to be conducted by the judicial police, but under the control of the public prosecutor. The law in fact required the criminal police bodies to act under the oversight of the Attorney General's office. Finally, the terminological imprecision that had worried Mrs. Belmir was inevitable, and European criminal codes were full of concepts that were difficult to render into other languages.

15. The question of whether Portugal exercised universal jurisdiction for acts of torture and whether the principle of *aut dedere aut judicare* ("extradite or prosecute") applied to them was dealt with in paragraphs 48 ff of the report. Article 5 of the criminal code had been partially amended in the new criminal code: the principle of universal jurisdiction had been maintained, but the list of crimes in paragraph 49 of the report had been changed; item b) of paragraph 1 of article 5 of the code covered crimes committed against Portuguese citizens by Portuguese citizens normally residing in Portugal, where the perpetrator was in Portugal but the crime had been committed outside Portugal's territorial jurisdiction. Torture was not

mentioned in these provisions, and consequently it fell under universal jurisdiction when the victims were Portuguese. The following crimes were henceforth included in the State's universal jurisdiction: slavery, trafficking, kidnapping, sexual abuse of children and dependent persons, prostitution of minors, child pornography, and environmental crimes. To these must be added the crimes covered by articles 144, 163 and 164 of the criminal code: disfigurement, removal of a bodily organ or member, depriving a person of the capacity to work, of intellectual capacities, of procreation capacities, etc. Acts of torture committed abroad by a public official, if they produced these consequences, would fall under universal jurisdiction.

16. The principle of *aut dedere aut judicare* applied, thus, in the form of an obligation that could be fulfilled in one of the two following ways: the perpetrator of one of the aforementioned offences, if found in Portuguese territory, would either be extradited, when possible, i.e. when guarantees relating to extradition were respected, or prosecuted if extradition were not possible.

17. In the case of the Indonesian soldiers, the Prosecutor General's office had examined the question of whether, as Portugal was the administrating power for Timor, that territory could be considered as Portuguese national territory and whether Portugal consequently had the necessary jurisdiction to take criminal action against foreigners who had committed crimes there. Its opinion, to the effect that the conditions for the exercise of universal jurisdiction were not present, was based not on the idea that universal jurisdiction was optional but on the conclusion that the notion of administrative power was too vague to give the Portuguese State the necessary jurisdiction to arrest foreign criminals in that territory.

18. Mr. DE ALMEIDA (Portugal), responding to a question about police raids for identification purposes, said that, under the terms of the law governing the police, taking a person to the police station for identification was an exceptional measure that must be applied in a strictly individual manner. When it was necessary to identify a group of persons, this was done on the premises, and individually. A person could justify his identity by merely presenting a piece of identification or calling a witness. That person could also return to his residence, accompanied by a police officer, or to any other place where his identification papers were located, to retrieve them.

19. With respect to the recruitment of minorities in the police forces, it was difficult if not impossible to apply "positive discrimination" measures, for article 50.1 of the Constitution guaranteed equality and freedom of access to the civil service for all citizens. It was true, however, that this access could be hindered by certain practical obstacles. For example, the requirement that police recruits should have 12 years of schooling was one that, unfortunately, very few members of the Roma community could meet, hence their under-representation in the police forces. Female police officers, on the other hand, were increasingly numerous, and currently accounted for around 10% of the public security police force and 4% of the National Republican Guard.

20. Efforts were being made to forge a closer relationship between the police and minorities, in particular the Roma community, and to improve the capacity of police officers to react appropriately to delicate situations such as taking care of women and children who were the victims of violence. A specialized unit had been created within the National Republican Guard. The public security police were cooperating with a nongovernmental organization in order to provide female and child victims of violence with the protection and assistance they needed.

21. The notion of detention embraced three quite distinct situations: identity control, police custody, and pretrial detention. Detention for identity control purposes was expressly provided for in article 2 of the regulations on the physical conditions of detention in police stations. Identity control could be exercised for persons suspected of having committed a crime, of having unlawfully entered or remained in Portuguese territory, or of being the object of an arrest warrant. The suspect would be held in police custody only if he could not justify his identity by one or other of the means mentioned above. Such detention could not exceed six hours, after which the person must be released even if his identity had not been established.

