ANNEX II

Additional information requested by the Committee

Following up to the letter of the Committee of 29 August 2016 requesting for additional information, Portugal has submitted the responses provided by the Ministry of Justice on 27 January 2017 (CAT/C/PRT/CO/5-6/Add.3). Adding to this response, in September 2017, MAI has provided additional information regarding the Ministry's scope of competences and its respective Security Forces and Services: GNR, PSP, SEF and IGAI. We hereby submit this information, pursuant to the General Guidelines (CAT/C/14/rev1):

Fundamental safeguards – Ill-treatment, namely of Roma and other minorities, and access to a lawyer for people deprived from their liberty (§ 8 and § 18)

In addition to the information provided on this issue to the Portuguese 5th and 6th National Report to CAT, MAI wishes to add the following information.

In the scrupulous fulfilment of the procedures provided for by the CCP, GNR has approved internal regulations (Circular No. 8/200-P and Circular No. 06/200-P), that define lawyer appointment procedures in criminal investigations and rules to be followed in relation to contacts within the territorial posts, whereby always guaranteeing the right to communicate with a lawyer, if so wished. This procedure is streamlined through the implementation of the Bar Association Information (SinOA) System.

Besides setting and disseminating the aforementioned standards, during the initial and promotion training courses provided at GNR´s School and the Military University Institute, the curricular units of Criminal, Criminal Procedural and Constitutional Law also include subjects on rights, freedoms and guarantees, respect for differences, use of coercive means, citizenship rights, among others. The Officers' Training Course provided at the Military Academy also has several curricular units on issues pertaining to human rights, multiculturalism, prohibition of discriminatory practices and peaceful resolution of conflicts, all with relevance to the topic at hand.

With regard to ensuring the automatic presence of a lawyer, such measure shall involve a governmental decision due to the predictable consequent financial burden.

PSP's has no additional information to provide to the one submitted for the national report. It has also national rules that completely comply with the CCP as well as initial and continuous and specialized training in line with human rights principles that are considered and promoted in police action in their training courses.

SEF also complies with the CCP whenever applicable in its specific field of competences and has initial and continuous and specialized training in line with human rights principles that are considered and promoted in their training courses.

Specifically concerning alleged ill-treatments to Roma or any other minorities, GNR, PSP and SEF have special programmes and projects aiming to fight any violation of rights or discrimination of these particularly vulnerable groups. Specific training is given to military, police and inspectors to prepare them to these special programmes and projects.

It is also important to mention that IGAI, in its assignments, embraces inquests *to verify all news of serious violation of the fundamental rights of the citizens by the services or theirs officers, that come to its knowledge, and evaluate other complaints, grievances and denunciations presented by potential breaches of the legality and, in general, the suspicions of irregularities or faults concerning the operation of the service*, especially those pertaining to the security forces and services (GNR, PSP and SEF) – Article 2, § 2, subparagraph (c), of Decree-Law 58/2012, of 14 March.

Among the plentiful expressions of a serious violation stands out the ill-treatment committed during the exercise of functions, namely torture and cruel, degrading or inhuman treatment, which are constitutionally foreseen in two topics: in the scope of the inviolability of the moral and physical integrity of persons (Article 25 of the Constitution of the Portuguese Republic) and that of the safeguards of the criminal procedure, that considers as not valid any proof obtained by means of torture, coaction or bodily or physical harm of a person (Article 32, § 8).

IGAI pays special attention to the conventional, legal, doctrinal and jurisprudential evolution that derives from the *absolute prohibition of the use of torture and inhuman or degrading treatment or punishment*, a principle established by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Considering some conceptual imprecisions and the difficulty of a semantic approach that does not create doubts or uncertainties, and also to conform and circumscribe its action in that field, IGAI uses the following concept of ill-treatment: «*The action of an officer with police authority who, in violation or in serious non-compliance with the rules addressed to the protection of fundamental rights (life, personal freedom, physical and moral integrity, cultural identity), makes use of physical, psychological or moral violence against persons who do not have the same authority in the context of that action.*»

Thus, the following actions are comprised in the concept of ill-treatment, and always having as a reference the risks of a physical, psychological or moral nature:

a) Actions that disturb the abovementioned juridical assets (fundamental rights) and which are themselves criminally punishable, regardless the fact that the law requires (or not) that the officer is specifically invested with authority [examples: a crime of *offence to the physical integrity* qualified by reason of a special blamableness or perversity (Article 145 of the CC); *ill-treatment* committed upon persons that are under the guard or care of the author (Article 152-A of the CC); *threat and coaction* against a person especially vulnerable by reason of age, disability, illness or pregnancy, or motivated by racial hate (Article 155, § 1 of the CC); *kidnapping* preceded or with torture or other cruel, degrading or inhuman treatment, committed against a person who has the function of prevention, pursuit, enquiry or reception of news of criminal, regulatory or disciplinary offences, the execution of sanctions of the same nature or the protection, guard or surveillance of detainees or an arrested person, with an aggravation in cases of regular use of such treatments or the use of especially serious means or methods of torture (Articles 243, § 1, and 244, § 2 of the CC);

