

## PORTUGAL

### Follow-up - State Reporting

#### Action by Treaty Bodies, Including Reports on Missions

CCPR A/59/40 vol. I (2004)

#### CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
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*Seventy-eighth session (October 2003)*

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Portugal	7 August 2004	-	-
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**Follow-up - State Reporting  
Action by State Party**

**CCPR CCPR/CO/78/PRT/Add.1 (2004)**

**Comments by the Government of Portugal on the concluding observations of the Human Rights Committee**

[19 August 2004]

Replies to the United Nations Human Rights Committee concerning the issues raised in recommendations 8, 9 and 10 of the Committee's concluding observations regarding the report of Portugal on the implementation of the International Covenant on Civil and Political Rights (CCPR/CO/78/PRT)

**Recommendation No. 8**

**Paragraph 8 (a).** Various institutional, legislative, procedural, best-practice and training measures have been and continue to be adopted with the aim of ending police violence. For example:

- The establishment, in 1995, of the General Inspectorate of Internal Administration (IGAI), an administrative body outside the police that investigates cases of damage to private property, and especially death or serious injury attributable to police action.
- Amnesty International<sup>1</sup> and the United Nations Committee against Torture<sup>2</sup> have expressed their satisfaction with the initiatives undertaken by the IGAI, for example in areas such as the modernization and training of police forces and the reduction in the number of complaints of human rights abuses by the police.
- The IGAI advocated the issuance of Decree-Law No. 457/99 of 5 November 1999, the first general Portuguese law on this question, which regulates the use of firearms by the police in accordance with: the relevant international instruments, such as the United Nations Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the principles of appropriateness, necessity and proportionality; the regulations on physical conditions of detention at police stations, approved by Order No. 8684/99 of the Minister of the Interior; and the Police Code of Conduct annexed to Council of Ministers decision No. 37/2002, published in the official gazette, I, series B, of 28 February 2002, article 3 of which, entitled "Respect for the fundamental rights of the human being", states:

"1. In the performance of their duty, members of the security forces shall promote, respect and protect human dignity, the right to life, liberty and security, and all the other fundamental rights of any person, irrespective of nationality or origin,

status or political, religious or philosophical convictions.

"2. Members of the security forces have the particular duty to refrain from inflicting, encouraging or tolerating in any circumstances cruel, inhuman or degrading acts."

- When the use of a firearm by a police officer causes death or bodily harm, a report of the incident must be drawn up and an inquiry held as a matter of course. Police stations throughout Portugal and the islands (the Azores and Madeira) are systematically inspected without prior notice at any hour of the day or night to ensure proper compliance with the law on detainees (registration, reporting to the Public Prosecution Department, hygiene, medical treatment, etc.) and places of detention. Clearly visible posters in various languages listing the rights and obligations of detainees have been put up in all police stations. Checks are made to ensure observance of a detainee's right to consult a lawyer in private, to receive medical treatment and to have the services of an interpreter. Lastly, in accordance with the law on the protection of personal data, audio and video recording equipment is gradually being installed inside and outside police stations, and the recordings are monitored.
- Systematic promotion and encouragement of best practice in safeguarding human rights and eliminating ill-treatment by the police using available means (initial and ongoing training, theoretical and practical training, organization of and participation in seminars, dissemination of materials received from international organizations, such as the "Manual on human rights training", and "Human rights and law enforcement").
- In their curricula, all police training institutions offer human rights training with strong emphasis on restraint in the use of firearms. Training is offered at all levels: as a requirement for induction and promotion, to senior and ordinary police officers, upon entry and throughout an officer's career, from the standpoints of theory and practice, and in a legal, sociological or political context. Training courses vary in length between 15 and 30 hours.
- The Aliens and Frontiers Department runs training sessions on the prohibition of torture, ill-treatment and racial discrimination, both on entry (10-hour course entitled "Cultural anthropology" intended to encourage understanding of cultural difference and prevent racist and xenophobic attitudes) and on an ongoing basis (attendance at seminars).
- The Advisory Board for Training of Security Forces and Services, established by Council of Ministers decision No. 78/98 of 7 June 1998, offers support and advice to the Minister of the Interior, and decides all matters relating to the training of members of the security forces and services. Among its various initiatives are in-house training and distance learning programmes in the following areas: firearms use, prohibition of torture, ill-treatment and racial discrimination, immigration and ethnic minorities. In partnership with the High Commissioner for Immigration and Ethnic Minorities, the Advisory Board has organized "forums" on the resolution of conflicts between the police and ethnic minorities, in which 400 members of the National Police Force and the National Republican Guard have already

participated.

