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Portugal

Attack on a prisoner in Lisbon Prison

Introduction

On 11 November 2003 Albino José Vasques Libânio was beaten by some 10 to 15 prison officers, including trainee prison officers, while detained in Lisbon Prison. Amnesty International has had access to a report, dated 20 November 2003, containing the initial findings of the Portuguese Prison Service inspectors' inquiry into the attack on Albino Libânio (*Serviço de Auditoria e Inspeção/Delegação Sul*¹ of the *Direcção Geral dos Serviços Prisionais* – DGSP. Hereafter, the SAI/Sul report).

The SAI/Sul report found that Albino Libânio suffered multiple injuries (*extensas lesões*) and was unable to walk steadily (*andar cambaleante*) as a result of a beating amounting to grave physical ill-treatment (*sevícias corporais fortes*). No medical assistance was provided to Albino Libânio following the attack. The morning after the attack he received a visit and told his visitors that he had been beaten. His visitors informed his lawyer, who reported the attack to the prison service and the Public Prosecutor. Albino Libânio's injuries were examined and photographed by the SAI/Sul inspectors. A medical report was still awaited when the SAI/Sul report was drafted.

A criminal investigation was opened following the filing of a report of the incident with the prosecuting authorities by Albino Libânio's lawyer, and, following the submission of the SAI/Sul report to the Director-General of the DGSP, disciplinary proceedings involving a number of prison officers were also opened.

¹ The competencies of the *Serviço de Auditoria e Inspeção* (SAI), defined in Article 26 of *Decreto-Lei* n.º 268/81, *Lei Orgânica da Direcção-Geral dos Serviços Prisionais*, regulating the prison service, include: supervising the treatment of prisoners and the management of prisons; evaluating prisons' performance; verifying that laws, regulations and internal rules are abided by; monitoring prisons' procedures and practices and proposing improvements; proposing prisons' inspections, and carrying out inspections as requested; proposing the bringing of disciplinary or other proceedings as necessary as a result of inspections' findings; carrying out inquiries, including disciplinary, of particular complexity or involving senior management. The SAI is directed by a deputy director-general of the prison service (Article 14 of *Decreto-Lei* n.º 268/81).

At the time of going to print, Amnesty International was not aware that criminal charges had been brought in connection with the attack, and -- notwithstanding Albino Libânio's being a party to the criminal proceedings as a result of lodging a complaint -- no information about the criminal investigation had reportedly been provided to him. In addition, Albino Libânio's attempt to bring a civil case against the authorities in relation to the attack had been hindered by the prosecuting authorities' refusal to disclose the names of the suspects under investigation.

Amnesty International considers that the findings of the SAI/Sul report, coupled with the refusal to cooperate with the internal inquiry by virtually all the prison officers of Lisbon Prison, give rise to concerns that go beyond the individual case of Albino Libânio. The organization is concerned that the case of Albino Libânio exposes systemic failures to ensure the protection of the human rights of inmates in Lisbon Prison. The premeditated nature of the attack appears to indicate that there may have existed a system in Lisbon Prison for ensuring that beatings against inmates could take place with impunity. Amnesty International is concerned that other similar attacks may have taken place in Lisbon and in other prisons without coming to the attention of the investigating and prosecuting authorities. Furthermore, although some of the failures that appear to have facilitated the attack on Albino Libânio had been identified in the past, including by the Ombudsman (*Provedor de Justiça*), the recommendations for addressing them had not been acted upon.

On 5 July 2004 Amnesty International wrote to the Minister of Justice to express the organization's concerns about the case of Albino Libânio, to request information about the criminal and disciplinary investigations and any other measures that might have been taken following the SAI/Sul report, and to submit a number of recommendations. At the time of going to print, no reply had been received from the authorities.

Amnesty International brought the case of Albino Libânio to the attention of the United Nations Special Rapporteur on Torture, of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and of the Commissioner for Human Rights of the Council of Europe.

The attack on Albino Libânio

The following account of the incident is based on the information contained in the SAI/Sul report. On 11 November 2003, at 12.20pm, a trainee prison officer (*guarda instruendo*, hereafter trainee prison officer A) considered that Albino Libânio had been disrespectful and reported the incident involving Albino Libânio to the prison officer (prison officer B) responsible for that wing of the prison. The SAI/Sul report describes Albino Libânio's alleged infringement of prison disciplinary rules as being not particularly grave ("*...a participação não relata factos de gravidade especial, por parte do recluso...*"). Albino Libânio had apparently used "inappropriate" language to inquire for a second time about the delivery of a package of food that he was expecting. After having been informed of Albino Libânio's alleged infringement of the prison rules, prison officer B went to speak with him.

