

PORTUGAL

A brief summary of Amnesty International's concerns: January - October 1997

This document is an updated version of the entry on Portugal in *Amnesty International Concerns in Europe: January - June 1997 (AI Index: EUR 01/06/97)*.

Urgent Action on new proposals regarding the death penalty

In May Amnesty International received confirmation that the Portuguese Parliament was to consider imminently an amendment to the Constitution which could place people at risk of the death penalty. The authorities were seeking to amend the clause which forbids the extradition of any person for crimes which carry the death penalty under the law of the requesting state. According to the proposed amendment to Article 33(3) of the Constitution, extradition to requesting states would be allowed in certain exceptional cases, if the Portuguese Government was persuaded that it had received "satisfactory assurances" (*garantías consideras suficientes*) that the death penalty would be commuted and substituted by another penalty of limited duration. Concerned that the Portuguese authorities had not defined the nature or the applicability of such assurances, and the way in which they would assess their reliability, Amnesty International sent urgent appeals expressing its concern to Jorge Sampaio, President of the Republic, and António Almeida Santos, President of the Assembly of the Republic. In its appeals Amnesty International expressed its opposition to the amendment because it could result in an extradited prisoner being sentenced to death by a court in the requesting State, and underlined its unconditional opposition to the death penalty. It also suggested that the amendment would be seen in other countries as a retrograde step, given Portugal's long history of abolition of the death penalty and the important role Portugal has played in seeking worldwide abolition.

Amnesty International subsequently received confirmation that the proposed amendment to the new Constitution, approved on 3 September, had been abandoned and replaced by a clause which stated explicitly that extradition would not be allowed either for "political reasons" or for crimes which, in the law of the requesting state, carried the death penalty or involved any other irreversible injury to a person's physical integrity.

Cases of alleged ill-treatment

Amnesty International was concerned about allegations of police ill-treatment that were made by **Vítor Manuel Santos**, a 23-year-old carpenter, hours before he was found shot through the head near Vila Franca de Xira on 9 February 1997. An autopsy report

concluded that the cause of death was suicide, but also reportedly found on his body a number of marks that indicated he could have been beaten shortly before his death. The Public Security Police (*Policia de Seguranca Pùblica* - PSP) deny the allegations made by Vítor Santos and by members of his family that he had been beaten and kicked en route to and inside the police station at Vila Franca de Xira, following his arrest in a bar for drunk and disorderly behaviour during the night of carnival. After leaving the station Vítor Santos attended the local hospital, where he was reported to have a bruised left eye and to be in a state of great agitation. A judicial complaint was lodged against the police by his family. A disciplinary inquiry was also opened by the General Inspectorate of Internal Administration (*Inspecção-Geral da Administração Interna* - IGAI). This body informed Amnesty International in August that no evidence of assault by the police had been found, and that the doctor who conducted the autopsy had not discovered on the body any external signs of violence that could be attributable to beating. However, IGAI reported that, contrary to their claims, the police officers who arrested Vítor Santos had been customers in the cafe at the time and had not been called there. They would therefore be disciplined for providing misleading information. Reports that the judicial inquiry was dropped by the public prosecutor (*Ministério Pùblico*) on grounds of lack of evidence have not yet been confirmed. The family say they have not had access to the autopsy report and are seeking information concerning certain incidents prior to Vítor Santos' death.

Amnesty International is seeking further details about allegations that a prisoner at Caxias, **Belmiro Santana** was severely beaten by five guards on the night of 8 June. He remains in a poor state of health. The beating is thought to have originated in an incident during a visit by the prisoner's mother when the guard refused to allow him to return to his cell to fetch a legal document. Belmiro Santana claimed that he had been kicked and beaten on the arms and groin with truncheons, that two of his teeth had been broken and that the rings on his pierced nipples and navel had been torn out "in cold blood", leaving deep gashes in the flesh. He further claimed that he had been left for the remainder of the night in solitary confinement, without medical treatment, and did not see a doctor until the following day. He was then taken to the Hospital S. Francisco Xavier for tests and treatment and later transferred back to the prison hospital of Caxias. The General Prison Services Directorate (*Direcção-Geral dos Serviços Prisionais* - DGSP) reportedly stated that only one guard had been involved in the incident and that both a guard and a prisoner had received medical treatment. An inquiry into the incident was opened by the DGSP.

Update on deaths in police custody

A judicial inquiry into the death of **Carlos Manuel Gonçalves Araújo** (see AI Index: EUR 01/01/97), who died of a gunshot wound in the course of arrest, shortly after being taken into custody for robbing a shop in Évora on 15 December 1996, continued before the *Tribunal de Instrução Criminal de Évora*. The police officer whose Browning

semi-automatic pistol was found to have fired the fatal shot, and who had been held in preventive detention, was subsequently released by order of the appeal court (*Tribunal da Relação de Évora*) and he has been allowed to continue service within the police force, but not to carry arms. In its inquiry into the shooting, the IGAI found there had been no unwarranted delay in getting Carlos Araújo to hospital, as earlier reports had suggested.