- As part of its continuous learning programme, the National Police Force initiated, in 2003, a new 70-hour ongoing training module which has already been attended by approximately 7,000 officers. The training covers firearms instruction, police intervention techniques and the use of non-lethal weapons. Circumstances in which various coercive techniques may be employed are also covered.
- As part of its continuous learning programme, the National Republican Guard addresses topics pertaining to "professional ethics" (for example, the "Basic rights" module) and the "social environment" (for example, the "Immigrants and ethnic minorities" module).

**Paragraph 8 (b).** The following points should be noted concerning investigation, punishment and compensation in respect of allegations of torture, ill-treatment and disproportionate use of force:

- The law stipulates that all such cases, without exception, shall give rise to a disciplinary investigation by IGAI inspectors and referral to the Minister of the Interior for a decision.
- There is no record of any delays in disciplinary proceedings. Only in a very limited number of cases have disciplinary proceedings been suspended pending a final decision by the criminal courts, under terms and provisions expressly stipulated by law. However, in accordance with IGAI guidelines, this option is used only in exceptional circumstances.
- As regards liability and compensation for police actions, whether lawful or otherwise, attention should be drawn to the Constitution, which states: "Officials and other personnel of the State and other public bodies shall be responsible in civil, criminal or disciplinary proceedings for their acts or omissions when performing their functions, and by virtue thereof, when their actions result in infringements of the legally protected rights or interests of citizens; no action or proceedings in respect of these matters shall be dependent, at any stage, on the prior approval of a superior authority" (Constitution of the Portuguese Republic, art. 271, para. 1). The ordinary law covers the substantive and procedural arrangements for lodging claims for compensation with the authorities (respectively, Decree-Law No. 48 071 of 21 November and the Code of Administrative Court Procedure, arts. 37 et seq.).
- The actions of Portuguese police forces may be monitored externally or internally. External oversight is the responsibility of the courts, which are sovereign bodies with constitutionally enshrined independence, and the Public Prosecution Department, the body entitled to initiate criminal proceedings, which also has constitutionally enshrined independence, if the acts or omissions in question are criminal offences (Constitution,<sup>3</sup> arts. 202 et seq. and 219). External oversight is exercised by the Ombudsman (Provedor de Justiça) and the IGAI if the acts or omissions in question are disciplinary offences. Internal oversight is within the remit of individual police headquarters if the acts or omissions in question are disciplinary

offences.

- Article 23 of the Constitution establishes the institution of Ombudsman,<sup>4</sup> an independent officer appointed by Parliament (Assembleia da República) for a term established by law. The Ombudsman has a general-purpose mandate, which means that citizens can lodge complaints about acts or omissions by any public body, including the police. The Ombudsman evaluates these complaints without having the power to make decisions, but addresses to the competent bodies any recommendations that are required to prevent and redress injustices. The rules governing the Ombudsman's activities are stipulated by law (Act No. 9/91 of 9 April 1991; Act No. 30/96 of 14 August 1996), and the organization of the Ombudsman's Office is regulated by Decree-Law No. 279/93 of 11 August 1993 and Decree Law No. 15/98 of 29 January 1998.
- By law (Decree-Law No. 227/95 of 11 September 1995, Decree Law No. 154/96 of 31 August 1996 and Decree-Law No. 3/99 of 4 January 1999), the IGAI<sup>5</sup> is the body that exercises external oversight over the police. It is directly subordinate to the Minister of the Interior and has the status of a high-level inspectorate. It is headed by judges from the higher courts and employs a team of inspectors drawn from the judiciary who are technically and administratively independent in the performance of their duties and follow strict criteria of legality and objectivity.