b) Actions with unnecessary or excessive use of violence, namely disproportionally resort to coercive means that are available to the author (examples: use of a firearm

when the use of a truncheon or a simple verbal order would be enough; use of instruments of physical restraint, such as handcuffs, without the need to safeguard security measures);

c) Actions that are clearly of a discriminatory nature, vexing treatments or exploitation of moral weakness (examples: different treatment mainly by reason of sex, race or ethnic origin, disability or the presence of a serious risk for the health; Roma that are forced to sing songs of a known band formed members of the same ethnic group);

d) Actions meant to pursue forbidden purposes or which are not committed to their author, namely suggestive (example: simulations of violence) or wrongly rewarding (example: in order to obtain a confession, promise of immediate freedom that the author may not determine) police actions;

e) Actions with unnecessary exposition of a person to a physical, psychological or moral danger or with aggravation of the risk (examples: to put in the same cell persons of different gender or belonging to rival groups, bad conditions of hygiene in the cell);

f) Actions that are not ascribed to but are executed by officers generally with public authority, and claiming it or (unduly) making believe they have that authority (example: an officer that was prevented from the exercise of his function or is using a leave of absence or is already retired);

g) Actions that, with the resource, abusive by itself, to the authority accorded to the author, intend to cause physical, psychological or moral damage to a third party (example: an officer offends a father to cause a reaction in the son and then use against him some violent act);

h) The affixation or specifications, by who has the power to command, of orders or regulations that may cause any of the actions abovementioned (examples: stimulation of a sense of impunity; adoption of a culture of violence).

IGAI is confident this broad concept of ill-treatment exceeds by far the definition of *torture and cruel, inhuman or degrading treatment* as all «act that consists of causing a serious physical or psychological suffering, serious physical or psychological fatigue, or the use of chemical products, narcotics or other means, either natural or artificial, with the intention of disturbing the capacity of determination or the free expression of the will of the victim» (Article 243, § 3, of the CC; on its turn, Article 244, § 1, lists also some examples of *especially serious means or methods of torture*, the beatings, the electric shocks, the simulations of execution and the hallucinatory substances).

Concept of "arguido" – the "defendant" (§ 8, subparagraphs a) to c))

MAI considers that the recommendations related with fundamental safeguards (§ 8 subparagraph a)) of the CAT/C/PRT/CO/5-6, is already contained in the provision of Article 81, § 1 of the CC where it is clearly stated: «*The detention, pre-trial detention and confinement in the dwelling imposed to the defendant are fully deducted from the sentence of imprisonment, even if they have been applied in a different case from the one in which he is condemned, when the fact for which the defendant is condemned was committed before the final decision on the procedure under which the measures were applied* ».

This consideration is sustained by several Court Judgements, such as:

- Porto Court of Appeal Judgement, December 2006, whose executive summary reads: «*I. Periods of detention for interrogation and for being brought to the trial hearing must be deducted from the sentence. II. If the convicted person has suffered two detentions, both of them for less than 24 hours, 2 days must be deducted from the enforced sentence.*»;
- Évora Court of Appeal Judgement, 10 March 2013, whose executive summary reads: «*Having the defendant been detained in the context of a road traffic operation and freed about one hour later after formally giving his identity and residence, one day should be deducted from the prison sentence in which he was convicted.*»;
- Coimbra Court of Appeal Judgement, 19 February 2014, whose executive summary reads: «*1. The detention imposed on the defendant must be deducted in the calculation of the prison sentence imposed on him; 2. The lowest unit of time provided for the prison count is the day, corresponding to a period of 24 hours. Thus, the detention that lasted for about 4 hours, corresponds to the discount of 1 day.*».

This Coimbra Court of Appeal Judgement of 19 February 2014 is also sustained by the provisions of Article 479 of Decree-Law 78/97, of 17 February, as amended by Decree-Law 317/95, of 28 November.

Regarding CAT´s recommendation of § 8, subparagraph c), MAI considers it is necessary to clarify a few crucial concepts emerging from Portuguese criminal law, particularly, the concept of defendant (“arguido”).

“Arguido” is a person suspected of having committed a crime who, formally or at his/her own request, has been designated as such for criminal proceedings, and against whom proceedings are instituted. That person’s status comprises rights and duties other than those of the other parties to the proceedings. From the moment the criminal police body informs the person concerned that he/she is a defendant in a criminal proceeding and tells him/her what are his/her procedural rights and duties, the person is formally considered for that matter as defendant. The person concerned must be provided with a document identifying the proceedings as well as a defense attorney (if one has been appointed) and containing a notice of his/her procedural rights and duties.