Prison officer B told the SAI/Sul investigators that he found the prisoner well and calm. Despite this, he informed Albino Libânio that after his educational classes he would be placed in a cell known as “waiting room” or “cell 80” to “calm down”. According to the SAI/Sul report, after that conversation prison officer B did not see Albino Libânio anymore. A third prison officer (prison officer C) took Albino Libânio to “cell 80” at about 5pm that day.

The SAI/Sul inquiry report details how at about 7pm trainee prison officer A went to “cell 80”, where another trainee prison officer (trainee prison officer D), who at that time was in charge of the keys of that cell, opened the door. According to the findings of the SAI/Sul inquiry, trainee prison officer D suspected what was about to happen, but did not take any action to prevent or stop the attack or to alert his superiors, even though from his position in the proximity of gate 4 (*portão 4*) he could see and hear what was happening. According to the SAI/Sul report, Albino Libânio was taken by trainee prison officer A from “cell 80” to a hallway leading to an area known as “*caminho de redondo*”, where a group of some 10 to 15 prison officers was waiting. The prison officers had aligned themselves in two rows, through which Albino Libânio was made to walk, while the prison officers pushed, kicked and punched him. At some point another prison officer (prison officer E) arrived at the scene, saw the commotion and noticed that a prisoner was lying on the ground covering his head with his hands, surrounded by a group of prison officers. Prison officer E rushed to take the prisoner away and led him, by mistake, to Wing E, whereas Albino Libânio’s cell was in Wing B. Albino Libânio was later transferred to his cell in Wing B by trainee prison officer A. Another trainee prison officer (trainee prison officer F) told the SAI/Sul investigators that a short time after the above-described events, while having dinner with his colleagues, he learnt that a prisoner had been attacked, but he, too, failed to take any measure to check if the prisoner concerned was in need of assistance, or to inform his superiors about what he had learnt.

According to the information available to the inquiry, no dinner was provided to Albino Libânio.

Following the report of the incident to the prosecuting authorities and the prison service by his lawyer, Albino Libânio was transferred to another prison.

The use of “cell 80”

The SAI/Sul report indicates that placing Albino Libânio in “cell 80” facilitated the attack on him. “Cell 80” was used in Lisbon Prison for a number of different purposes, i.e. for the temporary placement of inmates in transit, for example, when waiting to be taken to their visitors or to attend judicial proceedings or arriving from outside the prison; and as a cell for the separate detention of violent or vulnerable inmates. The cell’s multiple functions rendered exercising control over its use difficult, and facilitated its use in breach of national legislation and prison service rules intended to safeguard inmates’ rights and prevent abuses. According to the SAI/Sul report, the cell was used for the separate detention of inmates as a form of disciplinary punishment. Furthermore, it would appear that sometimes prison officers used “cell 80” to hold back and isolate inmates that they had decided to assault while all other

inmates would be locked up in their cells for the night. Upon being assaulted, the inmates so targeted would be returned to their cells.²

Breaches of national laws and of prison service regulations

The SAI/Sul report states that placing an inmate in the “waiting room” in order for him to “calm down” – as in Albino Libânio’s case -- amounts to subjecting the inmate to the special security measure of separate detention, provided for under Art. 111, n. 2, c), of *Decreto-Lei* n.º 265/79, *Execução das Medidas Privativas de Liberdade*. Under *Decreto-Lei* n.º 265/79, such measure can only be applied to an inmate when, due to his behaviour or mental state, there exists a serious risk of escape or of violent acts against himself, others or against property. Art.111, n. 5, of *Decreto-Lei* n.º 265/79 expressly prohibits the use of a special security measure as a disciplinary measure. Albino Libânio was found to be calm and allowed to attend classes before being placed in separate detention. He was not seen at the end of his classes by a prison officer to assess whether any special security measure was needed. Therefore, the report concludes that his placement in separate detention in “cell 80” occurred in violation of *Decreto-Lei* n.º 265/79.