### **Recommendation No. 9**

Principles 9, 14 and 16 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials have been incorporated into Portuguese law: the text and spirit of these principles have been transposed, sometimes verbatim, into article 3, paragraph 2, of Decree-Law No. 457/99 of 5 November 1999.

This is illustrated by the said paragraph, which reads as follows:

"2. A firearm shall not be used against persons except where, cumulatively, the desired result cannot be achieved without recourse to a firearm, within the meaning of paragraph 1 of this article, and where one of the circumstances listed below exclusively obtains:

(a) To avert unlawful assault against the officer or a third party in the event of imminent danger of death or serious injury;

(b) To prevent the perpetration of a particularly serious crime involving threat to life;

(c) To arrest a person presenting such a threat and resisting authority, or to prevent his or her escape."

In November 2003, the IGAI organized an international seminar on the theme of "The use of firearms by police forces".<sup>6</sup> It was attended by representatives from Spain, France and the United Kingdom of Great Britain and Northern Ireland, who reviewed the legislative situation and local practice in each country. The conclusions that emerged from the discussions have enabled the IGAI to submit proposals to the Minister of the Interior with a view to refining the law or national practice in the area of firearms use by the police where necessary.

As part of its normal annual programme, on 5 May 2004 the IGAI organized a conference at the National Police academy on "The use of force and coercive methods by the security forces".

### **Recommendation No. 10**

All detainees are immediately conveyed to places of detention administered by the security forces and services.

The Public Prosecution Department is systematically notified by fax of all cases of detention, as prescribed by law (Code of Criminal Procedure, art. 259, para. (b)).

All cases of detention reported to the Public Prosecution Department are systematically recorded in the registers which every police station is required to maintain (Register of detainees, Detainee's personal data sheet, Official record of detention and Register of communications to the Public Prosecution Department, to which are annexed the faxes referred to above and the counterfoils proving receipt by the Department).

As has been stated above, the IGAI teams of inspectors pay systematic and unannounced visits to police stations throughout Portugal and the islands at any hour of the day or night to ensure proper compliance with the law on conditions of detention (registers, reports to the Public Prosecution Department, hygiene, medical treatment, etc.).

As also mentioned above, audio and video recording equipment has been installed inside and outside police stations and is used to record conditions of detention (CCTV).

Offences committed by police officers are recorded in the "officers" database of the Office of the Government Procurator.

For the sake of transparency, the Office has permitted these data to be used in this report. The data have been updated to 15 June 2004.

**Table 1**  
**Police officers**  
**Procedural action - offences committed in service**

Procedural action	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
1. Proceedings instituted	189	292	427	343	348	325	293	296	354	367	362	408	392	4 396
2. Proceedings resulting in charges	56	80	101	91	72	73	75	62	61	52	46	48	23	840
3. Amnesty	2	7	19	8	2	1	2	4	2	0	0	0	0	47
4. Withdrawal of complaint	5	18	20	19	19	19	15	16	22	18	23	18	16	228
5. Case dropped on other grounds	29	56	73	50	78	57	62	52	68	70	51	38	38	722
<b>6. Total proceedings dropped (3+4+5)</b>	36	81	112	77	99	77	79	72	92	88	74	56	54	997
7. Insufficient evidence	78	106	178	151	160	158	128	147	172	183	160	150	107	1 878
8. Referred to military jurisdiction	19	24	33	21	16	11	4	8	11	7	3	2	0	159
9. Convictions	19	28	41	38	28	21	22	15	12	8	0	1	3	236
10. Discharges	20	23	32	24	15	24	22	8	9	5	2	1	0	185

It should be noted that not all proceedings instituted result in an indictment by the Public Prosecution Department. And of those that do, only a small proportion result in a conviction. Another (relatively small) proportion result in a discharge. This is attributable to the fact that, between indictment and discharge or conviction, a number of events may occur, such as the death of the accused or any other circumstance that prevents the procedure from ending in a final judgement.