That said, the ensuing remarks take into consideration and closely follow:

a) 2013/48/EU Directive of the European Parliament and of the Council, of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;

b) CCP;

c) Decree Order (*Portaria*) 10/2008, of 3 January, amended by Decree Order 2010/2008, of 29 February, amended and republished by Decree Order 654/2010 of 11 August, and again amended by Decree Order 319/2011 of 30 December, that regulates the Act (of Parliament) of Access to “Rights”, i.e. regulating free legal consultation and access to a lawyer.

Article 3 of the 2013/48/EU Directive imposes this access in several moments or, to be more precise, starting out from several moments, instilling in fact a logic of continuity in time of the access to a lawyer (on this respect, also refer to Article 2, § 1).

Explicitly, Article 3, § 2, subparagraph a) to d) of the 2013/48/EU Directive specifies that: «*…suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest: a)before they are questioned by the police or by another law enforcement or judicial authority; b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with subp. (c) of § 3;c) without undue delay after deprivation of liberty;d)where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court…».*

The obligation to provide legal aid is clearly laid down in Article 64 of the CPC which refers specifically, not to moments in time, but to actual material procedural acts, all of which require the assistance of a lawyer, even though the lawyer appointed to a given act may remain for subsequent acts. To that end, the legal provision from Article 3 of the Ordinance 10/2008, indeed encompasses the appointment of a lawyer for the entire case and throughout all the proceedings, from its earliest stages up until the final court decision and into the appeal.

Considering the transcribed provisions of Article 3, § 2, subparagraph a) to d) of the 2013/48/EU Directive, it should be recognized that the Portuguese law, specifically Article 64 of the CPC, already ascertains compulsory legal assistance and access to a lawyer before the suspect is questioned, namely by the police, in view of the provisions and combined interpretation of subparagraphs a) to h) of § 1, of Article 64 of the CPC, that state:

«*1 – The assistance by a defence counsel is compulsory:*

a) During the interrogation of an arrested or detained defendant;

b) During interrogation by a judicial authority;

c) During the preliminary hearing and court hearings;

d) In any procedural acts other than the formal declaration as defendant, whenever the accused person has any visual, hearing or speaking impairment or is illiterate, cannot speak or understand the Portuguese language, is less than 21 years old, or where the issue of his excluded or diminished criminal liability has been raised;

e) In case of ordinary or extraordinary appeal;

f) In cases provided for by Articles 271 and 294;

g) Where the trial hearings take place in absence of the defendant;

h) In other cases determined by law.

Article 64 § 2 to 4 of the CPC states: «*2 – Besides cases referred above, the court may appoint a defence counsel for a defendant, at the court's or defendant's request, where the specific circumstances of the case show the need or the convenience for the defendant to be assisted. 3 – Subject to the provisions of the above paragraphs, if the defendant does not have a lawyer or an appointed defence counsel, the appointment of a*

counsel is compulsory as of the moment when the person is formally charged. The identification of the defence counsel shall be mentioned on the court order that closes the inquiry. 4 – In the case provided for by § 3 above, the defendant shall be informed, on the charge document, that, if he is found guilty, he must pay the defence counsel's fees except if he has been granted legal aid, and that he may replace the defence counsel by a lawyer of his choice».

Moreover, Article 64 of the CPC covers all conceivable procedural acts that may occur in a criminal case, making the assistance of a lawyer mandatory throughout all the proceedings, from its earliest stages up until the final court decision and into the appeal.

Hence, according to the provisions of Article 64 of the CPC, it is legitimate to conclude that legal assistance is also required at sessions of identification, confrontation of witnesses (or co-defendants) and reconstitution of the crime scene, specifically and respectively established in Articles 146, 147 and 150 of the CPC.

Once more, taking into account the provisions of Article 3, § 2, subparagraph a) to d) of the 2013/48/EU Directive, it should also be recognized that the Portuguese law, specifically Article 64 of the CPC, already ascertains compulsory legal assistance and access to a lawyer by the suspects «*…in due time before they appear before the court…*», in view of the provisions and combined assessment of subparagraph a) to i) of § 1, of Article 61 of the CPC, which state:

«*1 – Unless otherwise provided for by law, a defendant has, at all stages of proceedings, the right to:*

a) Attend all procedural acts that directly affect him;

b) Be heard by the court or by the examining judge whenever they render a decision that personally affects him;

c) Be informed on charges against him prior to making any statements before an authority;

d) Refuse answering any questions addressed by an authority on charges against him and on the substance of his statements on them;

e) Choose a lawyer or ask the court to appoint him a defence counsel;

f) Be assisted by a defence counsel in all procedural acts where he takes part and, when detained, to contact such counsel in privacy;

g) Take part in the inquiry and examination, propose evidence and require any necessary measures;

h) Be informed on his rights by the judicial authority or criminal police body before which he must appear;

i) *Appeal, under the law, against any decisions to his detriment*».