The report further concludes that the use of “cell 80” for the separate detention of inmates alleged to have committed disciplinary infringements was in breach of prison service and Lisbon Prison regulations. Requirements for the lawful separate detention of prisoners under DGSP Circular 1/03 -- providing for the detention in separate cells of violent or vulnerable inmates -- were ignored. The provision in Lisbon Prison internal rules (*Norma de Execução Permanente*, NEP) requiring that a senior prison officer (*graduado de serviço*) be informed in advance of the placement of an inmate in the “waiting room” was also breached. A senior prison officer was never informed of the placement of Albino Libânio in “cell 80”, nor of his removal from “cell 80”. In addition, the above-described use of “cell 80” as a “waiting room” for inmates that prison officers had decided to target for a beating allowed officers to circumvent prison service regulations requiring that cells that have been locked for the night cannot be opened save in exceptional circumstances; and that any such opening must be recorded.

The SAI/Sul report conclusions and recommendations

The disproportionate reaction of prison officers to an alleged relatively minor disciplinary infringement by a prisoner is underscored by the SAI/Sul inspectors and regarded as

² “Mais do que isso, fica a impressão de que por vezes esta “sala de espera” é usada como antecâmara de castigos corporais a reclusos mal comportados, ali colocados a aguardar o fecho das alas para serem posteriormente “castigados”, longe de testemunhas e já depois do fecho geral dos reclusos.”, SAI/Sul report, page 70.

symptomatic of a “culture” that fostered abuse of power (*“É clara manifestação de uma cultura de prepotência e poder...”*). In the report, the inspectors also describe how they were faced with a conspiracy of silence by virtually all the prison officers of Lisbon Prison. Such reaction is described in the SAI/Sul report as amounting to defiance of the principles at the core of the prison officers’ mission and of the standards of conduct expected of them (*“...estes arguidos estão numa situação de clara rebelião e livre arbítrio face ao princípios que norteiam a sua missão”*).

The report analyzes the individual disciplinary responsibilities of some of the prison officers who a) were directly involved in the incident; b) foresaw what would have happened or witnessed the assault but did not take any action to stop it, provide assistance to Albino Libânio, or report the assault on him to their superiors; and c) learnt of the assault in its immediate aftermath but did not take any action to provide assistance to Albino Libânio or report the incident to their superiors.

The SAI/Sul report recommends disciplinary proceedings for a number of prison officers, including trainee prison officers. The recommendations include:

- That the director of Lisbon Prison be required to take measures to put an end to the use of the “waiting room” as a cell for the application of special security measures within a specified period of time;
- That information regarding the involvement of each trainee prison officer involved in the case be transmitted to their superiors in Lisbon Prison to be considered in the context of the future assessment of the trainees’ suitability to perform their job;
- That disciplinary proceedings be brought against prison officers A, B, C, D and F; and
- That trainee prison officer A be suspended pending further investigation, as he might interfere with the inquiry and his presence might create tension among inmates.

Amnesty International understands that the SAI/Sul report’s recommendations were endorsed by the DGSP, and that, as a result, trainee prison officer A was suspended for 80 days and disciplinary proceedings were initiated against all of the above-mentioned prison officers.

Amnesty International’s concerns

Amnesty International is gravely concerned about the findings of the SAI/Sul report. The circumstances of the attack as described in the SAI/Sul report and the refusal to cooperate with the internal inquiry by virtually all the prison officers of Lisbon Prison give rise to concerns that go beyond the individual case of Albino Libânio. The organization considers that such findings expose systemic failures to ensure the protection of the human rights of inmates in Lisbon Prison.

In particular, the organization is concerned that the attack against Albino Libânio as described in the SAI/Sul report may amount to torture. Amnesty International is also

concerned about the failure to provide Albino Libânio with medical assistance. Had it not been for the visit that Albino Libânio received the day after the attack, he may have been left without any medical assistance despite the injuries he had sustained, and his injuries may never have been recorded as evidence of the attack.

Amnesty International is further concerned about the failure of the prison authorities to identify and prevent the potential for abuse of the physical and mental integrity of inmates arising from the use of “cell 80” as described in the SAI/Sul report. This is inexcusable given that problems connected with the lack of a clear distinction between cells for inmates subjected to disciplinary measures and cells for inmates subjected to special security measures had been identified in Lisbon Prison in 1998 by the Ombudsman (*Provedor de Justiça*). Moreover, in his third report on the situation of prisons entitled *Our prisons (As Nossas Prisões)*, published in November 2003, under the entry regarding Lisbon Prison, the Ombudsman stated that the situation noted in 1998 persisted, that the recommendations he had made in 1998 had not been acted upon, and reiterated that measures had to be taken to achieve a clear distinction between cells for inmates subjected to disciplinary measures and for those subjected to special security measures.