22. The rights of detainees were protected by the Constitution, by the law, and by the regulation governing the physical conditions of detention in police stations. The right to consult a lawyer was protected by paragraph 2 of article 20 of the Constitution, and several articles of the regulation. A decree issued in 2000 by the Ministry of the Interior regulated procedures for applying that law.

23. Under the terms of that regulation, any detention was automatically recorded in a memorandum and entered in the registry of detentions as well as in the individual file of the detainee. It must also be notified to the public prosecutor's office within two hours after the arrest. Every detention centre also maintained a registry in which detainee complaints were recorded.

24. With respect to surveillance of private security agencies by the IGAI, it should be clearly understood that these agencies operated exclusively in the private sector and were not involved in public security activities. The oversight exercised by the IGAI (*Inspeçäo Geral da Administraçäo Interna*) was intended to ensure the legality of these activities, which affected the rights of citizens.

25. The IGAI and the public prosecutor's office were required to cooperate with each other. The IGAI must advise the prosecution office of any facts constituting a criminal offence and, if the prosecutors so requested, must assist in compiling evidence, while the prosecutor's office was required to inform the IGAI of any disciplinary violation by police officers.

26. The Code of Ethics of the National Republican Guard and the Public Security Police had the status of law. The IGAI in the administrative authorities were attentive to its observance. Any violation of its provisions constituted an offence and would trigger disciplinary proceedings.

27. The inspections performed in 2005 had revealed some shortcomings in the procedure for recording arrests, which in some cases were not entered in the registry or notified to the prosecutor's office. The visits conducted in 2006 confirmed that these problems had been remedied and no new ones had arisen.

28. Several cases of mistreatment by police officers had been cited. In the *Antonio Pereira* case, the officer had been suspended from duty for 225 days. In the *Nuno Lucas* case the officer had been placed in compulsory retirement on 30 December 2003. An appeal against that measure was currently pending before the administrative tribunal.

29. When police officers used firearms it was mandatory to file a report. If death or bodily injury resulted from police use of a firearm, an investigation was automatically opened. As to the specific problem of using firearms during vehicle chases, the IGAI had sent a report to the Ministry of the Interior on this matter,

recommending among other things that the use of firearms in such circumstances be prohibited, save in exceptional cases. With respect to the 2006 Porto incident, disciplinary proceedings were under way against the police officer concerned, who had been suspended provisionally, and the outcome of the judicial examination was awaited.

30. Mr. MATEUS (Portugal) said that the provisions governing detention in secrecy had been amended with respect to what was indicated in paragraphs 54 to 57 of the written responses. The code of criminal procedure provided henceforth that detention in secrecy was applicable only to persons suspected of having committed terrorist acts or violent crimes or of belonging to a criminal organization, and that it could be imposed only by decision of the prosecutor, pending the suspect's appearance before a judge, and could not last for more than 48 hours. The suspect thus detained had the right to consult a lawyer.

31. The rules governing pretrial detention had also been amended in the course of the recent legislative reform. Pretrial detention was henceforth authorized in cases where there was a strong presumption of an offence punishable by a prison sentence of more than five years – or of three years in the case of terrorist acts or offences related to organized crime – or in cases involving persons illegally present in Portuguese territory or the subject of an extradition or expulsion proceeding.

32. The new provisions resulting from the reform required that pretrial detention must end after four months if no charges had been laid; after eight months if the examining magistrate had not rendered a decision; after 14 months if there had been no conviction in a court of first instance; and at the end of one year and six months if there had been no definitive conviction. These periods could be extended in the case of terrorism, acts stemming from organized crime, or offences punishable by a prison sentence exceeding eight years.

33. The maximum duration of pretrial detention was currently three years and four months – it had been four years prior to the reform – pursuant to article 215.3 of the code of criminal procedure. It could however be extended by six months if a constitutional challenge were filed. In exceptional circumstances, pretrial detention could be extended by one half of the penalty imposed if an extraordinary recourse were filed against a decision confirming the conviction upon first appeal.

34. The notion of pretrial detention was thus very broad. This had to do with the fact that in Portugal the presumption of innocence pertained until the conviction became final. Statistics showed that of the total number of persons in pretrial detention (representing 21.5% of all prisoners) 16.1% were awaiting trial and 5.4% had been convicted in first instance and were awaiting the outcome of an appeal.