It is also worth mentioning the provision of § 2, of Article 61 of the CPC, which states: «*2 – Communication in privacy as referred to in subparagraph f) above shall occur in a visible manner whenever required for security reasons, but may not be overheard by the watching agent*».

With regard to the assistance «*… without undue delay after deprivation of liberty…*» referred to in Article 3, § 2, subparagraph c) of the 2013/48/EU Directive, that is a matter already addressed and regulated in the transcribed subparagraph f), § 1, Article

61, of the CPC, as well as in Article 15, §. 2 to 5, Article 16, Article 17 § 2, and Article 22, § 1 to 5 of the Ministerial Order 5863/2015, of 26 May (RMCDPP).

It is a fact that it is with the acquisition of the status of defendant, that emerges the right to choose a lawyer or to request the appointment of a lawyer, but it is also a fact that the right to choose a lawyer or to request the appointment of a lawyer is mandatory in a wide range of cases and possible even upon the request of the defendant (Articles 20 and 32, § 3 of the Portuguese Constitution; Article 61, § 1, subparagraphs e) and f); Article 57, § 1; Article 58, § 1; and Article 59, § 1 and 2 of the CPC), which makes it possible to affirm that in the Portuguese criminal proceedings access to a lawyer is possible at all times.

Any defendant has the right to be assisted by a defence counsel in all procedural acts where he/she takes part and, when detained, to contact such counsel in privacy without undue delay after deprivation of liberty (Article 61, § 1, subparagraph f) of the CPC).

However, it is doubtful whether the concept of «suspect» used in the 2013/48 / EU Directive covers the Portuguese concept of suspect, as defined in Article 1, e) of the CPC. The Directive does not provide for a definition of a suspect, thus preventing a rigorous assessment of the moment where the protection set on by the Directive begins. Under the provisions of the 2013/48 / EU Directive, a suspect is someone who has the right of access to a lawyer in certain situations, but it is not said when someone should consider himself/herself a suspect – that is, a framework of guarantees is created for a subject who is not well-defined. This definition is therefore kept in the hands of the Member States (MS).

In Portugal, the decisive moment is the acquisition of the status of defendant, which can occur, and typically does, before the defendant is formally charged, but does not even depend, in a necessary way, on more demanding assumptions than those found in certain concepts of suspect. That is to say, in Portugal the role played by the concept of defendant absorbs that which in other systems is performed by concepts there designated as "suspect". Hence, in Portuguese Law the defendant is a formalization of the quality of suspect, and it is in the defendant*)* that the Portuguese law concentrates the charge of the potential perpetrator of a crime.

So, the concept of "*arguido*" totally comprises the concept of the suspect referred to in 2013/48 / EU Directive, ergo it is not necessary to attribute to the suspect defined in Article 1, subparagraph e) of the CPC the guarantees enshrined in that EU Directive. The opposite would always be equivalent to the accession of the latter towards the concept of "*arguido*" thus initiating a process of neutralization or redundancy of the concept of "*arguido*", which would see its functions absorbed by the concept of suspect.

The provision of Article 3, § 2, subparagraph a) of the 2013/48/EU Directive, comprising police questioning of suspects may be explained by the fact that in some MS police officers actually have much broader procedural powers than in Portugal, exercising powers and performing functions that in Portugal fall exclusively upon judicial authorities (on this respect, refer to Article 141, 143 and 144 of the CPC).

In Portugal, the non-mandatory assistance of a lawyer in such interrogations (if such police interrogations ever take place) is largely explained by the null and void relevance that those statements would take in trial. Article 357 of the CPC, namely its § 2 applies: «*The statements previously provided by the defendant reproduced or read at a hearing are not valid as a confession under the terms and for the purposes of article 344.*».

Article 357 § 3, of the CPC, which stipulates that the provisions of § 7 to 9 of Article 356 are correspondingly applicable, is also relevant:

- Criminal police agencies that have collected statements that are not allowed to be read during the hearing, as well as any persons who have participated in any such collection, may not be questioned as witnesses on the contents of those statements.
- Viewing or listening of recordings of procedural acts is only allowed when reading the respective written deposition is admissible under the terms of the previous paragraphs.
- The permission of reading, viewing or listening and its legal justification are recorded in the minutes of the hearing, under penalty of nullity.

In short, under CPC's provisions when someone deprived of his liberty is subjected to an interrogation the assistance of a legal counsel during that proceeding is mandatory. The non-compliance with the formalities entails the impossibility of using against him the testimonies that may have been given.

Failure to comply with formalities (for instance, by the police) means that any depositions made by the defendant, namely those made without the assistance of an attorney, cannot be used against him.

On this matter we should also underline thathe Portuguese Constitution lays down (in Article 27, § 4) that: «*Every person deprived of liberty shall be immediately informed, in an understandable manner, of the reasons for the arrest, imprisonment or detention, as well as of his rights* (assured by law)».

The procedural rights of the defendants set forth in Article 61 of the CPC, thus apply to everyone who is deprived of liberty, be it due to arrest, imprisonment or detention.