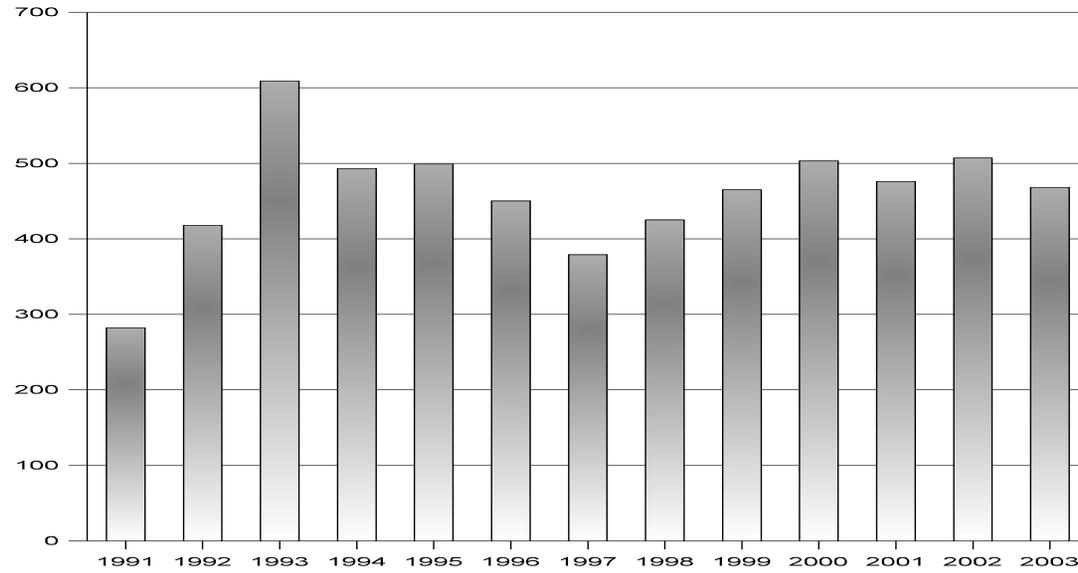
**Table 2**  
**Police officers**  
**Types of offence reported (categorized by criminal offence) - in service**

Type of offence	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Abuse of authority	41	45	57	72	69	77	46	58	66	74	63	53	49	770
Menaces	16	26	32	28	23	30	18	32	30	34	35	38	40	382
Coercion	5	7	16	8	19	12	9	11	7	18	9	9	11	141
Corruption	3	6	13	9	16	12	11	13	9	21	12	28	20	173
Obtaining evidence by threats	8	9	17	16	11	1	1				1			64
Negligent homicide	1	3	2	7	6	3	1	3	2	1	1	2		32
Intentional homicide	1		4	3		2	3	1	1	3	1			19
Insults	23	38	51	33	43	25	31	41	45	41	42	44	36	493
Intentionally causing bodily harm	109	178	261	211	184	179	153	164	212	192	206	218	193	2 460
Other offences	54	78	111	81	85	91	92	95	87	115	105	114	116	1 224
Unlawful imprisonment	15	18	35	17	28	14	12	6	6	4	1	1	2	159
Wrongful promotion/ non-promotion	6	10	10	8	15	4	2	1					1	57
<b>Total</b>	<b>282</b>	<b>418</b>	<b>609</b>	<b>493</b>	<b>499</b>	<b>450</b>	<b>379</b>	<b>425</b>	<b>465</b>	<b>503</b>	<b>476</b>	<b>507</b>	<b>468</b>	<b>5 974</b>

*Note:* The recorded figures refer to reported offences, and not to offences actually committed, which can only be confirmed or disproved by investigation and possible judgement. It should also be noted that the rise in the number of complaints, rather than indicating an increase in the number of incidents possibly attributable to police conduct, could indicate greater awareness on the part