35. A question had been raised about measures taken to relieve prison overcrowding. The recent amendments to the criminal code and the code of criminal procedure had done much to reduce the number of prisoners, thus resolving the overcrowding problem. In fact, between June 2004 and November 2007 the number of prisoners had dropped from 13,803 to 12,603, bringing the current occupancy rate from 111% to 97%. In the case of women's penitentiaries, the opening of a new facility at Porto in January 2005 had resolved the overcrowding problem at the Tires prison. There were also plans to build a new penitentiary in the Azores in 2008, and another in Lisbon. At the same time, several prisons had been declared obsolete and closed.

36. Violence among prisoners was generally linked to drug trafficking. Penitentiary personnel were taking this problem very seriously. Regular sweeps had resulted in the seizure of 2.822 kg of cannabis in 2006 and 3.557 kg in 2007. Detoxification programs were also in place, and a protocol prepared with the Ministry of Health allowed new arrivals who were already undergoing replacement treatment to continue their treatment in prison. In 2006, 568 prisoners had benefited from these measures. There were plans to step up the prevention of narcotics trafficking in prisons through closer video surveillance and visitor controls.

37. A national plan for the prevention of infectious diseases in prisons had been approved in 2006. Among other things, it called for the free distribution of condoms and of tattooing and piercing implements, screening tests, and health education programs for prisoners.

38. Sexual violence among prisoners was rare but whenever an offence of this kind occurred judicial proceedings were opened. Consistent with the recommendations of the Committee against Torture following its last visit to the central prison of Porto, a broad range of measures had been taken to combat violence among prisoners, such as posting 24-hour guards in the different cellblocks, speeding disciplinary procedures, modernizing collective areas such as sports fields, gymnasiums and the library, offering a greater choice of apprenticeship activities and vocational training, and separating first-time from repeat offenders. At the current time, more than 700 prisoners were following courses, working, or taking vocational training in the central prison of Porto.

39. Referring to paragraph 81 of the written responses, Mr. Mateus specified that the suspended sentence given the prison guard found guilty of mistreatment at the central prison of Porto was conditional upon payment of €15,000 in damages and interest to the victim. Responding to Mr. Camara, he said that the amount of compensation was determined by the judge in light of the injuries inflicted. In cases of torture, damages and interest must normally be paid by the perpetrator but, pursuant to Decree Law 423/91, if that person were insolvent the State would compensate the victim in his place. When a State agent was found guilty of grave bodily harm against an individual, the victim could demand compensation either by the State or by the official concerned.

40. With reference to the *Vasques Libânio* case mentioned by Mrs. Gaer – which dealt with an incident dating from 2003 where an inmate had been beaten by several guards at the central prison of Lisbon – Mr. Mateus said that the prison audit and inspection service had launched a disciplinary investigation against 8 guards at the prison, and had recommended that seven of them be dismissed from their functions. At the same time, measures had been taken to prevent further such incidents. This case had been brought to the attention of the Prosecutor General, who had conducted an investigation and appointed a forensic surgeon to examine the alleged victim. One of the guards charged had been immediately suspended for 90 days, while the other seven guards had been brought to justice. However, they had been acquitted for lack of proof, as the inmate was unable to identify his aggressors among the guards who were present in his wing of the prison at the time of the events. This acquittal was currently the subject of an appeal and, once a final decision was rendered, disciplinary proceedings would be taken against those responsible. Finally, further to the information provided in paragraph 93 of the written responses, during the period 2004-2007 the prison audit and inspection

service had imposed 125 disciplinary penalties on officials of the penitentiaries administration who had committed offences other than acts of torture.

41. Responding to Mrs. Belmir, Mr. Mateus said that when acts meeting the definition in the first article of the Convention were committed against an inmate, the Prosecutor General was obliged to request a legal review and that if a complaint of torture or mistreatment were dismissed for lack of proof the victim could challenge that dismissal by the Prosecutor General and demand a re-examination of his complaint.

42. In addition, Mr. Mateus said that the number of suicides among inmates had been declining steadily for the last 10 years, from 20 in 1998 to 8 in 2007, and that special suicide prevention measures had been taken with respect to high-risk inmates. All inmates were screened for HIV/AIDS upon arrival in prison and antiretroviral drugs were distributed to those diagnosed with the infection. In 2004, the budget for distribution of antiretroviral drugs was €3.5 million; in 2005 it was €3.7 million and in 2006 it exceeded €4 million.