It should also be mentioned that the 2007 and 2013 amendments of the CPC have extended the obligation of assistance by a defence counsel. Indeed, the previous version of the Code only set forth such obligation in the «first judicial examination of the person detained»; this obligation now extends to all the defendant's examinations and proceedings carried out during the investigation phase, by the Public Prosecution, and in all the remaining phases of the procedure, by the judge (Article 64, §1, subparagraph a) and Article 144, § 3 and 4 of the CPC).

In this regard, one must underline that Ministerial Order 5864/2015 applies both to the PSP and GNR and thus to all the detention places of those police forces. The RMCDPP covers not only cases involving «arguidos»/«defendants» but also detained persons, including persons undergoing an identification procedure.

Furthermore, Article 4 of the Deontological Code of Police Service (DCPC), approved by the Council of Ministers Resolution 37/2002, on the fundamental rights of the detained person, foresees that: «*The members of the police forces have the special duty of insuring the respect for the life, the physical and psychological integrity, the honour and the dignity of persons under their custody; the members of the police forces must watch over the health of the persons at their guard and must take immediate measures to insure that they be given the necessary medical care*».

Also relevant is Article 2, § of the same DCPC which states: «*While exercising their functions, members of the security forces shall have absolute respect for the Constitution of the Portuguese Republic, for the Universal Declaration of Human*

Rights, for the European Convention on Human Rights, for the Community legality, for international conventions, for the law and for this Code.».

Regarding all the above mentioned remarks, it should be underlined that:

- To the effects and proceedings of the RMDCPP, a «detained person» is both the person undergoing identification (Article 250 of the CPC) and the «detained person» himself (Article 254 and forth of the CPC); thus, the identified person has all the *rights* set forth under the Regulation, although he is never considered as an «*arguido*».
- The rights of the «*arguido*», as defined by the CPC, are of a procedural nature and are not related to one's well-being; for detention conditions purposes, the difference between "detained person" and "arguido" is not relevant;
- Unannounced inspections carried out by IGAI focus on the enforcement of the RMCDPP by the police forces, that is, on the "detainees" condition, in the sense given by that Regulation, which includes all citizens conducted to a police station including for identification purposes.

We would also like to underline the provision of Article 17, § 1 and 2 of the RMCDPP.

Particularly relevant is §2, of Article 17 of the RMCDPP, which reads: «*In addition to the book referred in the preceding §, an individual detainee form, of an approved model, will be developed to record all the circumstances and measures related to the detainee, in particular, the time and cause of deprivation of liberty, the moment the detainee was informed of his rights, marks of injuries, contacts with family, friends or lawyer, incidents that occurred during detention, the moment the detainee was presented to the judicial authority and released. Such a form shall be signed by the police officers involved and by the detainee*». This provision should be interpreted in accordance with the CPC framework and bearing in mind the clarifications already given.

Recently, the EU Council adopted the 2016/1919/EU Directive of the European Parliament and of the Council, of 26 October on legal aid for suspects or accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. The new rules will ensure that the right to legal aid is provided and the legal aid itself is offered in a uniform way across the EU. Suspects or accused persons should benefit from legal aid from the early stages of criminal proceedings and are granted this aid under clear criteria defined in the Directive. MS are required to transpose the Directive within 30 months after its publication in the Official Journal of the Union. These rights will be available as of May 2019.

In conclusion, Portugal's current legal framework not only sets standards for all criminal proceedings in line with EU Law, specifically on legal aid for suspects or accused persons in criminal proceedings, but also guarantees basic rights to detainees and defendants in such proceedings, such as the right of access to a lawyer, as well as any entitlement the defendant may have to free legal advice, and the right to be informed about the accusation, enshrined both in the Constitution and in the CPC.

The performance of law enforcement agencies and the material enforcement of the CPC and its provisions is closely assessed, namely through the oversight of specialized agencies like IGAI and IGSJ.

Prompt, effective and impartial investigations (§ 9)

With regard to the alleged ill-treatment of citizens before being detained or even in places of detention, as a standard procedure, as soon as the GNR becomes aware of these facts through complaints or written accounts, it immediately requests for relevant information and initiates proceedings (investigation; enquiry; disciplinary) with a view to establishing the full facts and, when appropriate, notify the Public Ministry.

The situations of ill-treatment reported in the written accounts or complaints are usually always associated with criminal proceedings, thus they are sent to the Court which is the decision-making power. The GNR Command mandatorily informs the higher authorities (IGAI or the Military Judiciary Police), and is moreover subject to internal supervision by the GNR Inspection by sending an annual report on corruption and related offences every year to MAI and that is collected by the Court of Auditors, in order to ensure natural and necessary impartiality.

Similar procedures are developed by PSP with regard to the alleged ill-treatment of citizens detained or in places of detention under the scope of competences of the Police.