In addition, Amnesty International is concerned that the conduct of the prison officers of Lisbon Prison in connection with the attack on Albino Libânio, and their attitude to the SAI/Sul inquiry show a lack of the most basic understanding of the duty of care that they owe to inmates and of the legal obligation upon them to respect and protect the physical and mental integrity and the human dignity of inmates. The organization notes with dismay that the prison authorities failed to notice such fundamental flaws and to take measures to prevent and counter them, and to ensure an adequate selection and training of prison officers.

In light of the above-detailed concerns and of Portugal’s obligations under international law and standards, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights, to protect detainees from torture and other cruel, inhuman or degrading treatment or punishment; to ensure that prompt and impartial investigations are carried out into allegations of torture and cruel, inhuman or degrading treatment or punishment; that perpetrators are brought to justice; and that victims obtain redress and have an enforceable right to fair and adequate compensation, Amnesty International urges the Portuguese government to consider and take action on the following recommendations.

Amnesty International’s recommendations

The organization calls on the Portuguese government to ensure that both disciplinary and criminal investigations are carried out thoroughly, promptly and impartially, and that any perpetrator is brought to justice, consistent with international laws and standards.

The organization considers that all prison officers allegedly involved in the attack should be suspended pending the outcome of criminal investigations. Amnesty International

recommends that the findings of the disciplinary and criminal investigations into the circumstances of the attack on Albino Libânio be made public. The organization further considers that Albino Libânio should be given adequate reparations, including compensation, compatible with the findings of disciplinary and criminal investigations.

The premeditated nature of the attack on Albino Libânio appears to indicate that a system existed in Lisbon Prison for ensuring that beatings against inmates could take place with impunity away from potential witnesses, in an organized fashion, and with the cooperation and/or collusion of a large number of prison officers. The attack on Albino Libânio came to be investigated due to the fortuitous circumstance that the day after it occurred he received a visit and managed to tell his visitors of the attack. A key concern for Amnesty International is that other similar attacks may have taken place in Lisbon Prison and in other prisons without coming to the attention of investigating and prosecuting authorities. In light of this, Amnesty International urges the Portuguese government to establish an independent inquiry to ascertain whether other similar incidents occurred in the past in Lisbon and other prisons, and to ensure that all lessons emerging from this incident and any other that may come to light in the course of such an inquiry are learnt. Such inquiry should also be required to examine the effectiveness of existing systems for prisoners notifying impartial authorities of alleged criminal conduct by prison officers, and make recommendations for change if necessary. All inmates interviewed in connection with this inquiry should be guaranteed protection from reprisal, including if necessary being moved to other prisons. The organization considers that the findings, scope and methods of such an inquiry should be made public.

Amnesty International raised the organization's concerns and recommendations including regarding allegations of ill-treatment in prisons in the report *Portugal before the Human Rights Committee: summary of Amnesty International's concerns*, (AI Index: EUR 38/001/2003). As detailed in that report, the UN Human Rights Committee, in its Concluding Observations (CCPR/CO/78/PRT) in August 2003, following the consideration of Portugal's third periodic report under the International Covenant on Civil and Political Rights, expressed concern regarding allegations of ill-treatment by prison officers and made a number of recommendations. Amnesty International considers that Paragraphs 10 and 16 of the Human Rights Committee's Concluding Observations are particularly relevant to the concerns expressed in this report and requests the Portuguese government to implement its recommendations and comply with its requests:

“10. The Committee is concerned about reported cases of ill-treatment and abuse of authority by prison staff and of violence among prisoners, which, in some instances, have led to the death of the victims. (Articles 6, 7 and 10 of the Covenant)

a) The State party should increase its efforts towards the elimination of violence among prisoners and ill-treatment by prison staff, in particular through adequate training of staff and timely prosecution of offences.

b) The State party should keep the Committee informed about the outcome of the proceedings conducted as a result of the violent death of two prisoners in October

2001 in the prison in Vale de Judeus. Responses on allegations of ill-treatment by prison staff in the prisons of Custóias and of Linhó (Sintra) are also requested.

c) More comprehensive information on the status, mandate and achievements of the various agencies supervising prisons and dealing with complaints from detainees, should be provided to the Committee.”