43. Finally, Mr. Mateus stressed that the situation in the prisons was the subject of internal and external surveillance and that, in particular, the sentence enforcement judge was required to grant a private interview to prisoners who so requested. At the central prison of Lisbon, there were 171 such interviews conducted in 2004, 135 in 2005, 159 in 2006 and 116 in 2007.

44. Mr. ATAIDE (Portugal), responding to questions by Committee members about the expulsion of foreigners and the means of recourse open to them, said that non-citizens who were denied entry to the country at a border post could appeal the decision before an administrative judge within 90 days. Illegal aliens against whom an expulsion order was issued could also launch an appeal, and this had suspensive effect. As to asylum seekers, there were two stages involved: first, the application must be presented to the Director General of the Aliens and Borders service who would rule on its admissibility. In case of refusal, an appeal could be brought before the administrative and fiscal tribunal, with suspensive effect. If the application were declared admissible, or if it was not examined within five days, the asylum seeker was authorized to enter the territory. In the subsequent stage, the application was reviewed by the Ministry of the Interior and, if denied, an appeal could be submitted to the administrative and fiscal tribunal, with suspensive effect. If that tribunal upheld the denial of the application, the asylum seeker must leave the territory within 20 days. If the person satisfied the conditions for the assisted voluntary return program of the International Organization for Migration, he would have 30 days to leave the country.

45. All asylum applications must be reported to the Portuguese Council for Refugees, an NGO representing the Office of the United Nations High Commissioner for Refugees, which had no bureau in Lisbon. The Council had the power to conduct interviews with asylum seekers, give its opinion to the authorities upon first examination of the request, assess the situation in the asylum seekers' country of origin, and supply documents for help in evaluating the risks facing the applicant if he were returned to his country. Pursuant to the code of administrative procedure, enforcement of a decision to return an asylum seeker was suspended immediately if the person concerned could show that he would be in significant danger if returned to his country. In such a case, the expulsion order would be suspended until the courts had decided his appeal.

46. With respect to measures for removing from Portugal aliens other than asylum seekers, Mr. Ataide said that illegal aliens arrested by the police must be brought before a judge within 48 hours after being placed in a detention centre in preparation for expulsion. Aliens who were denied entry to the territory were placed in provisional shelters located at the frontier. If they could not be returned to their country within 48 hours, the criminal judge of first instance must be advised of their presence in those centres.

47. The Aliens Law provided that an alien under an expulsion order could be held for up to 60 days in a temporary shelter, but these provisions were applied only rarely, when the risk of flight was significant. In 2006, the average detention time for aliens arrested for expulsion purposes was 18 days, and at the end of the first half of 2007 it was 20 days, or one-third the maximum duration authorized by law. According to administrative statistics, 396 persons had been expelled from the country in 2007, including 12 Russians, 13 Moldavians, 38 Ukrainians, 12 Angolans, 189 Brazilians and 5 Chinese.

48. Unaccompanied minors requesting asylum were represented by the Portuguese Council for Refugees and were housed in that organization's reception centres. Juvenile refugees of sufficient maturity could apply for family reunification in order to bring their parents or siblings to Portugal.

49. Responding to a question from Mr. Grossman, Mr. Ataide indicated that Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers had been incorporated into the law of 23 June 2006, supplementing national legislation for the social production of asylum seekers and their access to employment.

50. Moreover, under an agreement signed in 2003 with the centres for assisting victims of torture, asylum seekers showing signs of torture and mistreatment could receive medical care and psychological support in those centres.

51. On the question of diplomatic assurances, Mr. Ataide said that the Portuguese authorities had not established a list of "safe countries" and that they assessed the risk of torture upon return on a case-by-case basis, using information furnished by their embassies, European Union bodies, NGOs and the media. To date, Portugal had never sought diplomatic assurances from another state.

52. Responding to questions on the fight against human trafficking, Mr. Ataide said that, under the new Aliens Law, victims of trafficking could be given a residency permit for humanitarian reasons and for exceptional grounds that did not involve the asylum procedure. In May and November 2006, the Brazilian and Portuguese governments had jointly hosted seminars on this issue in order to identify best practices and reinforce cooperation between the two countries to combat trafficking. In addition, the anti-trafficking campaign of the Council of Europe, with the slogan "Human being – not for sale", was to be launched in Portugal very shortly.