On the excessive use of force by police officers, IGAI reiterates what has always been emphasized in all contexts. In the scope of disciplinary procedures, by means of recommendations, through participation in training actions, in informal contacts with officials responsible for the security forces and departments, and in all other scenarios of action conferred by the law, IGAI has always stated that abusive practices related to the use of coercive means by police forces are unacceptable in a democratic State based on the rule of law, fighting, without any margin for hesitation, for a firm and strict application of the law.

It must be underscored that, regardless of their source and origin, IGAI pays special attention to all reports of ill-treatment of citizens by members of the security forces and departments and, where deemed necessary, considering the reported facts and their seriousness, inquiry proceedings always take place at the initiative of the Inspector General (Article 5, § 1, subparagraph d), of Decree-Law 58/2012, of 14 March).

IGAI is especially focused on the control of legality and the defence of citizens' rights, and it is incumbent on IGAI to investigate all reports of serious violations of the citizens' fundamental rights (Article 2, § 2, subparagraphs c) and d) of Decree-Law No. 58/2012), although its mission is not limited to this specific task.

According to the provisions of Decree-Law 58/2012, (amended by Decree-Law 146/2012, of 12 July), IGAI is entrusted with the mission of ensuring high level functions of audit, inspection and control regarding all entities, services and bodies, under the authority of or whose activity is legally regulated by the Minister of Home Affairs (Article 2, § 1).

Reports of a disciplinary offence always lead to the opening of a procedure to establish if there is any liability that may be involved in the case, and the disciplinary action is of an informal nature, since it does not depend on participation, complaint or denunciation (according to Articles 71 and 72 of GNR´s Disciplinary Regulation, which find some correspondence to Articles 20 and 61 of PSP´s Disciplinary Regulation and to Article 194 of the General Labour Law in Public Functions).

It is also necessary to consider the Regulation of the Inspection and Control Proceedings (RICP), (Regulation 10/99, of 29 April) that define the procedural rules of the actions

conducted by IGAI. The preamble to the RICP states: «*... The scope of action of IGAI is extensive and includes departments and organisations whose organic realities, legal frameworks and internal cultures show, among them, significant differences. It is therefore important to concentrate on a single legal text the procedural rules of the inspection and control actions, harmonising the procedures and improving the performance of the Inspectorate General, to provide the required legal certainty to all persons involved, inspectors and those subjected to inspection/control actions…*».

The RICP further establishes that: *"Whenever, as a result of the action or failure to act by the security officers and other services within the scope of action of the IGAI, it ensues to anyone the violation of fundamental rights, namely death or serious bodily harm, or there is evidence of serious abuse of authority or property damage of high value, the forces or services must immediately report the facts, by fax, to the Minister of Home Affairs and wait for the decision regarding the opening of disciplinary procedures"* (Article 2).

More recently the criteria established in the RICP were reinforced by Decision of the Minister of Home Affairs 10529/2013, of 29 July, from which we highlight the following: *"... 1. When there is a violation of personal assets, namely the death or serious bodily harm, or there is evidence of serious abuse of authority or property damage of high value, the Security Forces, the Immigration and Borders Service and other Departments of the Ministry of Home Affairs must immediately inform, by the quickest means available, the Minister of Home Affairs and the Inspectorate General of Home Affairs; 2. The Inspectorate General of Home Affairs shall immediately carry out the analysis of the paperwork received and initiate investigation or enquiry procedures, regarding to which it has specific legal competence, or suggest to the Minister of Home Affairs the opening of disciplinary procedures, if the necessary conditions are met; 3. Whenever the Inspectorate General of Home Affairs decides to open procedures, that fact must be communicated to the Minister of Home Affairs and to the highest rank official of the security force, of the Immigration and Borders Service or of the addressed department which, if he/she has already begun an internal procedure of the same or less important nature, must order its closure and immediately send the file to the Inspectorate General of Home Affairs for inclusion in the corresponding procedure;…"*.

It is therefore considered that, from a normative point of view, IGAI has at its disposal legal instruments that guarantee that it may intervene and act as a police oversight body, including taking the initiative to investigate reports of ill-treatment of citizens committed by elements of the security forces and services.

The legal framework that is applicable to inspection bodies is based on Decree-Law 276/2007, of July 31, which lays down the fundamental rules governing the exercise by inspection bodies of the powers of inspection, audit and supervision (hereinafter only FRIAS). FRIAS establishes the operational skills of inspection bodies, qualified as «*safeguards to the implementation of the inspection activity*».