IGAI also informed Amnesty International in May that it was pursuing disciplinary proceedings against a police officer for unjustifiably assaulting Carlos Araújo and the two other men arrested with him while they were being held in custody at Évora. The two other men were named as **Sérgio Filipe Reis Nogueira** and **Luís António Gomes Alfama Correia**. The disciplinary inquiry was still in progress at the time of writing.

The Portuguese authorities assured Amnesty International that judicial and disciplinary inquiries had been opened into the death of **Olívio Almada** (see AI Index: EUR 01/01/97), whose body was found in the Tagus river following his detention by police officers in October 1996.

The trial of officers of the National Republican Guard (*Guarda Nacional Republicana* - GNR) in connection with the killing of **Carlos Rosa** (see AI Index: EUR 01/01/97) opened on 22 September 1997 before the *Tribunal da Boa Hora* in Lisbon. Defence lawyers acting for the police officer accused of killing the detainee and cutting his head off are reportedly attempting to reduce the charge against the officer from aggravated homicide (*homicídio qualificado*) to one of manslaughter (*negligência grosseira*) on the grounds that he maintained he had not remembered that his gun was loaded at the time. Four other police officers face charges in connection with the murder.

Effective impunity for officer found guilty of manslaughter

Amnesty International is concerned that there continues to be effective impunity for an officer of the PSP who, in April 1995, was found guilty of manslaughter (*homicídio por negligência*). He had shot dead a 31-year-old Rom, **Romão Monteiro**, in June of the previous year, during an interrogation about drug offences (see AI Index: EUR 01/01/97). The officer, who had earlier claimed that Romão Monteiro committed suicide, maintained that he had not realized his gun was loaded. Although the officer was convicted of the killing, a three-year prison sentence suspended for four years was reduced to a suspended prison sentence of two years and ten months by the Supreme Court of Justice (*Supremo Tribunal de Justiça*) on 4 December 1996. The Supreme Court also annulled the decision of a lower court that the officer should be expelled from the police force, on the basis of a change to the Penal Code which had removed from courts the power to determine expulsions from public service. The officer is reported to be currently assigned to a PSP station at a Portuguese airport. After the Supreme Court hearing the Minister of Internal Administration ordered the opening of a disciplinary proceeding into the conduct of the

officer, but to date, over 10 months later, no decision on expulsion has been announced by the PSP and it has been reported that a final decision could take the police force years to reach.

Inspector-General's plan to control abuses

At the end of May IGAI published a report on its plans for 1997. Referring specifically to criticisms made by both Amnesty International and the European Committee for the Prevention of Torture (see AI Index: EUR 01/01/97), the Inspector-General announced that initially he would focus on human rights breaches by the security forces. Plans included systematic, unannounced visits to PSP stations and GNR posts at the rate of one station or post a day by the end of the year. IGAI is also working on new proposals governing the use of firearms by police officers and is engaged in an inquiry into the current practice of suspending internal disciplinary procedures against officers while judicial inquiries are under way. A study is being undertaken into police conduct towards minority groups, such as Africans and Roma.

Torture: National Assembly rejects proposals for reform of Penal Code

In April, Amnesty International called on the government to redraft the proposed reform of the articles of the Penal Code relating to law enforcement officers suspected of crimes of torture and ill-treatment.

The revised 1995 Penal Code introduced specific crimes of torture and ill-treatment and also provided for the punishment of superior officers who fail to report such crimes within three days. The effectiveness of these new laws is questionable because of the qualifying articles. In particular, the definition of what constitutes such a crime is so restrictively worded in Article 243, and the burden of proof on the victim so heavy, that many acts of torture and ill-treatment would not qualify.

The consequences of this are very serious because of another piece of legislation which discriminates against victims of ill-treatment. Most of the cases of ill-treatment by law enforcement officers would be considered crimes of common assault (*ofensas corporais simples*) under Article 143. Currently clause 2 stipulates that any criminal investigation requires a judicial complaint by the victim. Amnesty International believes that there are many valid reasons why the victim of an assault by a law enforcement officer may legitimately not wish to make a complaint. If there is no such complaint then there will be no judicial action and the victim is denied a remedy.

In December 1996 the Minister of Justice assured Amnesty International that this article of the law would be recategorized to a *crime publico* leading to automatic judicial action. The proposed reform is a two-step process meaning that the law would only recognize common assault as a *crime publico* where the officer is suspected of having committed an offence with a **grave** abuse of authority. This introduces the definite

possibility that numerous offences of common assault will be excluded because they fail to meet the court's definition of the qualification grave.

Amnesty International believes that for the reform to be effective any new law should make clear that where an officer is suspected of ill-treatment this should lead to automatic judicial action. On 5 June the proposed Penal Code reform, which did not include the changes for which Amnesty International has pressed, was rejected by the National Assembly.

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