53. Mrs. CARVALHEIRA (Portugal) added on this point that, as part of the first national plan to combat trafficking, a strategy had been launched for sensitizing the public to this phenomenon, protecting victims, and providing training to police forces in this area. With respect to domestic violence, pursuant to a resolution of the Council of Ministers, a third plan to combat this practice had been adopted with a view to improving follow-up and treatment of complaints, creating a database

together with a single registry of complaints (so that victims would not have to recount their sufferings more than once), offering social services and psychological support for victims, and creating a reception structure for minors.

54. Several studies on domestic violence had been published by both public and private agencies, and their findings were similar to trends observed in other countries. According to one study conducted in 2006, 80% of domestic violence victims were women, and 60% of them were married to or cohabiting with their aggressor. However, it seemed that more and more people were judging this practice intolerable and that victims were gaining readier access to justice. Legislative and administrative measures had been taken to make domestic violence a criminal offence and to protect persons whose life and security were threatened by a violent spouse or partner. Measures had also been taken to create a mechanism to receive complaints from female and child victims of such violence. There were currently 34 reception centres for female victims of spousal violence. Finally, convicted offenders could have their sentence suspended if they agreed to undergo psychotherapy, with a view to avoiding recidivism.

55. Mr. DOS SANTOS PAIS (Portugal), responding to a question from Mr. Grossman on Portugal's follow-up to the Decision of the European Committee of Social Rights in the *World Organization against Torture* v. *Portugal* case (complaint 34/2006), said that what the Committee had criticized in the *João Bernardo* case was not so much the ruling issued by the Supreme Court of Portugal but rather the judges' legal reasoning. On one hand, the Supreme Court had not quashed the suspended sentence of18 months in prison handed down by the court of first instance; on the other hand, it has simply ruled that moderate punishment administered solely to correct a child’s behaviour, and appropriate to the situation, was not illegal. Consequently, the court's ruling by no means opened the door to physical assaults against children or the possibility of inflicting on them corporal punishment that could constitute cruel, inhuman or degrading treatment within the meaning of the Convention against Torture.

56. In answer to a question from Mrs. Gaer about agreements between Portuguese and Spanish hospitals to facilitate the transport of human organs from one country to the other, Mr. Dos Santos Pais said his country was facing a severe organ shortage as a result of the low number of donors, and that to address the situation some private agreements had indeed been concluded. They were subject to strict public oversight by the Portuguese and Spanish health ministries, which enforced legislation governing organ donations in the two countries. In Portugal, organ donations were now covered by the principle of presumed consent, whereby any person was considered a potential donor upon death unless, while alive, that person had deposited a declaration of refusal with the health ministry services.

57. The Chairperson thanked the Portuguese delegation for its very detailed responses and invited Committee members to put any further questions they might have.

58. Mr. MARIÑO MENÉNDEZ (Rapporteur for Portugal) congratulated the delegation for its professionalism and the quality of its responses. He wanted more details on practical guarantees of the right of any detainee showing signs of torture or mistreatment to be examined by a physician. He noted that this right was not stipulated in law but rather in a rule of lesser ranking, namely the Regulation on the Physical Conditions of Detention in Penitentiary Institutions. He understood that

access to a physician was not systematic and was mandatory only when the detainee complained of torture. The regulation in question required that the person showing injuries must be examined "promptly"; the delegation was asked to explain what that phrase meant.

59. The Rapporteur also wanted to know whether, under Portuguese legislation, a foreigner was systematically informed, in the course of expulsion proceedings, of his right to contact the consular representative of his home country in Portugal. Finally, he asked if the appeal against a decision denying asylum, taken under the "fast-track" procedure, would have suspensive effect.

60. Mr. CAMARA (Co-rapporteur for Portugal) said that, given the lateness of the hour, he wanted only to thank the Portuguese delegation for its highly detailed responses.