According to the FRIAS (Article 17), inspectors are entitled to use a professional identification and free self-transit card, which they must display when at duty. Inspectors are empowered with what the FRIAS designates as «*prerogatives*» (Article 16), in particular:

- *Right of access and free transit, according to the law, for the time and during the time necessary for the performance of their duties, to all departments and facilities*

of public and private entities subject to the exercise of their duties;

- *Request for examination, consultation and attachment to the case file, books, documents, records, archives and other pertinent elements held by entities whose activity is subject to the inspection action;*
- *Collect information on the inspected activities, examine any traces of infractions, as well as the examinations, measurements and samples taken for laboratory examination;*
- *Conduct inspections, in order to obtain evidence, to the places where activities are carried out and that are subject to its scope of action and that may constitute illicit activities, without dependence of previous notification;*
- *To promote, under the applicable legal terms, the sealing of any facilities, as well as the seizure of documents and objects of evidence held by the inspected entities or their personnel, when this proves indispensable to the execution of the action, for which it must be drawn up the respective writ of execution;*
- *Requesting the cooperation of the police authorities, in cases of refusal of access or obstruction to the exercise of the inspection action by the addressees, to remove such obstruction and ensure the performance and safety of the acts of inspection;*
- *To request the adoption of necessary and urgent precautionary measures to ensure the means of proof, when necessary, in accordance with the CCP;*
- *Obtain, for the purposes of ongoing actions in the same departments, the borrowing of requested material and equipment, as well as the collaboration of personnel, deemed indispensable, in particular for the purpose of executing or complementing services in delay of execution, without which the inspection action would be impossible or difficult;*
- *Use, in the inspected places, by means of borrowing from the inspected entities, facilities in conditions of dignity and effectiveness for the performance of their duties;*
- *To exchange mail with all public or private entities on matters of service of their competence;*
- *To carry out, by themselves or resorting to police or administrative authority, and complying with legal formalities, the necessary notifications for the development of the inspection action;*
- *Be considered as a public authority for the purposes of criminal protection.*

In addition to this broad set of prerogatives, FRIAS also establishes that the departments of the State's direct, indirect and autonomous administration, as well as natural and legal persons governed by public and private law subjected to inspection, are bound by the duties of information and cooperation, in particular by providing the elements of information necessary for the development of the inspection activity, in the form, prop, periodicity and urgency required (Article 4, § 1).

At the same time, the executive directors and employees of the inspected entities are obliged to provide all the information and cooperation required by the inspection bodies within the deadline set for that purpose (Article 4, § 2).

In addition, the FRIAS also establishes that:

- Inspection bodies are empowered with the right to request the State departments' of direct and indirect administration to allocate specialized technical personnel to follow up inspection actions (Article 4, § 4);
- Violation of the information and cooperation duties to the inspection bodies and its inspectors causes the offender to be subject to disciplinary and criminal liability (Article 4, § 5);
- Public legal persons must bestow the inspection bodies with all the collaboration demanded by them (Article 5, § 1)
- inspection bodies may request information from any legal person under private law or natural person, whenever the inspection bodies consider it to be necessary to unveil the facts (Article 5, § 2).
- Executive directors and employees of direct and indirect administration departments of the State, as well as of companies and establishments subject to inspection may be notified by the inspector in charge of the case, for the provision of depositions or testimony deemed necessary, subject to the applicable provisions of the CPC (Article 13, § 1 and 3).

This brief review reveals that in Portugal inspection bodies have indisputably a relevant set of prerogatives, safeguards, powers and competences. In Portugal inspection bodies have all the legal instruments they need to be able to carry out investigations on matters within their competence.

It is also important to bear in mind some data related to the IGAI, namely, with respect to the respective organic law (LOIGAI) and the specific legal framework applicable. LOIGAI is currently based on Decree-Laws 58/2012, of 14 March and 146/2012, of 12 July. As stated in the preamble: «... *Since its inception, the IGAI has been an operational control and inspection body that is especially concerned with the control of legality in one of the most sensitive areas of activity of democratic rule of law, such as the exercise of the powers of authority and the legitimate use of means of coercion by security forces and services, whose performance, given their special characteristics, may conflict with fundamental rights, freedoms and guarantees of the citizens…*».

IGAI was conceived from the outset as a body to be filled by «... *individuals with high maturity and professional experience, highly qualified and credible for the exercise of the delicate functions entrusted to them with independence, neutrality, dedication and self-abnegation ...* » such was what it could be read in the preamble of Decree-Law 227/95, of 11 September, which created and established the IGAI within MAI.

According to the LOIGAI, IGAI is a central inspection department of the direct administration of the State, endowed with technical and administrative autonomy (Article 1). IGAI's mission is to exercise high-level audit, inspection and oversight functions upon all entities, services and agencies, dependent or whose activity is legally protected or regulated by the member of the Government responsible for Home Affairs (Article 2, § 1).

Given its specificities and the delicate domain in which it exercises its powers, IGAI is, among all the inspection bodies, the only State's inspection department whose inspectors, in fact all of them, perform inspective functions on the basis of a three years public appointment (Article 2, § 2 of Decree-Law 170/2009, of 3 August).