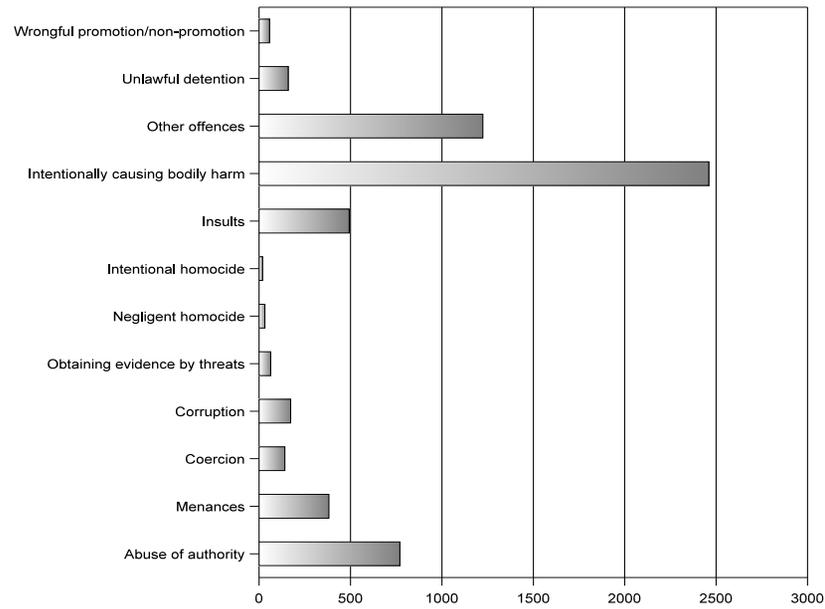
of the public about the exercise of their rights and possible violations of these rights.

Number of offences reported (categorized by criminal offence) - in service  
(Annual totals)



**Figure 1 - Police officers**  
**Types of offence reported (categorized by criminal offence) - in service**  
**(Table 2)**

### Types of offences reported 1991-2003



**Figure 2 - Police officers**  
**Types of offence reported (categorized by criminal offence) - in service**  
**(Table 2)**

**Table 3**  
**Officers detained by a police body - in service**

Officers detained (pursuant to allegation)	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
National Police Force	245	329	480	425	405	430	319	309	413	411	344	422	397	4 929
Municipal Police		1	2			2	1		3	5	4	3		21
Judicial Police	23	40	57	37	51	32	32	62	38	34	37	14	45	502
Prison guards	5		9	12	16	11	20	16	21	13	23	23	25	194
National Republican Guard	74	107	127	141	132	131	114	130	136	161	315	332	143	2 043
Forest rangers		2	1	5	1		7	3		5				24
Tax police	1	11	22	4	1		2						2	43
General Directorate for Economic Inspection	1	1												2
<b>Total</b>	<b>349</b>	<b>491</b>	<b>698</b>	<b>624</b>	<b>606</b>	<b>606</b>	<b>495</b>	<b>520</b>	<b>611</b>	<b>629</b>	<b>723</b>	<b>794</b>	<b>612</b>	<b>7 758</b>

With regard to the situation at Vale de Judeas prison, the investigation of two cases has been completed by the prosecuting authorities; one (revolt) has led to an indictment and the other (drug-trafficking) has been dropped. As regards three other cases resulting from events at this prison, the first, the "tunnel" affair, is at the stage of investigation by the Judicial Police. In the second case, that of the homicides, the Public Prosecution Department has completed the investigation and drawn up the indictment, which will shortly be transmitted to the court. In the third case, the so-called "mobile phones" affair involving an assault on an inmate by a prison guard, proceedings are expected to be dropped with regard to the mobile phones per se.

Lastly, it should be noted that the law on the prison system is currently being reformed, and will have important consequences for the basic rights and living conditions of detainees, action to combat prison overcrowding and to prevent drugs from entering and circulating in prisons, and the provision of adequate legal support.

### **Recommendation No. 12**

The Aliens and Frontiers Department has expressed a wish to comment on the Committee's recommendation No. 12.

Portuguese domestic law and specifically article 8 of Act No. 15/98 of 26 March 1998 containing provisions on asylum and refugees, expressly stipulates that a residence permit shall be granted on humanitarian grounds to aliens or stateless persons who do not qualify for the right of asylum and corresponding refugee status but are prevented from returning, or feel they cannot return, to their country of origin or habitual residence for reasons of serious insecurity resulting from the existence of armed conflicts or systematic violation of human rights in that country.

Unlike under the previous legal provisions, when the above-mentioned supposition exists, the authorities must apply article 8; in addition, throughout the proceedings, the alien enjoys all the safeguards stipulated by the law of asylum regarding the granting of refugee status, including those that relate to reconsideration and appeal.