61. Mr. GROSSMAN commended the quality of the dialogue with the Portuguese delegation, which had provided the Committee with some very important information. Drawing attention to the fact that immigration was currently one of the major challenges facing states, he wondered if Portugal had taken the necessary steps to ensure full respect of the fundamental rights of aliens, in particular the right to legal counsel, under the fast-track procedure for handling asylum requests. He also asked the delegation to comment on reports to the effect that, of the 690 complaints filed in 2006 against police officials for acts of torture or other cruel, inhuman or grading treatment indicating racist motives, only two had been brought to conclusion.

62. Mrs. BELMIR thanked the Portuguese delegation for the precision and professionalism with which it had answered the Committee's questions, and offered two observations. First, she explained that the question she had raised in her previous intervention as to the acquisition of tasers by the Portuguese police was intended merely to underline the fact that the State party, which had declared its interest in weapons of this type in paragraph 78 of its written responses, must not forget that their use could be particularly dangerous and even fatal, as the Committee had already observed during its examination of the periodic reports submitted by other states parties. Second, with respect to reforms of the criminal code and the code of criminal procedure, she urged the State party to bring the terminology used in the articles governing preventive detention into line with those of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

63. Mr. KOVALEV also thanked the Portuguese delegation and observed that it was hard to imagine how narcotic substances could enter and circulate in the prisons without the complicity of penitentiary agents.

64. Mr. WANG Xuexian drew the attention of the Portuguese delegation to the fact that the use of electric shock weapons had already led to 70 deaths in the United States and that he himself could confirm, having watched a video of taser-armed police officers arresting a suspect, that the electric charge delivered by these weapons was extremely violent. While not wishing to criticize the State party, which was free to acquire weapons of this kind, he urged it to be extremely careful as to how they were used.

65. The Chairperson had two observations to offer. The first dealt with the dangerous nature of the electric shock weapons acquired by the Portuguese police,

which called for the greatest caution. Second, the fact that domestic violence could constitute cruel, inhuman or degrading treatment could not be dismissed as readily as the delegation had done.

66. Mr. DE ALMEIDA (Portugal), responding to a question of Mr. Mariño Menéndez on the right of detainees to medical assistance, cited articles 21.to 221.3 of the regulation on the physical conditions of detention in penitentiary institutions, and said that one must distinguish two situations. First, any detainee had the right to consult a physician of his own choice at any time, for which he would pay a portion of the expenses. Second, if the detainee were wounded or his state of health so justified, he must undergo a medical examination promptly, i.e. no discretion in this matter was left to the penitentiary official, who was required to present the person to a physician immediately.

67. Mr. ATAIDE (Portugal), responding to Mr. Grossman's questions, said that illegal aliens held in detention were systematically informed of their right to contact the consular representative of their country in Portugal, for which purpose they were given a free telephone calling card. As to the decision denying an alien the right to reside in Portugal, this was automatically notified to the consular authorities concerned. Finally, it should be noted that the law guaranteed asylum seekers' right to legal counsel, and that any appeal against a decision denying asylum had suspensive effect.

68. Mr. DOS SANTOS PAIS (Portugal) said, with respect to measures taken by Portugal to combat domestic violence, that the important thing for his country was not whether this type of violence was covered by the first article of the Convention but rather to ensure that such acts did not go unpunished.

69. Mr. MARRECAS FERREIRA (Portugal) said it was important not to allow any uncertainty to persist concerning the existence of discriminatory practices in Portugal. On this point, he referred to the final observations adopted by the Committee on the Elimination of Racial Discrimination following its examination of the 10th and 11th periodic reports of Portugal (CERD/C/65/CO/6). While Portuguese judges were still making only limited use of the provisions of article 240 of the criminal code on discrimination based on race, gender and sexual orientation – adoption of which had marked a step forward in the fight against discrimination – they were applying other articles of the criminal code to punish racist behaviour. On this point, the mayor of one commune had recently been convicted for racist remarks against Gypsies, as had persons who had distributed racist pamphlets. As to the significant number of complaints of racist acts attributed to public officials, Mr. Marrecas Ferreira suggested that this might reflect the adoption of legislative and regulatory provisions specifically punishing racist acts by State agents, provisions that Portugal was working hard to implement.

70. The Chairperson commended the depth of the discussion during consideration of the fourth periodic report of Portugal, and said that the Committee's views and recommendations would be transmitted to the Portuguese government at the end of the session.

The meeting rose at 6.05 p.m.