According to LOIGAI, the IGAI is responsible for:

- Investigate all reports that come to its attention of serious breaches of the

fundamental rights of citizens by MAI departments or their agents, and to assess other complaints and grievances of possible violations of legality and, in general, suspicions of irregularity or deficiency in a departments' operational activity (Article 2, § 2, subparagraph c);

- Conduct inquiries, probes and expert´s report, as well as investigations and disciplinary proceedings (Article 2, § 2, subparagraph d);
- Propose to the member of the Government responsible for the area of the Home Affairs legislative measures regarding the improvement of the quality, efficiency and development of units, divisions and departments of MAI (Article 2 § 2, subparagraph e, final segment);
- Give notice of criminal facts to the bodies responsible for criminal investigation and cooperate with them in obtaining evidence, when requested (Article 2 § 2, subparagraph f).

LOIGAI also foresees that the IGAI does not interfere with the development of the operational performance of the security forces and departments. However, when considered convenient, it is responsible to investigate the way in which it is carried out and its consequences (Article 3).

Among the responsibilities of the Inspector General, the following stand out from LOIGAI:

- Propose to the member of the Government responsible for the area of internal administration legislative measures concerning the improvement of the quality and efficiency of MHA departments and the improvement of security, civil protection and relief institutions (Article 5, § 2, subparagraph b, final segment);
- Determine thematic and unannounced inspections under the annual activity plan, as well as the carrying out of inspection actions (Article 5, § 2, subparagraph c);
- Establishing and deciding on inquiry and investigation procedures, as well as proposing the instatement of disciplinary proceedings and the carrying out of probes (Article 5, § 2, subparagraph d);

IGAI performs, on a systematic basis, unannounced inspections to GNR and PSP facilities and SEF immigration removal centers on any day of the week, at any time of the day or the night. These unannounced inspection actions seek to have a preventive character, with special care and attention to the inspection of detention areas (cells) and the conditions that are provided to detainees, a matter that is regulated in the RMCDPE.

In 2014, IGAI, as a qualified entity, was further empowered with the authority to monitor the coercive removal operations (forced return operations – FRO) of third country citizens from national territory, pursuant to Article 180-A, § 4, subparagraph c, of Law 23/2007, of 4 July and Order 11102/2014, of 25 August.

This responsibility is established in the Regulation for Inspection and Inspection Procedures for Immigration Removal Centers or Similar Spaces and for Monitoring of Forced Returns, approved as annex to Order 10728/2015, of 16 September.

In summary, this is the broad field in which the IGAI exercises its powers and competences, and where, covering this whole spectrum, it includes the competence to also investigate cases of alleged racial discrimination, in particular, misconduct based on racist motivations on the part of Military personnel of the GNR, police officers of the PSP, inspectors of the SEF and all other workers of the entities, departments and agencies, dependent or whose activity is legally protected or regulated by the member of

the Government responsible for the area of Home Affairs.

Moreover, with regard to the question of effectiveness of IGAI, it will be said that the investigated cases and the evidence gathered in each case file show the profound and exhaustive manner in which they are instructed in order to obtain evidence and ascertain the material truth, case files that for that matter will always be available for consultation, scrutiny and analyses by international organizations such as CAT.

In addition to the autonomy and independence of IGAI, executive directors of inspection bodies, including those of the IGAI, as well as its inspectors, enjoy technical autonomy (Article 10 of the FRIAS), something that in the case of the IGAI is even emphasized in its Organic Law (Article 1 of LOIGAI).

Executive directors and inspectors are bound by the principle of proportionality, and must conduct by adapting their procedures to the objectives of the action, in addition to being subordinate to the principle of «critical review» (Articles 11 and 12 of the FRIAS).

In addition, this autonomy, independence and impartiality are reinforced by the fact that the executive directors of the IGAI, both the Inspector-General and the Deputy Inspector-General, are magistrates.

Indeed, magistrates who are executive directors of inspection bodies, as is the case of the IGAI, remain bound by their respective statutory laws of origin and the fulfillment of their duties, which those statutes themselves underline with the expression «*...whatever the situation they are in…*».

With regard to Public Prosecution magistrates, their Statute (Law 47/86, of 15 October, last amended by Law 9/2011, of 12 April) stipulates: «*The Public Prosecution enjoys autonomy in relation to other central, regional and local bodies, according to the law, characterizing this autonomy by being bound by criteria of legality and objectivity and by the exclusive subjection of Prosecution magistrates to the directives, orders and instructions provided for by Law.*» (Article 2), and it is also apparent from the CCP that the Public Prosecutor complies «*in all procedural interventions with criteria of strict objectivity*» (Article 53, § 1).

Judicial magistrates are independent and impartial (Articles 4 and 7 of their Statute)

Finally, and in relation to data concerning investigations into acts of torture and ill-treatment, as far as those investigations fall into the responsibilities of IGAI, the related data is public and available in the IGAI's annual activities reports[1], partially available in English[2].

[1] https://www.igai.pt/2013-10-28-00-53-11/relatorio-de-actividades
[2] https://www.igai.pt/en/publications/report-of-activities