Moreover, this provision, like every provision in asylum law, must, by virtue of article 33 of the Constitution, be interpreted and implemented in accordance with the Universal Declaration of Human Rights, the European Convention on Human Rights, and the 1951 Convention relating to the Status of Refugees and its additional Protocol.

Therefore we do not believe it is correct to say, as the interpretation contained in paragraph 12 has it, that applicable domestic law does not provide effective remedies against the return of an alien to a country where he or she would be in danger.

### **Recommendation No. 17**

In recommendation No. 17, the Committee states that Portugal should amend its legislation

in order to ensure that the family life of resident and non-resident aliens sentenced to an accessory penalty of expulsion is fully protected, as stipulated in articles 17 and 26 of the Covenant.

The accessory penalty of expulsion, as currently provided for under article 101 of Decree-Law No. 244/98 of 8 August 1998, as amended and reissued by Decree-Law No. 34/2003 of 25 February 2003, is not automatically applicable by the courts. This holds true even if the penalty is potentially applicable, in objective terms, for example when a sentence of imprisonment of more than six months and one year is imposed on non-resident aliens or aliens residing in Portugal temporarily.

With regard to resident aliens, in addition to the general principles of preservation of public order and proportionality, in the application of the accessory penalty of expulsion account must be taken of the gravity of the offence allegedly committed by the accused, his or her personality, the possibility of a repeat offence, the extent to which the person is integrated into Portuguese life, the preventive measure appropriate to the case, and the number of years he or she has been in the country.

With regard to permanent residents (those who have lived in Portugal for more than five or eight years, depending on whether they are citizens of a Portuguese-speaking country or of a third country), the accessory penalty of expulsion can be applied only if the citizen's conduct constitutes a sufficiently serious threat to public order or national security.

As it currently stands, the provision in question also places non-derogable restrictions on application of the accessory penalty of expulsion. Thus, under no circumstances may the penalty of expulsion be imposed on persons born in Portuguese territory who habitually reside there, residents with minor children over whom they effectively had parental authority at the time of the offence that gave rise to the penalty, and for whose maintenance and upbringing they are responsible (provided that the child will still be a minor at the expected time of enforcement of the penalty), and persons who have lived in Portugal since before the age of 10 and habitually reside there.

Restricting ourselves to the question that concerns us here, namely, article 101, paragraph 1, of Decree-Law No. 244/98 (accessory penalty of expulsion applicable to non residents) and the alleged violation of articles 17 and 26 of the Covenant (a study having been conducted on various decisions relating to this matter - Constitutional Court, European Court of Human Rights and European Court of Justice), it appears that the requirements of the International Covenant on Civil and Political Rights are being met.

Given that the accessory penalty of expulsion is never applied automatically, as is clearly apparent from article 101, paragraph 1, of Decree-Law No. 244/98 ("may be applied"), account will always be taken of the criminal-law principles of proportionality and appropriateness in imposing this penalty (which is always decided by a judicial authority), and at the same time an effort will be made to strike a fair balance between the right to privacy and family life, and the protection of public order and the prevention of wrongdoing.

Lastly, it should be further stated, in connection with the reference to article 26 of the Covenant, that expulsion cannot be regarded as a form of discrimination on grounds of nationality in connection with the punishment of offences. Thus, generally speaking, the penalty imposed on a Portuguese national for committing a given crime must be the same as that imposed on an alien. Taking into account proportionality with regard to the offence committed and the mental and material circumstances of its commission, the punishment must therefore be the same whatever the status of the perpetrator. And if this is not so, it is because the Constitution forbids the expulsion of Portuguese nationals, which is strictly in accordance with international rules and principles.

## Notes

1. <http://web.amnesty.org/library/Index/engEUR380022001!Open>
2. <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/2fef437dbcf9ef8c1256d7a00470970?OpenDocument&Highlight=0,igai>
3. [http://www.parlamento.pt/const\\_leg/crp\\_port/](http://www.parlamento.pt/const_leg/crp_port/)
4. <http://www.provedor-jus.pt/>
5. <http://www.igai.pt/>
6. <http://www.igai.pt/public.asp?pubtype+=6>