“16. The Committee notes with concern that detainees subject to solitary confinement as a disciplinary measure may only lodge an appeal if the period of confinement exceeds eight days. The Committee is also concerned that during solitary confinement the daily supervision of detainees by fully qualified medical staff is not guaranteed. (Article 10 of the Covenant)

The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement and should guarantee the daily supervision of detainees by fully qualified medical staff during solitary confinement.”

Amnesty International urges the Portuguese government to ensure that the recommendations of the *Provedor de Justiça* aimed at protecting the safety of inmates are implemented in all prisons. In particular, with regard to Lisbon Prison and to any prisons where this may be relevant, the organization urges the authorities to ensure the installation of video-cameras capable of recording footage, including in the disciplinary and security areas (for Lisbon Prison, see page 524 of *Our prisons*, November 2003).

The organization considers also that there should be a review of the use of cells for holding inmates in transit and those subjected to disciplinary or security measures, with a view to identifying breaches of rules and procedures and avoiding further attacks on detainees in Lisbon and other prisons; and an urgent review of the training, selection and supervision of prison officers, including trainee prison officers, so as to ensure their consistency with the requirements of international law and standards. In accordance with such laws and standards, prison officers must have a clear understanding of the rights of inmates subjected to disciplinary proceedings for alleged breaches of prison discipline; and of the operational meaning of their duty of care toward inmates, including to provide medical assistance as necessary. The organization considers that the findings of such reviews should be made public.

Amnesty International is also concerned about the reported failure of the authorities to ensure an adequate dissemination of prison rules in all prisons, and to ensure that each inmate receives a copy of the prison rules when entering a prison establishment. The organization notes that such failure results in inmates not being fully aware of their rights, including in relation to disciplinary proceedings for breaches of prison rules, and contributes to leaving inmates vulnerable to abuses of procedures by prison officers. The organization further notes that this failure has been of concern to lawyers for some time, and that the Human Rights Commission of the Bar (*Ordem dos Advogados*) published in May 2004 a

Charter of the Rights and Duties of Detainees and Prisoners (*Carta dos Direitos e Deveres dos Detidos e dos Reclusos*), to be distributed to the prison population with the cooperation of the prison service. Amnesty International urges the authorities to ensure that each inmate is provided with a copy of the prison rules and of the above-mentioned publication.

The Optional Protocol to the Convention against Torture

Amnesty International urges the Portuguese government to sign and ratify or accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the earliest opportunity.³

As Article 1 of the Protocol states, its aim is:

... "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."

To that end, the Protocol establishes a Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (Sub-Committee). By becoming party to the Protocol (namely by accepting this Protocol through ratifying it or acceding to it), a state will be obliged to allow the Sub-Committee to visit any place under its jurisdiction *"where persons are or may be deprived of their liberty"*. A state party is obliged to help the Sub-Committee in its visits, make all relevant information available to it and allow the Sub-Committee to meet any detainees it wishes to in private and without any negative consequences for the detainees.

The Sub-Committee would then make confidential recommendations to the state party, to be published only with the latter's consent. However, where the state is uncooperative, or fails to take steps to improve the situation, the Sub-Committee may make a public statement.

Uniquely for an international instrument, the Protocol also provides for establishing, designating or maintaining *national* preventive mechanisms (NPMs), namely visiting bodies from within each state party, whose work will complement (but also overlap) that of the Sub-Committee.

The Protocol provides (in Article 17) that states parties undertake to:

"maintain, designate or establish at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level."

States parties also undertake to:

³ For further information on Amnesty International's campaign on the Protocol, see *Preventing Torture at Home: A Guide to the Establishment of National Preventive Mechanisms* (AI Index: IOR 51/004/2004), from which the information contained in this paragraph is taken.

- Guarantee the independence of NPMs, their funding and professionalism as well as assure that their composition is gender-balanced and representative of the population (Article 18);
- Grant NPMs powers to examine the situation of detainees regularly, make recommendations to the relevant authorities and submit proposals and observations on existing or draft legislation (Article 19);
- Guarantee NPMs unhindered access to all relevant information, including statistics, as well as to all places of detention and detainees, including the opportunity to interview detainees in private. Communications between NPMs and the Sub-Committee must also be unhindered. (Article 20);
- Ensure that no harm befalls anyone who communicates with NPMs, and that all such communications remain confidential, not to be published without the express consent of the person concerned (Article 21);
- Examine the NPMs' recommendations and enter a dialogue with them (Article 22);
- Publish and disseminate the annual reports of NPMs (Article 23).